

Sr. No. 04

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 65/2023

CM No. 2202/2023

Caveat No. 548/2023

Balbir Singh & ors.

.... Petitioner/Appellant(s)

Through:- Mr. G. S. Thakur, Advocate

V/s

Attar Singh & ors.

.....Respondent(s)

Through:- Mr. K. S. Chib, Advocate

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

Caveat No. 548/2023

With the appearance of Mr. K. S. Chib, learned counsel appearing on behalf of the respondents, who is on caveat, **caveat stands discharged.**

CM(M) No. 65/2023 & CM No. 2202/2023

The present petition has been preferred by the petitioners under Article-227 of the Constitution of India for quashing order dated 31.03.2023 passed by the Court of learned 1st Additional District Judge, Jammu.

Mr. G. S. Thakur, learned counsel appearing on behalf of the petitioners submits that order dated 31.03.2023 passed by the Court of learned 1st Additional District Judge, Jammu, by virtue of which the order passed by the 1st Civil Subordinate Judge, Jammu dated 27.11.2018 whereby the parties were directed to maintain status quo on spot, has been reversed and the order impugned whereby the petitioners have been restrained from interfering in the suit property has been passed by allowing the appeal. Learned counsel further

submits that the respondents filed a civil suit for permanent prohibitory injunction restraining the petitioners from interfering into the land bearing Khasra No. 538 measuring 02 Kanals 09 Marlas, Khasra No. 541 measuring 06 Kanal 04 Marals, Khasra No. 540 measuring 05 Kanal 19 Marals situate at Toph Sherkhania Jammu, alleged to be inherited from one Naseeb Singh after his death and further alleged that the petitioners, who collected the building material and were contemplating to raise the construction, a suit was filed for injunction before the Court below.

Specific case of the petitioners is that the petitioners, who were on caveat, pursuant to the filing of the suit, appeared before the Court below and filed the written statement stating therein that though the plaintiffs are the co-sharers of the aforesaid land, and aforesaid land was sold to the petitioners by way of various agreement to sells and Revenue Fard were also issued but the respondents, who became greedy, despite the fact that the sale consideration amount was received by the respondents and possession of the land was handed over.

Further case set up by the petitioners before the Court below is that the petitioner no.1 paid Rs 15 lacs to the respondent no. 1 and agreement to sell were executed, similarly the petitioner no.2 namely Naveen Jamwal and his wife paid Rs 3,50,000/- for 4 marlas of land on 06.07.2015, 4 lacs on 23.06.2015 and for 05 marlas of the land and 13 lacs for 06 marlas of land on 23.06.2015 and the agreement to sell were executed by the one Kulbir Singh who being the agent of the respondent no.1. The payment was received by the respondent no.1 through Bank transaction i.e. by way of cheque which was

encashed by Kalka Construction which is the proprietary of the respondent no.1 and similarly petitioner no. 4 Narayan Singh Manhas also paid Rs 5.50 lacs and the agreement dated 14.08.2015 was executed by the said Kulbir Singh on behalf of the respondent no.1. Similarly the other petitioners have also paid the sale consideration.

Learned counsel has vehemently argued that the respondents filed the suit in which the court of learned 1st Civil Subordinate Judge, Jammu by virtue of order dated 27.11.2018 directed the parties to maintain status quo on spot. The respondents being aggrieved of the aforesaid order filed an appeal before the court of 1st Additional District Judge, Jammu, and the learned 1st Additional District Judge, Jammu allowed the appeal and the petitioners have been temporarily restrained from interfering in the suit property and the learned Appellate Court without taking this fact into consideration that the petitioners are in possession of the suit land and the trial Judge has rightly directed the parties to maintain status quo so as to determine the question, whether the petitioners are in possession of the suit property or the land is still in possession of the erstwhile owners.

It has been argued by learned counsel appearing on behalf of the petitioners that the order impugned is otherwise bad in the eyes of law and admittedly the respondents are not in possession of the suit property and have concealed the material facts from the trial court, where they suppressed the factum of sale of small plots to the petitioners, where the construction of shops came up, but never objected by the respondents and rightly so as to the sale consideration was received by them. It has been further argued by the

learned counsel that the petitioners specifically pleaded in the written statement that the agreement to sell were executed and the sale consideration was received by their agent and this fact has not been denied by the respondents by way of filing the replica and thus, a triable issue was involved where the indulgence of the court is required to be determined the rights of the parties, as such, the rights were yet to be adjudicated but learned Appellate Court has recorded the findings by virtue of impugned order dated 31.03.2023, which reads as under:-

*“For the reasons assigned hereinabove, appeal is allowed, so far as respondents except 6 are concerned order impugned dated 27.11.2018 is set aside. I have examined the judgments referred to by the learned Counsel for the appellants. The ratio whereof is applicable to the factual scenario of this case. As appellants have not pressed the appeal against respondent no. 6, so far as respondent no.6 shall stand dismissed. Consequently, **application under Order 39 Rule 1 and 2 CPC shall stand allowed and non-applicants shall stand temporarily restrained from interfering in the suit property or creating any third party interest by any mode or changing the nature of the suit property till the disposal of the main suit.** The observations made herein are limited for the disposal of the appeal and shall not influence the merits of case before the learned Court below. Application for grant of stay filed alongwith the appeal is also disposed of in terms of the judgment and be consigned to records after its due compilation. Copy of this judgment be sent to learned Court below for information and compliance”*

The learned counsel vehemently argued that the Appellate Court has wrongly set aside the order of Trial Court and in a way decreed the suit by virtue of order impugned. Thus, as per the learned counsel, the order passed by the Appellate Court allowing change of status quo of property during pendency of litigation not justified.

Heard learned counsel appearing on behalf of the parties at length and perused the record.

Prima facie case for indulgence is made out.

Issue notice to the respondents.

Mr. K. S. Chib, learned counsel waives notice on behalf of the respondent. He seeks and is granted four weeks' time to file reply.

List on 31.05.2023.

Meanwhile, subject to objections and till next date of hearing before the Bench, operation of order impugned dated 31.03.2023 passed by learned 1st Additional District Judge, Jammu, shall remain stayed. Alteration/modification on laying motion.

JAMMU
17.04.2023
RAM MURTI



(Wasim Sadiq Nargal)
Judge