

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

Reserved on: 25.08.2025

Pronounced on: 26.09.2025

CM(M) No.276/2023 c/w WP(C) No.236/2024

ZAHOOR AHMAD KAMBAY AND ORS ...Petitioner/Appellant(s)

Through: Mr. G. M. Bhat, Advocate.

Vs.

SABEENA AND ORS ...Respondent(s)

Through: Mr. Mir Majid Bashir, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

- 1.** The issues involved in the instant petitions are akin and analogous to each other, as such, are taken up together for final disposal at this stage with the consent of the appearing counsel for the parties.

WP(C) No.236/2024

(i) The petitioners herein have maintained the instant petition in representative capacity and claim to be the inhabitants of the village, Wakoora Ganderbal and have stated that respondent 1 herein had filed a suit for declaration and mandatory injunction against the respondent 2 herein besides the proforma respondents herein claiming therein the said suit to be the owner in possession of the land measuring 147 kanals and 4 marlas falling under Survey No. 495/405 situated at Mouza Rakhi Rabitar, Tehsil Lar District Ganderbal having purchased by her from the owner through attorney respondent 2 herein pursuant to an agreement to sell for a sale consideration of Rs.2,25,000/-.

(ii) It is stated that written statement had also been filed to the said suit by respondent 2 herein being a defendant 6 in the suit and the attorney of the owner of the land in question admitting the claim of the plaintiff/respondent 1 herein qua the land in question and upon the

said admission of the suit, the same came to be referred to the National Lok Adalat organized by the District Legal Services Authority, Ganderbal on 06-12-2024, resulting into the disposal of the same in terms of Award dated 06-12-2014 declaring the respondent 1 herein to be the owner in possession of land measuring 147 kanals and 4 marlas falling under Survey No. 495/405 Min (64K- 10% M), 406 Min (56K, 17/M) and 317 (25K,16.5M) with a direction to the defendant 6 therein the suit being respondent 2 herein not to cause any interference whatsoever with the suit land.

(iii) It is being stated by the petitioners herein that upon coming to know about the said award, the petitioners herein filed a suit against the same before the Principal District Judge Ganderbal on 11-05-2015, impleading the respondents 1 and 2 herein besides, the proforma respondents herein as well party defendants therein stating in the suit that the land in question though owned by one Sansar Singh had been in their uninterrupted possession and, as such, have become owners of the land in question on account of the said long uninterrupted possession on the ground of adverse possession and that the award dated 06-12-2014 obtained by respondent 5 herein from Lok Adalat is outcome of fraud and based on misrepresentation and concealment of true and correct facts.

(iv) It is further stated by the petitioners herein that the said suit, however, came to be, dismissed by the court of Additional District Judge, Ganderbal on 02-05-2023 on the ground of non-disclosure of cause of action, though providing a liberty to the plaintiffs/petitioners respondents herein to approach the proper forum with proper pleadings. It is thereafter that the petitioners herein have maintained the instant petition wherein it is being alleged that the impugned award is illegal, outcome of fraud, inasmuch as having been passed without jurisdiction ignoring the fact that the petitioners herein have been in continuous possession of the land in question from times immemorial initially through their forefathers and evidenced by relevant revenue records, and that the suit wherein the impugned

award came to be passed, the plaintiff therein the said suit-respondent 1 herein concealed and suppressed the said material facts.

(v) **Objections** to the petition have been filed by respondents 1 and 2 wherein it is being stated that the petitioners have no locus standi to assail the award in question as the petitioners herein cannot claim adverse possession qua the land in question being a private property.

(vi) It is also stated that the original owner of the land sold the same to respondent 1 herein on 15-07-2010 and also appointed Mrs Safia Akhtar respondent 2 herein as his attorney to facilitate the said sale and to execute the documents thereof as the said owner was due to his old age and ailing health was not able to travel and execute sale deed and that the owner also made a deed of declaration on 24-12-2010 in favour of respondent 1 herein fortifying the delivery of the possession and of conveyance of title of the land in question which facts were authenticated before the Lok Adalat on 06-12-2014 when the award came to be passed.

(vii) It is further stated that the petitioners herein have neither ownership rights nor possessory title over the land in question, who are trespassers and have manipulated the revenue entries and that since the disputed questions of fact are involved in the petition, as such, same are liable to be adjudicated upon by the civil court.

(viii) It is also stated that there is no legal, factual or procedural infirmity or jurisdictional error in the award under challenge warranting indulgence of this Court and that the petitioners did not choose to avail alternate statutory remedy against the award before approaching this Court.

CM(M) No.276/2023

(i) In the instant petition filed under Article 227 of the Constitution, the petitioners herein have invoked the Supervisory jurisdiction of this Court while calling in question award dated 06.12.2014 passed by the Lok Adalat in case titled "*Sabeena Vs. State and Others*", and have assailed the same on the similar grounds as are

urged in WP(C) No.236/2024 *supra* as such, for the sake of brevity and in order to avoid repetition are not referred herein.

(ii) The respondents 1 and 2 herein have filed same set of reply in opposition to the instant petition as has been filed in opposition to WP(C) No.236/2024 *supra*, as such, same as well in order to avoid repetition is not referred herein.

Heard counsel for the parties and perused the record.

2. Record reveals that WP(C) 236/2024 *supra* had been initially filed as a petition under Article 227 of the Constitution and registered as CM(M) No. 5/2024 however, on 31.01.2024 when it was being considered by this Court, it upon taking suo-moto cognizance of the issues involved in the petition, came to be treated the writ petition under Article 226 of the Constitution and consequently Registry diarized the same a petition under Article 227 of the Constitution.

3. Be that as it may, record of both the petitions would reveal that in CM(M) No.276/2023, respondent 1, namely Sabeena, being the daughter of respondent 2, Safiya Akhtar, had maintained the suit *supra* for declaration and injunction stating therein that in the Month of July 2010, one Sansar Singh, adopted son of late Gen. Bagh Singh, resident of Udampur, had sold land measuring 147 kanals and 1 marla falling under survey No. 495/405 to her against a sale consideration upon execution of an agreement to sell, whereupon the possession of the land was taken over by her, while contending further in the said suit, that the defendant 6 therein the said suit being respondent 2 in the CM(M) No.276/2023 *supra* and being her mother and attorney of the owner of the land namely, Sansar Singh has lodged a claim over the said land and is interfering into her peaceful possession thereof, and that the official defendants in the suit, including the revenue authorities, adopted an unknown and foreign procedure for forcibly dispossessing her from the suit land.

4. Record would reveal that the said suits came to be settled and compromised by and between the plaintiffs therein the said suit and the defendant 6 being respondent 1 herein, consequently resulting into passing

of impugned Award dated 06-12-2024, holding that the land measuring 147 kanals, 4 marlas, declared to be in the ownership and possession of the each of the plaintiffs/respondents' 1 herein, and that the defendant/respondent 6 herein shall not cause any interference whatsoever with the said suit land.

5. Record would also reveal that a similar suit had been filed by one Syed Yasmeen/respondent 1 in WP(C) No.236/2024 supra and besides, impleading the official respondents herein as defendants in the said suit also impleaded respondent 2 herein as defendant in the said suit, claiming in the said suit that land measuring 147 kanals, 4 marlas stands purchased by her from its owner, namely Sansar Singh pursuant to an agreement to sell through his attorney being respondent 2 herein against sale consideration paid in full whereupon the possession of land in question came to be delivered to her and that said attorney in connivance with official defendants are attempting to dispossess of the said land illegally and after filing of the written statement to the said suit by the said attorney admitting the suit, the same as well came to be referred to Lok Adalat wherein the same came to be settled and the award dated 06.12.2024 came to be passed.

6. In both the suits record bears testimony to the fact that the plaintiffs therein claimed to have purchased their respective land pursuant to an agreement to sell, a bear perusal whereof would demonstrate that both the agreements to sell have been executed on 15-07-2010 at Jammu purportedly by owner of the land through the attorney respondent 2 herein in both the petitions against the sale consideration of Rs.2,25,000/- respectively, claimed to have been received and possession of land delivered to the purchasers and that therefore, the purchasers thereof while admitting them to be the owners in possession of the entire land without any interference with the stipulation and that the seller shall execute all required documents of sale in favour of the purchasers through the named attorney.

7. A closer examination of the records available on the file, however, reveals that no sale deed formally transferring the title of the land stands executed qua the land in question in favour of the purchasers, yet the purchasers plaintiff in both the suits and respondent 1 in both petitions herein claimed to be the owners in possession of land on the basis of the said sale agreement.

8. Perusal of the record of the petition, however, would reveal that the petitioners herein in both the petitions claim the land in question to be in their actual physical possession jointly and in support thereof have placed on record relevant revenue extracts signifying the said position and have claimed that the said land has remained in their continuous uninterrupted position initially through their predecessors in interest having subsequently devolved upon them and have resisted and opposed the claim of the respondent 1 in both the petitions to be either the owners or in possession thereof.

9. It is indisputable position of law that any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property and that agreement to sale, whether with possession or without possession, is not a conveyance.

10. Having regard to the aforesaid position of law and reverting back to the cases in hand, it is manifest that the land in question is claimed to have been purchased by the plaintiff/respondent 1 pursuant to the agreements to sell as well as possession acquired thereof

11. Perusal of the available record also reveals that the Lok Adalat has overlooked the position of the law qua an agreement to sell and seemingly in a mechanical and casual manner has passed the impugned awards so much so, the plaintiffs in the suits and defendant 6 therein in the suits being respondents 1 and 2 herein in the instant petitions have also failed to bring true and correct facts in the suits and have succeeded in obtaining of the impugned awards from the Lok Adalat.

12. Viewed thus for what has been observed, considered and analysed hereinabove inasmuch as the impugned awards in view of law laid down by the Apex Court in case titled as “**Bhargavi Constructions and Another Vs. Kothakapu Muthyam Reddy and Ors**” reported in **2018 (13) SCC 480**, dated 06.12.2014 passed by the National Lok Adalat are **set aside** and suits titled as “*Syeda Yasmee Vs. State and Ors.*” are restored to the original numbers before the trial court to be dealt with by the trial court in

accordance with law. Further the petitioners herein in both the petitions shall be deemed to have been impleaded as defendants in the said suits.

13. It is made clear that nothing hereinabove shall be deemed to be expression of any opinion qua either the claim of the plaintiffs in both the suits or that of the now newly added defendants therein in both the suits, which claims shall be dealt with by the trial court in accordance with law and further any observation made hereinabove in this regards shall be deemed to have been made for the purposes of the disposal of the instant petitions alone.

14. Disposed of along with connected application/s.

15. Record of the trial court be returned back.

16. A copy of this order shall be placed on the record file of each of the petition.

SRINAGAR
26.09.2025
Ishaq


(JAVED IQBAL WANI)
JUDGE

<i>Whether order is speaking?</i>	<i>Yes/No</i>
<i>Whether approved for reporting?</i>	<i>Yes/No</i>