

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...

C2A no.34/2018

Pronounced on: 21.11.2025

Mst Khati

.....Petitioner(s)

Through: Mr Rizwan ul Zaman, Advocate

V/s

Abdul Rashid Salroo

.....Respondent(s)

Through: Mr Gazanfar Ali, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. This civil second appeal is directed against judgement and decree dated 24th August 2018, passed by Principal District Judge, Anantnag (*1st Appellate Court*) in Civil First Appeal titled as *Abdul Rashid Salroo v. Mst. Khati* and for setting-aside the same on the grounds made therein.
2. Heard and considered
3. A civil suit titled *Mst. Khati v. Abdul Rashid Salroo*, was filed by appellant (plaintiff) against respondent (defendant) before the court of Sub Judge, Bijbehara (*Trial Court*) for permanent prohibitory and mandatory injunction. The case set up by plaintiff was about interference caused by defendant and restraining him from causing any sort of interference in land measuring 10 Marlas falling under Khasra no.945 min situate at village Jablipora Tehsil Bijbehara, Anantnag (*suit land*). Defendant in his written statement claimed that he was actually

in possession of land measuring 01 Kanal and 10 Marlas falling under Khasra no.945 min situate at Moza Jablipora Tehsil Bijbehara by virtue of a decree passed in his favour and against shareholders of land falling under Khasra no.945 min and that he did not know which land was in possession of plaintiff as she had not specified boundaries of suit land.

Trial Court framed following issues:

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| (i) Whether plaintiff is owner and in possession of suit land measuring 10 Marlas falling under Survey no.945 min situated at Jablipora Bijbehara? | OPP |
| (ii) Whether defendant without any right is interfering in possession of plaintiff in suit land? | OPP |
| (iii) Whether defendant is in possession and ownership of land measuring 01 Kanal 10 Marlas under survey no.945 min situated at Jablipora by virtue of a decree? | OPP |
| (iv) Whether suit is not maintainable due to suppression of material facts and non-specification of suit land? | OPD |
| (v) Whether plaintiff has any cause of action? | OPP |
| (vi) Reliefs: To what reliefs parties are entitled? | OP Parties |

4. Plaintiff adduced three witnesses, besides herself, in support of her case. Defendants produced five witnesses besides himself. Trial Court vide judgement and decree dated 10th November 2014 allowed plaintiff's suit, passing a decree for permanent prohibitory injunction along with costs of Rs.10,000/-, restraining defendant from causing any sort of interference personally or through any other person in the ownership and cultivating possession of plaintiff over suit land.
5. Defendant, dissatisfied with Trial Court judgement and decree, directed Civil First Appeal. The 1st Appellate Court vide impugned judgement and decree allowed defendant's/respondent's appeal, setting-aside Trial Court judgement and decree, and dismissing plaintiff's suit as being meritless. Aggrieved thereof, instant appeal has been filed by plaintiff.
6. This Court vide order dated 27th April 2022, framed the following substantial question of law for consideration of the case:

“Whether the suit is not maintainable due to the suppression of material facts and non-specification of the suit land?” ...OPD

7. However, a Coordinate Bench of this Court vide order dated 1st May 2025, framed following two additional substantial questions of law for determination:

(i) Whether the finding of the 1st Appellate Court that the respondent/defendant is in possession of the suit land in the absence of any document conferring right of possession upon him with regard to the suit land is sustainable in law?

(ii) In case answer to the aforesaid question is in negative; whether the learned 1st Appellate Court has fallen in error while interfering with the finding of the fact recorded by the learned Trial Court on the question of possession?

8. Mr. Rizwan, learned counsel for appellant/plaintiff while reiterating all what has been stated in plaint and instant appeal, would contend that plaintiff in her suit sought permanent prohibitory injunction qua land measuring 10 Marlas falling under Survey no.945 min situate at village Jablipora Tehsil Bijbehara District Anantnag, so as to restrain defendant from interfering in the suit land. Defendant in his written statement admitted that suit land was inherited by plaintiff and her two daughters in equal shares from husband of plaintiff, namely, Ghulam Mohammad Lone, and that defendant claimed purchase of suit land from two daughters of plaintiff including share of plaintiff. However, defendant did neither produce any sale deed nor defendant produce any legal instrument that plaintiff sold her share. Even plaintiff continues to be shown as owner in cultivating possession of suit land. According to learned counsel, Trial Court has rightly and correctly passed judgement and decree. However, 1st Appellate Court has failed to appreciate the law governing the field including provisions of the J&K Transfer of Property Act inasmuch as defendant has failed to produce any

document as were/are required to be shown under and in terms of the said Act.

9. Learned counsel for appellant would also contend that defendant has admitted that land measuring 30 Marlas had been inherited by plaintiff and her daughters in equal shares and defendant has himself admitted purchase of suit land from daughters of plaintiff and not from plaintiff. Respondent/defendant cannot claim any right whatsoever over the suit land inasmuch as possession in law is following ownership and a person in order to claim to be in possession must have got a right to possess it legally and lawfully that too on the basis of rules/laws governing the field, which in the present field is J&K Transfer of Property Act, particularly Section 138 thereof. Any claim of possession without right to possess it, is trespass, illegal interference and encroachment and not possessed in law. According to him impugned judgement of 1st Appellate Court has placed a premium on illegal encroachment/interference made by respondent/defendant over the suit land instead of protecting the poor, aged and helpless plaintiff from illegal interference from defendant. He would also aver that revenue records proved during trial plaintiff as owner in cultivating possession of suit land. It is vehemently stated by learned counsel for plaintiff/appellant that a vendor cannot transfer his/her title to vendee beyond his own title. However, the suit land, which belongs to plaintiff and that her daughters cannot transfer the said land to defendant. Learned counsel for appellant has placed reliance, *inter alia*, on a judgement dated 29th February 2024 passed by the Supreme Court in Civil Appeal no.9035 of 2013 titled as ***Savitri Bai and another v. Savitri Bai***.

10. Contrary to submissions of learned counsel for appellant, it is stated by Mr. Gazanfar Ali, learned counsel for respondent/defendant, that plaintiff has not supported the case set up in the plaint before the Trial Court and when she appeared as her own witness, she set up entirely different case in contradiction to the pleadings adopted. He would aver that evidence on record shows that plaintiff is out of possession and relief of permanent prohibitory injunction can in no circumstances be granted in favour of a person who is not holding suit property and that close relatives of plaintiff including her daughters and official witness, viz. Patwari, categorically stated that defendant is in peaceful cultivating possession of suit land and, therefore, plaintiff should have come for an appropriate relief and should not have asked for prohibitory injunction. Learned counsel for defendant/respondent also states that plaintiff has herself stated that defendant has been projecting himself as owner of suit property which implies that title of plaintiff in respect of suit property is under cloud and as such she was required by law to seek declaration of her status as owner in possession of suit land. He also states that impugned judgement and decree of 1st Appellate Court do not call for any interference inasmuch as conclusion drawn by Trial Court is not supported by any evidence. It is being also stated that in Trial Court judgement, defendant was asked to prove himself as owner when onus has always been on plaintiff for the reason of being in settled possession of suit property and defendant is presumed to be owner unless proved otherwise.

11. In the above backdrop, it would be appropriate to take up the first substantial question of law framed by this Court, viz. “*Whether the suit*

is not maintainable due to the suppression of material facts and non-specification of the suit land'. In this regard, let me at the outset have a look on Trial Court judgement and its record. Perusal whereof reveals that Trial Court while framing issues had also framed an Issue no.4, which is "*Whether suit is not maintainable due to suppression of material facts and non-specification of suit land?*".

12. It is the case of plaintiff that she is recorded owner in revenue records because she has got ownership and possession by inheritance and her daughters have also their shares as per mutation but defendant is causing interference in suit land and trying to dispossess her. Plaintiff also states in her plaint that defendant is talking about forged document when she has neither sold suit land nor executed any document in conformity with applicable laws in his favour.

On the other hand, it is stated by defendant in his written statement that plaintiff has suppressed material facts in the suit and has not come with clean hands and that plaintiff has neither identified suit land nor has given any specification/boundaries of suit land and also has not filed any document/site plan in support of her claim. In paragraph 01 of written statement, it is claimed by defendant that he is in possession of One kanal and Ten Marlas of land falling under Khasra no.945 min situate at Mouza Jablipora Tehsil Bijbehara by virtue of a decree passed in his favour and against the shareholders of land under Khasra no.945 min and that he is not in know of as to which land is in possession of plaintiff as she has not given any specification/boundaries of suit land just to create chaos and confusion and to mislead the court. Defendant in paragraph 02 has stated that plaint is partly admitted to

the extent that land falling under Khasra no.945 min was mutated in the name of daughters of plaintiff who have transferred the said land in favour of defendant through a decree and defendant is in possession of said land and has constructed a pucca built wall. It has been reiterated by defendant in his written statement at paragraph 03 that share of daughters was duly transferred in his favour and plaintiff is habitual litigant.

13. While deciding Issue no.4, the Trial Court has deliberated upon submissions made by parties and arguments advanced by counsel for parties.

Defendant's counsel has stated that since plaintiff has not disclosed the fact that she has sold the suit land to defendant, she has suppressed material facts before the court, besides she has also not given specification of suit land by boundaries.

In opposition to the said contention, it has been stated by counsel for plaintiff that plaintiff has not sold suit land to defendant and that plaintiff has given specification of suit land by mentioning khasra number and the area in which it is located in the plaint and that witnesses have also clearly stated that plaintiff's land is situated towards the western side. He has also stated that defective specification is no ground for dismissal or rejection of plaint.

14. The Trial Court after discussing arguments of counsel for parties has opined that since it is not the case of defendant that plaintiff sold the land to him, therefore, there is no question of suppression of material facts and that so far as non-specification of suit land is concerned, it can be specified by Khasra number and plaintiff has also tried to specify the

land within the khasra number by specifying the boundaries in her statement. Besides, when both parties are well aware of suit land, that much specification is sufficient and suit cannot be dismissed and plaint cannot be rejected when suit land is specified in this way.

15. It is relevant to mention here that specification of suit land has even been given by witnesses of parties. Perusal of statement of witnesses adduced by plaintiff would reveal that there is 30 Marlas of land; out of which she has purchased 10 Marlas and 20 Marlas belonged to her husband. Suit land is situated near Forest Office at National Highway which is bounded on East by the land of Mohammad Lone and on West there is her land in which she has cultivated mustard crop and 10 Marlas of land purchased by her is in her possession and from the estate of her husband, whereas another witness of plaintiff has stated that there is 30 Marlas of land, in which plaintiff has 10 marlas of land and rest belongs to her daughters. Suit land is vacant and 10 marlas of land is in possession of plaintiff and her daughters have sold 20 marlas of land. Defendant tried to fence plaintiff's land and plaintiff removed the fencing, which resulted in filing of suit and police case. Another witness, namely, Musthaq Ahmad Akhoon, produced relevant revenue record. He has deposed that in the year 1984, mutation of inheritance of deceased Ghulam Mohammad vide Khewat no.100 of land had been effected in favour of plaintiff, Khati and her two daughters, in equal shares. The plaintiff has not sold her land. It is being also deposed that on spot the suit land is in possession of defendant but there is no document relating to the suit land. As per the record, only two daughters of plaintiff have sold land measuring 20 marlas to defendant, but on

spot defendant is in possession of 30 marlas while there is no document in his favour.

Even one of the witnesses of defendant in examination-in-chief has stated that he and defendant have simultaneously purchased suit land from daughters of plaintiff. Another witness of defendant during cross-examination has stated that at the time of execution of documents, plaintiff was not present but her daughters were present and plaintiff has not taken any amount as consideration in his presence. Another witness of defendant during cross-examination has stated that share of plaintiff was sold in her absence and without her signature but with her implied consent. Defendant's another witness during cross-examination has deposed that defendant has purchased the land from daughters and sons-in-law of plaintiff and that at the time of preparation of documents plaintiff was not present on spot nor she has signed in his presence.

16. I have considered the case in hand in all aspects. It is made clear here that The Trial Court has rightly found that it is not the case of defendant that plaintiff has sold suit land to him and, therefore, there is no question of suppression of material facts inasmuch as plaintiff has given specification of the suit land by mentioning khasra number and location as well. However, the 1st Appellate Court has considerably failed and erred in saying that since possession of suit land lies with defendant and since plaintiff has not given specification of suit land, as such, plaintiff has suppressed the material facts. Such an observation by 1st Appellate Court is absurd one.

It is not known how 1st Appellate Court has viewed that there is no specification given about suit land when plaint as well as statement of witnesses adduced by both the parties disclose clear picture and specification of suit land. It appears that 1st Appellate Court has not gone through the Trial Court record while passing impugned judgement and without proper appreciation of facts and circumstances of the case has passed judgement impugned. If that being the position, then first substantial question of law viz. *Whether suit is not maintainable due to suppression of material facts and non-specification of suit land*, is decided in favour of plaintiff/appellant herein and against defendant/respondent herein. As a corollary thereof, the suit of plaintiff was maintainable and was rightly so held by the Trial Court.

17. Let me now turn to second substantial question of law, viz. *Whether the finding of the 1st Appellate Court that the respondent/defendant is in possession of the suit land in the absence of any document conferring right of possession upon him with regard to the suit land is sustainable in law.*

18. In the present case as has been seen above, defendant has not produced any document as was required of him to show and demonstrate his right vis-à-vis suit property, then he by no stretch of imagination could have been vested and conferred with the rights of owner/possessor of the property of any other person muchless suit land but that has been astonishingly so done by 1st Appellate Court in the instant case. Further to elaborate; defendant claims that daughters of plaintiff have transferred suit land in his favour. Then he was required to show, produce and place on record such documents. Although learned counsel

for appellant has placed reliance on a judgement of the Supreme Court in the case of Savitri Bai (supra) which fortifies and squarely covers appellant's case, yet it may not be out of place to mention here that oral submissions and/or oral statement either of defendant or that of plaintiff will not confer any right in favour of a person muchless defendant, more particularly in the context of provisions of J&K Transfer of Property Act (for short "*Act*"), which, when looked into, necessitate fulfillment of provisions of its Section 138, that reads as under:

"138. Transfer of immovable property after due registration.

(1) No transfer of immovable property, except in a case governed by any special law to the contrary, shall be valid unless and until it is in writing registered and [the registration thereof has been completed in accordance with sub-section (3) of section 61 of the Registration Act, 1977.

(2) No Court shall entertain a suit for preemption in respect of transfer of any such immovable property unless the transfer complies with the provision of sub-section (1).

(3) No person shall take possession of, or commence to build or build on, any land in the Province of Kashmir which has been transferred or has been contracted to be transferred to him unless and until such transfer becomes valid under the provision of sub-section (1).

(4) No person who has obtained a transfer of immovable property referred to in sub-section (1) shall apply for and obtain from any Revenue or Settlement Officer or Court any alteration in any existing entry in any Settlement Record or paper, unless such person produces before such officer or Court a duly executed registered instrument the registration whereof has been completed in the manner specified in subsection (1).

And no such officer or Court shall alter or cause to be altered any such entry except upon the production of an instrument registered in the aforesaid manner....."

19. Section 138 stipulates that no transfer of immovable property except in a case governed by any special law to the contrary, shall be valid unless and until it is in writing registered and its registration is complete in conformity with the provisions of Subsection (3) of Section 61 of Registration Act, 1977. Subsection (2) of Section 138 of the Act provides that no court shall entertain a suit for pre-emption in respect

of transfer of any such immovable property unless the transfer complies with the provisions of subsection (1) of Section 138 of the Act. Insofar as Subsection (3) is concerned, it in categorical and unequivocal terms enjoins that no person shall take possession of any land in the Province of Kashmir which has been transferred or has been contracted to be transferred to him unless and until such transfer becomes valid under the provision of Subsection (1) of Section 138 of the Act.

20. Icing on the cake is Subsection (4) of Section 138. It, in clear cut terms, says and enjoins that no person who has obtained a transfer of immovable property referred to in subsection (1) of Section 138 shall apply for and obtain from any Revenue or Settlement Officer or even from Court, any alteration in any existing entry in any settlement record or paper, unless such person produces before such officer or court a duly executed registered instrument, the registration whereof has been completed in the manner specified in Subsection (1) of Section 138, and no such officer or Court shall alter or cause to be altered any such entry except upon the production of an instrument registered. Law in this regard is already settled. A Bench of this Court in *Jana Begum v. Badir Khan*, 3 JKLR 226, held that unless the sale of immovable property was in writing and registered, the suit for pre-emption cannot be entertained. In *Ghulam Hussain v. Ghulam Qadir*, AIR 1978 J&K 88, it has been held that under Section 138 of the Act, transfer of immovable property without registered instrument of sale does not confer any right of ownership and, therefore, in absence of such an instrument mere possessory right will not mature into ownership right. In *Sher-i-Kashmir National Medical Institute Trust v. State*, 2005 SLJ 282, it has

been held that there cannot be a valid transfer of immovable property unless and until it is in writing and registered in accordance with Section 61(3) of the J&K Registration Act and that the transferee cannot take possession of the land unless and until transfer is in writing and duly registered and even, he cannot apply for mutation in the revenue record. Possessory rights will not mature into the ownership and transfer of immovable property without satisfying the requirements of Section 138 is invalid and it does not confer any right of ownership on a party in whose favour there is no registered instrument of sale and in absence of such an instrument, the mere possessory rights will not mature into ownership rights. [See: *Gh. Hussain v. Gh. Qadir & others 2010 (8) JKJ HC-427*].

21. When impugned judgement of 1st Appellate Court is looked into, it in essence and core has showered the benefit of what provisions of Section 138 of the Act prohibit. There is nothing on record to show that defendant has produced the documents as are contemplated and required under and in terms of provisions of Section 138 of the Act. In other words, impugned judgement of 1st Appellate Court has vested ownership rights in defendant/respondent herein qua the property which he has not purchased as per the law viz. Section 138. Thus, impugned judgement, on the face of it, violates provisions of Section 138 of the Act.

22. In the context of second substantial question of law, it is worthwhile to look at Trial Court judgement. After recording statement of witnesses of both plaintiff and defendant, the Trial Court in its judgement had taken up Issue nos.1 and 3 for consideration, which are:

- (i) *Whether plaintiff is owner and in possession of suit land measuring 10 Marlas falling under Survey no.945 min situated at Jablipora Bijbehara.*
- (iii) *Whether defendant is in possession and ownership of land measuring 01 Kanal 10 Marlas under survey no.945 min situated at Jablipora by virtue of a decree.*

23. Perusal of Trial Court judgement reveals that plaintiff's witnesses have deposed and stated that plaintiff is in possession of suit land and sowing it. Defendant's claim is that he has purchased suit but has failed to produce document(s) in support of his stand. As discussed above, Section 138 of the Act is clear cut. It enjoins and stipulates that no transfer shall be valid unless such transfer is in writing and registered under Registration Act. It further envisages that no court shall even entertain a suit for preemption in respect of transfer of any such immovable property unless such transfer complies with provisions of Subsection (1) of Section 138 of the Act that means transfer should be in writing and registered under Registration Act. Even it mandates that no person can/ shall take possession of any land in the province of Kashmir, even if such a land is transferred to him, unless and until such transfer has been made in strict compliance of Subsection (1) of Section 138 of the Act. Subsection (4) of Section 138 of the Act in clear cut and categorical terms envisions that no court shall alter any entry in respect of any immovable property unless a duly executed registered instrument under Subsection (1) of Section 138 is produced. In the present case, 1st Appellate Court has in gross violation of provisions of Section 138 tried to alter the records by showing defendant owner and possessor of suit land against recorded owner. Thus, the finding of 1st Appellate court that defendant is in possession of suit land is not

sustainable in law and is hereby set at naught being derogatory to provisions of Section 138 of the Act. In that view of matter, second substantial question of law is decided in favour of plaintiff/appellant herein and against defendant/ respondent herein.

24. In view of decision on second substantial of question in favour of plaintiff, the 1st Appellate Court, as shown herein before, has fallen in error while interfering with the findings of the fact recorded by the Trial Court on the question of possession. The Trial Court has in detail and comprehensively discussed all issues and all facts and circumstances of the case eloquently whereas on the other hand, 1st Appellate Court has miserably failed to even go through the provisions of law governing the field muchless provisions of Section 138 of the Act. Resultantly the third substantial question of law is decided in favour of plaintiff and against defendant.

25. For all what has been discussed above, instant appeal is allowed. Impugned judgement and decree dated 24th August 2018 passed by Principal District Judge, Anantnag (1st Appellate Court) in Civil First Appeal titled as *Abdul Rashid Salroo v. Mst. Khati*, is set-aside and as a corollary thereof, Trial Court judgement and decree is upheld.

26. Registry to accordingly prepare a decree sheet.

27. Disposed of.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
21.11.2025
"Qazi Amjad, JR/Secy"

Whether approved for reporting? Yes/No.