



2024:JKLHC-JMU:267

Serial No. 06

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

Case:- CM(M) No. 24/2024
CM No. 538/2024
CAV No. 151/2024

**Mangal Singh aged 65 years
S/o Munshi Singh
R/o Village Balahar
Tehsil Marheen
District Kathua (J&K)**

.....Appellant(s)/Petitioner(s)

Through: Mr. Gagan Oswal, Advocate.

Vs

- 1. Balbir Singh S/o Romalu
R/o Village Balahar
Tehsil Marheen District Kathua (J&K)**
- 2. Santokh Singh S/o Romalu
R/o Village Balahar
Tehsil Marheen District Kathua (J&K)**
- 3. Raghubir Singh S/o Romalu
R/o Village Balahar
Tehsil Marheen District Kathua (J&K)**
- 4. Karnail Singh S/o Romalu
R/o Village Balahar
Tehsil Marheen District Kathua (J&K)**
- 5. Babu Singh S/o Romalu
R/o Balahar
Tehsil Marheen District Kathua (J&K)**

..... Respondent(s)

Through: Mr. Bhavesh Bhushan, Advocate for
Caveator/Respondnet.

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

**JUDGMENT
(12.02.2024)**

(ORAL)

- 01.** Supervisory Jurisdiction of this Court is being invoked by the petitioner in the instant petition while seeking quashment of order dated 15.11.2023 (for short "**the**



impugned order”) passed by the court of Munsiff Hiranagar (for short ***“the trial court”***) in suit titled as ***“Mangal Singh Vs Babu Singh & Ors.”***

02. Facts emanating from the record would reveal that the petitioner herein filed a suit for possession *qua* land measuring 07 Kanals covered under Survey no. 426 and 07 Kanals 04 Marlas covered under Survey no. 429 situated at Village Balahar against the defendant-Babu Singh being respondent 5 herein on the premise that the land in question vested unto the father of the plaintiff, namely, Munshi pursuant to a succession mutation, however, the said defendant took over the possession of the suit land in the year 1980, whereupon the plaintiff has been seeking recovery of possession of the land in question from the said defendant, who initially denied delivery of the possession back to him by delaying tactics and finally refused to handover the possession of the same about 10 years back.

03. The defendant filed written statement to the said suit essentially admitting the fact that he came to be in possession of the land in question in the year 1980 and that the plaintiff has been claiming possession of the said land since then stating further that he has been in possession of the land for the last more than 12 years without any break and, thus, the said possession became



adverse and hostile to the plaintiff having matured into his ownership over the said land.

- 04.** During the pendency of the suit, the respondents 1 to 4 herein filed an application before the trial court for impleadment as party defendants to the suit on the ground that the original defendant/respondent 5 herein is their real brother and that in fact the suit land is being owned and possessed by them jointly and that the said defendant in the suit/respondent 5 herein wrongly got his name entered in the Khasra-Girdawari *qua* the land in question excluding them, thus, compelling them to file an application before Sub Divisional Magistrate/Assistant Collector 1st Class, Hiranagar for effecting correction in the Khasra-Girdawari of the land in question whereupon after seeking a detailed ^{सत्यमेव जयते} report from Patwari Halqa duly authenticated by Naib Tehsildar, necessary corrections came to be entered in the Khasra-Girdawari and in the column of possession of the land in question, same was shown to be joint estate of said defendant/respondent 5 and applicants/respondents 1 to 4 herein and that the defendant/respondent 5 herein in connivance with the plaintiff-petitioner herein got the suit maintained without arraying them as a party defendants in the suit generating a strong suspicion in their mind that the suit is essentially



collusive in nature filed by the plaintiff against the defendant/respondent 5 herein without impleading the applicants herein as party defendants through being necessary and proper party.

05. The trial court upon considering the aforesaid application filed by the respondents 1 to 4 herein for impleadment as defendants and after inviting objections both from the plaintiff-petitioner herein as also defendant/respondent 5 herein *disposed of* the same in terms of the impugned order dated 15.11.2023 directing impleadment of respondents 1 to 4 herein as party defendants 2 to 5 in the said suit.

06. The plaintiff-petitioner herein has thrown challenge to the impugned order on multiple grounds in the present petition.

Heard learned counsel for the parties and perused the record.

07. **Order 1 Rule 10 (2) CPC** provides for striking out or adding parties. It enables the Court to strike out the name of any party improperly joined or to add any person as a party who ought to have been joined as a party plaintiff or defendant. The primary object of enacting of this provision in the Code is to bring before the Court at one and the same time, all the persons interested in the dispute so that all the controversy in the suit may be finally determined



ones for all and in presence of all the parties without any delay, inconvenience and expansion of several actions, trials and in conclusive adjudication.

The power, thus, confers upon the Court a wide discretion although such discretion has to be exercised judiciously and on settled legal principles. The Apex Court in case titled as **“Anil Kumar Vs Shiv Nath”** reported in **1995 (3) SCC page 147** while considering the provisions of Order 1 Rule 10 (2) observed that though the Court may have power to strike out the name of a party improperly joined or add a party either on an application or without application of either party, the condition precedent is that the court must be satisfied that the presence of such a party would be necessary in order to enable the Court to effectually and conclusively adjudicate upon and settle all the questions involved in the suit while reiterating the object of the rule being to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute is determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.



The Apex Court further in case titled as **“State of Assam Vs Union of India”** reported in **2010 (10) SCC 408** held that a necessary party is one without whom no order can be made effectively and a proper party is one in whom absence an effective order can be made but whose presence is necessary for a complete and final decision of the questions involved in the proceedings.

- 08.** Keeping in mind the aforesaid position and principles of law and reverting back to the case in hand it is not being denied by the plaintiff-petitioner herein that the applicants who maintained the application for impleadment as party defendants in the suit are the brothers of the original defendant - Babu Singh being respondent 5 herein.

The fact of correction of Khasra-Girdawari *qua* the land in question corrected at the instance of the respondents 1 to 4 herein, who sought impleadment as party defendants in the suit by Sub Divisional Magistrate is also not being denied by the plaintiff-petitioner herein.

Thus, in presence of the aforesaid admitted facts, coupled with the contention of the applicants who maintained the application for impleadment and being respondents 1 to 4 herein that they are joint owners of the land in question



along with original defendant-respondent 5 herein which contention have had been never denied and disputed by the original defendant being respondent 5 herein by filing response/objections to the said application filed by the said applicants/respondents 2 to 5 herein, the findings arrived at by the trial court in the impugned order *qua* the locus of the applicants/respondents 2 to 5 herein that they are having a direct interest in the subject matter land can not said to be perverted or find fault with. The trial court, seemingly has rightly held that the applicants-respondents 2 to 5 herein are necessary party to the suit while placing reliance on the judgments of the Apex Court referred in the impugned order.

In view of the aforesaid position, the judgments relied upon by the learned counsel for the petitioner reported in **AIR 2022 Supreme Court page 4304** do not lend any support to the case of the petitioner being quite distinguishable, in that, the said judgment admittedly has been passed in respect of the impleadment of subsequent purchaser of the suit property involved therein as party defendant and in the judgment reported in **AIR 1978 Jammu and Kashmir 92,** the case pertained to the right of pre-emption and quite distinguishable from the facts and circumstances involved in the instant case.



09. Viewed thus, the impugned order does not call for any interference by this Court in exercise of supervisory jurisdiction enshrined in Article 227 of the Constitution of India particularly in view of the principles of law laid down by the Apex Court in case titled as **“Shalini Shyam Shetty and anr. Vs Rajinder Shankar Patil”** reported in **2010(8) SCC 3291.**
10. Resultantly, petition fails and is ***dismissed.***

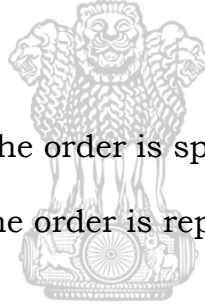
(JAVED IQBAL WANI)
JUDGE

JAMMU
12.02.2024

Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**



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HIGH COURT
OF JAMMU & KASHMIR AND LADAKH