

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

**Reserved on: 02.02.2024
Pronounced on : 28.02.2024**

Case No. CM(M) no. 192023
CM No. 731/2023

Neelam Sharma, age 55 years W/o Lt. Ganesh Dutt
R/o Village Chak Bhagwana, Tehsil Hiranagar District
Kathua.

...Petitioner(s)

Through: Mr. Abhinav Sharma, Sr. Advocate with
Ms. Parkhi Parihar, Advocate.

Vs

1. Ashok Kumar S/o Sh. Uttam Chand R/o
Village Chak Bhagwana Tehsil Hiranagar
District Kathua.

...Respondent

2. Prince S/o Lt. Sh. Ganesh Dutt R/o
Village Chak Bhagwana Tehsil Hiranagar
District Kathua.

3. Priyanka Sharma D/o Late Ganesh Dutt
R/o Village Chak Bhagwana Tehsil
Hiranagar District Kathua.

...Proforma Respondent(s)

Through: Mr. Rahul Sharma, Advocate and
Mr. Bhavesh Bhushan, Advocate.

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

JUDGMENT

1. Supervisory jurisdiction of this Court has been invoked by the petitioner herein seeking quashment of order dated

18.01.2023 (for short **'impugned order'**) passed by the court of Additional District Judge, Kathua (for short **'appellate court'**) in appeal titled as **"Ashok Kumar Vs. Neelam Sharma and ors"**.

2. The facts emerging from the record would reveal that the petitioner herein filed a suit before the Court of Munsiff, Hiranagar (for short, **'the trial court'**) for partition and injunction against the respondent 1 herein as defendant and proforma respondents 2 and 3 herein as proforma defendants 2 and 3 stating therein that she along with the defendants/respondents herein are joint owners and in possession of land measuring 04 kanals and 12 marlas covered under survey No. 121 min situated at village Chak Bhagwana Tehsil Hiranagar and that the said land vested unto her on account of the death of her husband being the brother of the defendant/respondent 1 herein and that her husband constructed a residential house as per the family settlement over the suit land ten years back and during the said time, the defendant/respondent 1 herein asked her husband to allow him to fill the plinth over the suit land and in case same is allowed to the defendant/respondent 1 herein, he will, in lieu thereof, provide possession of the half of the residential house situated in the middle of village Chak Bhagwana to him whereupon her husband allowed the defendant/respondent 1

herein to fill the plinth which plinth is in equal to the plinth of her house constructed by her husband and that the defendant/respondent 1 herein instead of providing possession of the half of the aforesaid residential house to her, the defendant/respondent 1 herein forcibly took the possession of her house and also thereafter constructed a new residential house in the premises of old residential house which she could not oppose on account of the untimely death of her husband and that the defendant/respondent 1 herein few days back collected building material for raising further construction over the aforesaid plinth filled by the defendant/respondent 1 herein earlier and upon being resisted by her, the same defendant/respondent 1 herein refused to desist therefrom leaving no option for the petitioner but to file the suit.

3. Along the suit, the plaintiff/petitioner herein filed an application for interim relief which came to be disposed of on 11.10.2021 after the defendant/respondent 1 herein appeared and filed objections thereto as also written statement to the suit in terms whereof the trial court directed the parties to maintain status quo on spot with respect to the suit land, aggrieved whereof the defendant/respondent 1 herein preferred an appeal before the appellate court on 03.11.2021, which came to be disposed of in terms of the impugned order by the appellate court whereby the order of the trial court

came to be set aside and consequently, the defendant/respondent 1 herein came to be allowed to complete his construction as per the prevalent building construction rules in the area over the suit land.

4. The impugned order is being challenged by the petitioner *inter alia* on the ground that the same is bad, illegal having been passed in haste virtually deciding the suit.
5. **Objections** to the petition had been filed by the defendant/respondent 1 herein wherein the petition is being opposed and grounds urged in the petition are controverted.

Heard learned counsel for the parties and perused the record.

6. The core issue involved in the present petition which falls for consideration of this Court is as to whether the impugned order could have been passed by the appellate court in favour of the appellant/respondent 1 herein authorizing him to raise construction over the suit land stated to be a co-sharer/co-owner of the suit property with the plaintiff/petitioner herein.
7. The law is no more res integra and stands settled by a series of judgment by various High Courts including this Court in case titled as **“Kuldeep Singh Vs. Sant Nirankari Mandal and**

ors” (CIMA No. 501/2013) wherein the following has been held:

"9. The factual position by and large is clear from the pleadings of the parties, averments in the memorandum of appeal and submissions made at Bar on behalf of the parties. Legal position in regard to the competence of a co-owner to transfer a specific portion of the joint holding by sale or otherwise, consequences of such a transfer and rights of the transferee by now and since long is well settled. A co-owner in exclusive possession of a specific portion of the joint holding can transfer that portion to a third person but such transfer should not exceed his share in the entire joint holding. In the case of sale of a specific portion of a joint holding, the vendee will get the right of possession of the property sold to him and status of a co-sharer qua the said property and the sale would be subject to partition at the time of partition among the co-owners. Likewise, legal position in regard to the exclusive use of a portion of joint holding in possession of a co-owner, in particular, permissibility of raising construction on the said portion is also well settled. It is permissible for a co-owner to raise construction on that portion of the joint holding of which he has been in exclusive possession without any objection from the other co-owners. This right of the co-owner, however, is not totally unfettered and is subject to some conditions, which need not be discussed here (See Mst. Rahti v. Wali Ganai and ors. AIR 1966 J&K 39, Mohammad Akram Siah v. State and ors, 2009 (2) SLJ 466, Kabla Singh and anr. v. Pari Ram and ors, 2009 (2) JKJ 313 and Din Dayal Kapoor and ors. v. Kusum Kapoor, 2014 (1) 351). Suffice to say, briefly, the vendee of a portion of a joint holding

will get rights in that portion to the extent of the rights held by the vendor."

What emerges from the perusal of the aforesaid principle of law, noticed and observed by this court in the judgment (supra) is that a co-sharer of a property, who is in exclusive possession of a joint holding, cannot be restrained from raising construction on that portion of the joint holding of which he is in exclusive possession.

8. Keeping in mind the aforesaid principle of law and reverting back to the case in hand, it is an admitted fact stated by the plaintiff/petitioner in the suit that the suit property is a joint property where upon a portion thereof, her husband constructed a residential house during his life time and the defendant/respondent 1 herein also got the plinth constructed thereon on the another portion with the consent of her husband.

In presence of the aforesaid admitted factual position and having regard to the aforesaid principle of law, it can safely be said that the appellate court has been alive to the said facts and consequently passed the impugned order while rightly setting aside the order of the trial court holding that the construction in question raised by the defendant/respondent 1 herein would not cause any irreparable loss to the plaintiff/petitioner herein and would rather impinge upon the

rights and interests of the defendant/respondent 1 herein. Under these circumstances, the appellate court cannot said to have committed any error or faulted while passing the impugned order.

9. Viewed thus, the impugned order does not call for any interference more so in the present petition filed while invoking supervisory jurisdiction of this Court, which jurisdiction is not to be exercised to correct mere errors of law and facts or just because another view than the one taken by the subordinate courts is a possible view and that the power under Article 227 of the Constitution of India has not to be frequently exercised but rather very sparingly as has been held by the Apex Court in **“Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil** reported in **(2010) 8 SCC 329**.
10. The petition resultantly fails and is, accordingly, dismissed along with connected application(s).

(Javed Iqbal Wani)
Judge

JAMMU
28.02.2024
Naresh, Secy.

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