

COURT OF SUB-JUDGE, BUDGAM

Date of Institution: 15-05-2026

Date of Order: 01-07-2026

Name of the plaintiff

Ghulam Nabi Shah
S/o Ghulam Mohiu-d-din Shah
R/o Khansahib Budgam

Through: Mr.M.S Shaheen (Adv).

Versus

Name of the defendants

1. Jehangir Ahmad Shah
2. Ghulam Nabi Shah
3. Javid Ahmad Shah
4. Saleema
5. Naseema
6. Shakeela
Sons and daughters of Ghulam Ahmad Shah
7. Ghulam Rasool Shah
8. Nazir Ahmad Shah
9. Ghulam Mohammad Shah
10. Fayaz Ahmad Shah
11. Mohammad Ayoub Shah
12. Naseer Ahmad Shah
13. Mukhtiar Ahmad Shah
Sons of Late Mohammad Yousuf Shah
14. Abdul Gani Shah
15. Abdul Rashid Shah
16. Ghulam Mohammad Shah
Sons of Late Ghulam Hassan Shah

17. Sajad Ahmad Shah
18. Parwaiz Ahmad Shah
19. Mehraj Yaseen
Sons of Late Mohammad Yaseen Shah
20. Mukhtiar Ahmad Mir
21. Muzaffer Ahmad Mir
Sons of Late Ghulam Nabi Mir
22. Anaab Parvaiz S/o Parvaiz Ahmad Shah
Residents of Khansahib Budgam
Defendant No. 5 resident of Waterhail Tehsil Khansahib
Defendant NO. 8 resident of Braripora Khanshaib
Defendant No. 22 resident of Natipora Chanapora
Defendants
23. Abdul Hameed Shah
24. Bashir Ahmad Shah
Sons of Ghulam Mohi-ud-din Shah
Residents of Khansahib Budgam
Proforma

Through:,Mr. Arif Ahmad Shah, advocate

***In the matter of: suit for declaration, partition, possession
and permanent injunction
And
Application for Interim Relief.
Application for clarification of order dated
15-05-2026 and for permission to execute
and register sale deed filed by Defendant
No. 1***

CORAM: Abdul Bari UID No. JK00197)

ORDER

1. By virtue of this composite order, I intend to dispose of both

the applications one for grant of interim relief filed by the plaintiff/applicant seeking that defendants be restrained from making any interference in the suit property in any manner and shall not create any third party interest till final disposal of the main sui and another application seeking clarification of order dated 19-05-2026 & seeking permission to execute and register the sale deed.

2. Before going into the merits of both the applications, it would be appropriate to have a glance over brief facts of the suit filed by the plaintiff which is enumerated hereinbelow:-

i). That the plaintiff and defendants 1 to 21 being the residents of Khansahib Budgam are belonging to one dynasty having a big chunk of land in various khewat Numbers, khatas and survey Numbers in village Khansahib. The land initially situated at Khansahib Budgam was owned and possessed by the head of their dynasty namely Samad Shah. The plaintiff and defendants 1 to 21 are co sharers, co owners and co possessors of the land which was inherited by the plaintiff and the defendants jointly from their ancestors. The said land partly was partitioned but not

properly.

ii). That the land under survey No 194 measuring 8 Kanals 19 Marlas, under survey No 196 measuring 7 Kanal 1 Marla, under survey No 197 measuring 15 Marlas, under survey No 2119/198 measuring 3 Kanals 10 Marlas, under survey No 2617/198 measuring 1 Kanal 8 Marlas situated at Khansahib Budgam was owned and possessed by Mahda Shah and Lassa Shah sons of Gaffar Shah residents of Khansahib Budgam in equal shares. The said land referred above was jointly owned and possessed by the grandfather of the plaintiff to the extent of one share and yousuf Shah, Hassan Shah and Mst Zebi sons and daughter of Mahda Shah to the extent of one share from the suit property mentioned supra. Late Khaliq Shah was Lambardar of the village under whose influence whole dynasty was existed and under his supremacy none of the co sharer was daring to claim their rights in their right perspective. Accordingly the suit property even if occupied by the plaintiff and the defendants No 1 to 21 was not properly partitioned

among all the co owners and the co sharers as per their rights and entitlement.

iii). That the record of rights (Jamabandi) and the record off possession (Girdawari) is clear about the status of inheritance of all the necessary parties. But unfortunately the father of the plaintiff being a powerless person was not given his share from the whole suit property to the extent of one half of the total land. The record has been changed due to the influence created by the defendants with the pathwari's concerned and other revenue officials. The revenue record which has been manipulated by the defendants is totally incorrect and is not recorded in accordance with the law of inheritance. As already cleared that the plaintiff's father is entitled to the extent of half of the suit property and the defendants are entitled to the extent of rest of the half. The suit property is situated at Khansahib which is a Kariwa. The said kariwa is now being changed in the residential area. The brokers transferred a big chunk of land to the various citizens of Srinagar due to which

Chaos and confusion has been created among whole villagers. The goons are wandering in the Kariwa who are being assisted by various brokers for alienation of the land. The suit property is unpartitioned in between the plaintiff, defendants 1-21 and proforma defendants by metes and bounds and is joint one. The defendants especially the defendants 1 to 6 have no concern with the suit property in a way which has been recorded in their name by ignoring the other defendants and the plaintiff to the extent of one half of the whole suit property. The defendants 1 to 6 may have their share with the other defendants from the suit property to the extent of one half of the same but not the way which has been recorded in their name. The whole record is incorrect and against the facts and circumstances of the situation on spot.

iv). That the said defendants by one way or the other are creating fuss for nothing and are always seeing a way how to dispossess and disown the co sharers especially the plaintiff. The plaintiff got the knowledge that the said defendants to 6 are intending to alienate

the suit property in favour of defendant No 22 or any other person who make quench their thirst without any legal right and any legal justification. The plaintiff approached to the defendants that since the property is joint and is un partitioned so none of the defendant has any right to occupy or alienate the suit property exclusively but the request of the plaintiff was turned down and process for obtaining Fard Intekhab from the Tehsildar Khansahib was started to be processed. In case the defendants succeeded in their ulterior designs the plaintiff shall suffer an irreparable loss which shall not be compensated by way of costs. There is imminent danger of breach of peace on spot. The record of girdawari has been changed so the cloud has erupted in the rights of the plaintiff so the present suit is presented accordingly. Since the proforma defendants have the right of inheritance from the suit property at par with the plaintiff so the proforma defendants were supposed to join the proceedings but saving the situation and face value of the proforma defendants, the proforma defendants did not join the

proceedings so in order to protect the lis and rights of the plaintiff the proforma defendants have been arrayed as proforma defendants.

3. **The defendants were** summoned in accordance with law who caused their appearance through counsel file written statement in the main suit and adopted the pleadings of the written statement as objections to the application for grant of interim relief.
4. **In the written statement** the defendants have raised a categorical defence that the plaintiff has no right, title, interest, or share in the suit property. Although both parties trace their lineage to a common ancestor, namely Samad Shah, the defendants contend that the plaintiff and proforma defendants belong to the branch of Lassa Shah, whereas the answering defendants belong to the branch of Mahda Shah. According to the defendants, the suit property has for generations remained in the ownership, possession, and enjoyment of the descendants of Mahda Shah and does not constitute joint family property between the parties.

5. The defendants further contend that the suit is not maintainable as it seeks partition only of selected survey numbers allegedly owned and possessed by Defendant No.1 while deliberately excluding other properties which, according to the plaintiff's own case, form part of the estate of Samad Shah. The suit is thus alleged to be one for partial partition and liable to dismissal on that ground alone.
6. It is also pleaded that the plaintiff has suppressed material facts from the Court. The defendants assert that prior to the institution of the suit, Defendant No.1 had already alienated the suit property in favour of a purchaser after receiving valuable sale consideration and that Fard Intikhab dated 18.05.2026 had been issued for execution and registration of the sale deed. According to the defendants, the suit was filed only after the plaintiff came to know about the proposed registration and was intended solely to obstruct and frustrate the lawful sale transaction.
7. The defendants have further pleaded that the suit is barred by acquiescence, waiver, and estoppel, inasmuch

as neither the plaintiff nor his predecessors ever asserted any right over the suit property for several decades and generations. Long-standing revenue entries and possession in favour of the defendants are stated to have remained unquestioned and therefore cannot now be challenged.

8. The defendants have also questioned the genealogy and succession projected by the plaintiff. It is their case that the plaintiff has deliberately concealed the subsequent devolution of property after the death of Samad Shah and has incorrectly projected inheritance rights in his favour. According to the defendants, the plaintiff and his brothers are already enjoying substantial landed property inherited through their own branch and have selectively targeted only those lands presently owned by Defendant No.1.
9. The allegations of manipulation of revenue records have been specifically denied. The defendants contend that no particulars regarding any alleged manipulation, mutation, revenue proceeding, or responsible official have been furnished in the plaint. They maintain that the

existing revenue entries carry a presumption of correctness and have remained in force for decades. Particular emphasis has been laid on the fact that the plaintiff himself served as Patwari and later as Naib Tehsildar and was therefore fully aware of the revenue position concerning the suit property.

10. The defendants further assert that land measuring 3 Kanals and 10 Marlas under Survey No.198 is the self-acquired property of the father of Defendants No.1 to 4 and that the plaintiff has no right or interest therein. They also maintain that Defendant No.1 was the lawful owner in possession of the suit property and was fully competent to alienate the same in favour of the purchaser.
11. On these grounds, the defendants contend that the plaintiff has failed to establish any prima facie right, title, or interest in the suit property, that no cause of action has accrued in his favour, and that he is not entitled to any declaration, partition, or injunction. Accordingly, they pray for dismissal of the suit and the connected applications with costs.

12. **Now coming to the first aspect i.e application for grant of interim** relief wherein it has been submitted that the plaintiff has a strong prima facie case against the defendants and has a balance of convenience also and in case interim relief is not granted the plaintiff shall face irreparable loss which cannot be compensated later on by any means. Lastly prayed that interim order dated 15-05-2026 passed in the application for grant of interim relief may be made absolute.
13. On the other hand ld counsel for the defendant also claimed that they have prima facie case in their favour and balance of convenience also titles in their favour and if the interim order dated 15-05-2026 is not vacated they shall face irreparable loss. Lastly prayed for vacation of interim order dated 15-05-2026 passed by this court in exparte
14. **Now coming to the second part i.e** application filed by the defendant NO. 1 seeking clarification of order dated 15-05-2026 and for permission to execute and register the sale deed on the grounds that The essence of the application filed by Defendant No.1 is that the interim

order dated 15.05.2026 restraining alienation of the suit property is causing grave prejudice and hardship, as the property had already been sold prior to the institution of the suit and before the passing of the injunction order. The applicant asserts that the sale transaction in respect of land measuring 5 Kanals and 15 Marlas falling under Survey Nos. 194 Min, 196, 197 and 1957/198 Min situated at Khansahib, Budgam, had already been concluded after receipt of full sale consideration from the purchaser, namely Hamida Parvaiz, and that only the formal act of execution and registration of the sale deed remained to be completed.

15. It is pleaded that the parties had already obtained Fard Intikhab on 18.05.2026 from the competent authority and had initiated the process for registration of the sale deed before the plaintiff instituted the suit. According to the applicant, the plaintiff, motivated by family rivalry and personal animosity, deliberately concealed these material facts from the Court and obtained an interim order solely to obstruct the completion of the transaction. The defendant further submits that he has incurred

substantial debts and financial liabilities in connection with the construction of his residential house and other family obligations and is facing increasing pressure from creditors. It is contended that the continued restraint on registration of the sale deed is causing severe financial hardship not only to the defendant but also to the purchaser, who has already paid valuable consideration and performed her part of the transaction.

16. The defendant maintains that no prejudice would be caused to the plaintiff if permission is granted to execute and register the sale deed because the transaction had already been concluded prior to the institution of the suit. It is further submitted that the balance of convenience lies in favour of permitting registration, particularly when the applicant undertakes that the sale deed and all rights flowing therefrom shall remain subject to the final outcome of the suit and any decree that may ultimately be passed by the Court.

17. On these grounds, the applicant seeks clarification/modification of the interim order dated

15.05.2026 by permitting execution and registration of the sale deed, subject to the final decision of the suit.

18. The plaintiff has opposed the application seeking clarification/modification of the interim order dated 19.05.2026 on the ground that the same is misconceived, legally untenable and liable to be dismissed. It is contended that the suit property is joint and unpartitioned and that Defendant No.1 has no exclusive right to alienate any portion thereof without the consent of the plaintiff and other co-sharers. The plaintiff submits that the defendant has failed to specify the exact extent of land proposed to be transferred under each survey number and has merely sought permission to alienate a consolidated area of 5 Kanals and 15 Marlas. It is further contended that Survey No.1957/198, though not forming part of the suit schedule, is also stated to be joint property and therefore cannot be transferred unilaterally. According to the plaintiff, the parties are co-sharers and co-possessors and the rights of all co-sharers remain undivided. It is pleaded that Defendant No.1 cannot claim exclusive ownership over the suit property nor transfer

the same to the prejudice of the rights claimed by the plaintiff and other defendants. The plaintiff asserts entitlement to one-half share in the suit property and contends that any alienation during the pendency of the suit would adversely affect his rights. The plaintiff has further disputed the defendants' assertion that the sale transaction had already been completed prior to institution of the suit. It is submitted that no registered sale deed has been executed and that issuance of Fard Intikhab by itself does not establish completion of a valid transfer. The averments regarding the alleged concluded sale transaction are therefore denied. It is also contended that no person can lawfully alienate joint and unpartitioned property during the pendency of litigation concerning title and partition thereof. Any agreement or transaction allegedly entered into by Defendant No.1 with the proposed purchaser is stated to be illegal, ineffective and not binding upon the plaintiff. The plaintiff further maintains that any such document, if executed in derogation of the rights of co-sharers, would be liable to be declared null and void. The plaintiff has also clarified

that although there exist other properties allegedly belonging to the common estate which are yet to be made subject matter of litigation, the present suit was instituted urgently in respect of the suit survey numbers because the defendants were attempting to alienate those properties. The plaintiff reserves his right to seek appropriate relief regarding other properties after obtaining the relevant revenue records. On these grounds, the plaintiff prays for dismissal of the application and for continuation of the interim order restraining alienation of the suit property during the pendency of the suit.

19. ***Heard learned counsels for both the parties and meticulously and dispassionately analyzed the plaint, written statement, documents annexed with the plaint besides arguments advanced by counsels for both the parties.***

20. Learned counsel for the plaintiff argued that the suit property is admittedly ancestral and joint property inherited from the common ancestor Samad Shah and has never been partitioned by metes and bounds. It was

contended that the plaintiff and defendants are co-sharers and co-owners and no individual co-sharer can claim exclusive ownership over any specific portion of the joint estate. The revenue entries relied upon by the defendants are incorrect and have been manipulated over a period of time to deprive the plaintiff and other legal heirs of their lawful share. According to the plaintiff, the entries in the revenue record are only fiscal in nature and do not confer title. The defendants are making persistent attempts to alienate portions of the suit property in favour of third parties despite the property remaining joint and unpartitioned. Such alienation, if permitted, would result in creation of third-party interests and would complicate the subject matter of litigation, thereby rendering the final decree ineffective.

21. **With regard to the application** filed by Defendant No.1 seeking permission to execute and register the sale deed, it was argued that mere issuance of Fard Intikhab does not amount to transfer of ownership. Since no registered sale deed has been executed, no valid transfer has taken place in the eyes of law. Once the Court has

restrained alienation of the suit property, permitting registration of the sale deed would defeat the very object of the interim order. Financial hardship or alleged receipt of sale consideration by Defendant No.1 cannot override the rights of co-sharers and cannot be a ground for permitting alienation of disputed property. Accordingly prayed that the interim order be made absolute and the application seeking modification or clarification of the order dated 19.05.2026 be dismissed.

22. **Per contra**, learned counsel for the defendants argued that the plaintiff has failed to establish any right, title or interest in the suit property and therefore has no prima facie case. Although the parties trace their ancestry to Samad Shah, the suit property exclusively belongs to the branch of Mahda Shah from whom the answering defendants derive title, whereas the plaintiff belongs to a different branch and has no concern with the suit property. The suit is not maintainable as the plaintiff has sought partition only in respect of selected survey numbers while deliberately excluding other properties allegedly inherited from the common ancestor. The suit,

according to the defendants, is one for partial partition and therefore not maintainable in law.

23. Learned counsel submitted that the plaintiff has suppressed material facts from the Court, particularly the fact that Defendant No.1 had already entered into a concluded sale transaction prior to institution of the suit and had obtained Fard Intikhab dated 18.05.2026 for execution and registration of the sale deed. It was contended that the suit was filed only to frustrate the lawful transfer. The plaintiff and his predecessors never asserted any claim over the suit property for several decades and are therefore barred by acquiescence, waiver and estoppel from challenging the defendants' title at this stage. The defendants also denied allegations of manipulation of revenue records and submitted that the existing revenue entries carry a presumption of correctness.

24. **Regarding the application** for clarification/modification of the order dated 15.05.2026, learned counsel argued that the sale transaction had substantially been completed before the institution of the

suit and only the ministerial act of registration remained. Defendant No.1 had already received sale consideration and incurred liabilities on the strength of the transaction. It was submitted that refusal to permit registration would cause grave financial hardship to Defendant No.1 as well as to the purchaser who had already paid the consideration amount. Learned counsel lastly argued that even if permission for registration is granted, the sale deed can always be made subject to the final outcome of the suit and therefore no prejudice would be caused to the plaintiff. Accordingly prayed that the interim order be vacated or suitably modified and Defendant No.1 be permitted to execute and register the sale deed.

25. **After hearing learned counsel** for the parties and perusing the record, this Court is of the considered opinion that for grant of temporary injunction the defendants are required to establish a prima facie case, balance of convenience and likelihood of irreparable loss in case the relief is declined.

26. A perusal of the plaint reveals that the plaintiff has challenged the exclusive claim of defendants over the suit

property and has specifically pleaded that the suit land is joint and unpartitioned property inherited from the common ancestor. The plaintiff has further asserted that the defendants are attempting to alienate the suit property without partition by metes and bounds and without recognizing the alleged rights of the plaintiff and other co-sharers. The controversy raised in the suit relates to title, inheritance and rights of co-sharers in respect of the suit property, which are matters requiring adjudication upon evidence during trial.

27. At this stage, the Court is not required to finally determine the rights of the parties. However, the pleadings and material placed on record disclose the existence of substantial questions requiring adjudication. Therefore, the plaintiff has succeeded in establishing a prima facie case for preservation of the property till final disposal of the suit.

28. The balance of convenience also lies in favour of maintaining status quo. In the event the defendants are permitted to create third-party interests during the pendency of the suit, complications are likely to arise

which may render the final adjudication ineffective and result in multiplicity of proceedings. On the contrary, preservation of the property during pendency of the suit would adequately safeguard the interests of all parties.

29. The Court is also satisfied that irreparable injury may be caused to the plaintiff if the suit property is transferred during the pendency of the proceedings and third-party rights are created. Such injury may not be capable of being adequately compensated in monetary terms.

30. **Coming to the application** filed by Defendant No.1 seeking **clarification/modification** of the order dated 19.05.2026 and permission to execute and register the sale deed, this Court finds no merit in the said application. The principal dispute in the suit pertains to the nature and character of the suit property and the alleged rights of the parties therein. The claim of Defendant No.1 that the transaction had already been concluded prior to institution of the suit is a disputed question of fact which cannot be conclusively determined at this interlocutory stage.

31. Merely because a Fard Intikhab is stated to have been issued prior to institution of the suit does not, by itself, establish completion of a valid transfer in accordance with law. Admittedly, the sale deed has not yet been executed and registered. Once an order restraining alienation has been passed by this Court and the rights of the parties in the suit property are under adjudication, permitting execution and registration of the sale deed would result in creation of third-party interests and may seriously prejudice the rights claimed by the plaintiff.
32. The contention that the proposed purchaser has already paid consideration or that Defendant No.1 is facing financial hardship cannot outweigh the necessity of preserving the subject matter of the suit. Any such transaction entered into by the parties shall necessarily remain subject to the outcome of the litigation. However, granting permission for execution and registration of the sale deed at this stage would defeat the very purpose of the interim protection granted by this Court.
33. Accordingly, the application for grant of interim relief is allowed and the interim order dated 19.05.2026 is

made absolute till disposal of the suit. The defendants are restrained from alienating, transferring, encumbering or creating any third-party interest in respect of the suit property during the pendency of the suit.

34. Consequently, the application filed by Defendant No.1 seeking clarification/modification of the order dated 15.05.2026 and permission to execute and register the sale deed is dismissed.

35. This order shall not have any bearing on the outcome of the main suit.

36. Both the applications are accordingly disposed off and shall form part of the main file.

**Announced:
01-07-2026**

**(Abdul Bari)
Sub Judge, Budgam**