

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

Reserved on: 18.04.2026

Pronounced on: 30.04.2026

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

Full

RFA No.60/2024

NAZIR AHMAD MIR & ORS. ...PETITIONER(S)/APPELLANT

*Through: - Mr. Manzoor Ahmad Dar, Advocate, with
Mr. Javaid Ahmad, Advocate.
Mr. Luqman Ahmad Dar, Advocate.*

Vs.

ISHFAQ AHMAD MIR & ORS. ...RESPONDENT(S)

*Through: - Mr. Jahangir Iqbal Ganai, Sr. Advocate
with Mr. Firdous Ahmad, Advocate
Ms. Gousia Jan, Advocate.*

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

JUDGMENT

1) The appellants have challenged order/judgment dated 31-07-2024 passed by the learned 1st Additional District Srinagar (hereinafter referred to as the "trial court"), whereby application of respondent No.1 /defendant No.1 under Order VII Rule 11 of the Civil Procedure Code has been allowed and the plaint filed by the appellants/plaintiffs before the trial court has been rejected.

2) The facts leading to the filing of the present appeal are that the appellants filed a suit for declaration and injunction against the respondents before the learned trial court. In the

plaint it was alleged there that the predecessor-in-interest of plaintiff No.1, namely, Late Haji Mohammad Jamal Mir, had left behind estate comprising residential/commercial structures and landed property situated at various places of Union Territory of Jammu and Kashmir. It was further pleaded that an award dated 03.07.1971 came to be passed by the Arbitrator, Shri Omkar Nath Tikku, whereby mechanism for apportionment and partition of the properties left behind by Late Haji Mohammad Jamal Mir was provided. The award passed by the learned Arbitrator was made Rule of the Court and a decree in terms of the award was passed, whereafter the property left behind by late Haji Muhammad Jamal Mir was distributed amongst his legal heirs. The estate, including the residential structures comprising land measuring 47 kanals, 9½ situated at Nandpora, Nigeen, Srinagar, was also apportioned in favour of the beneficiaries of the arbitral award.

3) The plaintiffs further pleaded that pursuant to the passing of the arbitral award, which pertained to the land situated at Nandpora, Nigeen, as well, the said land came to be partitioned privately, whereafter plaintiff No.1 took over possession of his share of the land as also the residential house and the land underneath and appurtenant thereto that had already been gifted in his favour. According to the

plaintiffs, the land in the adjoining vicinity to the share of plaintiff, had fallen to the share of the father of defendants No.1 and 2 and husband of defendant No.3. It was pleaded that the predecessor-in-interest of defendants No.1 to 3 did not show any inclination to occupy and put the same to use, thereby abandoning the same. This, according to the plaintiffs, exposed the land which had fallen to their share, to trespass and damage, as a consequence whereof, they enclosed the portion of land that had fallen to the share of predecessor-in-interest of defendants No.1 to 3 by fencing it around in the year 1985 and 1986. It was pleaded that since then the said portion of the land is in continuous, uninterrupted and peaceful possession of plaintiff No.1. It was also pleaded that the predecessor-in-interest of defendants No.1 to 3 and thereafter the said defendants never raised any objection to the continuous and uninterrupted possession of the plaintiffs, which has matured into adverse possession in the year 1994.

4) It was further pleaded that the plaintiffs are enjoying peaceful, open, continuous, hostile and clear possession of the said parcel of land to the knowledge of predecessor-in-interest of defendants No.1 to 3 and thereafter to the knowledge of said defendants. It was further pleaded that the predecessor-in-interest of defendants No.1 to 3, even after

passing of the arbitral award in the year 1971, never opted to have physical or constructive possession of the land which had fallen to his share.

5) It was further pleaded by the plaintiffs that after all these years, defendants No.1 to 3 have woken up from deep slumber and have started making claims over the suit land by resorting to filing of an application before the Divisional Commissioner, Kashmir, seeking partition of the land in question. It was pleaded that under the directions of the Divisional Commissioner and Assistant Commissioner, the Tehsildar (defendant No.7) has proceeded to direct his subordinate revenue officials to effect demarcation of the land in question. This action of the revenue officials, according to the plaintiffs, is without jurisdiction. It was further pleaded that defendants No.1 to 3 cannot defeat the ownership/title of the plaintiffs on the strength of adverse possession by filing an application seeking partition, particularly when the land in question has already been partitioned way back in the year 1982 after passing of the arbitral award. The plaintiffs also pleaded that the defendants are using extra-judicial means to dispossess them from the suit land.

6) On the basis of the aforesaid pleadings, the plaintiffs sought a declaration that they may be declared as owners of

land measuring 11 kanals 9 marlas and 147 sft. Falling under Survey Nos.744-min, 746-min, 747-min,748-min, 749-min,750-min, 751, 752-min, 753-min, 754-min, 755-min, 756-min, 758-min, 759-min, 760-min, 786-min, 789-min, 774-min and 775-min together with structures existing thereupon situated at Village Nandpora Nigeen, Hazratbal, Srinagar, on the strength of adverse possession. A further declaration that the impugned communication dated 28.01.2023 issued by defendant No.4 providing for partition of the suit property, is invalid and legally not binding upon the plaintiffs, with a further declaration that the consequential action taken by defendants No.5 and 6 on the basis of the order issued by defendant No.4, is null and void not binding upon the plaintiffs, has also been sought. Besides, the plaintiffs have sought a decree of permanent prohibitory injunction against defendants No.1 to 3 restraining them from causing any interference in the peaceful possession of the plaintiffs over the suit land.

7) Defendants No.1 to 3, besides filing their written statement, also filed an application under Order 7 Rule 11 of CPC before the learned trial court. In their application under Order VII Rule 11 CPC, it was contended that the plaint does not disclose any cause of action. It was further contended that in the plaint, the plaintiffs have admitted

that defendants No.1 to 3 are co-owners of the suit property and in the absence of any pleading with regard to ouster or exclusion of defendants No.1 to 3, the plaintiffs cannot claim title by virtue of adverse possession. It was also contended that the plaintiffs have not pleaded the act of hostile possession, not to talk of exact date of hostile possession in the plaint. It was contended that in law, possession of one co-owner is deemed to be the possession of all co-owners, as such, there is no question of adverse possession. The defendants have also contended that the plaintiffs have not pleaded the essential requisites of adverse possession in the plaint, as such, the same does not disclose any cause of action.

8) The learned trial court, after analyzing the contents of the plaint and after hearing the parties, came to the conclusion that the plaintiffs have failed to establish any cause of action that would give them right to claim adverse possession over the suit property. It has been observed by the learned trial court that the parties to the suit are co-owners and that the plaintiffs have not pleaded ouster of the defendants from the suit property. Accordingly, vide impugned order dated 31.07.2024, the trial court has rejected the plaint.

9) The appellants have challenged the impugned order on the grounds that the learned trial court has ignored the vital aspects of the matter, inasmuch as the plaintiffs have in clear cut terms pleaded that they are in exclusive possession and enjoyment of the suit land to the knowledge of defendants 1 to 3 and to their exclusion. It has been further contended that the plea of adverse possession is a question of fact and law and without permitting the parties to go to trial, it was not open to the learned trial court to reject the plaint. It has been further contended that the averments made in the plaint clearly disclose cause of action in favour of the plaintiffs, as such, the impugned order is liable to be set aside.

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

11) The legal position with regard to rejection of plaint is well settled. A plaint can be rejected in terms of Order VII Rule 11(a) of Civil Procedure code by the court if it does not disclose cause of action. Without a cause of action, a civil suit cannot be entertained. A cause of action means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to judgment. In order to ascertain whether the averments made in the plaint disclose a cause of action, a court has only to consider the

averments made in the plaint and not the contentions raised in the written statement or in any other ancillary proceedings. However, when a plaintiff also relies upon documents annexed to the plaint or filed along with the plaint, having regard to the provisions contained in Order VII Rule 14 of the Code of Civil Procedure, those documents are required to be taken into consideration for the purpose of disposal of an application under Order VII rule 11(a) of the Code of Civil Procedure. If it is shown from the averments made in the plaint and the documents relied upon by the plaintiff, which are to be taken as true at their face value, that the plaintiff would be entitled to a decree as prayed in the suit, the plea of a defendant for rejection of the plaint has to be turned down. While dealing with an application under Order VII Rule 11 (a) of the Code of Civil Procedure, the courts have to determine whether the plaint discloses a cause of action by carefully scrutinizing the averments made in the plaint together with the documents relied upon by the plaintiffs.

12) With the aforesaid legal position in mind, let us now scrutinize the averments made in the plaint in order to ascertain whether the same discloses any cause of action in favour of the plaintiffs. The main contention, on the basis of which the defendants are seeking rejection of the plaint, is

that in the plaint the plaintiffs have admitted that the suit property is joint and unpartitioned, as such, there is no question of claiming title by adverse possession by the plaintiffs.

13) Learned Senior Counsel appearing for the defendants/respondents has drawn attention of this Court to award of Arbitrator, particularly its contents relating to land situated at Nandpora Nigeen, Srinagar. It has been submitted that as per the award of the Arbitrator, it was not possible for the Arbitrator to divide the suit land by metes and bounds and it was suggested by the Arbitrator that the same can be done by the revenue authorities after looking into Khasra numbers. It has been submitted that after the award of the Arbitrator was made rule of the court, the land situated at Nandpora Nigeen, Srinagar, was never subjected to partition by any revenue authority. Therefore, the same continued to be the joint holding of the parties. Once it is shown that the suit property is joint and unpartitioned holding of the parties, even if the plaintiffs are in possession of the same, in law the defendants No.1 to 3, being the joint owners of the suit property, can be deemed to be in constructive possession of the suit property. Thus, the plea of adverse possession projected by the plaintiffs is bound to fail even without trial.

14) The argument raised by the learned Senior Counsel appearing for respondents No.1 to 3, at its first blush, appears to be attractive but when the award of the Arbitrator is analysed closely, it comes to the fore that even though the Arbitrator has suggested to the parties to get the land situated at Nandpora Nigeen, Srinagar, partitioned by the revenue authorities, the learned Arbitrator has proceeded to determine the shares of the parties in respect of the suit land giving an option to them to approach the revenue authorities for partition thereof. This does not mean that the partition of the suit property in accordance with the shares provided under the award of the Arbitrator could not have been effected by the parties privately without the assistance of the revenue authorities.

15) The plaintiffs, in para (4) of their plaint, have specifically pleaded that the land situated at Nandpora Nigeen, Srinagar, came to be partitioned privately. The issue whether the parties partitioned the suit land privately without the help of revenue authorities is factual in nature. The arbitral award nowhere rules out the partition of the suit property without the assistance of revenue authorities. Once the plaintiffs have pleaded that the partition of the suit property came to be affected by the parties privately pursuant to the award of the Arbitrator, they have to be given a chance

to prove this fact by leading evidence. The learned trial court, therefore, could not have presumed that the suit land is still joint holding of the parties at this stage without there being any trial with regard to the issue whether there was any private partition of the property pursuant to the award passed by the Arbitrator. Once the question as to the status of the suit property, whether it was joint holding or partitioned, becomes a triable issue, the plaint could not have been rejected under Order VII Rule 11 of the Code of Civil Procedure.

16) So far as the pleadings of the plaintiffs with regard to adverse possession of the portion of the joint holding which had come to the share of defendants No.1 to 3, are concerned, a perusal of the plaint would reveal that the plaintiffs have clearly pleaded that for the last more than 40 years they are enjoying peaceful, continuous, open, hostile and clear possession of the land in question to the knowledge of the predecessor-in-interest of defendants No.1 to 3 as also to the knowledge of said defendants. It has also been pleaded that the plaintiffs have enclosed the land in question by fencing in the year 1985-1986 and the same has been in their uninterrupted and peaceful possession since then. According to the plaintiffs, they are in uninterrupted

possession of the suit land since 1982 and their possession has matured into adverse possession in the year 1994.

17) If the plaintiffs succeed in showing that a private partition in respect of the suit land had taken place and it ceased to be the joint holding of the parties, it is open to them to plead adverse possession in respect of the same. The learned trial court, while rejecting the plaint by observing that the plaintiffs cannot claim adverse possession over the suit land as the same is a joint holding, has fallen into a grave error because it has ignored the pleadings with regard to private partition in respect of the suit land.

18) Apart from the above, even if it is assumed that the plaintiffs cannot claim adverse possession in respect of the suit property, still then they are certainly well within their rights to claim a decree of permanent prohibitory injunction against defendants No.1 to 3 in respect of the suit land as, admittedly, the same is in their possession. They are entitled to protect their possession from defendants No.1 to 3 by means other than sanctioned by law. To that extent, even if the case of defendants No.1 to 3 is accepted, the plaintiffs can maintain the suit. It is a settled law that a plaint cannot be rejected partially. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Kum.**

Geetha v. Nanjundaswamy and others (2024) 14 SCC 390.

In the said case, the Supreme Court has, after relying upon the principles explained in the case of **Sejal Glass Ltd. v. Navilan Merchants**, (2018) 11 SCC 780, followed by **Madhav Prasad Aggarwal v. Axis Bank Ltd.** (2019) 7 SCC 158, held that a plaint cannot be rejected in part. On this ground also, the impugned order passed by the learned trial court is not sustainable in law.

19) For what has been discussed hereinbefore, the appeal is allowed and the impugned order passed by the learned trial court is set aside. The case is remanded to the learned trial court with the direction to frame issues on the basis of the pleadings of the parties and proceed further in the matter in accordance with law.

20) A copy of this judgment be sent to the learned trial court for information and compliance.

(Sanjay Dhar)
Judge

SRINAGAR
30.04.2026
"Bhat Altaf-Szeg"

Whether the **judgment** is reportable: **YES/NO**