HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case:- CM(M) No. 33/2026
CM No. 1041/2026

Reserved on:28.09.2026
Pronounced on:05.10.2026
Uploaded on: 05.10.2026

Whether the operative part or full judgment is pronounced: ***Full***

Ashwini Kumar Singh, age 60 years
Adopted son of late Jyanti Devi, R/o Rehain Tehsil and District Samba. .....Petitioner(s)

Through: Ms. Shweta Sambyal, Advocate

Vs

1. Tara Singh, S/o Dhanatar Singh,
2. Pardeep Singh, S/o Tara Singh,
both R/o Village Rehian, Tehsil & District, Samba.
... Respondent(s)
3. Ajay Singh,
4. Ranbir Singh, both sons of Naseeb Singh,
both R/o Village Rehian, Tehsil & District, Samba. ...Prof. Respondent(s)

Through: Mr. Mandeep Sambyal, Advocate with
Mr. Amit Khajuria, Advocate (Through VC)

Coram: **HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE**

JUDGMENT

01. In this petition, petitioner has invoked supervisory jurisdiction under Article 227 of the Constitution of India, seeking *inter alia* setting aside order dated 10.02.2026 passed by the Court of learned Munsiff, Samba (for short 'the Trial Court'), in the suit titled *"Ashwini Kumar Singh vs Tara Singh & Ors"*, whereby, the Trial Court while declining the petitioner's prayer for rejection of the plaint under Order VII Rule 11 of

the Code of Civil Procedure, has directed the petitioner to correct the valuation of the suit and affix the requisite court fee in accordance with law within a period of fifteen days.

BRIEF FACTS

02. The petitioner has filed the above-stated suit on the premise that he is the owner in possession of land measuring 7 Kanals 15.5 Marlas, comprising Khasra No. 698 min, situated at Village Rehain, Tehsil and District Samba. The petitioner has raised three shops upon the said land. Out of the said three shops, the petitioner, upon being approached by respondents 1 and 2, who are his close relations, permitted them to use and occupy two contiguous shops purely on a licence basis, with the understanding and assurance that they would vacate the shops as and when so required by the petitioner. It is stated that the aforesaid arrangement was arrived at between the petitioner and respondents 1 and 2 with the intervention of elders of the family and other relatives.

03. It has been pleaded *inter alia* in the suit that in the month of September, 2025, the petitioner requested the respondents to vacate the aforesaid two shops, as the same were required by him for his personal use. The respondents initially acceded to the request but sought some time to vacate the premises. However, subsequently, after delaying the matter on one pretext or another, the respondents finally refused to vacate the shops and even extended threats to the petitioner of implicating him in false and frivolous cases. Their acts, however, did not remain confined merely to their refusal to vacate the shops; rather, they also started interfering with

the adjoining premises of the petitioner and made preparations to raise construction over the shops-in-question and to encroach upon the same. The respondents even cut the mango trees standing in the suit property. These acts ultimately constrained the petitioner to institute the aforesaid suit against them.

04. It is further stated that the respondents/contesting defendants duly entered appearance in the suit and filed their written statement as well as an application under Order VII Rule 11 CPC seeking rejection of the plaint. Besides raising various rival contentions in the written statement, the respondents sought rejection of the plaint primarily on the ground that the petitioner had failed to value the suit by taking into consideration a relief of possession. Such objection of the petitioner is wholly misconceived, as no independent relief of possession was either set up or claimed by the petitioner in the suit.

05. It is stated that respondents 1 and 2 were in use and occupation of the shops purely as licensees. In view of their subsequent conduct and refusal to vacate the premises, the petitioner, apart from seeking permanent prohibitory injunction, also sought a mandatory injunction directing the respondents to vacate the shops-in-question, which was the appropriate relief in the facts and circumstances pleaded in the suit.

06. It is stated that, while seeking the aforesaid mandatory injunction, the petitioner, merely in the course of describing the consequential direction sought against the respondents, used the expression *"handover its vacant and peaceful possession to the plaintiff."* The said expression was purely

incidental to, and descriptive of, the mandatory injunction sought and was never intended to constitute an independent relief of possession. The expression, therefore, could not have been construed, either by the defendants/respondents or by the learned Court below, as converting the suit into one for recovery of possession.

07. It is further stated that while passing the impugned order, the learned Court below has failed to appreciate the true nature and substance of the suit, the reliefs actually prayed for, and the specific case set up by the petitioner in the plaint. Instead, the learned Court below has been unduly swayed by the expression *"handover its vacant and peaceful possession to the plaintiff,"* which was used merely in the natural and consequential course of seeking a mandatory injunction. The learned Court below has, therefore, erred in treating such incidental expression as constituting an independent claim for possession, without appreciating the plaint as a whole and the reliefs actually sought therein.

08. Heard learned counsel for the parties and perused the material on record.

09. Learned counsel for the petitioner during the course of arguments has reiterated the grounds taken by her in the petition. However, learned counsel for the respondents submits that the respondents do not want to file any reply.

10. The learned Court below while declining rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, has passed the impugned order dated 10.02.2026, relevant paragraphs whereof are reproduced as under:

> "5. In the present case, the plaintiff has valued the suit at Rs.300/- by invoking Section 7(iv) (d) of the Court Fees Act. While discretion is available to a plaintiff in valuing a suit for injunction, such discretion is not absolute and cannot be exercised arbitrarily where the substantive relief sought is recovery of possession. The valuation made in the plaint is, therefore, prima facie improper. However, mere undervaluation or insufficiency of court fee does not automatically entail rejection of the plaint. Under clauses (b) and (c) of Order VII Rule 11 CPC, the plaintiff must first be afforded an opportunity to correct the valuation and supply the requisite court fee. The issue of pecuniary jurisdiction shall arise only after such correction.
>
> 6. Thus, in light of the discussion made hereinabove, the prayer for outright rejection of the plaint under Order VII Rule 11 CPC is declined. The non-applicant/plaintiff is directed to correct the valuation of the suit and affix the requisite court fee in accordance with law, within 15 days from today. In case of failure to comply with the above direction within the stipulated period, the plaint shall be liable to be rejected under Order VII Rule 11(b), (c) CPC. Upon correction of valuation, the question of pecuniary jurisdiction shall be examined and appropriate orders shall be passed in accordance with law. The application is disposed of accordingly. Be made part of suit after its due compilation."

11. It is stated by the learned counsel for the respondents that petitioner in his suit has prayed for mandatory injunction to vacate the suit shops and hand over the possession of the same to the petitioner but neither the suit shops have been valued for the said relief nor the petitioner has affixed Court fee for the relief he has prayed in the suit.

12. For facility of reference, Order VII Rule 11 of the Code of Civil Procedure is reproduced as under:-

> **"11. Rejection of plaint-**The plaint shall be rejected in the following cases:-
> **(a)** where it does not disclose a cause of action;

> **(b)** where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
> **(c)** where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
> **(d)** where the suit appears from the statement in the plaint to be barred by any law;
> **(e)** where it is not filed in duplicate;
> **(f)** where the plaintiff fails to comply with the provisions of rule 9:
> **[Provided** that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

13. The learned Munsiff, Samba has though rejected the application of the respondents under Order VII Rule 11 CPC, but while rejecting the application has also directed petitioner to correct the valuation of the suit and to affix requisite Court fee in accordance with law within 15 days from the date of passing of the impugned order. This Court on 24.02.2026 while issuing notice had directed the Court of learned Munsiff, Samba to take note of the fact that the impugned order has been challenged by way of this petition and is pending adjudication. Therefore, petitioner herein has still time to comply with order impugned dated 10.02.2026.

14. Since the petition is filed in terms of Article 227 of the Constitution, therefore, its maintainability against the orders impugned needs to be first addressed.

15. The Hon'ble Supreme Court has consistently reiterated the principle that the petitions filed under Article 227 of the Constitution are not to be treated as writ petitions and deprecated the practice of entertaining the

petitions under Article 227 of the Constitution against the orders against which revision is barred in terms of amended Act of CPC. The Apex Court in case titled ***Shalini Shyam Shetty v. Rajendra Shankar Patil*** reported as ***2010 AIR SCW 6387***, has laid down the following principles to be followed by the High Courts in exercising jurisdiction under Article 227 of the Constitution:

> *"a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.*
> *(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.*
> *(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.*
> *(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*
> *(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, `within the bounds of their authority'.*
> *(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.*
> *(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and*

manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

> *(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."*

16. The Hon'ble Supreme Court has also in cases, titled ***Babubhai Jamnadas Patel v. State of Gujarat and others***; ***Radhey Shyam and anr. v. Chhabi Nath and othes*** reported as ***(2009) 9 SCC 610 & AIR 2015 SC 3269*** respectively, taken a similar view.

17. The law laid down by the Hon'ble Supreme Court as referred to hereinbefore, would make it clear that the petition under Article 227 of the Constitution is subject to high degree of judicial discipline and is not to be taken recourse of for setting right the mere irregularities occurring in the Subordinate Court orders. The power is only required to be exercised when it is so warranted. The condition precedent, therefore, for the purposes of exercising jurisdiction under Article 227 of the Constitution, is that it has to be exercised to keep the Tribunals and Courts subordinate to it within the bounds of their authority; to ensure that law is followed by such Tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them; when there is patent perversity in the orders of Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted; and is not to be exercised to correct mere errors of law or just because another view than the one taken by the Tribunals or Courts subordinate to it, is a possible view.

18. It is very axiomatic that this Court can exercise its power of superintendence vested with it under Article 227 of the Constitution only when the order challenged in the said petition falls within any of the aforesaid categories. A perusal of the order impugned would make it clear that the Trial Court has certainly exercised the jurisdiction that is vested with it. The Trial Court does not appear to have traversed beyond the bounds of its authority, nor does the impugned order appears to be perverse so as to cause a manifest failure of justice or the basic principles of natural justice have been flouted.

19. In view of above, the petition is not maintainable and is ***dismissed*** accordingly. The Trial Court shall decide the matter without getting influenced, in any way, by any of the observations made by this Court in this order.

(MOKSHA KHAJURIA KAZMI)
JUDGE

JAMMU
05.10.2026
(Anil Sanhotra)

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