

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

RFA No. 27/2019

CM Nos. 4228/2019 & 4174/2023

Reserved on:- 11.08.2026

Date of Pronouncement:- 08.09.2026

Uploaded on:- 08.09.2026

1. Hassan Sheikh, (Dead), S/o Maqbool SheikhAppellant(s)
2. Nazir Sheikh, S/o Hassan Sheikh
3. Jahangir Sheikh, S/o Hassan Sheikh
4. Shamima, W/o Nazir Sheikh
5. Naba Sheikh, S/o Maqbool Sheikh
6. Mohiudin Sheikh, S/o Naba Sheikh
7. Sameena, D/o Naba Sheikh
8. Yaqoob Sheikh, S/o Naba Sheikh
9. Nazir Sheikh, S/o Naba Sheikh
10. Gulshana, W/o Yaqoob Sheikh
11. Nawaz Sheikh, S/o Mohiudin
12. Farida, W/o Mohiudin Sheikh
13. Manzoor, S/o Maqbool Sheikh
14. Chesfeeda, W/o Manzoor Sheikh
15. Ayaz Sheikh, S/o Manzoor Sheikh
16. Sajad Sheikh, S/o Manzoor Sheikh
17. Hamid Sheikh, S/o Mohamad Sheikh
18. Zooni, W/o Hamid Sheikh
19. Sadam Sheikh, S/o Hamid Sheikh
20. Arshid Sheikh, S/o Hamid Sheikh
21. Afzal Sheikh, S/o Maqbool Sheikh
22. Khurshid Sheikh, S/o Afzal Sheikh
23. Wakeel Sheikh, S/o Afzal Sheikh
24. Feroz Sheikh, S/o Afzal Sheikh
25. Farooq Sheikh, S/o Afzal Sheikh

26. Masrat Akhter, D/o Afzal Sheikh
27. Rozy, D/o Afzal Sheikh
28. Ahsan Sheikh, S/o Maqbool Sheikh
29. Farooq Sheikh, S/o Ahsan Sheikh
30. Ashaq Sheikh, S/o Ahsan Sheikh
31. Younus Sheikh, S/o Ahsan Sheikh
32. Rashid Sheikh, S/o Ahsan Sheikh
33. Manzoor Ganie, S/o Hassan Ganie
34. Gulzar Ganie, S/o Hassan Ganie
35. Mudasir Ganie, S/o Manzoor Ganie
36. Shabir Ganie, S/o Manzoor Ganie
37. Mukhtar Ganie, S/o Manzoor Ganie
38. Yousuf Ganie, S/o Bashir Sheikh
39. Hamid Sheikh, S/o Hassan Sheikh
40. Tasaduq Sheikh, S/o Hamid Sheikh
41. Gul Sheikh, S/o Maqbool Sheikh
42. Mubarak Sheikh, S/o Gul Sheikh
43. Naza, W/o Yousuf Sheikh

All Residents of Ramnagri Shopian, Tehsil &
District Shopian

Through: Mr. Zahoor A Shah, Advocate with
Mr. Manzoor Noor, Advocate.

Vs.

1. Abdul Hamid Turey
2. Mohammad Ashraf Turey
Sons of Qudoos Turey
3. Gh. Mohammad Turey
S/o Abdul Gani Turey
4. Nisar Ahmad Turey
S/o Gh. Rasool Turey
5. Mohammad Shafi Turey
S/o Abdul Ahad Turey
6. Bashir Ahmad Turey
S/o Gh. Hassan Turey

All Residents of Hergam, Shopian, Tehsil & District
Shopian

..... Respondent(s)

Through: Mr. G A Lone, Sr. Advocate with
Mr. Mujeeb Andrabi, Advocate.

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

- 01.** This Civil First Appeal under Section 96 of the Civil Procedure Code (*CPC*) is directed against the judgment and decree dated 18 June 2019 passed by the learned Principal District Judge, Anantnag (the “*trial Court*”) in suit File No. 06/N titled, “*Abdul Hamid Turray and others Vs. Hassan Sheikh and others*”, whereby the trial Court decreed the suit for permanent prohibitory injunction and restrained the defendants from interfering with the plaintiffs’ possession over land measuring 102 Kanals 13 Marlas situate in village Ramnagri, Tehsil and District, Shopian, comprising Survey Nos. 322, 323, 325, 326, 336, 339, 363, 337, 338, 3177/326, 333, 334, 250 and 341, which has been raised into an apple orchard.
- 02.** Although the memorandum of appeal raises various grounds of challenge on fact and law, yet the controversy that actually falls for decision is a narrow one, inasmuch as the decree under challenge is a decree of injunction simpliciter based on possession, and title to the suit land was expressly left open by the trial Court. This Court is not called upon, in this appeal, to declare ownership. The questions, which arise for consideration are whether the plaintiffs had proved the possession on the standard of Preponderance of Probabilities, and whether the trial Court committed any error of law in granting a possessory injunction against the defendants,

who had pleaded that they were merely caretakers of the alleged true owners.

03. For the sake of convenience, the respondents shall hereinafter be referred to as the plaintiffs and the appellants as the defendants.

FACTS:-

04. Description of parties and the suit land in brief may be taken note of at the outset. The plaintiffs, who are six (06) in number, are the residents of village Hergam, Shopian, a place situated about eight (8) kilometers away from the suit orchard, and they claim through their ancestors, namely, Kudoos Turey, Abdul Gani Turey, Ghulam Rasool Turey, Abdul Ahad Turey and Ghulam Hassan Turey. The defendants, who are forty three (43) in number, are residents of Ramnagri, Shopian.
05. The suit property is an existing apple orchard containing both fruit bearing and non-fruit bearing trees, and it is, therefore, not a vacant land. Possession of such land is a physical fact capable of being proved by evidence of cultivation, spraying, harvest, employment of labour, transport of fruit, and the contemporaneous crop inspection record maintained by the revenue agency.
06. The suit was instituted by the plaintiffs on 27 April 2011. The plaintiffs pleaded that they are owners in possession of the orchard; that the land was purchased from the original owners, including Hafizullah Sheikh and others; that after sale and consequent mutation the revenue entries stand in their names; and that they have been enjoying the usufruct of the orchard. The plaintiffs have further pleaded that the defendants, who reside next to the suit land, took advantage of the circumstances that the plaintiffs live

about eight (08) kilometers away, used muscle power, intimidated labourers engaged on the orchard, and attempted to dispossess them. The cause of action was said to have arisen a few days before the institution of the suit, when the defendants refused to stop the interference. The only relief claimed was a decree of permanent prohibitory injunction.

07. Alongwith the plaint, the plaintiffs filed photostat extracts of revenue record. During the trial, vide order dated 28 December 2013, the trial Court allowed further revenue extracts, including Intikhab Jamabandi, Girdawari and certified copies of the pending suit, to be placed on record, subject to costs of ₹1,000/- and with liberty to the defendants to contest those documents. Subsequently, two (02) review petitions preferred against that order were dismissed on 15 April 2014 and 25 November 2014. According to plaintiffs, the enabling provision is Order XIII Rule 2 of CPC and after the amendment of 2009, the same power is also traceable to Order VII Rule 14(3) of CPC. Therefore, it is contended that a wrong citation of Order XIII Rule 2 of the CPC, if any, does not take away a power, the Court otherwise possessed.

08. The defendants filed the written statement, thereby denied both title and possession of the plaintiffs. It was pleaded that the suit was not maintainable under the Civil Procedure Code and the Specific Relief Act; that an injunction cannot be granted on speculative grounds without a proof of legal character; that the photocopies filed with the plaint were fabricated and had not been issued in the manner required by procedure; that the plaintiffs are not khewat holders of village Ramnagri; that the land belongs to Hafizullah Sheikh, Ghulam Rasool Sheikh, Abdul Hamid

Sheikh, Mohammad Ismail Sheikh, Mohammad Sheikh, Abdul Gani Sheikh, Mohammad Ibrahim Sheikh, Mohammad Anwar Sheikh and their heirs; and that the defendants are only caretakers and managers of the suit land and of its usufruct on behalf of those owners. It was also pleaded that the true owners had not been impleaded and that the plaintiffs were trying to occupy the land under the cover of the suit.

09. At this stage, be it noted that the defendants produced neither Jamabandi nor Girdawari nor Mutation nor any Power of Attorney from the persons whom they described as the true owners. Their oral evidence consisted of two of their own family members, namely, Mohammad Yaqoob Sheikh and Farooq Ahmed Sheikh, an auto driver, namely, Zahoor Ahmad Hajam, who deposed that he had carried fertilizer and pesticide to the orchard, and Tariq Ahmed Sheikh, a resident of Uri and grandson of Hafizullah Sheikh.

10. On 4 July 2012, the trial Court, on the basis of the pleadings, framed the following issues:-

- (i) Whether the plaintiffs are owners and exclusive possession of the suit land? OPP.
- (ii) In case issue No.1 is proved in affirmative, whether defendants are interfering in the possession of the plaintiffs? OPP.
- (iii) Whether the suit of the plaintiffs is based on forged and fabricated documents, if so what is its effect? OPD;
- (iv) In case plaintiffs failed to establish issue No.1, whether the defendants are owners and exclusive possession of the suit land ? OPD.
- (v) To which relief the parties are entitled?

11. The plaintiffs examined Mohammad Ashraf Turey and Bashir Ahmed Turey as their own witnesses, the Halqa Patwari, Syed Qounsar Ahmad; labourers, namely, Gull Kasana, Barqat Kasana and Abdul Rasheed Kasana and drivers, namely, Ghulam Mohammad Shah and Mushtaq Ahmad Naikoo; the drivers deposed that they have been carrying empty and filled apple boxes from the orchard over a long period from 1968 and 2000, respectively. The labourers further deposed about the cultivation, spraying and harvesting of the suit land under the plaintiffs.
12. The Halqa Patwari, namely, Syed Qounsar Ahmad produced and proved the revenue position as per the record in his custody. He deposed that after the sale and mutation Nos. 578 and 415, the land stood recorded in the names of the plaintiffs/vendees in self-cultivation column and he further deposed that no land under the survey numbers of the suit land was recorded in the names of the defendants. The Intikhab Jamabandi was exhibited as EXPW-P/3. In cross-examination, he admitted procedural irregularities in the photostat copies filed with the plaint, including want of treasury fee; non-compliance with the Rule 34 of the Jammu and Kashmir Land Revenue Rules and the Circular of the Government dated 14 September 2012.
13. It is equally noteworthy that the defence evidence did not accord with the written statement. DWs-Mohammad Yaqoob Sheikh and Farooq Ahmad Sheikh deposed of ancestral cultivation and inheritance of the suit land and not of a mere caretaking agency. One of the defence witnesses, DW-Farooq Ahmad Sheikh described the area as about eighty (80) Kanals instead of 102 Kanals 13 Marlas. Similarly, DW-Zahoor Ahmad

Hajam did not know, who owned the orchard nor its age nor its yield. DW-Tariq Ahmad Sheikh did not support the case that the defendants were caretakers. No documentary proof produced, though the defendants asserted that the revenue record stood in their favour.

Findings of the Trial Court:-

14. Now let's take note of the findings of the trial Court. The trial Court treated the suit as one for injunction simpliciter and, while relying on the judgments passed in, "*M. Kallappa Setty Vs. M.V. Lakshminarayana Rao, AIR 1972 SC 2299*" and "*State of J&K and Anr. Vs. Ghulam Rasool and Anr., AIR 1979 J&K 53*", it held that proof of possession is enough to support a prohibitory injunction and that the question of title may be left open to be decided in a properly instituted suit.
15. **On Issue No. 1**, the trial Court held that the plaintiffs' oral evidence of cultivation, plucking of fruit, hiring of labour and transport of boxes was definite, positive and consistent; that the Patwari's evidence and the Jamabandi extract EXPW-P/3 supported possession after purchase; and that the defence evidence was "*loose, scattered, inconsistent and fickle*". Thus, the Issue No. 1 was decided in favour of the plaintiffs on the question of possession. However, the ownership and title were left open
16. **On Issue No. 2**, the trial Court held that once possession was found with the plaintiffs, the allegations of use of muscle power, and intimidation of labour were treated as un-rebutted for the defendants had not specifically traversed those acts and had only asserted their own possession. It was held that assertion having failed on Issue No. 1, therefore, interference was held proved and Issue No. 2 was decided in favour of the plaintiffs.

17. **On Issue No. 3**, the burden lay on the defendants, who led no evidence of forgery, and the Issue was decided against them. **Issue No. 4** was held to have been rendered redundant in view of the finding on Issue No. 1.
18. The suit was, accordingly, decreed. The defendants were permanently restrained from interfering with the plaintiffs' possession. Preliminary objections of vague cause of action, bar of previous suit and necessity of deciding title first were rejected by the trial Court.

Submissions and challenge:-

19. Submissions of the appellants are that no admissible proof of title or possession had been produced; that only three (03) unauthenticated photostat leaves had accompanied the plaint; that the trial Court had travelled beyond the pleadings; that affidavits and exhibits had not been proved in the manner required by the Evidence Act; that an earlier injunction suit filed on 26 March 2010 before the learned Munsiff, Shopian, and disposed of on 01 May 2010, barred the present suit under Order II Rule 2 and Order XXIII Rule 1 of the CPC; that proper Court fee on the valuation of ₹51,000/- had not been paid; that a mere injunction without a declaration of title was not maintainable; and that revenue entries are not proof of ownership.
20. ***In rebuttal***, the respondents submitted that the suit protects settled possession of an orchard, which has been enjoyed for a long period; that the pleas of Order II Rule 2 and Order XXIII Rule 1 of the CPC and constructive res-judicata were not taken in the written statement and cannot be sprung for the first time in appeal; that the Jamabandi and Girdawari extracts were proved by the Patwari without a successful

challenge in the cross-examination; that the defendants' evidence contradicted their own plea of being caretakers; that a person in settled possession may restrain a person who has not shown a better title; and that the earlier suit before learned Munsiff, Shopian arose from a different act of interference, involved a smaller set of defendants, and does not bar a later suit founded on a fresh interference.

21. At this stage, it is also noteworthy that during the currency of instant proceedings, **CM No. 4174/2023** was filed by the respondents, by virtue of which, they sought leave to produce inter-alia, old mortgage deed and sale deed, i.e., transfer documents of the year 1957 under Order XLI Rule 27 of the CPC. However, the said application was deferred vide order dated 30 July 2024 and was kept pending for consideration after hearing the main appeal.

Analysis:-

22. On going through the memo of appeal, the trial Court record, including the impugned judgment and decree and after hearing the learned counsels for the parties, the following points for determination are framed:-

- (a) Whether a suit for prohibitory injunction simpliciter was maintainable without a declaration of title;
- (b) Whether the plaintiffs proved possession by Preponderance of Probabilities;
- (c) Whether photocopies of revenue record, read with the Patwari's and other oral evidence were legally sufficient for a possessory decree;

- (d) Whether the caretaker defence of the defendants defeated the injunction;
- (e) Whether the earlier suit before the Court of learned Munsiff, Shopian, barred the present suit;
- (f) Whether the remaining technical objections, including those as to Court-fee and late production of documents, vitiate the decree; and
- (g) Whether additional evidence under Order XLI Rule 27 CPC is necessary for the disposal of this appeal;

23. Before touching the nub of controversy raised in the appeal, it is necessary to take note of the law governing a possessory injunction. It is well settled that a prohibitory injunction may be granted on the basis of possession, even if title is not finally decided. In *M. Kallappa Setty (supra)*, the Hon'ble Supreme Court held that the plaintiff who is in possession can restrain interference even where his title is not satisfactorily established, leaving the defendant to seek his remedy in a properly constituted title suit. In "*Rame Gowda (dead) by LRs Vs. M. Varadappa Naidu (dead) by LRs and Anr.*, (2004) 1 SCC 769", the Apex Court recognized the protection of settled possession against persons, who have not better right in the eye of law. In "*Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs and others*, (2008) 4 SCC 594", the Hon'ble Supreme Court drew the familiar distinction that where the dispute is only interference with peaceful possession, an injunction simpliciter is maintainable whereas where title is under a genuine cloud and possession is itself doubtful, the proper suit is one for declaration, possession and injunction. Title need not

be decided in an injunction suit unless possession can be inferred only from title, as in the case of vacant site.

24. The suit land is an apple orchard under active horticulture and is not a vacant site. Possession of such land can and must be proved as a physical fact, that is to say, by showing who plants, prunes, sprays, irrigates, harvests, employs labour and takes the boxes to the mandi. The trial Court was, therefore, right in principle in leaving title open and in trying possession as a question of fact.
25. The standard applicable is the standard of Preponderance of Probabilities. The Court looks to a combination of day-to-day control, horticultural operations, employment of labour, movement of produce, and the khasra Girdawari, which is the best contemporaneous official note of who is cultivating. Jamabandi entries carry a rebuttable presumption under Section 31 of the Jammu and Kashmir Land Revenue Act, as to possession and fiscal liability, but they are not title deed. A recital of delivery of possession in a registered sale deed is relevant against the vendor, but is not conclusive against third persons, who were not parties to the deed. It may, however, be used as a pointer when it is consistent with the revenue record and physical acts of the possession.

Point (a)-Maintainability without declaration:-

26. Issue No. 1 was framed in the language of “owners and exclusive possession”. The trial Court, however, decided only the question of possession and left title open. That course is legally permissible in a suit for injunction simpliciter. The framing of the issue in a wider form does

not convert the decree into a declaration of title. The decree only restrains interference with possession and does not declare the plaintiffs to be the owners. Either party remains free to institute a comprehensive title suit. The objection that the injunction is bad for want of a prayer for declaration is, therefore, rejected.

27. The defendants did not establish a genuine cloud over the plaintiffs' title of the kind contemplated in *Anathula Sudhakar (supra)*. Their pleaded case was not that they themselves are the owners under a competing deed. Specific case set up by the defendants was that they are the caretakers of the third persons, who were never brought on the record and who never entered the witness box. A caretaker plea, unsupported by any document from the alleged original owners, does not by itself force the plaintiff who is in possession to convert his injunction suit into a title suit.

Points (b & c)-Proof of Possession:-

28. The plaintiffs discharged the burden on Issue No. 1 and confined it to possession, on a Preponderance of Probabilities. Their own statements, the statements of the labourers and two drivers formed a consistent narrative of long horticultural control consisting of pruning, spraying, harvesting and movement of fruit boxes. That narrative was not shaken in cross-examination and, thus, once the same has withstood the test during cross-examination, it can hardly be discarded on the basis of oral submissions and un-pleaded averments.
29. The evidence of the Patwari concerned had supplied the official corroboration. The said witness deposed on the basis of record in his

custody. After the sale and mutation Nos. 578 & 415, the land was recorded in the names of the plaintiffs/vendees in self-cultivation. It has also come on record that there is no entry under the suit survey numbers, which stood in the names of the defendants. That is the finding of the trial Court, and it is the finding, which this Court affirms. The statement that *“the land of the defendants appeared in the record”* is given by one of the defence witnesses, namely, Tariq Ahmad Sheikh, but his oral assertion being not supported by any documentary material, therefore, it was rightly discarded by the trial Court.

30. Photostat copies of public revenue records, standing alone, are not the primary mode of proof prescribed by Sections 65(e) & (f), 74, 76 & 77 of the Evidence Act and that objection would have decisive, if the case rested only on the three (03) unauthenticated leaves filed with the plaint, but it does not so rest. The Halqa Patwari entered the witness box, produced the record position and was cross-examined. Secondary evidence of a public document may be received when the original public record is spoken to by the official who keeps it and the trial Court was entitled to act on that combination. The admitted defects in the photostat, namely, want of treasury fee, non-compliance of Rule 34 of the Jammu and Kashmir Land Revenue Rules and 2012 Circular were considered by the trial Court. Those defects affect the weight of the copies and their probative value, but they do not require this Court to ignore the proof furnished by the official witness, i.e., Patwari concerned in context to the original entries made in the revenue record and same find mention in his testimony. Further, it needs to be noticed that those admissions go to the

mode of proving the copies. However, they do not wipe out the probative value of the oral proof based on original record, which formed the basis of his deposition in respect of the possession of the plaintiffs over the suit land.

31. The defendants, who asserted that the record stood in their name and that they were in cultivating possession, produced not a single extract and silence of that kind, after a specific plea, is a legitimate circumstance against them. Their oral evidence was mutually inconsistent on the area of land, on identity of the owner, and on whether they were owners or only caretakers. The trial Court's description of that evidence as "*loose and fickle*" is a possible view on the record, and it is not a view which this Court will reverse in first appeal, merely, because another view is conceivable.
32. The oral evidence of labourers and drivers is interested in the ordinary sense that they worked for the party who called them, but interest is a matter of weight and not of admissibility. Weighed against the testimony of Patwari concerned and against the defendants' failure to produce the record they themselves invoked, that evidence was sufficient. Possession of an orchard is proved by the fact of control and not by a title decree.

Point (d)- The caretaker defence:-

33. Possession of a caretaker is permissive, for it is the possession of the person for whom he holds. In "***Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through LRs***, 2012 (5) SCC 370", the Hon'ble Supreme Court held that a caretaker, watchman or servant cannot set up an independent possessory title against the person in

whom the legal possession resides, and cannot defeat an injunction merely by saying that “*he is looking after the property*”.

34. Two further difficulties confront the defendants. First, they led no proof in writing from Hafizullah Sheikh (original owner/vendor) or his heirs, authorizing them to manage the orchard. Second, their own witnesses deviated from the written statement and claimed inheritance. Evidence, which contradicts the pleaded case cannot be used to fill the gap. No party should be permitted to travel beyond its pleadings. A reference in support of this proposition may be made to “***Ram Sarup Gupta (dead) by LRs Vs. Bishun Narain Inter College and Ors., (1987) 2 SCC 555***”. Therefore, a party cannot be a caretaker in the pleadings and an heir in the witness box. The caretaker defence, therefore, does not displace the plaintiffs’ proved possession.

Point (e)-The earlier suit:-

35. An injunction suit was filed before the Court of learned Munsiff, Shopian on 26 March 2010 and stood withdrawn on 01 May 2010. The present suit was filed on 27 April 2011 against forty three (43) defendants. The earlier proceedings, so far as the record shows, were against a smaller set of defendants. The pleas of Order II Rule 2, Order XXIII Rule 1 and constructed *res-judicata* were not put in issue and cannot, as a matter of practice, be allowed to dominate a first appeal when the opposite party had no opportunity to meet them at the trial.
36. Bar of Order II Rule 2 CPC applies only when, both the suits arise from the same cause of action in substance, but in a suit for injunction, a fresh act of interference, threat or trespass after withdrawal of the first suit is a new and recurring cause of action. Therefore, Order II Rule 2 CPC does

not compel a plaintiff to combine every possible future cause of action. A subsequent event that did not exist or had not matured when first suit was filed, is not barred and consequently, also neither attracts res-judicata nor constructive res-judicata, because a suit dismissed as withdrawn is not decided on merits. Therefore, such withdrawal does not operate as constructive res-judicata also because nothing was in the case on hand “*might and ought*” to have been decided.

37. Nonetheless, on merit also the bar is not made out, because interference with possession gives a recurring cause of action and every fresh attempt to disturb settled possession gives rise to fresh cause for suit of injunction. The trial Court held that the cause of action pleaded in 2011 was a later act of interference and that finding has not been shown to be perverse. Mere non-mention of the earlier suit does not amount to suppression of a fact, which would have changed the possessory result. The objection on this count is, accordingly, rejected.

Point (f)-Other technical objections:-

38. The suit was valued at ₹51,000/-. The objection as to Court fee was not shown to go to the root of jurisdiction in the manner required to unsettle a decree after a full dress trial. The objection that documents were received after the written statement by the order dated 28 December 2013, which gave the defendants liberty to contest those documents, and by the two successful reviews that followed. Variance between the pleadings and proof was not of a kind that took the defendants by surprise. Both sides knew that possession of the Ramnagri orchard was the issue and both sides led evidence upon it.

Point (g)-Additional evidence:-

39. The respondents by virtue of application, **CM No. 4174/2023**, seeks leave to produce a registered mortgage and a registered sale deed, transfer of the year 1957, together with papers of an earlier proceeding instituted by the erstwhile owners. Those papers, even if genuine, go to title. Title was left open by the trial Court and is left open by this Court as well. Additional evidence is not required to decide whether the decree under challenge, confined as it is to possession, is sustainable on the trial record. The application does not satisfy the conditions of Order XLI Rule 27 CPC for the purpose of this appeal. The application is, accordingly, **dismissed** as not necessary for disposal of the appeal, without prejudice to the right of the either party to rely on those or any other title documents in a properly constituted title suit.
40. Before concluding, it is deemed necessary to address the point raised by the appellants that the trial Court has wrongly relied on the deleted provisions of Order XIII Rule 2 CPC while taking on record the additional evidence. In this regard, it is important to note that law on the point is no more *res-integra* and it is a well settled that if an authority has a power under the law, merely while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. In this regard, a reference can be made to the judgment passed by the Hon'ble Supreme Court in "**N. Mani Vs. Sangeetha Theatre and others, (2004) 12 SCC 278**". The power of the Court, in this regard, is traceable to Order VII Rule 14(3) of the CPC and, thus, even if the trial Court has made

mention of order XIII Rule 2 of the CPC, it does not take away the jurisdiction otherwise vested in the Civil Court to receive such evidence with leave.

Conclusion:-

41. The judgment and decree dated 18 June 2019, that forms the subject matter of challenge is a classic possessory prohibitory injunction. It is capable of being executed as a restraint on interference and it does not decide ownership. On the trial record the plaintiffs proved possession of the orchard by a combination of consistent oral evidence and the official version supplied by the concerned Patwari on the basis of revenue record that the land is recorded with the vendees in self-cultivation and is not recorded with the defendants. The defendants, who claimed to be caretakers and, in the alternative to be in possession under ancestral right, produced no document and gave inconsistent oral evidence. On a Preponderance of Probabilities, the trial Court was entitled to grant the injunction and to leave title open. Thus, no ground is made out for interference.
42. However, it is clarified, so that there is no misunderstanding either in execution or in any future litigation, that the decree protects possession only; that ownership of the suit land remains undecided; that either party may institute a comprehensive suit for declaration of title and, if so advised, for possession; and that nothing in this judgment shall be read as a finding that the plaintiffs have established title as owners.
43. For the foregoing reasons, the judgment and decree dated 18 June 2019 passed by the learned Principal District Judge, Anantnag in suit File No. 06/N, titled “*Abdul Hamid Turray and others Vs. Hassan Sheikh and*

others” granting a permanent prohibitory injunction, restraining the defendants from interfering with the plaintiffs’ possession over the suit land measuring 102 Kanals 13 Marlas in village Ramnagri, Tehsil and District Shopian, comprising Survey Nos. 322, 323, 325, 326, 336, 339, 363, 337, 338, 3177/326, 333, 334, 250 and 341, is affirmed, resultantly, the instant Civil First Appeal is **dismissed**.

44. There shall be no order as to costs.

45. Pending miscellaneous application(s) shall also stand **disposed of**.

(SHAHZAD AZEEM)
JUDGE

JAMMU
08.09.2026
Ram Krishan

