

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

**CM(2562/2026)
In CM(M) 147/2026
CM(2563/2026)**

**Reserved on: 5th May, 2026.
Pronounced on: 6th May, 2026
Uploaded on: 7th May, 2026
Whether operative part or full
judgment has been pronounced: **Full****

Farooq Ahmad Mir (70 years)
S/o Late Rahim Mir
R/o Lalpora, District Kupwara.

...Petitioner(s)

Through: Mr. S M. Saleem, Advocate.

Vs.

1. **Habib Ul-Ilah Bhat.**
2. Noor-u-Allh Bhat
S/o Saif-ul-Ilah Bhat
R/o: Tehsil Lalpora, Lolab
District: Kupwara
3. Mushtaq Ahmad Mir
S/o: Rahim Mir
R/o: Lalpora Lolab, District Kupwara.

...Respondent(s)

Through:

CORAM:

Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.

JUDGMENT

CM(M) 147/2026;

01. The petitioner, invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, seeks setting aside of order dated 28.02.2026 passed by the learned Principal District Judge, Kupwara, whereby the appellate Court has

dismissed the miscellaneous appeal preferred by the petitioner and upheld the order dated 30.05.2024 passed by the learned Munsiff, Sogam, granting interim injunction in favour of the plaintiffs/respondents, which is also impugned in the instant petition.

02. The factual matrix of the case is that the respondents herein had instituted a suit for permanent injunction before the learned Trial Court, asserting possession over the suit property, comprising land, building, and an access pathway. Along with the suit, an application for interim relief was filed, which came to be allowed initially by way of an ex-parte order dated 28.12.2023 and subsequently confirmed vide order dated 30.05.2024 after hearing both sides.

03. The petitioner herein/defendants, being aggrieved of the said order, preferred miscellaneous appeal before the learned Principal District Judge, Kupwara. The appellate Court, after appreciating the record and considering the rival submissions, dismissed the appeal and upheld the order of the Learned Munsif Sogam dated 30.05.2024, primarily on the ground that the plaintiffs had succeeded in establishing a prima facie case of possession and that the balance of convenience lay in maintaining status quo.

04. **Heard and considered.**

05. The principal contention raised by the petitioner before this Court is that both the Courts below have erred in placing reliance upon an unregistered and unstamped agreement to sell, which, according to the petitioner, does not confer any right, title, or interest in immovable property and is inadmissible in evidence. It is further contended that the property in question is joint and undivided, and therefore incapable of lawful alienation.

06. This Court is not inclined to accept the aforesaid contention for more than one reason, as although an agreement to sell does not confer title, it may nonetheless be relied upon for collateral purposes, including for determining the nature of possession. It is well settled that at the stage of consideration of an application for temporary injunction, the Court is not required to conclusively determine title. The enquiry is limited to the existence of a prima facie case, balance of convenience, and likelihood of irreparable injury.

07. Hon'ble Supreme Court in **Zenit Mataplast (P) Ltd. v. State of Maharashtra**, reported as **(2009) 10 SCC 388** has held as under:

"Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial."

08. A plain reading of judgment supra makes it clear that it is evident that an *interlocutory injunction* rests on prima facie and tentative findings and is intended only as a temporary measure to preserve the status quo pending final adjudication. Its purpose is to ensure that the proceedings do not become infructuous or render the final relief illusory, while safeguarding the plaintiff from irreparable injury that may not be adequately compensated by damages if the matter is ultimately decided in his favour.

09. Hon'ble Supreme Court in **Wander Ltd. v. Antox India (P) Ltd.**, reported as **1990 Supp SCC 727** has held as under:

"The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate

court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

10. Applying the aforesaid settled principles to the facts of the present case, this Court finds no ground whatsoever warranting interference with the discretionary order passed by the learned Trial Court. The question as to whether the plaintiff had made out a prima facie case, whether the balance of convenience lay in his favour and whether irreparable loss would ensue in the event interim protection was denied, already stands examined by the Trial Court upon appreciation of the material placed before it. This Court, while exercising supervisory/appellate jurisdiction, cannot reassess the material on record as if sitting in appeal over the subjective satisfaction arrived at by the court of first instance merely because another view may also be possible.

11. The jurisdiction of this Court is confined only to examining whether the discretion exercised by the Trial Court suffers from patent arbitrariness, perversity, capriciousness or disregard of settled principles governing grant or refusal of interlocutory injunctions. No such infirmity has been demonstrated in the impugned order. The view taken by the learned Trial Court is a reasonably possible view borne out from the material available on

record and, therefore, this Court would refrain from substituting its own discretion in place of that exercised by the Trial Court.

12. Furthermore, from a bare perusal of the orders passed by the Courts below i.e, learned Principal District Judge, Kupwara, and the learned Munsiff, Sogam, demonstrates that the primary consideration which weighed with both the Courts was the factum of peaceful use and possession of the suit property by the plaintiffs therein. In a suit for simpliciter injunction, possession assumes paramount importance. Even a person without perfect title, if found in settled possession, is entitled to protection against unlawful interference except in accordance with law.

13. The argument relating to inadmissibility of the agreement to sell, though legally sound in the context of title, cannot be stretched to negate the limited use of such document for collateral purposes, particularly for assessing the nature and character of possession. Both the Courts below have relied upon the said document only to the extent of prima facie possession, which cannot be said to be impermissible.

14. Hon'ble Supreme Court in **S. Kaladevi v. V.R. Somasundaram**, reported as (2010) 5 SCC 401 has held that an unregistered document affecting immovable property, though required to be registered under the Registration Act, 1908 or the Transfer of Property Act, 1882, may nevertheless be admitted in evidence for a limited purpose, namely as evidence of a contract in a suit for specific performance or as proof of any collateral transaction which is not required to be effected by a registered instrument. The relevant portion of the judgment is reproduced as under:

"The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an

unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs 100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act. "

15. A plain reading of the aforesaid judgment makes it clear that reliance on an unregistered agreement is permissible to the limited extent of assessing the nature and character of possession, being a collateral purpose in law.

16. This Court has no hesitation in holding that the Courts below have committed no error in taking such material into consideration at the prima facie stage.

17. The plea that the property is joint and undivided raises disputed questions of fact, which cannot be adjudicated in proceedings of this nature, much less at the interlocutory stage. Such issues necessarily require appreciation of evidence and are to be decided during trial.

18. It is trite that this Court, in exercise of jurisdiction under Article 227, does not re-appreciate evidence or substitute its own view merely because another view is possible. This Court does not sit in appeal over the findings recorded by the Courts below and interference is warranted only where there is patent perversity, gross illegality, or failure of justice resulting from jurisdictional error.

19. Hon'ble Supreme Court recently **P.Suresh Vs. D.Kalaivani & Ors. reported as 2026 SCC OnLine SC 143** has held as under:

"The scope, ambit, amplitude and nature of the powers of a High Court under Article 227 of the Constitution are discussed and delineated by this Court in catena of decisions. Article 227 is perceived to be a custodian of justice, which is in the nature of extraordinary supervisory powers, discretionary in nature. In Shalini Shyam Shetty vs. Rajendra Shankar Patil, this Court cautioned that an improper and frequent exercise of this power will be counterproductive and would divest this extraordinary power of its strength and vitality. It was observed that this discretionary power has to be exercised very sparingly."

20. In similar facts and circumstances Hon'ble the Supreme Court in **Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand, reported as (1972) 1 SCC 898** held as under:

"Article 227 of the Constitution no doubt does not confer on the High Court power similar to that of an ordinary Court of appeal. The material part of this article substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the power of superintendence has been extended by this article to Tribunals as well. Section 107 according to preponderance of judicial opinion clothed the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors."

21. Furthermore, Hon'ble Apex Court in **Koyilerian Janaki v. Rent Controller (Munsiff), Cannanore, reported as (2000) 9 SCC 406** observed as under:

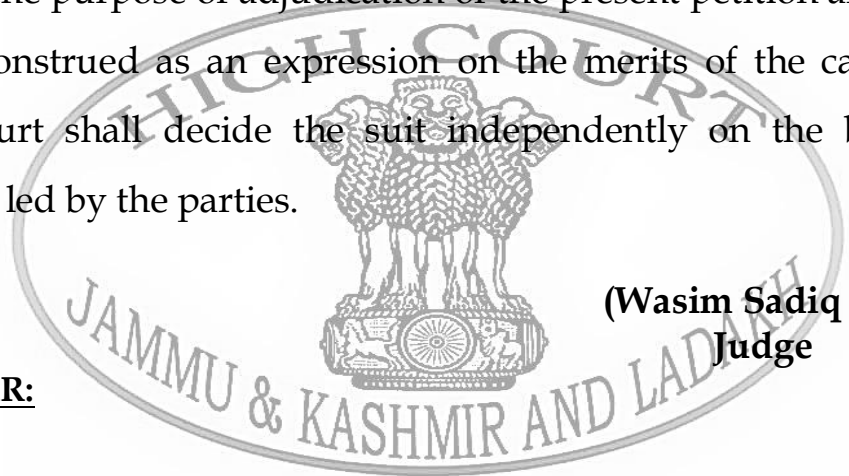
"The power under Article 227 is exercisable where it is found by the High Court that due to a certain grave error an injustice has been caused to a party."

22. The petitioner has failed to point out any patent illegality, jurisdictional error, or perversity in the concurrent findings recorded by the Courts below.

23. Viewed thus, the impugned order dated 28.02.2026 passed by the learned Principal District Judge, Kupwara, and also order dated 30.05.2024 passed by Learned Munsiff Sogam do not suffer from any infirmity warranting interference. The same reflect proper application of mind and are in consonance with settled principles governing grant of temporary injunction.

24. Consequently, the present petition, being devoid of merit, is accordingly *dismissed* along with all connected applications. The orders passed by the learned Principal District Judge, Kupwara, and the learned Munsiff, Sogam Court are upheld.

25. It is, however, clarified that any observation made herein is only for the purpose of adjudication of the present petition and shall not be construed as an expression on the merits of the case. The Trial Court shall decide the suit independently on the basis of evidence led by the parties.



(Wasim Sadiq Nargal)
Judge

SRINAGAR:

06.05.2026

"HAMID"

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|---|---------------------------------|------|
| ❖ | Whether Judgment is Speaking? | Yes |
| ❖ | Whether Judgment is Reportable? | Yes. |