

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

RSA No. 2/2025

CM No. 1144/2025, 1391/2025, 717/2025

Gulzar Begum and another

.....Appellant(s)/Petitioner(s)

Through: Mr. Bodh Raj Sharma, Advocate.

vs

Raja Begum and others

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

04.04.2025

ORAL

1. Through the medium of present appeal, the appellants have challenged judgment dated 18.12.2024 passed by the learned Principal District Judge, Ramban whereby the appeal against judgment dated 30.08.2022 passed by the learned Sub-Judge, Ramban has been upheld and the suit filed by the appellants against the respondents/defendants has been dismissed.
2. It appears that the appellants/plaintiffs had filed a suit seeking a declaration that they are the owners in possession of land measuring 10 Kanals 18 Marlas falling under Khasra No. 74/7, 78/8, 76/7 and that they are owners in possession of land measuring 8 Kanals falling under Khasra No. 126/49/1 situated at Village Bandhan, Tehsil Gool, District Ramban.
3. It was pleaded by the plaintiffs that the suit land has devolved upon them from their ancestors but the defendants, who are strangers to the

property in question, with an intention to grab the said property firstly entered their name in the revenue record and thereafter they took over the possession of the land measuring 10 Kanal 18 Marlas falling under Khasra No. 74/7, 78/8 and 76/7. They also got the mutation in respect of the said land attested in their favour.

4. Regarding land measuring 8 Kanals falling under Khasra No. 126/49/1, it has been submitted that the same was in possession of the plaintiffs, but from the last six months, the defendants started interfering in the said land and did not allow the plaintiffs to enter into the said land. It has been submitted that the defendants are now hell-bent to raise construction over the said portion of the land as well. It has been submitted that initially defendants were not in physical possession of whole of the property, but they in connivance with the Revenue Authorities entered their name into the possession column of revenue record and that they have illegally occupied the residential house constructed by father of the plaintiffs upon the land in question.
5. It was further case of the plaintiffs that they have challenged the mutation orders passed in favour of the defendants before the additional Deputy Commissioner, Ramban and the same have been set aside but despite this, the defendants are not handing over the possession of the land to the plaintiffs. It has been further submitted that the husband of defendant No. 1 had filed a suit for adverse possession before the court of learned Sub-Judge, Ramban, but the same was dismissed by the court in terms of order dated 16.09.2015.
6. According to the plaintiffs they are the real owners of the suit land and that the defendants have no right or title over the said land. The

plaintiffs have further submitted that the defendants are land grabbers and that they are not allowing the plaintiffs to enter into the land, which falls in their share. The plaintiffs have submitted that they are entitled to a direction upon defendants to hand over the possession of the land with a further direction that they shall not alienate or raise construction over the said land.

7. On the basis of aforesaid pleadings, the plaintiffs have sought a decree that they should be declared owners in possession of land measuring 10 Kanals 18 Marlas falling under Khasra No. 74/7, 78/8 and 76/7 and that they should be declared as owners of land measuring 8 Kanal falling under Khasra No. 126/49/1 i.e. total measuring 18 Kanal 18 Marlas situated at village Bandhan, Tehsil Gool and District Ramban with a mandatory injunction directing the respondents to hand over the possession of land measuring 8 Kanals in Khasra No. 126/49/1 to the plaintiffs/appellants.
8. It seems that the defendants filed an application under Order 7 Rule 11 CPC before the learned Sub-Judge, Ramban (Trial Court) seeking rejection of the plaint primarily on the ground that the suit is barred in terms of Section 25 of the J&K Agrarian Reforms Act. Learned trial court vide impugned judgment dated 30.08.2022 upheld the contention of the defendants and rejected the plaint holding that the suit is barred in terms of provisions under Section 25 of the J&K Agrarian Reforms Act. The aforesaid judgment of the trial court came to be challenged by the appellants/plaintiffs by way of appeal before the learned District Judge, Ramban, who vide impugned order dated 08.12.2024 dismissed the appeal filed by the appellants/plaintiffs

9. The appellants have challenged the impugned judgment passed by the 1st Appellate Court as also the judgment of the learned trial court on the grounds that both the courts below have not appreciated the controversy in its proper perspective. It has been contended that the courts below have not followed the procedure prescribed under law while passing the impugned orders.
10. Vide CM No. 1144/2025, the appellants have placed on record proposed questions of law formulated, which read as under:
- i. *“Whether the plaintiff/appellant is entitled to get suit for declaration declaring the plaintiff as owner in possession of land measuring 10 Kanals 10 Marlas falling under Khasra No. 74/7, 78/8, 76/7 and suit for mandatory injunction directing the defendants to handover the possession of the land falling under Khasra No. 126/49/1 measuring 08 Kanals falling under share of plaintiff situated at Village Bandhan, Tehsil Gook, District Ramban?”*
 - ii. *Whether the suit is barred under the Agrarian Reform Act 1976 and Agrarian Reforms Rule 1977 more particularly Sections 19 and 25 of Agrarian Reforms Act, 1976?*
 - iii. *Whether the suit land is not falling under the definition of Section 2(9) of Agrarian Reforms Act?*
 - iv. *Whether the suit of the plaintiff falls within the ambit of Section 42 of Agrarian Reforms Act?*
 - v. *Whether the suit of the plaintiff falls within the ambit of Section 9 and 42 of the Specific Relief Act, 1977?*
11. I have heard learned counsel for the appellants/plaintiffs and perused record of the case including the impugned judgments passed by the learned trial court and the 1st Appellate Court.

12. The issue involved in this case is as to whether the subject matter of the suit filed by the plaintiffs before the trial court is cognizable by a Revenue Officer and as such barred in terms of Section 25 of the J&K Agrarian Reforms Act and if not whether this appeal raises any substantial question of law for its determination.
13. In order to find an answer to the aforesaid question, it would be appropriate to notice the provisions contained in Section 25 of the J&K Agrarian Reforms Act, which read as under:

25. Bar of jurisdiction of Civil Court

Notwithstanding anything contained in any law for the time being in force

- (a) *No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter arising under this Act or the rules made thereunder; and*
- (b) *No order of any officer or authority passed under this Act or the rules made thereunder shall be called in question in any Civil Court.*

14. A perusal of the aforesaid provisions would reveal that a Civil Court does not have jurisdiction to settle, decide or deal with any question or to determine any matter arising under the J&K Agrarian Reforms Act or the rules made thereunder and further that an order made by an authority under the said Act cannot be called in question before a civil court.
15. So far as powers of Revenue Officers under the J&K Agrarian Reforms Act are concerned, the same have been laid down in Section 19 of the said Act, which reads as under:

19. Powers of Revenue Officers

- (1) *Unless the class of Revenue Officers, by whom any function is to be discharged or any power is to be exercised, is specified by or under this Act, the*

Government may, by notification, determine the functions to be discharged or the powers to be exercised under this Act by any class of Revenue Officers.

- (2) *The manner and procedure for the performance of duties, the exercise and conferment of powers, distribution of business and withdrawal and transfer of cases under this Act shall, save as otherwise provided by or under this Act, be regulated by the Jammu and Kashmir Land Revenue Act, Samvat 1996 and the rules made thereunder.*
- (3) *The following applications, suits and proceedings shall be disposed of by a Collector: —*

 - (a) *Proceedings under section 56 of the Jammu and Kashmir Tenancy Act, Samvat 1980;*
 - (b) *Proceedings under sub-section (2) of section 68-A of the Jammu and Kashmir Tenancy Act, Samvat 1980;*
 - (c) *Proceedings under section 24 of the Jammu and Kashmir Big Landed Estates Abolition Act, Samvat 2007;*
 - (d) *Application by an owner or an intermediary that the person, who claims to be cultivating the land as a tenant, is not a tenant but a trespasser;*
 - (e) *All other cases of dispute including those where the party in possession pleads adverse possession against the recorded owner/intermediary.]*
[Clause (e) substitution by Act No. IV of 1989, section 4.]
- (4) *Any application, suit or proceeding of the kind mentioned in sub-section (3), pending at the commencement of this Act before a Revenue Officer subordinate to a Collector or any Civil or Revenue Court, shall be transferred to the Collector having jurisdiction in the place in which the land in dispute is situate.*
- (5) *Any application, suit or proceeding relating to cases specified in clause (e) of sub-section (3) which immediately before the commencement of the Jammu and Kashmir Agrarian Reforms (Amendment) Act, 1988 were pending before any civil court, shall, on such commencement stand transferred to the Collector having jurisdiction over the area in which the land in dispute is situate, and the Collector shall in his capacity as the appellate or revisional authority, as the case*

may be, dispose of the same in accordance with the provisions of this Act.]

16. From perusal of the Sub-Section (3) quoted above, it is clear that suits and proceedings which are cognizable by a Collector include the proceedings under Section 56 of the J&K Tenancy Act, Svt. 1980, proceedings under Sub-Section (2) of Section 68A of the J&K Tenancy Act, Svt. 1980, proceedings under Section 24 of the J&K Big Landed Estates Abolition Act, Svt. 2007, application by an owner or an intermediary that the person, who claims to be cultivating the land as a tenant, is not a tenant but a trespasser and all other cases of dispute including those where the party in possession pleads adverse possession against the recorded owner/intermediary.
17. Sub-sections (4) and (5) quoted above provide that any proceeding in respect of the aforesaid matters that were pending before the Civil Court or Revenue Court would stand transferred to the Collector having jurisdiction, meaning thereby that the jurisdiction of the Civil Court in respect of a matter specified in Sub-Section (3) quoted above, even if the same does not fall within the category of cases specified in Section 25 of the Act, would be impliedly barred.
18. A Full Bench of this Court has, in case titled as **Jagtu and others Vs. Badri and others** reported in **2010 (8) JKJ[HC] 177** interpreted the provisions contained in Section 19(3) of the J&K Agrarian Reforms Act. It would be profitable to reproduce the observations of the Full Bench contained in Paras 28 to 30 of the judgment, which read as under:-

“28. It is not disputed that the categories of cases envisaged from (a) to (d) are precisely those in which disputes relating to possession are involved. The words "other cases of dispute are of wide amplitude and must cover all cases in which right to possess the land is claimed or disputed. These words must receive the ordinary meaning as having reference to all such other disputes of possession relating to land. These words can have no application to disputes of mere title and succession. The words "all other" are significant and are to be read in the background of the scheme of the Act as also sub-clauses (a) to (d). These sub-clauses also refer to questions of possession of land either claimed or disputed under different Acts and which were heretofore cognizable by the Revenue courts. Therefore where in a suit or proceedings right to possession is claimed or disputed, it is referable to the officer or the authority appointed under the Act and the civil court is debarred from settling such a dispute. This interpretation of the expression receives support from the language used in the latter portion of clause (e) according to which "all other cases of dispute" include those cases as well where the plea of adverse possession is set up in a suit by the adverse party. This dispute which was otherwise triable by the civil court heretofore is now referable to the Collector. The word "including force and postulates that all other disputes fall under its ambit. The expression is only enumerative and illustrative but not exhaustive. In my view as the scheme of the Act goes no suit for possession can be conceived where the dispute is not either principally collaterally, or incidentally referable to the Act of 1976 as the final adjudication is to be made by the authority consistent with the Act and the rules made thereunder. There is no warrant for the view that the "dispute" envisaged by sub-cl. (e) are those as arise under the Act. If that were the intention of the legislature then it would definitely have added those words as it has done under Section clause, it has manifested its clear intention by

bringing all other cases of disputes which may arise under different Acts under the jurisdiction of the new forum created under Section 19. Section 19 (3) (e) is an extension on Section 25 (a) enlarging its scope and extent

29. I, however, do not subscribe to the view enunciated by some of the learned Advocates that the words "all other cases of dispute" should be construed in limited sense so as to mean only those disputes as have semblance to disputes enumerated in categories (a) to (d) of sub-clause (3). Clause (e) cannot be read ejusdem generis with clauses (a) to (d) in that sense. There cannot be any common nexus between clauses (a) to (d) and (e). By using the word "including" in clause (e) legislature has intended that the principle of ejusdem generis be not made applicable to cases of dispute as are envisaged in sub- clauses (a) to (d). As already stated the word "including" has an extending force. It is not exhaustive and is not intended to aim at limiting the meaning of the expression

30. It needs to be appreciated that in suits or proceedings involving claim to possession, questions will fall for determination as regards the capacity of a party to get possession of the land under the Act of 1976 and question will be one determinable under the Act of 1976. A question may be raised before a civil court in a suit for possession that because of the imposition of ceiling area or because of the fact that the land has vested in the State or it has vested in the tiller or for some other reason, the party is debarred to get possession. Now these questions cannot be decided or settled by the civil court as they affect the very relief sought by the plaintiff and are required to be dealt with under the Act by the appropriate authority. In that view of the matter, all such suits pending in courts are required to be transferred to the Collector as they cannot be tried by the civil court Take a case where a suit for possession is brought by A against B on the basis of possessory title. B raises the plea that A already holds the land up to the ceiling limit and, therefore, he cannot be granted decree

for possession in the suit, as it would defeat the very purpose of the Act, as the granting of the relief, would exceed the ceiling in his case, or B may plead that he is the tiller of the land and may become prospective owner of the land under the Act. As suit is therefore, misconceived. Now these questions cannot be decided by a civil court. Again, take the case of the plaintiff who in exercise of right of prior purchase claims the suit land on the ground that he is the tenant. The defendant vendee denies that the plaintiff is the tenant of the land AS the matter required to be decided under the Act, therefore the suit shall have to be decided by the appropriate authority and not by the civil court. Again, take a case where a suit is brought for specific performance of contract in respect of land, The plaintiff relies on the contract for sale. The defendant raises the plea that the contract for sale was made in violation of the Act of 1976, and, therefore, no decree for specific performance of contract can be granted in favour of the plaintiff or that the granting of the coercive process against the defendants to execute the sale deed would enable the Plaintiff to have the land in excess of the ceiling area Or take the case where the plaintiff a co-sharer out of possession brings suit for right of prior purchase against his other co-sharers, the vendees, Here again the same questions will arise for determination which are determinable by the authority under the Act. It is not, however, possible to deal exhaustively with all conceivable cases, only the principle is enunciated.”

19. From the foregoing analysis of law on the subject, it is clear that the forum created under Section 19 of the Agrarian Reforms Act is vested with jurisdiction to decide not only the disputes which arise under the J&K Agrarian Reforms Act but the said forum has also jurisdiction to decide all other cases of disputes which may fall under the categories mentioned in Clauses (a) to (e) of the Sub-Section (3) of Section 19

quoted above. It is also clear that where in a suit right to possession is claimed or disputed, it is referable to the officer or the authority appointed under the Agrarian Reforms Act and the Civil Court is debarred from settling such a dispute.

20. Adverting to the facts of the present case, the appellants/plaintiffs have clearly admitted in the plaint that they are out of possession of the suit land. A perusal of the plaint shows that the plaintiffs at some places have claimed that they are in possession of 8 Kanals of land under Khasra No. 126/49/1, which is part of the suit land but thereafter they have clearly pleaded that the respondents have prevented them from entering the said portion of the suit land meaning thereby even the said portion of the land in question is in possession of the defendants. In Para (12) of the plaint, the plaintiffs have clearly admitted that the defendants are not allowing them to enter upon the suit property and in Para (14) they have admitted that cause of action in their favour lastly arose on 18.03.2022 when the defendants did not allow the plaintiffs to enter into the suit property. Thus, there is clear cut admission on the part of the plaintiffs that they are out of possession of the suit property.
21. The land which is the subject matter of the suit falls within the definition of “land” as contained in Section 2(9) of the J&K Agrarian Reforms Act, therefore, the provisions contained in Section 19 and Section 25 of the J&K Agrarian Reforms Act do apply to the subject matter of the suit.
22. A bare perusal of the contents of the plaint would reveal that the suit in question involves determination of right of the plaintiffs to possess the land in question, therefore, the said dispute in terms of the ratio laid

down by the Full Bench of this Court in case titled as **Jagtu and others Vs. Badri and others** reported in **2010 (8) JKJ[HC] 177** is amenable to the jurisdiction of Revenue Officer (Collector), a forum created under the provisions of J&K Agrarian Reforms Act. The suit before the civil court is, therefore, barred by provisions contained in Section 25 read with Section 19 of the Agrarian Reforms Act.

23. In view of the above, both the trial court as well as the 1st Appellate Court have rightly appreciated the controversy and come to the conclusion that the suit of the plaintiffs is barred by law and is liable to be rejected.

24. For the foregoing reasons, the present appeal does not raise any question of law, much less a substantial question of law, which requires to be determined by this Court in second appeal. **The appeal lacks merit and the same is accordingly dismissed along with the connected applications.**

(SANJAY DHAR)
JUDGE

Jammu
04.04.2025
Sahil Padha

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