

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

Uploaded on: 09.10.2026

**CR No. 44/2026
CM No. 7130/2026**

Tara Chand and another

...Petitioner /Appellant(s)

Through: - Mr. Rahul Aggarwal, Advocate

Vs.

Bhagata Alias Bhagat Ram

...Respondent(s)

Through: -

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

ORDER

07.10.2026

1. The petitioners, through the medium of the present petition, have challenged order dated 29.07.2026 passed by the learned Munsiff, Billawar (hereinafter referred to as “the trial court”), whereby, while dealing with the issues framed in a suit filed by the respondent against them, the learned trial court has decided the said issues against the petitioners.
2. It appears that the respondent/plaintiff has filed a suit before the learned trial court seeking a declaration that he is the exclusive owner in possession of land measuring 4 kanals and 1 marla, falling under Khasra Nos. 360 min, 362 min, 368 min and 370 min, situated at Village Mooni, Tehsil Billawar. In the plaint, it has been averred by the respondent/plaintiff that he is in exclusive possession of the suit land. According to the plaintiff, the predecessor-in-interest of the defendants, their deceased mother, along with her co-sharer, handed over land measuring 24 kanals and 6 marlas, including the suit land, to him after receiving the entire settled

consideration of Rs. 30,000/-, pursuant to an agreement to sell dated 12.03.1991. It has been pleaded that a sale deed in respect of land measuring 20 kanals and 5 marlas out of the aforesaid land was executed in favour of the plaintiff on 12.04.2007, but the defendants did not execute the sale deed in respect of their share in the remaining land, which constitutes the suit land. It has further been pleaded that the plaintiff has remained in possession of the suit land since 12.03.1991 and that the defendants never objected to such possession. Thus, on the basis of adverse possession, the plaintiff has sought a decree declaring him to be the exclusive owner in possession of the suit land.

3. It appears that the petitioners/defendants, in their written statement, raised a preliminary objection with regard to the maintainability of the suit on the ground that the suit land has not been properly specified and described and, therefore, the suit is hit by the provisions of Order VII Rule 3 of the Code of Civil Procedure, 1908. It has also been contended by the defendants that the suit is not maintainable as the plaintiff, on the one hand, claims ownership of the land on the basis of an agreement to sell and, on the other he is claiming ownership by way of adverse possession, which, according to the defendants, are mutually contradictory pleas.
4. On the basis of pleadings of the parties, learned trial court framed the following preliminary issues in the suit:

- (a)** Whether the suit in the present form is maintainable under the Code of Civil Procedure, 1908? (OPD)
- (b)** Whether the suit is not maintainable for want of proper specification and description of the suit land as required under Order VII Rule 3 of the Code of Civil Procedure, 1908? (OPD)

5. By virtue of the impugned order, the learned trial court decided both the aforesaid issues in favour of the plaintiff and against the defendants. While deciding Issue No. (a), the learned trial court observed that the plaintiff is not seeking a declaration of ownership on the basis of the agreement to sell; rather, he is seeking a declaration of ownership on the basis of adverse possession and, therefore, it cannot be said that he has taken contradictory pleas. While deciding Issue No. (b), the learned trial court held that the specifications and description of the suit land have been clearly mentioned in the plaint, as the relevant khasra numbers and measurements have been specified therein.
6. The petitioners have challenged the impugned order, inter alia, on the ground that Issue No. (a), relating to the maintainability of the suit, is not a purely legal issue, but involves a mixed question of law and fact, as such, the same should not have been decided without recording evidence. It has also been contended that the onus of proof in respect of Issue No. 1 was upon the plaintiff and not upon the defendants.
7. I have heard learned counsel for the petitioners and perused record of the case.
8. It is true that the language in which Issue No. (a) has been framed by the learned trial court would show that the onus of proof of the said issue was placed upon the plaintiff. However, having regard to the fact that it is the defendants who had raised the objection with regard to the maintainability of the suit, therefore, it was for the defendants to prove that the suit is not maintainable. In terms of Section 9 of the CPC, ordinarily a Civil Court has jurisdiction to try all types of suits except those cognizance of which is expressly or impliedly barred. Therefore, where the defendants assert that

the suit is not maintainable, the burden of establishing non-maintainability of the suit lies upon them.

9. The learned trial court may have committed an error in the choice of language while framing the issue, but the onus to prove said issue was rightly placed upon the defendants. Thus, no prejudice has been caused to the defendants by the choice of words used by the learned trial court in framing the issues.
10. So far as the contention of the petitioners that the issue relating to maintainability of the suit is a mixed question of law and fact is concerned, the same in the facts and circumstances of this case is misconceived because the said question had to be decided on the basis of the averments made in the plaint. There was no need to lead evidence on the said issue because its determination depended upon the pleadings set up by the plaintiff.
11. That takes us to the merits of the reasoning given by the learned trial court while deciding Issue No. (a). The court has rightly observed that the plaintiff is not seeking a declaration of ownership and possession of the suit land on the basis of the agreement to sell but the said relief is being sought on the basis of his alleged long, continuous, uninterrupted and hostile possession of the suit land. The reference to the agreement to sell dated 12.03.1991 has been made by the plaintiff only to explain the manner in which he has entered into possession of the suit land. The plaintiff seeks to claim ownership by way of adverse possession on the basis of his alleged uninterrupted possession and not on the basis of the agreement to sell. Therefore, at the stage of considering the maintainability of the suit, the

learned trial court was justified in holding that the plaintiff has not raised any contradictory pleas so as to render the suit not maintainable.

12. So far as Issue No. (b) is concerned, in this context, a perusal of the plaint reveals that the plaintiff has mentioned not only the khasra numbers and measurements of the suit land but he has also furnished the khewat and khata numbers pertaining to the said land. Order VII Rule 3 of the CPC provides that, where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and that the property can be identified by boundaries or numbers in record of settlement /survey.
13. In the present case, the plaintiff has mentioned the relevant khasra numbers as well as the measurement of the suit land and has also furnished the khewat and khata numbers. The description furnished in the plaint is, therefore, sufficient to identify the suit property. Accordingly, the requirement of Order VII Rule 3 of the CPC stands complied with. The learned trial court has, therefore, rightly decided Issue No. (b) against the petitioners/defendants.
14. For the foregoing reasons, I do not find any ground to interfere with the impugned order passed by the learned trial court. The petition lacks merit and the same is, accordingly, **dismissed**.

(SANJAY DHAR)
JUDGE

Jammu:
07.10.2026
Karam Chand

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No