

Supplementary List-I
Serial No. 166

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

RFA No. 54/2025
CM No. 7492/2025

Shamas Ud Din Pedhar

.....Appellant

Through: Mr. O. P. Thakur, Sr. Advocate with
Mr. O. S. Bandral, Advocate.

Vs

Ahmedullah Malik

.....Respondent

Through:

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

ORDER
(24.11.2025)

01. The appellant happened to be defendant No. 1 in a civil suit preferred by the respondent on file No. 61/2013 before the court of learned Principal District Judge, Ramban, instituted on 07.01.2013.

02. The defendant No. 2 in the civil suit was Parvez Ahmed Malik, the son of respondent/plaintiff.

03. The suit was for declaration with consequential relief with respect to an Agreement to Sell dated 12.11.2010 executed between the appellant and the defendant No. 2, in terms whereof the defendant No. 2 agreed to sell land forming the subject matter of said Agreement to Sell dated 12.11.2010 in favour of the appellant.

04. The trial court of learned Principal District Judge, Ramban, by virtue of judgment and decree dated 06.10.2025, decreed the suit, granting relief in the following manner:-

“18. Accordingly a judgment is passed in favour of the plaintiff and against the defendants. The agreement to sell as executed by the defendant No. 2 in favour of defendant No. 1 dated 12.11.2010 with respect to the tin roofed residential pacca house comprising of four rooms together with one bathroom and toilet under Khasra No. 129 min situated at village Devgool, Tehsil Banihal, District Ramban together with the land underneath is declared illegal null and void and not binding on the plaintiff.

19. Further the defendant No. 1 is directed to handover the possession of the aforesaid house along with the land underneath to the plaintiff and the defendants No. 1 and 2 are restrained from claiming any rights viz-a-viz the suit house on the basis of the agreement to sell dated 12.11.2010. The defendants No. 1 and 2 are also restrained from interfering on the land appurtenant to the residential house in Khasra No. 129 min situated at Village Devgool, Tehsil Banihal, District Ramban with the further direction that defendant No. 1 will not transfer the subject matter of the suit by any mode of transfer to any third person or in any manner create any third party interest in the subject matter of the suit. Without any costs. The judgment is accordingly passed in favour of plaintiff and against the defendants. A decree shall follow accordingly. File be compiled and be consigned to records under rules.”

05. The appellant is in the present civil 1st appeal under section 96 read with Order XLI of the J&K Code of Civil Procedure, Svt., 1977, on account of the fact that origin of suit had taken place under the J&K Code of Civil Procedure, Svt., 1977 which would continue to govern the civil 1st appeal as well.

06. The defendant No. 2 is said to have expired on 18.01.2025 and without bringing on record the legal representative of deceased defendant No. 2, who being a necessary party, the trial court still proceeded to adjudicate the suit which literally amounts to a decree passed against a dead person.

- 07.** Mr. O. P. Thakur, learned Sr. Advocate assisted by Mr. O. S. Bandral, Advocate submits that this aspect vitiates the judgment and decree, which otherwise is bad on the grounds pleaded in the memo of appeal.
- 08.** Issue notice to the respondents in the main petition as well as in application **CM No. 7492/2025**.
- 09.** Service of notice shall take place through the Tamilat Section of the court of learned Principal District Judge, Ramban, which shall get the summons served upon the respondents and return the process.
- 10.** Send for the record of civil suit on file No. 61/2013 titled "Ahmed Ullah Malik vs Shamesh-Ud-Din & Anr." from the court of learned Principal District Judge, Ramban.
- 11.** List on **04.02.2026**.
- 12.** In the meantime, the operation of the judgment and decree dated 06.10.2025 shall remain stayed.

(RAHUL BHARTI)
JUDGE

JAMMU
24.11.2025

Bunty