

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

**CM (M) 62/2023
CM (2008/2023)**

Farooq Ahmad Mir

... Petitioner/Appellant(s)

Through: Mr. Ahmad Javid, Advocate

V/s

Nisar Ahmad Wani and others

Through: Mr. Atib Kant, Advocate

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

26-04-2023

1. The petitioner herein has invoked the supervisory jurisdiction of this court enshrined in Article 227 of the Constitution for setting aside order dated 9.3.2023 passed by the court of Civil Judge/Munsiff Chadoora in case titled as "Nisar Ahmad Wani and others versus Farooq Ahmad Mir and others."
2. Before addressing to the issues raised in the instant petition, the facts those emanate from the petition would reveal that the respondents herein filed a suit for declaration and injunction against the present petitioner impleading him as a contesting respondent besides one Nisar Ahmad Bhat and Parvez Ahmad Bhat impleaded as proforma defendants in respect of a parcel of land measuring 5 kanals and 12 marlas covered under survey no. 342 situated at Kanipora tehsil B. K. Pora, Budgam. The petitioner herein being defendants in the suit, filed written statement thereto as also a counter claim.

3. During the pendency of the suit, the plaintiffs/respondents herein withdrew their suit unconditionally which resulted into registering of the counter claim filed by the defendant petitioner herein as a suit and transposition of original plaintiffs as defendants therein. In the counter claim/suit the defendant petitioner herein averred that the land in question had been agreed to be sold to him by the defendants/respondents herein against a consideration of Rs. 60 lakhs in the year 2017 and that the possession of the land also came to be delivered to him by the original defendants/respondents herein, whereafter the petitioner herein developed and improved the suit land, constructed a road through it, raised a stone plinth as also a boundary wall around it. The petitioner herein is stated to have paid a sum of Rs. 40 lakhs to the defendants/respondents herein as advance sale consideration having agreed to pay the rest of the consideration amount at the time of the execution of the sale deed. The petitioner herein in the counter claim had also averred to have sold 7 marlas out of the said land to the defendants 2 and 3 being the original proforma defendants in the original suit who are stated to have raised construction of a residential house thereon.
4. The original plaintiffs now impleaded as defendants upon registration of the counter claim filed by the present petitioner as a suit, filed written statement thereto denied the execution of sale agreement in respect of the land with the plaintiff/petitioner herein or else handing over of the possession of the land in question to him.
5. Upon the pleadings of the parties, the trial court framed five issues on 18.3.2019 and subsequently reframed the issues on 24.6.2019 while

framing additional issues. Issue No. 9 being relevant and germane to the controversy is extracted and reproduced hereunder:

Issue 9: Whether in absence of sale contract as pleaded in para 5 of the counter claim, the defendant no. 1 has under law only one option to sue for the specific performance of the contract. (OPP)

6. On 9.3.2023 the trial court appears to have partly heard appearing counsel for the parties on preliminary issues, however on 19.3.2023 the trial court passed the order under challenge framing the following issue:

“Whether the suit (counter claim) is maintainable in its present form?”

7. No doubt that courts have power under Order 14 Rule 5 of Civil Procedure Code to amend, add, delete or strike out the issues in order to ensure determination of all the issues between the parties inasmuch as enabling it to do justice between the parties by not leaving controversial points undetermined and undecided, at any time before the passing of the decree. It is equally settled law that once the issues stand framed by the court by the consent of both the parties, such issues are not to be struck off or deleted without consent of the parties. The power enshrined in Order 14, Rule 5, however, is controlled by the provisions of Rule 3 of Order 14 which provides that the court may frame issues from all or any of the materials comprising allegations made in the pleadings or in answers to interrogatories, documents produced by the parties, allegations made on oath by the parties or by any person present on their behalf, or statements made by the pleaders appearing for the parties, upon examination of

witnesses or inspection of the documents. The court cannot frame an issue on the points either not pleaded or abandoned or else determine an issue not arising from the pleadings of the parties. The court also is not permitted to stretch the issues which on reasonable interpretation does not fall within the pleadings on which the issues were founded and if the pleadings do not contain necessary foundation for raising an issue. It is equally settled position of law that sufficient particulars must be on record on the basis of which issues can be raised or framed.

8. Reverting back to the case in hand, there was nothing on record necessitating the framing of the issue in terms of the impugned order more so in presence of the Issue 9 framed earlier by the trial court on 24.6.2019. The issue framed in terms of the impugned order could not have been framed by the trial court in view of the aforesaid observations pertaining to the provisions of Order 14 Rule 3 supra.
9. The impugned order manifestly has been passed by the trial court while misdirecting itself in the matter. The impugned order thus is not sustainable as such warrants to be set aside. Petition accordingly is allowed and impugned order dated 09.3.2023 passed by the court of Civil Judge/Munsiff Chadoora in case titled as Nisar Ahmad Wani and others versus Farooq Ahmad Mir and others is set aside. The trial court is directed to proceed in the matter in accordance with the law and in light of the observations made hereinabove.

(JAVED IQBAL WANI)
JUDGE