



Serial No. 05

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

Case:- CM(M) No. 20/2024
CM No. 387/2024

1. **Kaka Ram, Age 65 years**Appellant(s)/Petitioner(s)
S/o Desu.
2. **Sandeep Kumar Age 34 years**
3. **Gurdeep Kumar Age 30 years**
4. **Ravi Kumar Age 28 years**
5. **Mohinder Kumar Age 26 years**
All Sons of Kaka Ram
All Residents of Bansultan
Tehsil RS Pura, District Jammu.

Through: Mr. Gagan Oswal, Advocate.

Vs

Mangat Ram
S/o Behari Lal
R/o Bansultan Tehsil RS Pura
District Jammu

..... Respondent(s)

Through:

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

ORDER
(05.02.2024)

(ORAL)

- 01.** In the instant petition, Supervisory Jurisdiction of this Court enshrined in Article 227 of the Constitution of India is being invoked by the petitioner while seeking quashment of order dated 15.09.2023 (for short "**the impugned order**") passed by the court of Additional District Judge, Jammu (for short "**the appellate court**") in appeal titled as "**Mangat Ram Vs Kaka Ram & Ors.**" arising out of order



dated 12.10.2020 passed by the court of Additional Special Mobile Magistrate, R. S. Pura (for short "***the trial court***") in case titled as "*Mangat Ram Vs Kaka Ram & Ors.*"

- 02.** Facts emerging from the record would reveal that the plaintiff-respondent herein instituted an injunction suit against the defendants-petitioners herein *qua* the land measuring 6½ marla falling under Survey no. 67 min situated at Village Bansultan Tehsil R. S. Pura, Jammu on the premise that the plaintiff-respondent herein is the owners-in-possession of the said land and that the defendants-petitioners herein are interfering forcibly and illegally *qua* his possession and enjoyment of the said land.
- 03.** Upon entering appearance pursuant to the summons issued by the trial court, the defendants-petitioners herein filed objections as also written statements to the application for interim relief and to the suit respectively, whereupon the trial court after considering the application for interim relief, *disposed of* the same in terms of order dated 12.10.2020 and vacated the interim order granted to the plaintiff-respondent herein on 20.07.2020.
- 04.** Aggrieved of the order of the trial court dated 12.10.2020, the plaintiff-respondent herein preferred an appeal before the appellate court on 16.11.2020 which came to be *disposed of* in terms of the impugned order dated



15.09.2023 whereby the appellate court directed the parties to maintain *status quo* on spot with respect to the suit land measuring 6½ marla.

- 05.** The defendants-petitioners herein are aggrieved of order dated 15.09.2023 and assail the same in the instant petition.

Heard learned counsel for the petitioners and perused the record.

- 06.** The fundamental ground urged by the learned counsel for the petitioners while making his submission in line with the contentions raised and grounds urged in the instant petition against the impugned order is that the appellate court in the impugned order, while deciding the appeal, wrongly recorded a finding that the plaintiff-respondent herein is possession of the suit land.

- 07.** The settled position of law *qua* the injunctions covered under Order 39 of the Code of Civil Procedure is that the same are either prohibitory, preventive restraining a party from doing something. It is equally settled in law that interim reliefs can always be granted in the aid of and as ancillary to the main relief available to a party on final determination of his rights in a suit appeal or any other proceeding, and the primary purpose of granting of an



injunction is the preservation of property in dispute till the rights and conflicting claims of the parties before the court are adjudicated.

In other words, the object of making an order of injunction is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of a matter and by striking a delicate balance between the parties.

- 08.** Keeping in mind the aforesaid principles of law and reverting back to the case in hand, it is not in dispute that the plaintiff-respondent herein, in the suit instituted by him against the defendants-petitioners herein has sought a decree of permanent prohibitory injunction against the defendants-petitioners herein for restraining them from forcibly and illegally dispossessing him from the land measuring 6½ marla falling under survey no. 67 min situated at Village Bansultan Tehsil R. S. Pura, Jammu or dumping any waste material of their respective houses thereon or raising any sought of constructions or alienating the suit land either by themselves or through anybody else in any manner whatsoever.

On the contrary, the defense set up by the defendants-petitioners herein in the written statement filed to the suit *inter alia* is that the



defendants-petitioners herein are in possession of the suit land since 1990 and have raised construction of a residential house over the same, and that the defendants-petitioners herein have adverse possession of the land, being hostile and open against the plaintiff-respondent herein.

- 09.** Perusal of the record in general and the impugned order in particular tends to show that the appellate court, while passing the impugned order, has been alive to the facts and circumstances of the case and the respective pleadings of the parties, inasmuch as the material annexed there to. A closer and deeper examination of the impugned order suggests that the appellate court while passing the impugned order has also been alive to the principles governing and regulating the grant or refusal of an injunction, as also various judgments of the Apex Court occupying the field referred therein in the impugned order and seemingly has passed the impugned order warranted in the facts and circumstances of the case more particularly considering the fact that both the plaintiff and the defendants i.e. petitioners and respondent herein have lodged conflicting and contradictory claims *qua* **“the title and possession of the land in question”** and consequently, rightly directed the parties to maintain *status*



quo on spot *qua* the suit land being 6½ marla, while striking a delicate balance between the parties.

10. It is noteworthy that a court while considering an application for interim relief, be it the trial court or an appellate court, while making any observation or recording any findings *qua* the controversy involved in the case, such observations or findings recorded are always tentative and temporary in nature and character being not final expression of any opinion as to the merits of the case.

The contentions of the learned counsel for the petitioners that the appellate court in the impugned order recorded a finding and made an observation *qua* the title of the land in question, thus, pales into insignificance

11. Furthermore, the issues raised in the instant petition by the petitioners while seeking quashment of the impugned order invoking the supervisory jurisdiction of this Court enshrined in Article 227 of the Constitution of India is otherwise as well not warranted in view of the law laid down by the Apex Court in case titled as **“Shalini Shyam Shetty Vs Rajendra Shankar Patil”** reported in **2010 (8) SCC 329**.



12. For the foregoing reasons, therefore, this Court is not inclined to display indulgence and exercise supervisory jurisdiction. Resultantly, the petition fails and is ***dismissed.***

**(JAVED IQBAL WANI)
JUDGE**

**JAMMU
05.02.2024**
Bunty

Whether the order is speaking: Yes

Whether the order is reportable: Yes

