

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

Case:- RSA No. 14/2026
CM Nos. 5895/2026 & 5896/2026
Cav No. 1571/2026

Madan Lal & Anr. Appellant(s)

Through: Mr. Sahil Gupta, Advocate.

Vs

Jeet Kour & Ors. Respondent(s)

Through: Mr. Ajay Bakshi, Advocate for R-3 to 5.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(02.09.2026)

Cav No. 1571/2026

1. Heard learned counsel for the caveator. Caveat stands discharged.

RSA No. 14/2026

2. On **18.07.2005**, two appellants herein Madan Lal & Ashwani Kumar commenced a civil suit on the file of learned Sub-Judge (Chief Judicial Magistrate), Samba. In their said suit, the two appellants, as plaintiffs, came to name four defendants, namely, Jeet Kour, Gurmeet Singh, Daljeet Singh and Jagdish Singh as defendants.

3. The suit came to wed two independent causes of action against two different sets of defendant in the sense that vis-à-vis defendant No. 1-Jeet Kour, a decree for specific performance of an Agreement to Sell dated **11.07.2001** with respect to land measuring 03 kanals comprising khasra No. 39 situated at Sujwan, tehsil Samba,

was solicited whereas with respect to defendants No. 2 to 4, namely, Gurmeet Singh, Daljeet Singh and Jagdish Singh, a decree of permanent prohibitory injunction for restraining the defendants from interfering in any manner, forcibly occupying or dispossessing the appellants/plaintiffs from the land forming subject matter of the Agreement to Sell was claimed.

4. In the civil suit, by virtue of an order dated **12.09.2005**, a temporary injunction direction came to be imparted by the Sub-Judge, (Chief Judicial Magistrate), Samba by directing the parties to the suit to maintain status-quo on spot with no construction of any nature to be raised by either of the parties to the suit.

5. Against this temporary injunction direction placed by the trial court, a miscellaneous appeal on file No. 102/Appeal was taken by the defendants No. 2 to 4, before the court of learned Additional District Judge, Jammu, which, by virtue of an order dated **15.05.2007**, came to set aside order dated **12.09.2005** of the Sub-Judge (Chief Judicial Magistrate), Samba, with a direction unto the defendants Nos. 2 to 4, who were the appellants in the appeal before the court of learned Additional District Judge, Jammu, to file an undertaking in the trial court that in case of the suit finally decided against them, they will hand over the suit land alongwith the construction raised thereupon to the appellants and further the appellants would then be entitled to pull down the construction.

6. This overturning of temporary injunction order of the learned Sub-Judge (Chief Judicial Magistrate), Samba, by the appellate court of Additional District Judge, Jammu, which literally acknowledged non-possession of the appellants vis-à-vis suit property did not bother the appellants to carry a challenge before this Court.

7. The outcome of the appeal before the court of Additional District Judge, Jammu, attained finality and, thus, the appellants carried forward the trial of the suit from a purported state of non-possession vis-à-vis the suit property.

8. By virtue of an order dated **25.09.2008**, the court of learned Sub-Judge (Chief Judicial Magistrate), Samba, came to frame the following issues:-

1. Whether the defendant No. 1 had executed an agreement to sell dated 12th July, 2001 in favour of plaintiffs by virtue of which she had agreed for sale of land measuring 3 kanal under khasra No. 39 situate at village Sujwan tehsil Samba for an consideration of Rs. 30,000/-? O.P.P.

2. In case issue No. 1 is proved in affirmative whether the plaintiff had paid the part consideration amount of Rs. 20,000/- to the defendant No. 1 and rest part of Rs. 10,000/- was promised to be paid at the time of execution of the sale deed? O.P.P.

3. In case issues No. 1 and 2 are proved in affirmative whether the defendant No. 1 had delivered the possession of the suit land to the plaintiffs at the time of execution of the aforesaid at the time of execution of the aforesaid agreement to sell and since then the plaintiffs continued to be in possession till date? O.P.P.

4. Whether the plaintiffs are ready and willing to pay the balance amount of consideration of Rs. 10,000/- to the defendant No. 1? O.P.P.

5. Whether the defendant No. 1 has denied to receive the balance amount of consideration and execute the sale deed in favour of the plaintiffs? O.P.P.

6. Whether the defendant No. 1 in connivance with defendant 2 to 4 are intending to forcibly dispossess the plaintiffs from the suit land by raising the construction over it? O.P.P.

7. Whether the present suit is hit by law of limitation? O.P.D.

8. Whether the defendant No. 1 was neither the owner nor in possession of the suit land, as such, the agreement to sell executed by her and is illegal and avoid and confers no right upon the plaintiff? O.P.D.

9. Whether the suit land was already mortgaged by defendants 2 and 3 alongwith their brother Iqbal Singh in favour of J&K State Finance Corporation large bench office Jammu at the time of execution of the agreement to sell dated 11th July, 2001? If so what is its effect? O.P.D. 2 to 4

10. Relief? O.P. Parties.

9. The court of Sub-Judge (Chief Judicial Magistrate), Samba, on the basis of the evidence led in the case, in which the principal defendant No. 1-Jeet Kour, remained *ex-parte*, came to dismiss the suit by holding that the appellants had successfully discharged the onus with respect to the execution of an agreement to sell in their favour by defendant No. 1-Jeet Kour for land measuring 03 kanals under khasra No. 39 for a consideration of Rs. 30,000/-.

10. However, what came to turn table against the appellants, as plaintiffs in the suit, is possession of the property forming subject matter of the agreement to sell.

11. While the appellants came to earn favourable verdict on issues No. 1 & 2 in their favour, the issue No. 3 with respect to possession came to be returned in finding against the appellants and in favour of the defendant Nos. 2 to 4.

12. Thus, cumulative effect of the reading of the evidence and the findings on the issues so returned by the trial court of Sub-Judge (Chief Judicial Magistrate), Samba, the trial court came to finding that the appellants have proved the execution of an Agreement to Sell dated **12.07.2001** with respect to 03 kanals of land in khasa No. 39 situated at village Sujwan, Tehsil Samba, for a consideration of Rs. 30,000/- against which, Rs. 20,000/- consideration as a part payment had been made and balance of Rs. 10,000/- to be made at the time of execution of the sale deed for which the appellants were always willing to come forward and make the payment to the defendant No. 1-Jeet Kour, who was awaiting to receive the said balance consideration and execute the sale deed.

13. The trial court of Sub-Judge (Chief Judicial Magistrate), Samba, on account of the fact that the possession of the land forming subject matter of the agreement to sell was not with the appellants or for that matter with the defendant No. 1-Jeet Kour, resulted in dismissal of the suit even for specific performance of contract against defendant No. 1 and for permanent prohibitory injunction against the defendant Nos. 2 to 4.

14. The judgment and decree dated **02.07.2025** passed by Sub-Judge (Chief Judicial Magistrate), Samba, came to be assailed in a civil 1st appeal by the appellants before the court of Additional District Judge, Samba, which has resulted in dismissal on the same line of reasoning as resorted to by the court of learned Sub-Judge (Chief Judicial Magistrate), Samba.

15. The appellants, thus, come forward with the present civil 2nd appeal addressed against a judgment and decree dated **30.05.2026** of the court of learned Additional District Judge, Samba.

16. The appellants have proposed in their memo of appeal the following substantial questions of law :-

A. Whether the learned First Appellate Court, being the final Court on facts, committed a substantial error of law by dismissing the appeal without properly appreciating the pleadings, evidence and findings recorded by the learned Trial Court on the material issues involved in the suit?

B. Whether the learned Appellate Court committed a substantial error of law and procedure in dismissing the appeal without adjudicating the pending contempt/interlocutory proceedings which were directly connected with preservation and status of the suit property?

C. Whether the learned Courts below committed a patent error of law in dismissing the suit for specific performance solely on the ground that the appellants were not in physical possession of the suit property, contrary to Section 22 of the Specific Relief Act, 1963 and the law laid down by the Hon'ble Supreme Court in Babulal v. Hazari Lal Kishori Lal and Rohit Kochhar v. Vipul Infrastructure Developers Ltd.?

D. Whether the learned courts below failed to exercise jurisdiction vested in them under Section 22 of the Specific Relief Act by

not considering the consequential relief of possession which is ancillary to and flows from a decree for specific performance?

E. Whether the learned Courts below acted illegally in treating the alleged possession of respondents Nos. 2 to 6 as a circumstance sufficient to defeat the contractual rights of the appellants despite recording no finding that respondents Nos. 2 to 6 had established lawful title over the suit property?

F. Whether the learned First Appellate Court committed a substantial error of law by ignoring the judicial orders passed in the interim proceedings whereby contested respondents furnished affidavits undertaking to remove the construction in the event of the appellants succeeding and by failing to consider the legal consequences of the said undertaking, which was affirmed by this Hon'ble Court in revision?

G. Whether the learned First Appellate Court failed to exercise the jurisdiction vested in it by law by not considering the legal effect of the undertaking furnished by contested respondents that no equity would accrue in their favour on account of the construction raised during the pendency of the litigation?

H. Whether the findings recorded by the Courts below suffer from perversity on account of misreading of evidence, non-consideration of the Patwari's report and statement, the findings recorded on Issue No. 8, and other material evidence available on record?

I. Whether the learned First Appellate Court committed an error

of law in failing to appreciate that defendant No. 1, the executant of the agreement to sell, had been proceeded ex parte and that the execution of the agreement remained un rebutted by the executant?

J. Whether the learned Courts below committed a jurisdictional error in dismissing the suit without adjudicating the legal consequences arising from the admitted failure of respondents

Nos. 2 to 6 to establish their ownership by any registered title deed, mutation, revenue record or other legally admissible evidence?

K. Whether the impugned judgment is vitiated by non-consideration of material evidence and settled legal principles governing suits for specific performance, thereby giving rise to substantial questions of law within the meaning of Section 100 of the Code of Civil Procedure?

17. This Court finds a scope for substantial question/s of law to be framed in the case which is to the fact that as to **whether for an agreement to sell executed by an owner of a property/land, possession is an essential component to lend validity to the agreement to sell for the purpose of enabling the prospective vendee/s to earn a decree for specific performance of contract against the prospective vendor/owner having executed an agreement to sell with or without possession of the property forming subject matter of an agreement to sell.**

18. It is only this substantial question of law which is found getting generated in the present civil 2nd appeal whereas on the aspect of the possession of the land forming subject matter of agreement to sell, there are concurrent findings of fact by the court below which may not admit of generating any substantial questions of law.

19. The appeal is, thus, **admitted** on the aforesaid substantial questions of law.

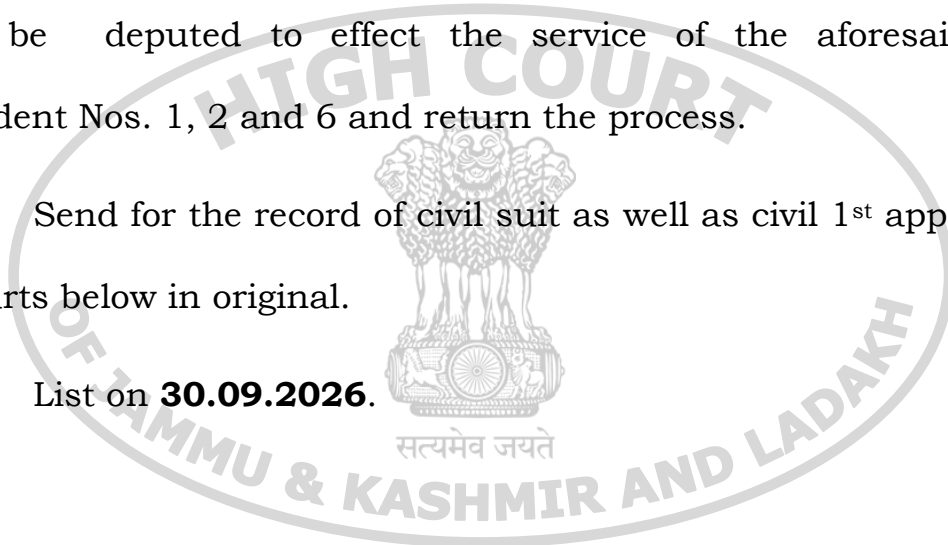
20. Issue notice to respondents in the main petition as well as in the CM No. 5895/2026.

21. Mr. Ajay Bakshi, learned Advocate, accepts notice on behalf of respondents No. 3 to 5, who are successors-in-interest of originally named defendant No. 3-Daljeet Singh.

22. Service of respondent No. 1, 2 & 6 to take place through Tamilat Section of the Principal District Judge, Samba, for which the appellants to procure the **Dasti** summons from the Registrar Judicial, Jammu, within a period of next 15 days from the date of passing of this order to be delivered to the Tamilat Section of the Principal District Judge, Samba, within next ten days whereupon a process server be deputed to effect the service of the aforesaid three respondent Nos. 1, 2 and 6 and return the process.

23. Send for the record of civil suit as well as civil 1st appeal from the courts below in original.

24. List on **30.09.2026**.



(RAHUL BHARTI)
JUDGE

JAMMU
02.09.2026
Shivalee