

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 02.12.2025

Pronounced on: 11.12.2025

Uploaded on: 11.12.2025

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

CM(M) No.185/2025

c/w

CM(M) No.136/2025

MEHRAJ AHMAD GANAI AND ANR.

MST. SARA BEGUM & ORS.

...PETITIONERS/APPELLANT(S)

Through: - Mr. Z. A. Shah, Sr. Advocate, with
Mr. A. Hanan, Advocate &
Mr. G. A. Lone, Advocate with
Mr. Mujeeb Andrabi, Advocate (in CM(M) No.185/2025)
Mr. Jahangir Iqbal Ganai, Sr. Advocate, with
Mr. Murfad, Advocate (in CM(M) No.136/2025)

Vs.

MST. SARA BEGUM & ORS.

MEHRAJ AHMAD GANAI AND ANR.

....RESPONDENT(S)

Through: - Mr. Jahangir Iqbal Ganai, Sr. Advocate, with
Mr. Murfad, Advocate (in CM(M) No.185/2025)
Mr. Z. A. Shah, Sr. Advocate, with
Mr. A. Hanan, Advocate &
Mr. G. A. Lone, Advocate with
Mr. Mujeeb Andrabi, Advocate (in CM(M) No.136/2025)

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

JUDGMENT

1) By virtue of the present judgment, the afore-titled two petitions, one filed by the appellants before the Appellate Court and the other filed by respondents before the Appellate Court, impugning order dated 11.03.2025 passed by the

CM(M) No.136/2025 c/w

CM(M) No.185/2025

Principal District Judge, Kulgam (hereinafter referred to as “the Appellate Court”) are proposed to be disposed.

2) It appears that a suit came to be filed by Mst. Sara Begum (petitioner No.1 in CM(M) No.136/2025) before the Court of learned Sub Judge, Kulgam, challenging decree dated 12.10.1998 passed in the case titled Mehrajdin Ganai (minor) and another through mother Mst. Nabiza vs. Mohammad Ramzan Ganai, which pertained to land measuring 22 kanals, 8 odd marlas falling under different survey numbers situated at Village Mah Tehsil Qaimoh District Kulgam. In the said suit, the petitioners in CM(M) No.185/2025 were impleaded as contesting defendants. However, the said suit of plaintiff Sara Begum came to be dismissed by the Court of learned Sub Judge, Kulgam (for short “the trial court”) by virtue of judgment and decree dated 27.03.2018.

3) The aforesaid judgment and decree passed by the learned trial court came to be challenged by plaintiff Sara Begum by way of an appeal before the Appellate Court. It appears that during the pendency of the appeal, learned counsels for the parties informed the appellate court that the parties have entered into a compromise and in this regard they also produced a compromise deed before the learned

Appellate Court. It was recorded by the learned Appellate Court that in view of the compromise arrived at between the parties, the appellants have prayed that the appeal be dismissed as withdrawn and, accordingly, the appeal came to be dismissed as withdrawn by virtue of order dated 23-01-2019 passed by the learned Appellate Court.

4) On 20-02-2025, the defendants in the suit, who happen to be the contesting respondents in the appeal, filed an application before the learned Appellate Court invoking provisions under Order XXIII Rule 3 read with Section 151 of CPC seeking recall of compromise deed dated 23-01-2019 on various grounds, including the grounds that the deed of compromise has not been signed by all the contesting respondents to the appeal; that the parties to the compromise never appeared before the court nor their statements were recorded by the Appellate Court; that the compromise is outcome of collusion, fraud and conspiracy; that respondent/defendant Zahoor Ahmad was minor on the date of execution of the compromise and, as such, was not in a position to execute any agreement or compromise; that after the execution of compromise, appellant/plaintiff, Sara Begum, in league with the Revenue Officers, managed illegal and fraudulent entries in respect of the suit property; that a

lease deed has been executed in respect of land measuring 1 kanal 2 marlas out of the suit land by appellant/plaintiff, Sara Begum, in favour of Mohd. Ashraf Naik, and they are the in the process of installation of a petrol pump over there; that the contesting respondents/defendants are entitled to recover possession of 9 kanals 8 marlas of land falling in Khasra No.724/17 and that the appellant/plaintiff and her associates are not entitled to raise any construction on spot.

5) The aforesaid application has been allowed by the learned Appellate Court vide impugned order dated 11.03.2025, by observing that even though the appeal has been dismissed as withdrawn, but there is a compromise which is placed on file whereby plaintiff/appellant Sara Begum has sought a decree in her favour. It has been observed that the compromise is not signed by all the parties to appeal nor the statements of the parties have been recorded by the court. According to the learned Appellate Court, a satisfaction had to be recorded about the contents of the compromise and voluntariness of the parties in execution of the said compromise which has not been done. Thus, it has been concluded that the compromise in question, in the facts and circumstances of the case, does not have any validity. Accordingly, order dated 23-01-2019 has been recalled and the appeal has been restored.

6) Petitioner Sara Begum and co-petitioners have challenged the impugned order on the grounds that the provisions contained in Order XXIII Rule 3 CPC or Section 151 CPC could not have been resorted to by the learned Appellate Court while passing the impugned order. It has been submitted that the impugned order does not have any sanction of law and the same suffers from perversity. According to these petitioners, the application for recalling of the compromise has been filed after a period of more than six years and during all these years, the applicants remained conspicuously silent and, as such, the said application is barred by limitation.

7) The contesting respondents to the appeal (petitioners in CM(M) No.185/2025) in their petition have challenged the impugned order to the extent that the Appellate Court has declined the relief relating to restitution. It has been contended that the learned Appellate Court has failed to exercise its jurisdiction properly, inasmuch as it was incumbent upon the said court to deliver possession of the land falling under Survey No.724/17 situated at Village Mah District Kulgam, which has been wrongfully held by petitioner Sara Begum and her co-petitioners.

8) I have heard learned counsel for the parties and perused record of the case.

CM(M) No.136/2025 c/w

CM(M) No.185/2025

9) The main ground for assailing the order impugned passed by the learned Appellate Court, as has been projected by the petitioners in CM(M) No.136 of 2025, is that the said court could not have resorted to the provisions contained in Order XXIII Rule 3 C.P.C. or Section 151 C.P.C. for recalling of order dated 23-01-2019. It has been contended that it is not a case where any decree was passed by the learned Appellate Court on the basis of compromise arrived at between the parties. Therefore, there was no occasion for the said court to pass an order thereby recalling the compromise arrived at between the parties.

10) The contesting respondents to the appeal, who happen to be the petitioners in CM(M) No.185/2025, have, on the other hand, contended that once the alleged compromise arrived at between the parties was taken on record by the learned Appellate Court and by acting on that basis order dated 23-01-2019 came to be passed, it amounts to passing of a decree on the basis of compromise and, therefore, the provisions contained in Order XXIII Rule 3 CPC are applicable to the present case. It has been contended that in any case, Section 151 of C.P.C. vests wide powers with a civil court to pass necessary orders for the ends of justice or to prevent the abuse of process of the court. It has been contended that in a

Procedure, it is always open to a civil court to take resort to the provisions contained in Section 151 C.P.C. for passing appropriate orders necessary for the end of justice.

11) If we have a look at order dated 23-01-2019, the same has been recorded by the learned Appellate Court in Urdu language. The translated version thereof reads as under:

23-01-2019. Parties along with their counsels present. Counsels for the parties have submitted that the parties have entered into a settlement between themselves and that the appellant does not want to pursue the appeal. In this regard, the counsels produced a written compromise deed, which is taken on record. The appellant has appended her signature on the margin of the order sheet. Her counsel has also appended his signature for the purpose of identification of the appellant. Since the parties have entered into a settlement and the appellant does not want to pursue the appeal, as such, the appellant has prayed that the appeal be dismissed as withdrawn. Accordingly, the prayer of the appellant is accepted and the appeal is dismissed as withdrawn. The file of the trial court be sent back to the said court and the file of appeal be consigned to records.

Sd/
Principal District Judge
Kulgam

12) It is pertinent to mention here that on the date when the aforesaid order was recorded by the Appellate Court, the counsel for the parties produced a written compromise deed before the said court, in terms of whereof, *inter-alia*, appellant Sara Begum was declared as owner in possession of land measuring 09 kanals 08 marlas in Khasra No.724/17 of village Mah and rest of the property was declared to be under

the ownership and possession of contesting respondents No.1 to 4. It was also prayed in the compromise deed that a decree be passed in terms of the compromise arrived at between the parties.

13) As is clear from the language of order dated 23-01-2019, the statements of the parties in proof of the compromise deed were not recorded by the court, though the said deed of compromise was taken on record by the learned Appellate Court. Not even a decree was passed by the said court in terms of the compromise deed. Instead, the appellant remained satisfied with production of compromise deed before the Appellate Court whereafter she, with her own consent, agreed to withdraw the appeal.

14) The question that arises for determination is as to whether order dated 23-01-2019 passed by the learned Appellate Court has the trappings of an order passed in terms of Order 23 Rule 3 CPC. For finding an answer to this question, it is necessary to have a look at the provisions contained in Order 23 Rule 3 CPC:

(3) Where the Court is satisfied,— (a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

it may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of

the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

15) A plain reading of the above provision shows that for a valid compromise in a suit, there has to be a lawful agreement or compromise in writing and signed by the parties which has to be proved to the satisfaction of the court, whereafter the court has to pass a decree in accordance therewith.

16) In the present case, even though the compromise agreement in writing has been placed on record before the Appellate Court, the statements of the parties have not been recorded in proof of the terms of the compromise. A perusal of order dated 23.01.2019 passed by the learned Appellate Court shows that it has not recorded any satisfaction with regard to the terms of the compromise, nor has it passed a decree in accordance therewith. The order passed by the learned Appellate Court, therefore, can, by no stretch of reasoning, be termed as an order passed in accordance with the provisions of Order 23 Rule 3 CPC. Instead, it appears to be an order passed by the Appellate Court in terms of Order XXIII Rule 1 of CPC.

17) Sub-rule (1) Rule 1 of Order 23 CPC provides that at any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a

part of his claim. It is a settled law that the provisions contained in Order XXIII Rule 1 CPC apply to appeals and, therefore, an Appellate Court can allow the withdrawal of an appeal. The right to withdraw a suit or appeal without any liberty for institution of fresh suit or appeal is an unfettered right of the plaintiff/appellant. Therefore, once the appellant expressed her intention to withdraw the appeal before the learned Appellate Court and she remained satisfied with mere filing of compromise deed before the said court instead of insisting upon passing of a decree in terms of the compromise deed, the learned Appellate Court had no choice but to dismiss her appeal as withdrawn. It was only if a decree in terms of the compromise deed would have been passed that the learned Appellate Court was duty bound to record satisfaction about the terms of the compromise and record the statements of the parties to the compromise before recording such satisfaction. Since the learned Appellate Court did not pass any decree in terms of the compromise and simply dismissed the appeal as withdrawn by exercising his powers under Order XXIII Rule 1 CPC, the contesting respondents/defendants could not have objected to passing of the said order. The learned Appellate Court, while restoring the appeal of the appellant in terms of the impugned order, is, in effect, compelling the appellant to pursue her appeal

which cannot be done as an appellant has an unfettered right to withdraw his/her appeal unless he/she seeks permission to file a fresh suit/appeal.

18) The appellant may have taken advantage of the fact that the compromise deed was placed on record by the Appellate Court at the time of passing of order dated 23.01.2019 by getting mutation in respect of a portion of the land attested in her favour and by acquiring possession of said portion of land but that cannot give a cause to the contesting respondents/defendants to reopen the issue with regard to dismissal of the appeal as withdrawn. If the revenue authorities or any other authority has mistaken the order of dismissal of appeal as a decree passed on the basis of the compromise arrived at between the parties, the remedy for the contesting respondents/defendants lies somewhere else and not to reopen the issue with regard to dismissal of the appeal by taking resort to either the provisions contained in Order XXIII Rule 3 CPC or Section 151 of CPC.

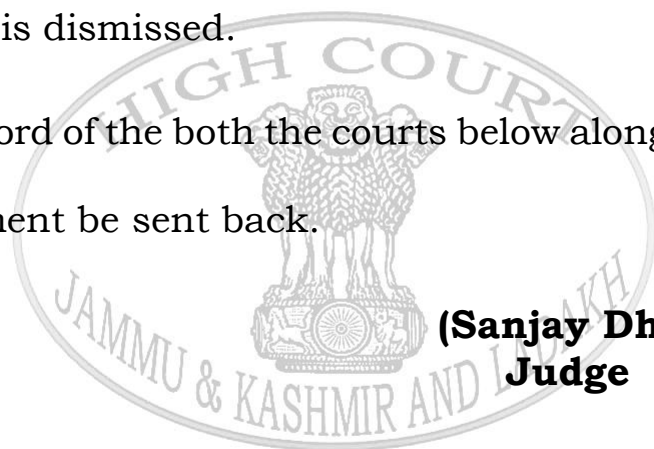
19) For what has been discussed hereinbefore, the learned Appellate Court while passing the impugned order has fallen into a grave error by construing the order passed by it on 23.10.2019 as an order passed under Order XXIII Rule 3 CPC, when the fact of the matter remains that the said order has

been passed in terms of Order XXII Rule 1 CPC. This
CM(M) No.136/2025 c/w
CM(M) No.185/2025

erroneous appreciation of legal position by the learned Appellate Court has resulted in passing of an order which was beyond the competence and jurisdiction of the said court. Thus, the impugned order deserves to be interfered with by this Court in exercise of its powers under Article 227 of the Constitution of India.

20) Accordingly, the petition bearing CM(M) No.136/2025 filed by Mst. Sara Begum and others is allowed and the impugned order dated 11.03.2025 is set aside. The petition bearing CM(M) No.185/2025 filed by Mehraj Ahmad Ganie and another is dismissed.

21) The record of the both the courts below along with copies of this judgment be sent back.



(Sanjay Dhar)
Judge

SRINAGAR

11.12.2025

“Bhat Altaf-Szeg”

Whether the Judgement is speaking:	YES
Whether the Judgement is reportable:	YES