

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 149/2025

Roshan Lal

.... Petitioner(s)

Through:- Mr. Koshal Parihar, Advocate.

V/s

Sri Chand and Ors.

.....Respondent(s)

Through:- Mr. Sandeep Gupta, Advocate for R- 1
& 2.

CORAM : HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER

29.06.2026

1. The petitioner through the medium of this petition has assailed order dated 25.01.2025 passed by the Court of learned Civil Judge, Senior Division, Kishtwar whereby respondent Nos. 1 and 2 have been permitted to raise construction subject to furnishing of an undertaking despite the status quo order dated 04.01.2025 passed in the application for temporary injunction filed by the petitioner alongwith suit titled "*Roshan Lal v. Sri Chand and Ors*".

2. It is contended by the petitioner that order impugned dated 25.01.2025 has been passed at his back without affording due opportunity of hearing to him.

3. Heard learned counsel appearing for the parties and perused the record.

4. Learned counsel appearing for the parties are *ad idem* that order impugned has been passed without affording opportunity of hearing to the petitioner i.e. the plaintiff in the suit.

5. Learned counsel for the petitioner has submitted that no application for the relief granted to respondent Nos. 1 and 2 in terms of order impugned was filed by respondent No. 1 and 2, as such, in absence of any such application, the order impugned could not have been passed. The order impugned is extracted as under:-

“Permitted to construct in his own share, as per undertaking to be furnished, that the petitioner/def. shall not exceed his own share, and in case later the suit is decided against him, in that eventuality, he shall demolish/remove some at his own peril, of course he has to conform to other laws, regarding construction.”

6. Admittedly the order impugned has been passed without affording due opportunity of hearing to the petitioner and that too when no application, for seeking the relief as granted to respondent Nos. 1 and 2, was filed by them. More so, the order impugned has been passed without assigning reasons.

7. Accordingly, in view of the above, order impugned dated 25.01.2025 is set aside and respondent Nos. 1 and 2 are permitted to file application for allowing them to raise construction over the land falling within their share and in the event, any such application is filed, the learned Civil Judge, Senior Division, Kishtwar shall decide the same after affording due opportunity of hearing to the petitioner in accordance with law as expeditiously as possible. Needless to say that this Court has not examined the merits of the case.

(Rajnish Oswal)
Judge

JAMMU
29.06.2026.
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