

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 26.11.2025

Pronounced on: 05.12.2025

Uploaded on: 05.12.2025

*Whether the operative part
or full judgment is
pronounced: **Full***

CM(M) No.124/2024

GHULAM MOHAMMAD RESHI @GULLA AND
ANOTHER

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. Syed Wasiq, Advocate.

Vs.

SMT. KAMLA JI AND OTHERS

...RESPONDENT(S)

Through: - Mr. Showkat Ali Khan, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners, through the medium of present petition, have challenged order dated 08.05.2023 passed by the learned Sub Judge (Special Mobile Magistrate), Anantnag (for short “the trial court”), whereby application of the petitioners/plaintiffs under Order 39 Rules 1 and 2 CPC has been dismissed. Challenge has also been thrown to order dated 28.12.2023 passed by the learned District Judge, Anantnag (for short “the Appellate Court”), whereby the aforesaid order of the trial court has been upheld and the appeal filed by the petitioners has been dismissed.

2) It appears that the petitioners have filed a suit for Permanent Prohibitory Injunction against the predecessor in interest of the respondents who has died during the pendency of the present petition, before the learned trial court. The case of the plaintiffs before the learned trial court is that plaintiff No.2 and father of plaintiff No.1 have been recorded as tenants of land measuring 05 kanals and 04 marlas falling under Khasra No.72 situated at Village Brah Tehsil Shangus District Anantnag. It has been submitted that Khasra number 72 has now been bifurcated into a series of new Khasra numbers and the suit land has been assigned two new Khasra numbers i.e. is Khasra No.1673/72 and 1676/72. It has been pleaded that father of the original defendant was ex-owner of the suit land and after the application of the provisions of the Jammu and Kashmir Agrarian Reformers Act (for short "the Act"), he ceased to have any right claim or interest in the suit land. It has been contended that the plaintiffs have been in physical cultivating possession of the suit land to the exclusion of defendants and their predecessor-in-interest, for a period of not less than 50 years. It has been pleaded that the original defendant, who was employed with the Office of Divisional Commissioner Kashmir, was misusing his position and was trying to force his entry into the suit land.

3) The original defendant filed his written statement before the learned trial court in which he pleaded that the suit is barred under Section 25 of the Act read with Rule 58 of the J&K Agrarian Reforms Rules (for short “the Rules”) It has been pleaded that the plaintiffs have manipulated and tampered with the revenue record and the present suit has been filed with a view to grab the suit land which has been vested upon the defendant by virtue of mutation No. 652 under section 7 of the Act. The defendant has pleaded that his father was owner of land falling under Khasra No.2-min (11 kanals 14 marlas), Khasra No.72-min (old) Khasra No.1673/72 and 1676/72 (new) (05 kanals 04 marlas) situated at Brah. It has been submitted that out of the afforested land, the suit land, i.e., land measuring 5 kanals, 4 marlas, from survey no. 1673/72 and 1676/72 was under the cultivation of father of plaintiff No.1 and plaintiff No.2 as tenants. After coming into force of the Act, mutation No.565 under Section 4 of the Act was attested in respect of the aforesaid land in favour of the plaintiffs and they were declared as prospective owners whereas the father of the defendant was declared as ex-owner. It has been submitted that after the death of father of the defendant, land falling under Survey No.72-min(old) Suit Survey No.1673/72 and 1676/72 (new) (02 kanals 12 marlas) has been resumed by the defendant and mutation No.652

dated 12.05.1987 stands attested in his favour. It has been submitted that even after attestation of mutation in favour of the defendant, the possession of the suit land has not been handed over in his favour. According to the defendant, because of onset of militancy and threat to Kashmiri Pandits, he could not take over possession of the suit land.

4) The defendant has submitted that in January, 2022, he approached the Revenue Officers for implementation of mutation No.652 and for demarcation of the land but it was found that the plaintiffs have manipulated a fraudulent mutation No.614 under Section 12 of the Act with respect to the suit land with a view to grab the same. It has been further submitted that after the plaintiffs were summoned to remain present on spot on 14.11.2022 for demarcation of the land, however, they remained absent and, as such, necessary entry has been made in red ink in the Jamabandi of 1967-68, 1997-98 and Girdawari of 2021 in favour of the defendant with respect to the suit land. According to the defendant, the plaintiffs have intentionally and deliberately suppressed the material facts in their plaint.

5) The learned trial court, while deciding the application of the plaintiffs under Order 39 Rule 1 and 2 of CPC, after noticing the aforesaid pleadings of the parties, has observed that once the revenue authorities have initiated the

proceedings under Section 7 of the Act, they are under a statutory obligation under the Act to take the proceedings to its logical conclusion in accordance with law. It has been further observed that from the material on record it appears that the revenue authorities have initiated the proceedings under Section 7 of the Act to attest mutation in respect of the suit land in favour of the defendant but the possession has not been delivered to the defendant till date. On this basis, the learned trial court has, *prima facie*, concluded that the dispute between the parties is fundamentally pertaining to Agrarian Reforms Authorities and it is within the domain of the authorities and the officers under the Act and that the civil court cannot interfere in such matters. It has been observed that if at all the plaintiffs faces any interference from the defendant, the remedy available to them is under Rule 58 of the Agrarian Reforms Rules.

6) The learned Appellate Court has, while agreeing with the opinion of the trial court that mutation under the Act is within the domain of the authorities under the Act and not within the jurisdiction of a civil court, proceeded to reject the claim of the plaintiffs with regard to adverse possession over the suit land. On this basis, the learned Appellate Court has, while holding that there is no *prima facie* case in favour of the plaintiffs, proceeded to dismiss the appeal filed by the plaintiffs.

7) The petitioners/plaintiffs have challenged the impugned order on the grounds that Section 19(3) of the Act stands deleted in terms of Jammu And Kashmir (Adaptation Of State Laws) Fifth Order, 2020, therefore, the trial court had the jurisdiction to entertain the dispute raised by the plaintiffs in the suit. It has been contended that it was the duty of the trial court to address the question as to whether the defendant could seek possession of the suit land after 36 years of attestation of mutation under Section 7 of the Act in his favour and whether the long possession of the plaintiffs over the suit land had matured into title in their favour.

8) I have heard learned counsel for the parties and perused record of the case.

9) As is clear from the pleadings of the parties, the plaintiffs claim that they are owners in possession of the suit land as mutation under Section 4 of the Act in respect of the suit land stands attested in their favour and that they have been in possession of the suit land for the last more than 50 years. The original defendant claims that mutation under Section 7 of the Act in respect of the suit land stands attested in his favour and, as such, he is entitled to resume the land in question, regarding which he has already approached the authorities under the Act.

10) Having regard to the nature of the issues arising from the pleadings of the parties, the question that falls for determination is whether the learned trial court and the learned Appellate Court were justified in holding that the suit is not, *prima facie*, cognizable by a civil court.

11) In the above context, it is to be noted that Section 25 of the Act creates a bar to the jurisdiction of the civil court to settle, decide or deal with any question or to determine any matter arising out of the Act or the rules made thereunder. In the present case, the issue that falls for determination is as to whether the defendant is entitled to resume the suit land on the basis that mutation under Section 7 of the Act stands attested in his favour way back in the year 1987. The plaintiffs are resisting resumption of the suit land by the defendant on the ground that they have been in possession of the suit land for the last many decades. It is not in dispute that the defendant has already approached the authorities under the Act seeking possession of the suit land pursuant to attestation of mutation under Section 7 of the Act in his favour.

12) Chapter V of the Rules deals with resumption and Rule 21, which falls in the said Chapter, provides the procedure prescribed for resumption. Sub-rule (2) of Rule 21 provides that the Revenue Officer has to conduct an enquiry on the

mutation itself and, after giving an opportunity of being heard to the parties, give his finding as regards the eligibility of the petitioner to resume the land. Sub-rule (5) of Rule 21 gives jurisdiction to the Revenue Officer to put the petitioner in possession of the resumed land after affording adequate opportunity to the respondent to remove the crop etc. Thus, an elaborate procedure has been prescribed under Rule 21 of the Rules with regard to the manner in which a petition for resumption of land filed by a person in whose favour mutation under Section 7 of the Act has been attested, is to be dealt with. It provides for granting an opportunity of hearing to the person who is in possession of the resumed land. All these proceedings are to be conducted by a Revenue Officer in exercise of his powers under the provisions of the Act. Therefore, *prima facie*, it appears that the civil court does not have jurisdiction to deal with the issues which were raised by the parties in the suit, which, primarily, pertain to entitlement of the defendant to resume the suit land.

13) In so far as the deletion of Section 19(3) of the Act is concerned, the same may not have any bearing on the present case, as it does not relate to any of the situations contemplated under clauses (a) to (e) of the deleted sub-section (3) of Section 19 of the Act.

14) For what has been discussed hereinbefore, the view taken by the learned trial court as upheld by the learned Appellate Court that, *prima facie*, the civil court did not have jurisdiction to deal with the issues raised in the suit, neither appears to be illegal nor perverse. Therefore, this Court, in exercise of its supervisory powers under Article 227 of the Constitution, would not be right in interfering with the impugned orders passed by the learned courts below.

15) For the foregoing reasons, I do not find any merit in this petition. The same is dismissed accordingly. Interim direction, if any, shall stand vacated.

(SANJAY DHAR)
JUDGE

Srinagar
05.12.2025
“Bhat Altaf”

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| Whether the Judgment is speaking: | Yes |
| Whether the judgment is reportable: | Yes/No |