

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

Case No.:- CM(M) No. 30/2022
CM No. 2051/2022

Ashok Kumar

.....Petitioner(s)

Through: None.

Vs

Kishor Kumar

..... Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
29.07.2025

1. The petitioner and the respondent are real brothers. The respondent-Kishor Kumar commenced a civil suit for a permanent prohibitory injunction in December 2014 before the Court of learned Sub Judge, Kishtwar thereby seeking a decree of permanent prohibitory injunction restraining the sole defendant Ashok Kumar-the petitioner herein from interfering by any means or from raising any sort of construction by encroaching over the vacant land of the respondent-Kishor Kumar, the plaintiff in the suit, falling in khasra No. 4985/3174 Mouza Kishtwar.

2. No delineation/dimension of the suit land came to be spelled out in the civil suit.
3. In terms of an order dated 17.12.2014, the trial court of learned Sub Judge, Kishtwar came to pass an ad interim injunction thereby restraining the petitioner as defendant from raising any sort of construction by way of encroaching over the vacant land comprising khasra No. 4985/3174 situated at Mouza Kishtwar till next date of hearing.
4. The petitioner came to file his written statement to the civil suit stating in preliminary objection that the respondent/plaintiff had neither annexed any site map/tatima shajra of the suit land in respect of which the relief being claimed nor property delineated or described.
5. In addition the petitioner came forward with parawise reply meeting the case of the respondent.
6. After a gap of more than six months of pendency of the civil suit, the respondent came forward with an application for seeking amendment of the plaint. The application for amendment was filed on 26.06.2015.
7. In the application, the reason which came to be set up for the amendment of the plaint was that during the pendency of the civil suit, the petitioner, as a defendant, had disobeyed the interim direction passed by the trial court and

in that process, succeeded in raising illegal and unauthorized construction at the site of suit land which required the respondent/plaintiff to convert his suit from permanent prohibitory injunction to that of mandatory injunction.

8. The proposed amended plaint came to be annexed with the application which was opposed by the petitioner herein disputing and denying the allegations and assertions made in the application being used as pretext for seeking amendment of the plaint.
9. June 2015 application filed for seeking amendment came to be decided by the trial court of learned Sub Judge, Kishtwar on 08.12.2021, almost six and half years of pendency just for taking a call as to whether the suit for permanent prohibitory injunction be allowed to be converted into a suit for mandatory injunction.
10. In the amended plaint, the respondent came to seek a decree for mandatory injunction for removal of the construction raised by the petitioner as defendant over the vacant land, this time identifying to be 3' x 50' ft. and 15' x 4' ft. in khasra No. 4985/3174 whereupon the construction is said to have taken place at the end of the petitioner. Even in the amended plaint so proposed, the

proper delineation and description of the suit land obtaining as a vacant land and the construction raised thereupon, was not given.

11. Said application being allowed in terms of an order dated 08.12.2021 by the court of learned Sub Judge, Kishtwar came to be objected to and assailed by the petitioner through the medium of the present petition filed under Article 227 of the Constitution of India.
12. In terms of an order dated 25.03.2022, this Court came to direct trial to continue but not to pass any final judgment/order. The respondent has appeared in this case.
13. As per last order on the suit file borne out from the scanned record of the trial court obtaining on the file of this case, the proceedings came to take place on 28.05.2022 when the counsel for the respondent as being plaintiff came to apprise the court that the respondent/plaintiff has suffered a heart attack and is hospitalized in Jammu.
14. This court is not fully apprised as to the current status of the civil suit as to at which stage the civil suit is, whether at the admission stage under the amended plaint with issues yet to be framed.
15. Therefore, this Court directs the Registrar Judicial, Jammu to requisition the scanned record of the civil suit bearing

updated court proceedings for the perusal of this Court for facilitating the disposal of this case.

16. In the event of non-appearance of the parties on the next date of hearing, the adjudication of this case shall take place on its own merits at the risk of the cost of the defaulting parties.
17. List again on 03.09.2025.

JAMMU
29.07.2025
Naresh/Secy.

(RAHUL BHARTI)
JUDGE

