

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

**CM (M) No. 363/2025
CM No. 5485/2025**

Reserved On: 15th of September, 2026.
Pronounced On: 26th of September, 2026.
Uploaded On: 26th of September, 2026.

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

Mohammad Sultan Bhat, (74 Years)
S/O Late Abdul Ahad Bhat
R/O Dangerpora, Teilbal,
Srinagar, Kashmir.

... Petitioner(s)

Through: -
Mr Sajad Ahmad Sofi, Advocate.

V/S

- 1. Union Territory of Jammu & Kashmir,**
Through Commissioner/ Secretary to Government,
Revenue Department, Civil Secretariat,
Srinagar/ Jammu.
- 2. Divisional Commissioner,**
Kashmir, Srinagar.
- 3. Tehsildar North, Hazratbal,**
Srinagar, Kashmir,
- 4. Naib Tehsildar, Nandpora,**
Srinagar, Kashmir.

... Official Respondents

- 5. Shabir Ahmad Bhat**
S/O Late Ali Mohammad Bhat
R/O Dangerpora Teilbal, Srinagar, Kashmir.
- 6. Wahid Ahmed Bhat**
S/O Abdul Samad Bhat
R/O Dangerpora Teilbal, Srinagar, Kashmir.

7. Manzoor Ahmad Bhat
S/O Late Nabla Bhat
R/O Dangerpora Teilbal, Srinagar
(Legal Heir of Nabla Bhat).

... Private Respondents

Through: -

Ms Nadiya Abdullah, Assisting Counsel vice
Mr Mohsin-ul-Showkat Qadri, Sr. AAG for R-1 & 2;
Mr Waseem Gul, Government Advocate for R-3 & 4; and
Mr Z. A. Qurashi, Senior Advocate with
M/S F. A. Bhat and Anurag Verma, Advocates for R-5 to 7.

CORAM: HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(JUDGMENT)

01. The Petitioner, through the medium of this Petition filed under Article 227 of the Constitution of India, has challenged Order dated 3rd of March, 2025 passed by the Court of learned 3rd Civil Subordinate Judge (Forest Magistrate), Srinagar in the Suit titled **“Mohammad Sultan Bhat V. Shabir Ahmad Bhat & Ors.”**, whereby the Trial Court has struck out the names of Defendants No. 1 to 3/ Respondents No. 5 to 7 herein from the array of Defendants by invoking the provisions of Order I Rule 10 (2) of the Code of Civil Procedure (CPC).

02. The Plaintiff/ Petitioner herein claims to have filed a Suit for declaration and perpetual injunction against all the Defendants/ Respondents herein; that, pursuant to notice, the Defendants No. 1 to 3/ Respondents No. 5 to 7 herein caused their appearance and filed two applications; one by Defendants No. 1 and 3 and the other by Defendant No.2, separately, under Order VII Rule 11 CPC, seeking rejection of the Plaint, on the ground that the jurisdiction of the Trial Court was barred and that the Plaintiff/ Petitioner herein has disclosed cause of action in the Plaint few days prior to filing of the Suit, when the Naib Tehsildar concerned had issued notice to the Plaintiff/ Petitioner herein and his nephew to part with possession over the Suit property, as such, the cause to file the present Suit was against the Naib Tehsildar only.

03. It is alleged by the Petitioner that, although both the applications moved by the Defendants No. 1 to 3 in terms of Order VII Rule 11 of the CPC were not granted by the Trial Court, however, the Trial Court, at its own, while invoking Order I Rule 10 (2) of the CPC, vide the Order impugned, ordered to delete them from the array of Defendants, holding that no cause of action is disclosed in the Plaint against them, nor has even accrued to them and also no relief has been sought against Defendants No. 1 to 3.

04. The impugned Order has been assailed by the Plaintiff/ Petitioner herein on the ground that the Trial Court has non-suited him against the private Defendants in the Suit, at whose behest the official Defendants had initiated proceedings against the Plaintiff/ Petitioner herein with regard to the Suit land; that the Trial Court has erred in holding that the Defendants No. 1 to 3 in the Plaint have been wrongly joined as Defendants, when no cause of action had arisen against them in favour of the Plaintiff/ Petitioner herein, inasmuch as, the Trial Court has not appreciated the material facts disclosing the cause of action in Paragraphs No. 18 to 20 of the Plaint as regards the Defendants No. 1 to 3; that the Trial Court has wrongly applied the provisions of Order I Rule 10 (2) CPC, without appreciating first the provisions of Order I Rules 3, 4, 5 and 7, which deal with the persons who may be joined as Defendants to a Suit; that the Trial Court has mis-judged the pleadings of the Plaintiff/ Petitioner herein in relation to cause of action which has arisen against the persons arrayed as Defendants in the Suit, in view of the fact that the official Defendants had acted against the interests of the Plaintiff, at the behest of private Defendants.

05. Heard learned Counsel appearing on behalf of the parties, perused the pleadings available on record and considered the matter.

06. From the perusal of the pleadings available on record, it transpires that the Plaintiff/ Petitioner herein filed a Suit for declaration and

injunction, arraying as many as seven Defendants, including the private Respondents No. 5 to 7 herein. On notice having been issued by the Trial Court, the private Defendants (Respondents No. 5 to 7 herein) filed two separate applications under Order VII Rule 11 of the CPC for rejection of the Plaint. The Trial Court, while dealing with the aforesaid applications, was of the view that since the Applicants/ Respondents No. 5 to 7 herein have sought rejection of the Plaint in part, to their extent only, as such, the said relief cannot be granted in view of the Judgments rendered by the Hon'ble Supreme Court in **“Maqsud Ahmad V. Mathra Dutt & Co., 1936 SCC Online LAH 337”** and **“(2018) 11 SCC 780”**. At the same time, the Trial Court observed that the Court, however, is not powerless or that the Suit can be continued against the Defendants No. 1 to 3 (Respondents No. 5 to 7 herein), when cause of action is neither disclosed in the Plaint against them, nor has even accrued to the Plaintiff (Petitioner herein) against them and also no relief in the Plaint is sought against the Defendants No. 1 to 3 (Respondents No. 5 to 7 herein), as such, the Defendants No. 1 to 3 (Respondents No. 5 to 7 herein) have been improperly joined in the Plaint as Defendants. On the basis of these observations, the Trial Court, while resorting to Order I Rule 10 (2) of the CPC, struck out the names of the Defendants No. 1 to 3 (Respondents No. 5 to 7 herein) from the array of Defendants.

07. Keeping in view the aforesaid factual backdrop, it becomes necessary to go through the mandate of Rule 10 (2) to Order I of the CPC, which reads as under:

“10 (2): Court may strike out or add parties – The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate

upon and settle all the questions involved in the suit, be added.”

08. From a bare perusal of sub-rule (2) of Order I Rule 10 of the CPC, it is clearly evident that the power has been conferred upon the Court to strike out the name of any party improperly joined, whether as Plaintiff or Defendant, and also when the name of any person ought to have been joined as Plaintiff or Defendant or in a case where a person whose presence before the Court may be necessary in order to enable the Court, effectually and completely, to adjudicate upon and settle all the questions involved in the Suit. In the present case, since this Court is concerned with the Order of the Trial Court striking out the name of Defendants No. 1 to 3 (Respondents No. 5 to 7 herein), having been improperly joined in the Suit as per the Trial Court, therefore, let us consider the said part of sub-rule (2) of Rule 10 of Order I of the CPC, in the light of the facts and circumstances of the case.

09. The primary meaning of a party is a litigant who has a part to play in the proceedings. A “**necessary party**” is one without whom no order can be effectively made. The object of Rule 10 (2) to Order I of the CPC is not to prevent multiplicity of actions, though it may incidentally have that effect, but that is a desirable consequence of the Rule, rather than its main objective. The only reason which makes it necessary to array a person as a party to an action is, so that, he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled, unless he is a party.

10. It is trite in law that a person may be added as a party-Defendant to the Suit, though no specific relief may be claimed against him/her, provided his/ her presence is necessary for a complete and final decision on the question involved in the Suit. Such a person is only a proper party, as distinguished from a necessary party.

11. The Petitioner has pleaded that, after the death of his father-Ahad Bhat in the year 1965, the demised estate devolved upon his two sons, namely, Ghulam Qadir Bhat and Mohammad Sultan Bhat (Petitioner herein), by virtue of Mutation No. 964 entered into the revenue records on 12th of July, 1967 to the exclusion of two sisters, namely, Ateeqa and Nabla, who were married outside their parental home and had not staked any claim at the time of inheritance mutation having been entered in the revenue records; that, subsequently, after the death of Ghulam Qadir Bhat in the year 2003, his demised estate devolved upon his widow, namely, Habla and one son, namely, Ghulam Ahmad Bhat, and daughter, namely, Nuzhat by virtue of inheritance Mutation No. 3061.

12. It is alleged that the Petitioner and his sisters had no dispute *inter se* over the inheritance rights till the year 2015, when greed prevailed upon one of his sisters, namely, Mst. Ateeqa, as a result of which, she filed a Revision Petition before the Joint Financial Commissioner to challenge the inheritance Mutation No. 964 entered into revenue records on 4th of July, 1967, on the basis of which the Plaintiff/ Petitioner herein and his deceased brother had acquired exclusive rights of ownership and possession over the demised estate of their father; that the inheritance Mutation No. 964 was ordered to be set aside by the learned Financial Commissioner, vide Order dated 26th of December, 2017, directing the Respondent No.3-Tehsildar North (Hazratbal), Srinagar to attest fresh mutation in accordance with Muslim Personal Law, after following proper procedure; that the Order passed by the learned Financial Commissioner was assailed by the Petitioner and his co-owners before this Court in OWP No. 118/2018, wherein Mst. Nabla was also arrayed as a party proforma Respondent; that Mst. Nabla and her sister-Mst. Ateeqa, arrayed as Respondents No. 3 and 4 in the aforesaid Writ Petition, filed their Response before this Court, taking the plea that the parties to the Writ Petition had already entered into a compromise which was reduced into writing and, under the terms of the

said compromise, Mst. Ateeqa has received her share in the form of cash, whileas Respondent-Nabla had been given land measuring 01 Kanal and 01 Marla under *Khasra* No. 745 in estate Teilbal, Srinagar and, on the basis of the said compromise, the said OWP No. 118/2018 was disposed of as settled by this Court on 20th of March, 2018; that, pursuant to the compromise *bonafidely* entered into between them, the Tehsildar, North (Hazratbal) recorded the statements of the sisters of the Petitioner, namely, Mst. Ateeqa and Mst. Nabla on 12th of May, 2018, so as to ascertain the factum of valid and binding compromise.

13. The Petitioner further contends that the Tehsildar, North (Hazratbal) did not close the proceedings for attesting fresh mutation in view of the compromise and kept the proceedings on board, generating doubts in the minds of the Plaintiff/Petitioner herein and his co-owners *vis-à-vis* the Suit property, as a result of which, the Plaintiff and the legal heirs of the deceased brother of the Plaintiff-Mst. Nabla-sister of the Petitioner, filed a civil Suit for declaration and injunction before the Court of learned Forest Magistrate, Srinagar, however, despite the knowledge about the institution of the said Suit on 27th of February, 2020 and in utter disregard of the civil proceedings, to which Tehsildar, North (Hazratbal) had been arrayed as a party, he passed a prejudicial Order on 5th of March, 2020, brushing aside the legal effectiveness and impact of the statements made by the sister of the Plaintiff-Mst. Ateeqa, wherein it had been stated that the inheritance Mutation No. 964 should be kept intact, inasmuch as, the inheritance claims of both the sisters had been satisfied by the Petitioner and his other co-owners, and that the Tehsildar could not sit in judgment over the compromise entered by the parties voluntarily before this Court in OWP No. 118/2018; that the Order passed by the Tehsildar was, thus, challenged through the medium of a Civil Original Suit for declaration and injunction before the Court of learned Forest Magistrate, Srinagar, who was pleased to pass an Order on interim injunction application.

14. The Petitioner further contends that the Respondent No.5-Shabir Ahmad Bhat, who has been arrayed as Defendant No.1 in the Suit, had exercised undue influence upon his mother, i.e., Defendant No.3 and filed a frivolous application before the Divisional Commissioner, Kashmir, misrepresenting the facts that her share in her father's demised property was not being given to her and the Divisional Commissioner, Kashmir referred the said application to Tehsildar, North (Hazratbal), who, in turn, endorsed the same to Naib Tehsildar, Natipora for necessary action as warranted under law, who has arrogated himself the powers of the Court to compel the Plaintiff/ Petitioner herein and his nephew to part with the possession of their landed property and give more land to Defendants No. 1 to 3/ Respondents No. 5 to 7 herein, which is illegal and unwarranted in view of the compromise entered between the parties.

15. The Petitioner, faced with the aforesaid circumstances, thus, claims to have filed a fresh Suit before the Trial Court, to declare that the Tehsildar and Naib Tehsildar had no authority or power to pressurize the Petitioner to part with his possession and ownership of the Suit property in view of the pendency of civil litigation before the Court of learned Forest Magistrate, Srinagar in their earlier Suit titled **“Mohammad Sultan Bhat & Ors. V. Mst. Ateeqa & Ors.”**, and the Revision Petition filed against Mutation No. 4378 pending disposal before the Joint Financial Commissioner, Srinagar and for permanent prohibitory injunction. The aforesaid Suit, besides official Defendants, was filed against the private Defendants/ Respondents No. 5 to 7 herein, as well.

16. The Respondents No. 5 to 7 moved two separate applications for rejection of the Plaint, on the ground that neither any cause of action is disclosed against them in the Plaint nor any relief has been sought against them. The Court below, however, declined their applications, but ordered to delete them from the array of Defendants for the reason that they were not necessary or proper party to the Suit.

17. It is an admitted fact, as borne out from the Complaint, that neither any cause of action has been disclosed against any of the private Respondents nor any relief has been claimed against them, in the Suit, though in an earlier Suit filed by the Petitioner and his co-sharers, they are stated to be party. As per the assertions made in the Complaint by the Petitioner before the Court below, as Plaintiff, the Tehsildar and Naib Tehsildar concerned have been proceeding in the matter as per the orders of the Divisional Commissioner, Kashmir. Instead of contesting the matter by the Petitioner and his co-sharers before the Tehsildar and Naib Tehsildar, the Petitioner has filed another Suit against the official Respondents, including the Tehsildar and Naib Tehsildar and also implicated the private Respondents as Defendants No. 1 to 3.

18. From the perusal of the aforesaid Complaint, there is neither any cause of action pleaded against them nor any relief has been sought against the private Respondents. Besides, it is also a fact that the proceedings before the aforesaid revenue officers can be effectually decided in absence of the private Respondents, who, otherwise, do not wish to join proceedings, which may be at their own peril. Therefore, the private Respondents cannot be forced to be made as party in a Suit, wherein there is neither any cause of action accrued to the Plaintiff against them nor any relief has been sought against them.

19. Having regard to the foregoing reasons and observations made hereinabove, this Court is of the considered opinion that the Trial Court has rightly decided to delete the private Respondents from the array of Defendants, as Defendants No. 1 to 3 in the Suit, before it and there is no perversity or illegality in the Order impugned passed by the Trial Court, so as to warrant any interference by this Court, while invoking supervisory jurisdiction. The impugned Order passed by the Trial Court is, thus, upheld.

20. Viewed thus, the present Petition is found to be bereft of any merit and substance. Accordingly, the same is hereby **dismissed**, along with the connected CM. Interim direction(s), if any subsisting as on date, shall stand vacated.

21. Registry to forward a copy of this Judgment to the Trial Court, for information.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

September 26th, 2026

"TAHIR"

i. Whether the Judgment is approved for reporting?

Yes.

