

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

OW104 No. 56/2016 c/w
OW104 No. 78/2016

Reserved on: 10.05.2023
Pronounced on: 25.05.2023

Chajju Singh
Bharat Bhushan Gupta

...Petitioner(s)

Through :- Mr. R. P. Sharma, Advocate
Mr. Pranav Sharma, Advocate for petitioner in
OW104 No. 56/2016.
Mr. Asif Malik, Advocate vice Mr. Bari
Abdullah, Advocate for petitioner in OW104
No. 78/2016.

v.

Subash Aggarwal and others
Chajju Singh and ors.

....Respondent (s)

Through :- Mr. Asif Malik, Advocate vice Mr. Bari
Abdullah, Advocate for respondents in
OW104 No. 56/2016
Mr. R. P. Sharma, Advocate
Mr. Pranav Sharma, Advocate for respondents
in OW104 No. 78/2016

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Both the writ petitions afore-captioned, arising out of same civil Suit, file No. 153/Civil, of the Court of learned Munsiff, Samba (trial Court, for short), are being disposed of by this common judgment.
2. The parties hereinafter shall be referred by their rank and title of the suit i.e. Plaintiff and defendants.
3. Plaintiff-Chajju Ram filed a suit in the trial court for mandatory injunction and for permanent prohibitory injunction against the defendants.

Along side the suit, plaintiff filed an application for temporary injunction. Defendant No. 3-Bharat Bhushan, entered appearance, joined the proceedings and filed his written statements as also objections to the application for temporary injunction. Rest of the defendants remained absent and were set *ex parte*.

4. Plaintiff claims to be owner in possession of land comprising Khasra Nos. 1000 and 1001 measuring 03 kanals and 13 marlas situate at Village Bagla (Jhakh Chhani) Tehsil and District, Samba, whereas defendants claim to be owner in possession of different lands bearing Khasra No. 986min measuring 10 kanals 07 marlas, Khasra No. 102 measuring 01 kanals 09 marlas, Khasra No. 103 measuring 01 kanals 12 marlas, Khasra No. 106 measuring 02 kanals 08 marlas and Khara No. 4377-2856 measuring 07 kanals and 02 marlas, adjacent to the suit land. It is categoric stand of defendant No.3 in the trial court that he has no concern with the suit land i.e. Khasra Nos. 1000 and 1001 and that he is not raising any sort of construction thereon. Defendant No. 3 also filed a counter claim. Learned trial court vide order dated 19.07.2012 directed maintainance of status quo qua the construction, if any, in the suit land by specifying that suit land covers Khasra Nos. 1000 and 1001 only. It is pertinent to mention that learned trial court in the application filed by defendant No. 3 for counter claim, vide order dated 09.08.2012 also restrained the plaintiff from interfering in the land under his possession.

5. Allegation of the plaintiff is that defendant No. 3, despite orders of status quo, continued with the construction in the suit land. He filed a petition for initiation of contempt proceedings against him for wilful

disobedience of the status quo order. However, defendant No. 3 maintained that he was not raising construction on the suit land. Therefore, plaintiff filed an application for appointment of local commissioner for inspection of the suit land, purportedly on the strength of some report of Patwari and learned trial court vide order dated 24.02.2016, (impugned in writ petition No. OW104 No. 56/2016) dismissed the application primarily on the ground that since contempt petition was pending, therefore, local inspection of the suit land by appointment of commissioner was not required to ascertain the genuineness of the report of the Patwari filed in support of the contempt petition.

6. Subsequently, plaintiff filed an application for implementation of the status quo order dated 19.07.2012, through agency of police and learned trial court vide order dated 03.06.2016 (impugned in the second writ petition being OW104 No. 78/2016) directed the said order to be implemented in letter and spirit through Tehsildar concerned with the aid and assistance of police agency.

7. Plaintiff has questioned the impugned order dated 24.02.2016, vide which, his application for appointment of Commissioner has been rejected by the trial court, inter alia on the ground that learned trial court has misread and misconstrued the purpose for which application seeking appointment of Commissioner was filed. According to the plaintiff while seeking appointment of Commissioner, all what he intended to solicit was squarely in consonance with the indulgence already accorded in his favour by learned trial court whereby learned trial court directed to ensure that there should not be any construction in the suit property and had any revenue official, being

appointed as a Commissioner, he would have inspected the spot and ascertained as to the existing position thereof. According to the plaintiff, given the terms of the ad interim direction passed by the trial court as also the facts and circumstances attending to the case, learned trial court or for that matter defendant No.3 should not have been averse to the appointment of Commissioner, intended to preserve the suit property.

8. *Per contra* defendant No. 3 has assailed impugned order dated 03.06.2016, by virtue of which, status quo order dated 19.07.2012 was directed to be implemented through police agency inter alia on the ground that learned trial court has exceeded jurisdiction vested in it by law. According to defendant No. 3, an ad interim order of status quo, unless made absolute, cannot be ordered to be implemented through police agency.

9. Having heard rival contentions of the parties and perused the material on record I have given my thoughtful consideration to the facts and circumstances attending the controversy as also the legal position governing the field.

10. Uncontroverted facts of the case are that plaintiff claims to be owner in possession of landed property bearing Khasra No. 1000 and 1001 situate at Village Bagla (Jakh Chhani) Tehsil and District, Samba. It is categorical stand of defendant No. 3 that he has no concern with the suit property and he claims to be owner in possession of landed property bearing different Khasra Nos. Since allegation of the plaintiff is that defendant No. 3 was raising construction by trespassing into the suit land, therefore learned trial court, in its wisdom, rightly directed maintenance of status quo for preservation of the suit property by providing that status quo order was confined to the suit

schedule property comprised of Khasra Nos. 1000 and 1001 only. Trial court also restrained the plaintiff from interfering into the land of defendant No. 3.

11. Law does not countenance a situation where orders passed by the Courts are allowed to be flouted with impunity. The legislature in its wisdom has incorporated various provisions in the Code of Civil Procedure, 1908 ('Code', for short) to ensure that orders passed by a civil court are implemented and obeyed by all concerned. Order XXI of the Code deals with executions of decrees and orders and the modes prescribed for execution of decree of injunction, under Rule 32 of Order XXI of the Code, are attachment of property or detention of the person disobeying the decree for injunction. Section 36 of the Code provides that provisions of the Code relating to execution of decrees be deemed to apply to the execution of the orders. Order XXXIX Rule 2A of the Code postulates consequences of disobedience or breach of injunction. Be it noted that there is no provision in the Code to direct for police assistance for enforcement or implementation of an order of temporary injunction. However, Section 151 of the Code saves inherent powers to Civil Court to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Court. It is under this provision of law that Court is vested with the power to direct the police to provide necessary help in case of disobedience or breach of its order passed under Order XXXIX Rules 1 & 2 of the Code.

12. If an injunction order is not carried out, it is always open to the parties to seek police protection and Court is obliged to ensure that orders passed by it are implemented and are given effect to in its letter and spirit. If a Court is powerless to grant police assistance for the purpose of execution of order of

temporary injunction, the very purpose of granting order of temporary injunction may be frustrated in a given case. Therefore, with a view to meet the ends of justice and to prevent the abuse of process of the Court, Civil Courts are vested with ample jurisdiction to provide police assistance for implementation of the orders passed or exercise of rights created under the orders of the court.

13. However, police aid cannot be granted on mere asking and grant of police assistance or aid is an extreme step and is required to be exercised with care and circumspection. The Court can grant assistance of police for enforcement or implementation of orders of temporary injunction, provided it is found that same is just or as observed earlier in order to prevent an abuse of the process of court or when it is found absolutely necessary. The object behind jurisdiction of a civil court to requisition the police aid in order to discharge its functions of giving effect to its decisions or orders, being inherent in nature, can be resorted to only for the purpose of meeting ends of justice or to prevent abuse of the process of law. It needs a specific mention that inherent powers of a civil court are in aid to and complementary to the powers expressly conferred upon it under the Code and they in no way are intended to create rights in the parties. The court is obliged to satisfy itself that *prima facie*, there is imminent threat of violation of an interim order passed by it and if police aid is declined, there is no way of ensuring effective compliance of its orders. It implies that once an injunction order is not carried out or obeyed, it is open to the parties to seek police protection to see that court order is implemented and not breeched.

14. Reverting to the present case, defendant No. 3 has assailed the impugned order dated 03.06.2006, vide which, status quo order dated 19.07.2012 passed by the trial Court was directed to be implemented through the agency of police on the solitary premise that learned trial court has exceeded jurisdiction vested in it by law because it is only an ad interim order of status quo, which is made absolute, can be ordered to be implemented through police agency. It is pertinent to mention that impugned order of status quo dated 19.07.2012 was passed by learned trial court only after defendant No. 3 had entered appearance and joined proceedings by filing the written statement as also objections to the application for temporary injunction and after considering the rival contentions of the parties.

15. An order of temporary injunction, be it ex parte or absolute, can be implemented through agency of police, if, as already observed, there is imminent threat of violation of the order. There is nothing in law to inhibit the power of a civil court to ensure that its order, be it ex parte or absolute, is implemented in its letter and spirit. Therefore, I do not find any illegality or perversity in the impugned order dated 19.07.2012 passed by learned trial court for implementation through Tehsildar concerned with the aid and assistance of police agency.

16. Plaintiff has questioned the impugned order dated 24.02.2016 passed by learned trial court by virtue of which his application for appointment of Commissioner has been rejected by the trial Court. It appears that plaintiff filed this application on the strength of some report of the Patwari, filed in support of the contempt petition. The said application was opposed by

defendant No. 3 on the ground that Patwari was never directed by the trial court for conducting Nissandehi and the report of Patwari was prepared at his back.

17. Order XXVI Rule 9 of the Code *inter alia* provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the court may issue a Commission to such person as it thinks fit directing him to make such investigation and to report thereof to the court. It implies that Court must be satisfied that local investigation is required or proper for the purpose of elucidation of any matter in dispute. In other words, the provision cannot be invoked as a tool in the hands of a party to create evidence in his favour. In the background of this legal position, I concur with the observation of learned trial court that local inspection cannot be ordered to ascertain the genuineness of the report of the Patwari, which is filed in support of the contempt petition as a specific procedure to be followed in the contempt proceedings.

18. Reliance placed by Mr. R.P. Sharma, learned counsel for the plaintiff on **Haryana Waqf Board v. Shanti Sarup and others** reported as **AIR 2008 Supp. (SC) 616** is distinguishable on the facts and circumstances of the present case, as the only controversy between the parties, in the said case, was regarding demarcation of the suit land as land of the respondents was adjacent to the suit land and an application for demarcation was filed before the trial court as also before the appellate court.

19. In the present case, neither the controversy relates to demarcation of the suit land nor any motion laid for the said purpose. There is nothing on

record to suggest that plaintiff ever approached the revenue authorities for demarcation of the suit land and the revenue authorities declined his request. In these circumstances, local Commissioner cannot be appointed by the Court to collect evidence for the parties. It was otherwise not required in view of the fact that learned trial court had already passed an order for implementation of status quo order dated 19.07.2012 through Tehsildar concerned with the aid and assistance of the police agency. There was, in fact, no occasion for the plaintiff to lay a motion for appointment of a Commissioner for demarcation of the suit lands.

20. In case landed properties of the parties are contiguous or adjacent to each other and there are allegations and counter allegations of interference by the respective parties into each other property, it shall always be proper and in the fitness of things that order of status quo is directed to be implemented with the help of revenue agency and with the aid and assistance of the agency of police.

21. For what has been observed and discussed above, I do not find any illegality, muchless perversity in the well reasoned orders dated 03.06.2016 and 24.02.2016, impugned in the aforesaid writ petitions. Consequently, both the writ petitions, being bereft of any merits are dismissed and impugned orders are upheld. Interim order, if any, shall stand vacated.

(RAJESH SEKHRI)
JUDGE

Jammu
25.05.2023
Paramjeet

Whether the order is speaking?
Whether the order is reportable?

Yes
Yes