

COURT OF SUB JUDGE KULGAM

Case File No.	Date of Institution	Date of Decision	CNR No.
354/N	21.11.2022	18.12.2025	JKKG020007372022

IN THE CASE OF:-

Abdul Salam Zargar,
S/O, Abdul Ahad Zargar,
R/O ,Chandian Pajan
Tehsil Devsar Kulgam

**Plaintiff along with his Counsel Advocate Waseem Afzal
Present.**

V/s

1. U. T of J&K through Commissioner Secretary
to Govt Department of Revenue Civil
Secretariat Srinagar
2. Deputy Commissioner Kulgam
3. Tehsildar Devsar
4. Naib Tehsildar Devsar

Defendants are in ex-parte.

In the matter of: - Suit for permanent prohibitory
Injunction.

Coram: -Altaf Hussain Khan

U.I.D No. JK00187

JUDGMENT

Ab Salam Zargar , V/S, U.T of J and K and others

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1. Main controversy resulting present litigation between the parties to lis is that plaintiff has filed suit captioned above for permanent prohibitory injunction before this court prayed therein that defendants be restrained from interfering with and forcibly constructing path-way/approach road through the suit land measuring 1 kanal 17 marlas and 6 sarsai bearing khasra no 1 situated at Dantray Devsar.
2. The case of the plaintiff is made out in the plaint that plaintiff is owner in possession of land measuring 1 kanal 17 marlas and 6 sarsais bearing Khasra no 1 situated at Dantary Devsar . Plaintiff has received whole suit land as his share at time of the partition of ancestral property . Plaintiffs other co-sharers have received their share from other survey numbers on spot. The total land bearing survey no 01 is comprising of two kanals out of the same land measuring , two marlas and 3 sariais has been acquired by

government/ defendants way back in the year 2015 for construction of Hablish to Dantray Road and the compensation for the same has not been paid to plaintiff by the defendants. suit land is surrounded on eastern side by land of Gh Nabi parray, on the west by land of Ab Rehman Bhat, on the northern side by land of Mohd Akram Parray and on the southern side by land of Gulzar Ahmad Dar. plaintiff has developed the suit land and has provided suit land to brick clin owners on lease for some years. plaintiff has received suit land back and same is now maintained by the plaintiff for agriculture purposes. Defendants are interfering with possession of plaintiff over the suit land without any right and are trying to forcibly encroach upon suit land by constructing short cut pathway through the same on the behest of some political influences without any justification. In case defendants

are interested construct a pathway through the suit land then they should acquired same properly under Land Acquisition Act and plaintiff is to be compensated as per law instead of that defendants are using their official machinery in the illegal way and want to cause a legal injury to plaintiff. Plaintiff approached defendant no 2 and 3 and requested them not to interfere with the suit land but in vain. Some days before defendant no 3 passed the order whereby Naib Tehsildar concerned has been directed to demarcate suit land , when defendant no 4 along with team constituted for demarcation of suit land appeared on spot and tried to demarcate same against interests of plaintiff.

3.On the presentation of suit this court has served the summons upon the defendants. In pursuance to summons standing counsel appeared on behalf of

defendants and sought time for filling of written statement however, subsequently defendants have not choosen to appear or participate in proceedings, as such this court vide order dated 12.07.2024 has initiated ex-parte proceedings against defendants and directed plaintiff to led evidence in ex-parte in support of his case.

In pursuance to directions plaintiff has examined;

1. Muzaffar Ahmad Zargar ,S/O, Abdul Salam Zargar, R/O,
Chandian Pajan Devsar
2. Nisar Ahmad Mir ,S/O, Mohammad Ramzan Mir, R/O,
Chandian pajan Tehsil Devsar.
3. Mohammad Jamal Bhat, S/O, Ghulam Ahmad Bhat ,R/O,
Chandian Pajan Devsar
4. Gulzar Ahmad Malik, Patwari Halqa Manigam besides that
the plaintiff Abdul Salam Zargar ,S/O, Abdul Ahad Zargar
R/o Chandian Pajan Teshil Devsar has examined himself

as a witness in support of his case. It is apt to discuss evidence led by the plaintiff in ex-parte in support of his case.

P.W-01, Abdul Salam Zargar ,S/O, Abdul Ahad Zargar ,R/O, Chandian Pajan Teshil Devsar (plaintiff as his own witness)

4.Has deposed that he is owner in possession of land measuring 1 kanal 17 Marlas and 6 sarsais falling bearing survey No. 1 situated at village Dantary Tehsil Devsar District Kulgam. He has received whole suit khasra number as his share at the time of the partition of the ancestral property , other co-sharers have received their share from other khasra numbers on spot. Total land bearing survey number 1 consists of 2 kanals, out of which 2 marlas and 3 Sarsais has been taken by Government / Defendants way back in the Year 2015 for the construction of Hablish - Dantary road and the

compensation for the same has not been yet released/paid to him . He has made remarkable development over suit land . He has provided the suit land to brick kiln owners on lease for some years. He has received back the same some years before .suit land is now maintained by him for agricultural activities. Defendants are interfering with his possession over the suit land without any reason and are trying to forcibly encroach upon suit land and want to construct short cut pathway through suit land for their blue eyed persons at the behest of political influences who are already having alternate pathway for reaching to their agricultural land. Defendant No. 3 has recently passed an order whereby a team has been constituted to demarcate suit land only without any legal justification and without giving a reasonable opportunity of hearing to him. said order has been passed at his back. He has given 2 marlas and 3 sarsais of land to Defendants for

construction of Hablish to Dantary road out of suit survey no .which has been taken over by the defendants . In case defendants succeed in their illegal designs to create another pathway forcibly through suit land then he will suffer an irreparable loss which cannot be compensated by any means. In case the defendants are interested to construct a pathway through the suit land then the suit land should have been acquired under Land Acquisition Act and then he should have been compensated as per law. He has approached defendants no. 3 and 4 and requested them not to interfere with suit land but in all vain .Defendants no 3 & 4 are bent upon to construct short cut pathway through the suit land illegally at the behest of political influences,

P.W-02. Muzaffar Ahmad Zargar ,S/O, Abdul Salam

Zargar, R/O, Chandian Pajan Devsar

5.Has deposed that plaintiff is owner in possession of land measuring 1 kanal 17 Marlas and 6 sarsais falling under Khasra no. 1 situated at village Dantary Tehsil Devsar District Kulgam. Plaintiff has received whole suit khasra number as his share at the time of the partition of the ancestral property and other co-sharers have received their share out of other khasra numbers on spot. Total land under khasra number 1 consists of 2 kanals, however, 2 marlas and 3 Sarsais has been taken Government / Defendants way back in the Year 2015 for the construction of Hablish to Dantary road and compensation for the same has not been yet released/paid in favour of plaintiff . Plaintiff has made remarkable development over land being owner in possession of the said land . Plaintiff provided the suit land to the brick clin owners on lease for some years and now he has received the same back . Suit land is now maintained by me for agricultural activities. Defendants

are interfering with plaintiffs possession over suit land without any reason and are trying to forcibly encroach upon suit land and want to construct short cut pathway through the suit land for their blue eyed persons at the behest of political influences who are already having alternate pathway for reaching to their agricultural land. Defendant no. 3 has recently passed an order whereby a team has been constituted to demarcate suit land without any legal justification and without giving a reasonable opportunity of hearing to plaintiff, said order has been passed at plaintiffs back. Plaintiff has already given 2 marlas and 3 sarsais to defendants for construction of Hablish to Dantary road out of the suit khasra number, which has been taken over by the defendants . In case defendants succeed in their illegal designs to create forcibly another pathway through the suit land then plaintiff will suffer an irreparable loss which cannot

be compensated by any means. In case the defendants are interested to construct a pathway through the suit land same should have been acquired under Land Acquisition Act . Plaintiff has approached the Defendants no . 3 and 4 and requested them not to interfere with the suit land but all in vain .Defendant Nos. 3 & 4 are bent upon to construct short cut path-way through the suit land illegally and create a pathway at the behest of political influence.

P.W-03. Nisar Ahmad Mir ,S/O, Mohammad Ramzan Mir ,R/O, Chandian pajan Tehsil Devsar.

6.Has deposed that plaintiff is owner in possession of land measuring 1 kanal , 17 Marlas and 6 sarsais falling under Khasra No. 1 situated at village Dantary Tehsil Devsar District Kulgam. Plaintiff has received whole suit khasra number as his share at the time of the partition of the ancestral property and other co-sharers have received their

share in other khasra numbers on spot. Total land under khasra number 1 consists of 2 kanals, however, 2 marlas and 3 Sarsais have been taken over from me by the Government / Defendants way back in the Year 2015 for the construction of Hablish to Dantary road and compensation for the same has not been yet released/paid in favour of plaintiff. Plaintiff has made remarkable development over suit land being the owner and the possession of the same .Plaintiff has provided the suit land to the brick clin owners on lease for some years and has now received the same back . Suit land is now maintained by him for agricultural activities. Defendants are interfering with plaintiffs possession over suit land without any reason and are trying to encroach upon suit land and want to construct short cut pathway through the same for their blue eyed persons at the behest of political influence who are already

having alternate pathway for reaching to their agricultural land. Defendant no. 3 has recently passed an order whereby a team has been constituted to demarcate suit land only without any legal justification and without giving a reasonable opportunity of hearing to him. said order has been passed at my back. Plaintiff has already given 2 marlas and 3 sarsais of land to the Defendants for construction of Hablish to Dantary road out of the suit khasra number, which has been taken over by defendants and on spot there is one existing road now . In case the defendants succeed in their illegal designs to create forcibly another pathway through suit land then plaintiff will suffer an irreparable loss which cannot be compensated by any means. In case the defendants are interested to construct a pathway through the suit land then suit land should have been acquired under Land Acquisition Act and plaintiff has

to be compensated for the same as per law. Plaintiff approached the Defendant Nos. 3 and 4 and requested them not to interfere with suit land but all in vain .Defendants no 3 & 4 are bent upon to construct short cut pathway through suit land illegally and create a pathway at the behest of the political influence.

P.W-04 . Mohammad Jamal Bhat, S/O, Ghulam Ahmad Bhat ,R/O, Chandian Pajan Devsar

7.Has deposed that plaintiff is owner in possession of land measuring 1 kanal , 17 Marlas and 6 sarsais falling under Khasra No. 1 situated at village Dantary Tehsil Devsar District Kulgam. Plaintiff have received whole suit khasra number as my share at the time of the partition of ancestral property and other co-sharers have received their share in other khasra numbers on spot. Total land under khasra number 1 consists of 2 kanals, however, 2 marlas

and 3 Sarsais have been taken over from me by Government / Defendants way back in the Year 2015 for the construction of Hablish to Dantary road, compensation for the same has not been yet released/paid in favour of plaintiff . Plaintiff has made remarkable development of over suit land being the owner and in possession of the said land. Plaintiff has provided the suit land to the brick clin owners on lease for some years and has now received the same back . Suit land is now now maintained by plaintiff for agricultural activities. Defendants are interfering with plaintiffs possession over the suit land without any reason and are trying to forcibly encroach the suit land . They want to construct short cut pathway through the suit land for their blue eyed persons at the behest of political influence who are already having alternate pathway for reaching to their agricultural land. Defendant No. 3 has recently passed an order whereby a team has been constituted to demarcate

the suit land only without any legal justification and without giving a reasonable opportunity of hearing to plaintiff said order has been passed at plaintiffs back. Plaintiff has already given 2 marlas and 3 sarsais to defendants for construction of Hablish to Dantary road out of suit khasra number, which has been taken over by defendants . In case the defendants succeed in their illegal designs to create forcibly another pathway through the suit land then plaintiff will suffer an irreparable loss which cannot be compensated by any means. In case the defendants are interested to construct a pathway through the suit land then the suit land should have been acquired under Land Acquisition Act and plaintiff has to be compensated for the same as per law. Plaintiff has approached defendants no . 3 and 4 and requested them not to interfere with the suit land but all in vain .Defendants no 3 & 4 are bent upon to construct short cut pathway through the suit land illegally and

create a pathway at the behest of political influence.

P.W- 0 5 Gulzar Ahmad Malik Patwari Halqa Manigam

8.Has deposed that he is posted as Patwari Halqa Manigam from last six months. He has brought Jamabandi Girdiwari of the year 2018-19 with him. contents of Giriwari extract on file pertaining to khasra no 1,khewat no 69 and khata no 105 in respect of land measuring 02 kanals 3 marlas and 2 sarsai are true as per the record, As per record suit land is recorded in in the name of Ahad, Khazir Ahsan Sons of Samad dar Residents of Chandain Pajan . In tenancy column suit land is recorded in their personal cultivation . Contents of Revenue extracts on file are true and correct but same are not penned down by him nor bears his signatures same is as Mark-S. He has visited the spot . A road passing through suit land which has been constructed by R&B department. As per record land measuring 02 marlas and

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3 sarsai has been acquired by the R&B department for construction of the road ie Hablish and Dantray road. Rest land measuring 01 kanal 17 marlas is in possession of the plaintiff on spot and his other co-sharers as per record . Due to intervention of other villages the defendants are intending to construct the road through his land . That is all the evidence led by the plaintiff in ex-parte in support of his case. Plaintiff's evidence was closed on 12.07.2024 and the matter came to be argued.

9.Heard and considered the arguments perused the plaint, evidence led by plaintiff in ex-parte in support of his case and other material on record.

11.By way of present suit plaintiff claims that he is owner in possession of land measuring 1 kanal , 17 marlas and 6 sarsais bearing survey no 01 situated at Dantary Devsar . Plaintiff received the whole suit land as his share at the time

of partition of ancestral property with other co-sharers . other co-sharers have received their share out of land besrung other survey numbers. Survey no 1 is comprising of two kanals out of which two marlas and 3 sarsias of land has been taken over by government/ defendants way back in the year 2015 for construction of Hablish-Dantray Road compensation in respect of sand has not been paid to plaintiff by the defendants. Plaintiff has provided suit land to brick clin owners on lease for some years and has received the same back now . Said land is now maintained by the plaintiff for agriculture purposes. Defendants are interfering with possession of plaintiff over suit land measring 01 kanal , 17 marlas and 03 sarsis without any right and are trying to encroach upon suit land forcibly by constructing short cut pathway through same on the behest of some political influences without any justification. In case the defendants want to acquire the said land and to construct a path-way through suit land then they should acquired the

same properly under Land Acquisition Act and plaintiff has to be compensated for the as per law however instead of acwuring the sane defendants are using their official machinery in the illegally. Although defendants have been duly served and they have tendered their appearance, however , they have not subsequently choosen to appear before this court or to participate in the proceedings as such this court vide order dated 12-07-2024 has initiated ex-parte proceedings against the defendants as such no defence has been raised by defendants in rebuttal and nor any evidence has been led by them .

12. On the other hand from evidence led by the plaintiff in ex-parte it is made out that plaintiff is in possession of land measuring 01 kanal 17 marlas and 03 sarsis bearing survey no 1 situated at Dander. As per evidence on record defendants are interfering with his possession over suit land . They are intending to construct pathway through the same on the behast of some villagers without following the due process of law. Patwari

concerned examined as witness too had deposed that suit land is proprietary land and is in possession of suit plaintiff as per record . Out of the suit survey no plaintiff is in possession of land measuring 01 kanal 17 marlas 6 sarsai on spot. R&B deptt/defendants has acquired land measuring 2 marlas 3 sarsai out of tsuit land for construction of Hablish -Dabtray road.

13. On scanning evidnce led by plaintiff in ex-parte as well as other material on record viz, revenue extracts placed on record this court comes to the conclusion that suit land is proprietary land and plaintiff is in possession of 1 kanal 17 marlas 6 sarsai on spot . The defendants are interfering with his possession over suit land by . They are intending to carve out path-way/road through the same without following the due process of law . It is true that government can acquire even proprietary land for public purpose but for acquiring the proprietary land set procedure for acquiring the same by notifying and providing compensation

to the person whose land Govt intends to acquire , however in the present case nothing on record suggesting that defendants are either intending to acquire or have acquired land in question or have initiated any process in this regard so far as after tendering their appearance they have not subsequently choosen to appear or participate in the court . They have not raised any defence to counter the claim projected by the plaintiff in the present suit in respect of suit land Plaintiff being in possession of suit land on spot as such can not be disposed out of the same even by state without following due process of law. Plaintiff being in possession as such is within rights to seek protection against his illegal/forcibly dispossession out of suit land . In case government intends to acquire suit land or any portion thereof they are supposed too follow due process of law prescribed in this regard and can not dispossess plaintiff out of suit land forcibly

14 . With these observations this court is of the view that plaintiff has made out the case justifying grant of relief prayed for against his

forcible disposssession out of suit land by defendants without following due process of law as such suit of plaintiff is decreed in ex-parte to the extent that defendants are restrained from interfering with possession plaintiff over the suit land measuring 01 kanal ,17 marals and 06 sarsias bearing survey no 01 situated at Dantray Devsar Kulgam without following due process of law. Office is directed to prepare decree sheet accordingly. Parties shall bear their own costs . Suit is accordingly disposed, same be consigned to record after due compilation.

**Announced in open court
Today on 18 -12-2025**

Sub Judge Kulgam