

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

Case No: RSA No. 04/2023

*Reserved on: 18.05.2026
Pronounced on: 05.06.2026
Uploaded on: 05.06.2026*

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

Abdul Aziz Mir (70 years)
S/O Abil Mir,
R/O Arin-Bandipora,
Tehsil and District Bandipora

...Petitioner(s)/Appellant(s)

Through: Mr. Altaf Haqani, Sr. Advocate with
Mr. Asif Advocate

Vs.

Tariq Ahmad Mir
S/O Sonauulah Mir,
R/O Arin Bandipora,
Presently Bandipora

.... Respondent(s)

Through: Mr. Altaf Mehraj, Advocate

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

JUDGMENT

1. The appellant-defendant, by virtue of the present Civil Second Appeal, has challenged the judgment and decree dated 13.03.2015 passed by the learned Sub Judge, Bandipora, as upheld by learned Principal District Judge, Bandipora, vide judgment and decree dated 29.04.2023, in a suit filed by the respondent-plaintiff against the appellant-defendant.

2. It appears that the respondent-plaintiff filed a suit for permanent prohibitory injunction against the appellant-defendant before the Court of the learned Sub Judge, Bandipora (hereinafter referred to as 'the trial Court'), seeking a decree restraining the appellant-defendant from interfering with his possession over land measuring 1 Kanal 10 Marlas falling under Khasra No. 2500, situated at Village Arin Dardpora. The respondent-plaintiff also sought an injunction restraining the appellant-defendant from raising any construction on the said land or changing its nature and character, and further restraining him from dispossessing the defendant-plaintiff from the said land.
3. According to the respondent-plaintiff, he was the owner in possession of the suit land, a fact duly reflected in the entries recorded in the Khasra Girdawari. It was averred in the plaint that the appellant-defendant, having no right, title or interest in the suit land, was attempting to encroach upon the same with a view to raise construction thereon and to alter its nature and character. It was further alleged that the appellant-defendant was trying to dispossess the respondent-plaintiff from the suit land. The respondent-plaintiff pleaded that he owned total 2 Kanals of land, out of which he had sold 10 Marlas to the appellant-defendant, but the latter was forcibly attempting to take possession of the entire 2 Kanals of land without any lawful justification.
4. The appellant-defendant contested the suit by filing a written statement. In the written statement it was pleaded that the

respondent-plaintiff has transferred whole of the 2 Kanals of land in favour of the appellant-defendant and that he has also handed over possession of the said land in his favour. Thus, the appellant-defendant had become owner in possession of the suit land. It was pleaded by the appellant-defendant that he has raised construction of a house on the said land, as such, the suit of the respondent-plaintiff is not maintainable. It was pleaded by the appellant-defendant that actually father of the respondent-plaintiff had transferred 2 Kanals of land under khasra No.2500 in his favour and he had received whole of the sale consideration, whereafter he had also delivered the possession of the land in favour of the appellant-defendant. It was pleaded that after taking over the possession of the land in question, the appellant-defendant has made improvements thereon by raising construction of a house and by fencing it. The appellant-defendant further alleged that the respondent-plaintiff was asked to execute a sale deed in respect of the land in question, but, he avoided to do so and instead filed the present suit against him, even after receiving whole of the sale consideration in respect of the suit land.

5. On the basis of the pleadings of the parties and the preliminary statements made by them, the learned trial Court framed the following issues:

- “1. Whether the plaintiff is in possession of the suit land measuring 1 Kanal 10 Marlas comprising khasra No.2500 situated at Arin Dardpora as its owner? OPP

2. In case issue No. 1 is proved in affirmative, whether defendant is causing interference with the suit land and wants to change its nature as alleged by the plaintiff? OPP
 3. Whether defendant has purchased the suit land as alleged by him ? OPD
 4. Relief ? OPP parties.”
6. After framing of the aforementioned issues, the parties led evidence in support of their respective cases. The respondent-plaintiff besides examining himself as witness also examined PWs- Mohammad Ramzan Mir and Ghulam Mohammad Rather as witnesses in support of his case. Besides this, the respondent-plaintiff also examined PW-Mushtaq Ahmad Guroo, Patwari as a witness in support of his case.
7. On the other hand, the appellant-defendant besides examining himself as witness produced DWs-Abdul Khaliq Mir, Ghulam Qadir Mir son of Abli Mir, Ghulam Qadir Mir son of Ghulam Mohi-ud-din, Ghulam Ahmad Mir, Haji Ghulam Mohammad Mir and Bashir Ahmad Mir as witnesses in support of his case. The appellant-defendant also relied upon two documents viz Agreement to Sell dated 30.08.2004 in respect of land measuring 10 Marlas in khasra No.2500 of village Arin Dardpora and “Tahrirnama” in respect of 2 Kanals of land which is undated. These two documents, for the sake of convenience and proper identification, shall hereinafter be referred to as Document D-1 and Document D-2, respectively.
8. Learned trial Court after analyzing the evidence on record decided all the issues framed in the suit in favour of the respondent-plaintiff and observed that from the evidence on record, it has been

established that the respondent-plaintiff is in possession of the suit land measuring 1 Kanal 10 Marlas comprised in Khasra No.2500 situated at Arin Dardpora as its owner and that the appellant-defendant is trying to cause interference in the said land. Accordingly, a decree for permanent prohibitory injunction against the appellant-defendant was passed by the learned trial Court in terms of the judgment and decree dated 13.03.2015 thereby restraining the appellant-defendant from interfering in plaintiff's possession over the suit land and from changing the shape of the said land by raising any construction over the same.

9. The appellant-defendant challenged the aforesaid judgment and decree passed by the learned trial Court by way of appeal before the learned Principal District Judge, Bandipora (hereinafter referred to as the 'first appellate court') contending therein that the learned trial Court has not appreciated the evidence on record properly. It was further contended that from the evidence on record it appears that the respondent-plaintiff is out of possession of the suit land as such no injunction could have been granted in his favour. It was also contended that the evidence adduced by the respondent-plaintiff was contradictory whereas the evidence led by the appellant-defendant clearly showed that the respondent-plaintiff had sold entire 2 Kanals of land in favour of the appellant-defendant and that he had also delivered possession of the said land in his favour.

10.The learned first appellate Court, while formulating the points for determination, reappreciated the evidence led by the parties whereafter it came to the conclusion that the findings of fact recorded by the learned trial Court did not warrant any interference. Accordingly, the appeal filed by the appellant-defendant was dismissed.

11.The appellant-defendant has challenged the judgment and decree passed by the learned trial Court, as affirmed by the learned first appellate Court, on the grounds that the courts below have failed to properly appreciate the evidence on record and that the findings recorded by both the courts below are perverse. It has been contended that the impugned judgment and decree was passed by the learned trial Court in hot haste, without properly appreciating the evidence on record. It has further been contended that the claim of the respondent-plaintiff regarding ownership and possession of the suit land was effectively rebutted by the appellant-defendant through cogent and convincing evidence, which has not been duly considered by either of the courts below. It has been contended that the evidence on record clearly establishes that the appellant-defendant is in possession of the suit land and that he has constructed a house thereon. According to the appellant-defendant, substantial questions of law arise for determination in the present appeal. It is contended that the findings recorded by the courts below with regard to possession of the suit land are perverse and,

therefore, give rise to substantial questions of law warranting interference by this Court.

12. I have heard the learned counsel for the parties and perused the record of the trial Court as well as that of the first appellate Court, the impugned judgments passed by both the courts below, the memorandum of appeal, and the substantial questions of law projected therein.

13. Before proceeding to deal with the contentions raised by the appellant-defendant, it would be necessary to understand the legal position governing the admission of a civil second appeal.

14. Section 100 of the Code of Civil Procedure provides for a second appeal to the High Court from an appellate decree. There is no vested right upon a litigant to file an appeal against a judgment unless the statute provides so. If a statute provides for a condition precedent to be satisfied before a court can exercise its appellate jurisdiction, the court is under an obligation to satisfy itself whether the condition precedent is fulfilled. Section 100 of the CPC clearly provides that the High Court has power to entertain an appeal from a decree passed in an appeal by a court subordinate to the High Court if it is satisfied that a substantial question of law is involved in the case. Thus, unless a substantial question of law arises in a case for determination, the High Court would not be justified in entertaining a second appeal.

15. The Supreme Court has, in the case of **Sir Chunilal V. Mehta & Sons Ltd. vs. Century Spinning & Manufacturing Co. Ltd.** AIR

1962 SC 1314, laid down the test to determine whether a question is a substantial question of law or not. It has been held that proper test for determining whether a question of law raised in the case is substantial, would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the Supreme Court or by the Privy Council or by the federal court or is not free from difficulty or calls for discussion of alternative views. The Supreme Court further held that if the question is settled by the highest court or the general principles to be applied in determining the question are well settled that there is a mere question of applying those principles or that the plea raised is probably absurd, the question would not be a substantial question of law. The aforesaid legal principles have been consistently reiterated and reaffirmed by the Supreme Court in its subsequent judgments including the judgment delivered in the case of **Chandrabhan (Deceased) through LRs & Ors. vs. Saraswati & Ors.** (2022) 20 SCC 199.

16. The substantial questions of law have to be expressly and specifically formulated by the High Court and in case no substantial question of law arises for determination by the High Court, the civil second appeal against the judgement and decree passed by the court below cannot be admitted.

17. Learned Senior counsel, appearing for the appellant has laid much emphasis on the formulation of the following questions of law:-

1. That whether the findings recorded by the learned courts below with reference to the possession of the plaintiff over the suit land is perverse.

2. Whether the courts below by rejecting the cogent evidence led by the appellant-defendant on flimsy grounds have caused mis-carriage of justice.

18. Learned Senior Counsel for the appellant-defendant has laid considerable emphasis on the contention that the evidence led by the parties before the learned trial Court clearly establishes that the entire land was in the possession of the appellant-defendant. In support of this contention, the appellant-defendant primarily relies upon Document D-2, which is in the nature of an undated "Tahrirnama" written on plain paper. According to the contents of the said "Tahrirnama", father of the respondent-plaintiff is stated to have transferred 2 Kanals of land in favour of the appellant-defendant. In order to prove this document, the appellant-defendant examined the witnesses in whose presence the said document is alleged to have been executed by father of the respondent-plaintiff.

19. From a perusal of the document styled as a "Tahrirnama", it is evident that the same is undated. Apart from this, the document does not specify the Khasra number of the land to which it relates. Not even the amount of sale consideration finds mention in the document. Admittedly, the document is neither registered nor stamped.

20. Section 138 of the J&K Transfer of Property Act, which was in force at the relevant time, provides that no transfer of immovable property can be a valid unless and until it is in writing and

registered. Sub-section (3) of Section 138 of the Act further provides that 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 in terms of sub section (1) of Section 138 of Act meaning thereby that even possession of the transfer of land cannot be taken over by a person if the land is situated in Kashmir Province unless transfer is made by a registered instrument. Besides this, Section 49 of the Jammu & Kashmir Registration Act makes an unregistered document with regard to the transfer of immovable property inadmissible in evidence.

21.In view of the aforesaid legal position, the document D-2 “Tahrirnama” is nothing but a piece of paper, which is inadmissible in evidence and, as such, cannot be taken into consideration for determining the issue as to whether 2 Kanals of land was transferred by father of the plaintiff in favour of the defendant and that possession thereof was delivered to him. The document is of no value as it does not bear any date nor does it bear particulars of the property and the particulars of the sale consideration. The same is, therefore, a waste paper in the eyes of law. On the basis of such a document, the appellant-defendant cannot even think of rebutting the evidence that may have been led by the plaintiff with regard to possession and ownership of the land in question.

22. The plaintiff, in order to prove his ownership and possession of the suit land, has, besides examining himself as a witness, also examined PW Mushtaq Ahmad Guroo Patwari as a witness. The Patwari has made it clear in his statement made on the basis of the record that the suit land measuring 1 Kanal 10 Marlas is entered in the name of the respondent-plaintiff and that he is in possession of the said land. Section 31 of the J&K Land Revenue Act raises a presumption of correctness in favour of entries in record-of-rights and annual records. Thus, once name of the plaintiff-respondent is shown in the column of possession in the revenue record, it has to be presumed that the entry in this regard is correct and consequently, he is in possession of the land. It is true that the said presumption is rebuttable in nature but there has to be cogent and convincing evidence on behalf of the appellant-defendant to rebut this presumption. On the basis of a document like Tahrirnama D-2, the presumption of correctness of entries in the revenue record with regard to the suit land cannot be rebutted.

23. The document D-2 becomes all the more suspicious having regard to the admitted case of the parties that 10 Marlas of land under Khasra No.2500 had already been transferred by respondent-plaintiff in favour of the appellant-defendant. Keeping in view the fact that the respondent-plaintiff was having only 2 Kanals of land in the said Khasra number, it is beyond comprehension as to how “Tahrirnama” was executed in respect of whole of the two kanals of land if the respondent-plaintiff had already transferred 10 Marlas of

land in favour of the appellant-defendant, which is a fact admitted by the parties.

24. Another aspect of the matter that casts serious doubt upon claim of the appellant-defendant is that there was no occasion for the appellant-defendant to purchase the suit land from father of the respondent-plaintiff when the said land, admittedly, belongs to the plaintiff. Even if it is assumed that the appellant-defendant had entered into some sort of transaction with respect to the suit land with father of the respondent-plaintiff, such a transaction, relating to property owned by the respondent-plaintiff, would be non est in the eyes of law because father of the plaintiff had no title in the suit land which he could transfer. Thus, very basis of the claim of the defendant is untenable in law.

25. Much emphasis has been laid by the learned Senior counsel appearing for the appellant-defendant on the contention that the courts below have not given due consideration to the evidence led by the appellant-defendant with regard to the possession of the suit land.

26. In the above context, if we have a look at the evidence led by the appellant-defendant during the trial of the case, it comes to the fore that the same is contradictory, hence unreliable in nature. While the appellant-defendant, namely, Abdul Aziz Mir states that the respondent-plaintiff was not present at the time when the document D-2 was executed by his father and it is the plaintiff's father who was present and it is he who received the money, but the

defendant's own witness, namely, Abdul Khaliq Mir has, in his cross-examination, stated that money was given to the respondent-plaintiff. Similarly, DW- Ghulam Qadir Mir also states that an amount of Rs.5 lakhs was given to the respondent-plaintiff. Again DW- Ghulam Ahmad Mir states that appellant-defendant gave an amount of Rs.40,000/- after counting the same and that full consideration amount was given to the respondent-plaintiff. Thus, the defendant's own version that the respondent-plaintiff was not present on spot and that he paid money to father of the respondent-plaintiff, is contradicted by his own witnesses.

27. There are contradictions with regard to the amount of consideration settled by the parties in respect of the suit land as well. While some witnesses state that amount of sale consideration was settled at Rs.5 lakh, some others state that amount of sale consideration was Rs.1,25,000/Rs.2,50,000. Similarly with regard to the question of possession, the statements of the appellant-defendant and his witnesses are at variance with each other. Some of the witnesses say that the appellant-defendant has been in possession of the suit land for 10/12 years whereas others say that he has been in possession of the suit land for 5/7 years.

28. Learned trial Court while appreciating the evidence on record has rightly noted the aforesaid contradictions and variations in the statements of the witnesses, produced by the appellant-defendant and has refused to place reliance upon these witnesses while deciding the issue relating to possession of the suit land.

29. Learned Senior counsel for the appellant-defendant has also contended that the witnesses produced by the respondent-plaintiff in support of his case were having animosity with the appellant-defendant because he had filed criminal case against them as such, their statements cannot be relied upon. The argument appears to be without any substance because mere fact that criminal cases have been filed by the appellant-defendant against some of the witnesses produced by the plaintiff does not make their statements unreliable. Both the witnesses produced by the plaintiff PW- Mohd Ramzan Mir and Ghulam Mohd Rather are the persons residing within the vicinity of the suit land, therefore, their statements assume great significance. When their statements are read in conjunction with the statement of Patwari, it is clearly established that the respondent-plaintiff is in possession of the suit land.

30. It has to be borne in mind that the High Court while exercising its power under Section 100 CPC cannot interfere with the concurrent findings of fact recorded by the courts below unless warranted by compelling reasons. The High Court is not expected to re-appreciate the evidence just to replace the findings of the lower courts. In the present case, no exception can be taken to the manner in which both the courts below have appreciated the evidence on record while arriving at the findings of fact. Thus, there is no scope for this Court to interfere with the findings of fact recorded by both the courts below.

31. For what has been discussed hereinbefore, I do not find that any question of law, much less a substantial question of law, arises for determination in the present appeal. The impugned judgment passed by the learned trial court as upheld by the first appellate court does not call for any interference from this Court. The appeal lacks merit and is **dismissed** accordingly.

(Sanjay Dhar)
Judge

Jammu

05.06.2026

Madan Verma-Secy

Whether order is speaking?	Yes/No
Whether order is reportable?	Yes/No.

