

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

*Pronounced on:08.04.2026*

*Uploaded on: 15.04.2026*

*Whether the operative part  
or full order is pronounced:*

**Full**

**RFA No.110/2025**

MST. JANA (DEAD) THROUGH LRS

...PETITIONERS/APPELLANT(S)

Through: - Mr. N. A. Kuchai, Advocate.

Vs.

ASSADULLAH RAINA & ORS.

...RESPONDENT(S)

Through: - M/S: Malik Fahad-ul-Haq & Salfi Izhar, Advocates.

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

**ORDER(ORAL)**

1) The appellants have challenged judgment and decree dated 07.08.2025 passed by the learned Principal District Judge, Budgam, whereby the suit filed by the predecessor-in-interest of the appellants, namely, Mst. Jana, against the respondents/defendants seeking a decree of right to prior purchase with possession and injunction has been dismissed.

2) It appears that the predecessor-in-interest of the appellants had filed a suit under J&K Right to Prior Purchase Act seeking enforcement of her right to prior purchase with possession and injunction in respect of land measuring 01 kanal 01 marlas falling under Khasra No.1097-min situated

at Village Buzgoo Lashikallan Tehsil Chadoora. The respondents were impleaded as defendants to the said suit. It appears that while the suit in question was pending before the learned trial court, the J&K Right to Prior Purchase Act came to be repealed by virtue of J&K Reorganization Act, 2019. Upon repeal of the said Act, the learned trial court vide impugned judgment proceeded to dismiss the suit of the plaintiff by relying upon the judgment of this Court in the case of **Mohammad Jamal Parray vs. Ghulam Qadir Mir & Ors.** (CR No.32/2022 decided on 24.07.2024).

3) The appellants have challenged the impugned judgment on the ground that the right of pre-emption is a settled enforceable right under Muslim Personal Law and in view of this legal position, the suit of the plaintiff could not have been dismissed by the trial court. It has been contended that the judgment delivered by this Court in **Mohammad Jamal Parray's** case does not lay down the correct position of law.

4) Heard and considered.

5) If we have a look at the averments made by the plaintiff in her suit that was filed before the trial court, it is revealed that she has based her relief on the provisions of J&K Right to Prior Purchase Act. Even in the title of the plaint, it is clearly mentioned that the suit has been filed under the

provisions of J&K Right to Prior Purchase Act. It has been further contended in the suit that the sale deed executed by defendant No.1 in favour of defendant No.2 is in violation of the provisions of the J&K Right to Prior Purchase Act. In the face of these specific pleadings, it cannot be stated that the plaintiff had filed the suit on the grounds other than those available under the J&K Right to Prior Purchase Act.

6) Apart from the above, Muslim Personal Law in India is applicable only in the matters relating to marriage and inheritance and in no other matters. Therefore, the appellants cannot claim right of prior purchase on the basis of Muslim Personal Law which does not come either under the purview of the laws relating to marriage or the laws relating to inheritance. The contention of the appellants in this regard is, therefore, wholly misconceived.

7) So far as the judgment passed by this Court in **Mohammad Jamal Parray's** case (supra) is concerned, the same is based upon the legal position settled by the Supreme Court in **Punyadeo Sharma and others etc. v. Kamla Devi and others etc.** 2022 LIVELAW (SC) 22. Once the legal position stands settled by the Supreme Court, the same becomes binding upon all the courts throughout the territory of India. In the **Punyadeo Sharma's** case (supra), the Supreme Court has clearly held that the pre-emptor must

have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the court of the first instance only. It has been further held that the pre-emptor who claims the right to pre-empt the sale on the date of the sale, must prove that such right continued to subsist till the passing of the decree of the first court and if the claimant loses that right, the suit for pre-emption must fail.

8) In the present case, before the decree could be passed by the learned trial court in the suit filed by the plaintiff for enforcement of her right of pre-emption, the said right was abolished by the legislature by repealing the J&K Right to Prior Purchase Act. Therefore, the suit of the plaintiff was bound to fail.

9) For the foregoing reasons, I do not find any ground to interfere with the impugned judgment passed by the learned trial court. The appeal lacks merit and is dismissed accordingly along with connected application.

**(Sanjay Dhar)**  
**Judge**

**SRINAGAR**

08.04.2026

“Bhat Altaf-Szegy”

Whether the **Order** is speaking: **YES**  
Whether the **Order** is reportable: **YES/NO**