

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

Case:- **CM(M) No. 59/2024**
CM No. 1667/2024

Hans Raj aged 75 years son of Bhagat Ram
resident of Village Chadwal (Chhan Dityal),
Tehsil Hiranagar, Kathua.

.....Petitioner

Through: Mr. Rohit Verma, Advocate.

Vs

Dilbagh son of Bhagat Ram resident of
Village Chadwal (Chhan Dityal),
Tehsil Hiranagar, Kathua.

.....Respondent

Through:

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

ORDER
(28.03.2024)

(Oral)

1. Order dated 23.01.2024 (for short "*the impugned order*") passed by the court of Munsiff/Judicial Magistrate 1st Class, Hiranagar is challenged by the petitioner in the instant petition filed under Article 227 of the Constitution.

2. The facts giving rise to the filling of the instant petition are that the respondent herein filed a suit for permanent injunction before the trial court against the defendant/ petitioner herein *qua* land measuring 8 marls covered under Survey No. 359/279 situated at Chhan Dityal, Hiranagar on the premise that the defendant/petitioner herein being his real brother purchased the land

in question on his behalf, in his own name owing to the disability of the plaintiff/respondent herein being a Non-State subject, however, subsequently transferred the rights and interests *qua* the said land in favour of the plaintiff/respondent herein by executing a Release-Deed on 16.05.2005, whereafter and whereupon the said land the plaintiff/respondent herein constructed shops and started conducting business therein and that the defendant/petitioner herein without any right started interference into the land in question and also collecting building material for raising construction over the land in question without any right or claim and upon failure of the defendant/petitioner herein to desist from interfering into the enjoyment of the land in question by the plaintiff/respondent herein, the plaintiff/respondent herein instituted the suit.

3. The defendant/petitioner herein filed a written statement to the suit before the Trial Court denying, therein that the land in question came to be purchased by him for and on behalf of the plaintiff/respondent herein, besides denying the execution of Release-Deed in favour of the plaintiff/respondent herein *qua* the land in question, stating further in the written statement that he constructed a residential house upon the land in question and that the plaintiff/respondent herein has no right, interest or concern over the said land.

4. On the basis of the pleading of the parties, the Trial Court on 26.08.2017 framed the following issues:-

“i. Whether plaintiff is owner of suit land by virtue of release deed executed by the defendant in favour of plaintiff and

registered before Sub Registrar, Hiranagar and is in peaceful possession over suit land? OPP

ii. If issue No. 1 is proved in affirmative, whether defendant is causing any interference over peaceful physical possession over suit land? OPP

iii. Relief.”

5. During the pendency of the suit, the defendant/petitioner herein filed an application on 27.05.2023 under Order 14 Rule 5 of the Code of Civil Procedure, seeking framing of the following additional issues:-

“i. Whether the Release Deed allegedly executed by the defendant in favour of the plaintiff, can be made legally by the defendant, who is the absolute owner in exclusive possession, in favour of a person (plaintiff herein), who is not a co-sharer/co-owner in suit khasra no. 359/279, as such no release, in the eye of law.

ii. Whether the alleged Release Deed is forged, in-genuine, having not been executed by the defendant, is otherwise non-existent, non-est, inoperative, null and void illegal and does not convey/transfer any interest in the suit land, in favor of the plaintiff.

iii. If issue No. (1) is proved in affirmative whether the suit filed by the plaintiff on the basis of alleged Release Deed, is liable to be dismissed.”

6. The aforesaid application of the defendant/petitioner herein came to be opposed by the plaintiff/respondent herein, whereafter the Trial Court in terms of the impugned order dismissed the said application holding the same to be devoid of any merit.

7. The impugned order is being challenged by the defendant/petitioner herein, *inter-alia*, on the ground that the Trial Court passed the same without adverting to the real controversy, inasmuch as, without any lawful justification.

Heard learned counsel for the petitioner and persued the record.

8. **Order 14 Rule 5** of the CPC provides for amendment, addition, deletion or striking down the issues and the primary object of the rules is to ensure determination of all the questions in controversy between the parties. The said provision by its plain reading is an enabling one intended to effectually and conclusively determine the controversial points between the parties. The power under this provision is exercisable by a Court either *suo-moto* or an application of a party, however, the exercise of power is controlled by Rule 3 of Order 14, which rule envisages that the Court can frame the issues from all or any of the materials being allegations made in the pleadings of the parties or any answers to interrogatories, documents produced by the parties, allegations made on oath by the parties or by any person present on their behalf or statement made by either appearing for the parties and lastly on examination of witnesses or inspection of documents.

9. Having regard to the aforesaid position of law and reverting back to the case in hand, indisputably issues in the suit came to be framed on the

pleadings of the parties by the Trial Court on 26.08.2017, **admittedly with the consent of the parties.**

10. Perusal of the issues drawn and framed on the pleadings of the parties on 26.08.2017 manifestly tends to show that the same pertain to the issues on which the parties are at variance and are based on their respective pleadings. The additional issues proposed by the defendant/petitioner herein while laying a motion wherein the impugned order has been passed by the Trial Court *ex-facie* reveal and suggest that the said issues are not only extraneous to the pleadings of the parties but also in essence are covered by the issues already framed by the Trial Court.

11. Perusal of the impugned order reveals that the Trial Court while deciding the application of the defendant/petitioner herein and passing the impugned order manifestly has been alive to the position of law, the respective case set up by the parties in their respective pleadings and has rightly, validly and lawfully passed the impugned order which, thus, does not call for any interference.

12. Resultantly, the petition fails and is, accordingly, **dismissed** along with connected application.

(JAVED IQBAL WANI)
JUDGE

JAMMU
28.03.2024

Shivalee

Whether the order is reportable : Yes
Whether the order is speaking : Yes