

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

**CM(M) 100/2026 CM(1598/2026**

**MOHD SULTAN WANI AND OTHERS.** ..... Petitioner(s)

Through: Mr. Raja Rathore, Advocate with  
Mr. Shujaat Hussain, Advocate.

V/s

**MST. SAJA AND OTHERS** ..... Respondent(s)

Through:

**Coram:**

**Hon'ble Mr. Justice Rahul Bharti, Judge**

**ORDER**

03.04.2026

1. The three petitioners, are defendants in a civil suit preferred by the respondents No. 1 to 6, before the court of Sub Judge, Bijbehara. The suit is for declaration, partition possession with consequential relief of permanent and prohibitory injunction.
2. In their civil suit, said respondents No. 1 to 6 have impleaded five defendants including three petitioners herein figuring as defendant No. 1 to 3.
3. The defendant No. 4 in the suit is Mst. Fatima who is referred herein as respondent No. 7.

4. The defendant No. 4-Mst. Fatima is being sued by the respondents No. 1 to 6 through her son Bashir Ahmd Wani.
5. In the entire plaint, the respondents No. 1 to 6 have not referred as to why they have referred the defendant No. 4-Mst. Fatima being sued through her son Bashir Ahmad Wani.
6. An application under Order 32 Rule 3 of the Code of Civil Procedure, 1908 came to be preferred by the respondent No. 1-Mst. Saja as being plaintiff no. 1 thereby seeking naming of Bashir Ahmad Wani as Guardian for the defendant No. 4-Mst. Fatima stating in the application that she is suffering from **Parkinson Disease** for the last more than eight years and, thus, being mentally unfit and unable to defend the suit of her own.
7. The application so filed by the respondent No. 1 is dated **27.12.2025** which has come to be allowed by the trial court in terms of an order dated **23.02.2026** purportedly on no objections registered by the counsel of the plaintiffs i.e., respondents No. 1 to 6.

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8. The manner in which the defendant No. 4 has come to be sued by projecting her as afflicted with **Parkinson Disease** and not being in mental fit state of mind has left the petitioner as co-defendant aggrieved to question that mandate of **Order 32 Rule 15 CPC** which makes the provision of **Rule 1 to 4 of Order 32 CPC** applicable to a person to be of unsound mind not being followed in letter and spirit and that renders the exercise of jurisdiction by the court of Sub Judge, Bijbehara vulnerable to supervisory jurisdiction under Article 227 of the Constitution of India.
9. In addition, the petitioner also finds themselves aggrieved of order dated **23.02.2026** whereby the court below has impleaded **defendants-Gowhar Ahmad Wani and Sayar Ahmad Wani** as co-defendants in the suit by purportedly acting on no objection of the plaintiffs.
10. In both orders, this Court finds prima facie that there is missing application of mind on the part of the court below and the passing of two orders seem to be of a

clerical mindset approach which is not cherishable when it comes to an application of judicial mind.

11. Issue notice to the respondents No. 1 to 6 only as this case affords an opportunity for re-visiting the application of **Order 32 of Code of Civil Procedure, 1908** with respect to persons named as defendant/s and being said to be mentally unsound requiring appointment of guardian for the purpose of being sued.
12. Notice in CM No. 1598/2026 also.
13. Petitioners to furnish registered postal covers whereupon notices shall go to the respondents No. 1 to 6.
14. In the meantime, further proceedings in the civil suit shall remain stayed.
15. List on **08.05.2026**.

**(Rahul Bharti)**  
Judge

**SRINAGAR**

03.04.2026

*Aasif*