



S. NO. 17/2026 JK LHC-JMU:2343

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

CM(M) No. 188/2025
CM No. 3820/2025
CM Nos.2783 & 2784/2026

Pronounced on: 27.07.2026

Uploaded on: 30.07.2026

**Krishna Devi, age 70 years D/o Sh. Kurku W/o
Waryam Singh R/o Assrev Chak, Tehsil Marh,
District, Jammu.**

.....Petitioner(s)

Through: Mr. Rohan Nanda, Advocate

Vs

- 1. UT of J&K Through Comm/Secretary
Revenue Department, Civil Secretariat, Jammu**
- 2. Regional Director Survey and Land Records
(Ex Officio Settlement Officer), Jammu.**
- 3. Tehsildar Marh.**
- 4. Subash Chander S/o Sh. Kurku R/o Village Karloop,
Tehsil Marh, District Jammu.**
- 5. Amit Kumar S/o Babu Ram R/o Village Karloop, Tehsil
Marh, District Jammu.**
- 6. Vishal Choudhary S/o Babu Ram R/o Village Karloop,
Tehsil Marh, District Jammu.**
- 7. Neelam Devi D/o Kurku W/o Ramesh Chander
R/o Village Karloop, Tehsil Marh, District Jammu.**

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG with
Ms. Chetna Manhas, Advocate for R-1 to 3
Ms. Deepali Arora, Advocate for R-4

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

**JUDGMENT (ORAL)
(27.07.2026)**

- 01.** Through the medium of the present petition, the petitioner has called in question the order dated 21.05.2025 passed by respondent No.2 in the appeal titled "*Subash Chander & Ors. vs. Krishna Devi & Ors.*"
- 02.** Mr. Rohan Nanda, learned counsel appearing on behalf of the petitioner, has vehemently argued that the impugned order dated 21.05.2025 came to



be passed by respondent No. 2 without issuing notice to the petitioner, despite the appeal being pending consideration and the matter having been fixed for further proceedings. It is further contended that the impugned order is in clear violation of the principles of natural justice, as the petitioner has been condemned unheard. According to the learned counsel, the order, being perverse and legally unsustainable, warrants interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

- 03.** Learned counsel further submits that the petitioner is the sister of respondent Nos. 4, 7 and 8 and the paternal aunt of respondent Nos. 5 and 6. Late Sh. Kurku Ram, father of the petitioner and respondent Nos. 4, 7 and 8, and grandfather of respondent Nos. 5 and 6, was the owner in possession of land measuring 27 Kanals and 17 Marlas situated at Village Chak Koulan, Tehsil Marh, District Jammu.
- 04.** It is further submitted that after the demise of Late Sh. Kurku Ram, mutation was attested in favour of all his legal heirs, including the petitioner, respondent Nos.4, 7 and 8, and the father of respondent Nos.5 and 6. It is further submitted that the mother of the petitioner and respondent Nos. 4, 7 and 8 also passed away in the year 1986, whereupon her share likewise devolved upon her legal heirs. According to the learned counsel, the petitioner requested respondent No. 4 and the other co-sharers to partition the jointly owned land in accordance with their respective shares as reflected in the revenue records, as the property had remained



undivided. However, respondent No. 4, along with certain other co-sharers, declined to have the land partitioned in accordance with law.

- 05.** It is further submitted that, in the aforesaid circumstances, the petitioner filed a petition dated 28.12.2022 before the Tehsildar, exercising the powers of Assistant Collector 1st Class, Marh, seeking partition of the land by metes and bounds and delivery of possession of the respective shares to the co-sharers. The said petition came to be allowed vide order dated 26.07.2024. According to the learned counsel, the said order was duly implemented and, in pursuance thereof, the land was partitioned and the petitioner was put in possession of land measuring 04 Kanals and 05 Marlas falling under Khasra No.47 situated at Village Chak Kalan, Tehsil Marh, by the revenue authorities on 27.11.2024, in the presence of police officials and local residents. In support of the aforesaid submission, reliance has also been placed upon the possession proceedings dated 27.11.2024, which have been placed on record as an annexure to the present petition.
- 06.** Aggrieved by the aforesaid order dated 26.07.2024, respondent Nos. 4 to 7 preferred an appeal on 31.01.2025, accompanied by an application seeking condonation of delay as well as an application for interim relief, before the Additional Deputy Commissioner, Jammu, against the order passed by respondent No. 3 in his capacity as Assistant Collector 1st Class, Marh. The appeal came to be presented on 06.02.2025.
- 07.** It is further submitted that respondent Nos. 4 to 7 did not get any interim



relief in the aforesaid appeal. Instead, respondent No. 3 was directed to furnish a report and the matter was listed on 25.02.2025. On the said date, a reminder was issued to respondent No. 3 for submission of the report and the matter was thereafter adjourned to 04.03.2025. According to the petitioner, on 04.03.2025, the appeal was transferred to respondent No. 2 for further proceedings and the parties were directed to appear before the said authority on 22.03.2025. On the said date, the petitioner filed objections, a copy whereof was furnished to the learned counsel appearing for respondent Nos. 4 to 7, and the matter was thereafter adjourned to 17.05.2025. However, as the Presiding Officer was on leave on the said date, the matter came to be adjourned to 08.07.2025.

- 08.** It has also been specifically pleaded that, after the matter stood adjourned on 17.05.2025, respondent Nos. 4 to 7, on 21.05.2025, presented yet another application seeking stay of the operation of the order dated 26.07.2024 passed by respondent No. 3. According to the petitioner, although the said application had been dated 14.05.2025 and was presented before respondent No. 2 on 21.05.2025, the applicants failed to disclose that an earlier application seeking interim relief, filed along with the appeal, was already pending consideration and that no interim relief had been granted therein.
- 09.** It has been specifically pleaded by the petitioner that respondent No. 2, without perusing the record and without issuing notice to the petitioner, proceeded to pass the impugned order staying the operation of the order



dated 26.07.2024. Feeling aggrieved thereof, the petitioner is stated to have also filed an application seeking review of the order dated 21.05.2025.

- 10.** The petitioner has assailed the impugned order primarily on the ground that, once the order dated 26.07.2024 had already been implemented by the office of respondent No. 3 and possession had been handed over to the petitioner, there was no occasion for the appellate authority to stay the operation of the said order. It is contended that documents evidencing the implementation of the order had already been placed on record along with the objections filed by the petitioner before respondent No. 2 in the pending appeal. However, respondent No. 2, without considering the said objections and the material placed on record, proceeded to pass the impugned order dated 21.05.2025 on the subsequent application for interim relief. It is further contended that respondent No. 2 also failed to take note of the earlier orders passed in the appeal, whereby a report had been called from respondent No. 3 to ascertain the factual position on the spot before passing any interim order. According to the petitioner, the said report was relevant and material for determining the rival claims of the parties, as it would have revealed that possession of land measuring 04 Kanals and 05 Marlas had already been delivered to the petitioner by the concerned revenue authorities with the assistance of the police while implementing the order dated 26.07.2024. It is, therefore, contended that there has been a gross and manifest failure of justice warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.



11. It has also been contended that, once the order dated 26.07.2024 had already been implemented, the same could not subsequently have been stayed by the appellate authority.
12. Learned counsel for the petitioner has further submitted that there is no provision under law for filing and entertaining a second application for interim relief when an application seeking stay, along with an application for condonation of delay accompanying the appeal preferred by respondent Nos. 4 to 7, was already pending consideration before the appellate authority. It is submitted that, while passing the impugned order dated 21.05.2025 on the subsequent application dated 14.05.2025, respondent No. 2 ignored the fact that the appeal had already been listed for 08.07.2025 and, without preponing the appeal along with the connected applications or issuing notice to the petitioner or his counsel, proceeded to pass the impugned order, which, according to the petitioner, is contrary to the mandate of law.
13. Mrs. Monika Kohli, learned Sr. AAG, appearing on behalf of respondent Nos. 1 to 3, submits that the dispute is essentially *inter se* between private parties and, therefore, she does not propose to file any reply in the present matter. Her statement is taken on record.
14. Learned counsel appearing for the contesting respondent No. 4 submits that the impugned order directly affects respondent No. 4 alone. Accordingly, respondent No. 4 has filed objections to the present petition, whereas the remaining respondents have chosen not to file any response.
15. *Per contra*, respondent No. 4, in the objections filed to the present petition,



has contended that the petition is wholly misconceived, legally untenable and not maintainable under Article 227 of the Constitution of India. It is submitted that the petitioner seeks to invoke the extraordinary supervisory jurisdiction of this Court against an interlocutory order passed by a competent appellate authority in a duly instituted and pending statutory appeal. According to the contesting respondent, it is a settled principle of law that the jurisdiction under Article 227 is neither appellate nor revisional in nature and is to be exercised sparingly, only in cases involving patent lack of jurisdiction, manifest perversity or gross miscarriage of justice. It is further submitted that, since the statute itself provides a complete mechanism of adjudication, including appellate remedies, this Court ought not to interfere at an intermediate stage so as to frustrate the statutory scheme.

16. Ms. Deepali Arora, learned counsel appearing on behalf of respondent No. 4, further submits that the petitioner has misconstrued and misapplied the observations made by this Court in its order dated 04.07.2025. According to the learned counsel, the observations regarding the functioning of the *quasi-judicial* authorities being in a '*sorry state of affairs*' were only *prima facie* observations made at the stage of issuing notice and were never intended to constitute a final adjudication on the issues involved. It is submitted that such preliminary observations cannot be treated as conferring any legal right upon the petitioner or as constituting a ground to invalidate the impugned action.
17. Learned counsel further submits that the contention raised by the petitioner



that the impugned order has been passed in a time-barred appeal is factually incorrect and legally misconceived. It is submitted that the appeal preferred by respondent Nos. 4 to 7 was accompanied by an application seeking condonation of delay, which was pending consideration before the appellate authority.

18. According to the learned counsel, it is well settled that once an appeal, along with an application for condonation of delay, is presented before the competent authority, the appellate authority does not become *functus officio* and continues to possess the jurisdiction to entertain the appeal and pass such interim or protective orders as may be necessary to preserve the subject matter of the dispute. It is further submitted that the question of limitation is itself a mixed question of fact and law, which is required to be decided on its own merits and, until such determination, the appellate authority is not divested of its ancillary and incidental powers.
19. Learned counsel for respondent No. 4 further submits that the impugned order dated 21.05.2025 has been passed strictly within the jurisdiction of the appellate authority and in exercise of its inherent and ancillary powers with a view to preserving the subject matter of the dispute and preventing irreparable loss and injury. It is contended that the order dated 26.07.2024 passed by the Tehsildar was *ex parte* in nature and suffers from serious procedural irregularities, including non-compliance with the mandatory provisions governing partition proceedings under Chapter X of the Land Revenue Act and the Rules framed thereunder. According to the learned



counsel, these circumstances fully justified the exercise of jurisdiction by the appellate authority while passing the impugned order.

20. Learned counsel for respondent No. 4 further contends that the present petition is premature, inasmuch as the statutory appeal preferred by the contesting respondent is still pending adjudication before the competent appellate authority and the rights, title and possession of the parties are yet to be finally determined. It is submitted that it is a settled principle of law that where proceedings are pending before a competent forum, the High Court ought not to interdict the same at an interlocutory stage unless exceptional circumstances are made out. According to the learned counsel, interference at this stage would not only defeat the legislative intent underlying the statutory framework but would also render the appellate proceedings otiose and infructuous. Accordingly, it is prayed that the present petition be dismissed.
21. Heard learned counsel for the petitioner and learned counsel appearing on behalf of respondent No. 4, the contesting respondent, at length and perused the record.
22. Having considered the submissions advanced at the Bar and upon perusal of the material available on record, this Court is of the considered opinion that the impugned order dated 21.05.2025 cannot be sustained in law. The record reveals that the impugned order came to be passed without affording any opportunity of hearing to the petitioner, despite the appeal admittedly being pending before the appellate authority and the matter having already



been fixed for further proceedings. An order adversely affecting the rights of a party could not have been passed without affording such party an opportunity of being heard. The impugned order, therefore, stands vitiated being in violation of the settled principles of natural justice, particularly the rule of *audi alteram partem*. Consequently, this Court is satisfied that the present case warrants interference in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. This Court consciously refrains from expressing any opinion on the merits of the controversy to avoid causing prejudice to either party before the appellate authority.

23. At this stage, it would be profitable to refer to the judgment of the Hon'ble Supreme Court in “**Canara Bank and others v. Debasis Das and others**”, (2003) 4 SCC 557, wherein, while emphasizing the importance of adherence to the principles of natural justice, particularly the rule of *audi alteram partem*, the Supreme Court held as under:

“The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the



most important principles of natural justice. It is after all an approved rule of fair play.”

24. Applying the aforesaid principles to the facts of the present case, this Court has no hesitation in holding that the impugned order dated 21.05.2025, having been passed without affording an opportunity of hearing to the petitioner, stands vitiated for violation of the principles of natural justice and cannot be sustained in law. Once the order itself is found to have been rendered in breach of the rule of *audi alteram partem*, the proper course would be to restore the matter to the appellate authority for fresh consideration after hearing all the concerned parties.
25. At this stage, learned counsel appearing for the contesting respondent No. 4 fairly submits that she has no objection if the matter is remanded to respondent No. 2, before whom the appeal is presently pending, for fresh consideration after affording an adequate opportunity of hearing to all the concerned parties. Learned counsel appearing for the petitioner has also expressed no objection to the aforesaid course of action. In view of the fair stand taken by the learned counsel appearing for the parties and having regard to the nature of the controversy involved, this Court is of the considered opinion that the ends of justice would be adequately served by remanding the matter to respondent No. 2 for fresh consideration in accordance with law. It is, however, clarified that nothing observed herein shall be construed as an expression of opinion on the merits of the controversy and all questions are left open to be considered independently by the appellate authority.



26. As a necessary corollary, the impugned order dated 21.05.2025 passed by respondent No.2 in the appeal titled "*Subash Chander & Ors. vs. Krishna Devi & Ors.*" is hereby set aside. The matter is remanded to respondent No. 2, i.e., Regional Director, Survey and Land Records (Ex-Officio Settlement Officer), Jammu, for fresh adjudication in accordance with law after affording due opportunity of hearing to all the concerned parties.
27. Needless to observe that respondent No. 2 shall, in the first instance, consider and decide the application seeking condonation of delay and the question of limitation strictly in accordance with law. Only thereafter shall the appellate authority proceed to examine the appeal on its own merits after granting adequate opportunity of hearing to all the concerned parties.
28. The parties are directed to appear before respondent No. 2 on 05.08.2026.
29. The Registry is directed to transmit the record.
30. Accordingly, the present petition, along with all connected applications, stands disposed of in the aforesaid terms.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
27.07.2026
Vijay

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