

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

CM(M) No. 205/2024
Caveat No. 1344/2024
c/w WP(C) No. 128/2024

Shiban Krishen Bakshi & Others. ... Petitioner(s)

Through: Mr. Zahoor Ahmad Shah, Advocate.

Vs.

Abdul Gani Lone & Another. ...Respondent(s)

Through: Mr. Mir Suhail, Advocate with
Mr. M. Abu Bakar Pandith, Advocate for Caveator/
Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

ORDER
27.06.2024

01. Heard learned counsel for the petitioners as also the learned counsel for the Caveator/Respondent No.2 at length and perused the material on record. Caveat stands **discharged**.

02. The short submission which has been advanced by the learned counsel for the petitioners is that Respondent No. 1 filed a suit for perpetual injunction against the Respondent No. 2 and Shafeeq Ahmad Qureshi and Syed Mushtaq Ahmad, before the Court of learned Munsiff, Tangmarg and the said suit was compromised in between the Respondent No. 1 (plaintiff) and the defendants vide Lok Adalat Award dated 21st October, 2017.

03. The learned counsel appearing on behalf of the petitioners has vehemently argued that petitioners were not parties to the aforementioned suit and the award/decreed so passed, is not executable against the petitioners, however, the Respondent No. 2 is seeking execution of the said decree by filing execution petition on 29th March, 2022 and in the execution petition, the petitioners have been arrayed as non-applicants. The learned counsel further submits that in spite of the fact that the Executing Court was apprised of the

legal and factual aspect of the matter, yet the Executing Court is proceeding in the execution petition against the petitioners.

04. The learned counsel for the petitioners has drawn attention of this Court to the compromise decree, which has been placed on record and it has been brought to the notice of this Court that the Tehsildar, Tangmarg, has conducted the spot inspection and filed a report before the Executing Court on 4th May, 2024. The learned counsel further submits that the petitioners cannot be proceeded in the execution petition, as they neither were parties in the suit, nor to the compromise decree, therefore, they cannot be compelled or proceeded against and the continuation of the execution proceedings by the executing court is an abuse of process of law.

05. The learned counsel for the petitioners with a view to fortify his claim, submits that the Respondent No. 1 (plaintiff in the suit) has sold the property to the Petitioner No. 3 vide sale deed dated 11th March, 2020 and on the said date, no proceedings against Petitioner No. 3 or the Respondent No. 1 were pending. He further submits that the Petitioner No. 3 has alienated the property/land in favour of Petitioners 1 and 2 vide subsequent sale deed dated 18th March, 2022 and till date, the said sale deeds have not been called in question and no proceedings as on date according to the learned counsel for the petitioners, are pending before any court nor the Petitioner No. 3 is restrained to affect the sale of the said property, as there is no legal impediment, which could have come in the way of the Petitioner No. 3 to have affected the sale of the said property.

06. The learned counsel for the petitioners submits that in absence of specific challenge to the aforesaid sale deed(s), the Executing Court cannot proceed against the petitioners.

07. The learned counsel appearing on behalf of the Respondent No. 2 submits that the Petitioner No. 2 has already filed a petition before this Court in respect of the land in question, which has been registered as WP(C) No. 128/2024 titled "Amit Bakshi vs Union Territory of J&K and Anr" and the said petition has been tagged with the instant petition, in which the Petitioner No. 2, has prayed for grant of permission for raising construction on the land in question, which is the subject matter in the instant petition. The learned counsel for the Respondent No. 2 further submits that the petitioners have

deliberately chosen not to array her as a party in the aforementioned writ petition (WP(C) No. 128/2024), although the Respondent No. 2 is a necessary party. The learned counsel for the Respondent No. 2 further submits that the Respondent No. 2 has already moved an application for seeking her impleadment in the said writ petition, which has not been decided as on date.

08. *Prima facie* case for indulgence is made out.

09. Issue notice to the respondents.

10. Mr. Mir Suhail, learned counsel accepts notice on behalf of Respondent No. 2. He seeks and is granted two weeks' time for filing the reply.

11. Notice shall also be issued to Respondent No. 1, returnable within a period of two weeks.

12. Requisite steps for service within one week.

13. List for consideration on 20th July, 2024.

14. In the meantime, subject to objections from the other side and till the next date of hearing before the Bench, the proceedings before the Executing Court in File No. 36/execution titled "Mehmooda Akhter vs Abdul Gani Lone & Others", shall remain stayed.

Vacation/Alteration/Modification on motion.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
27.06.2024
"HAMID"