

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

CM (M) No. 124/2023
CM No. 4148/2023

Vijay Singh and another

.....Appellant/Petitioner(s)

Through :- Mr. Amit Gupta, Advocate.

v/s

Madan Gopal Sharma and others

.....Respondent(s)

Through :-

CORAM: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER

In the instant petition, the petitioners are aggrieved of order dated 26.05.2023 passed by Learned Munsiff, Kathua whereby the application filed by the respondents for appointment of Commission for demarcation has been allowed.

Learned counsel for the petitioners further states that the impugned order needs to be quashed as the suit is at its initial stage and the issues have not been framed yet. Commissioner under O.XXVI R.9 CPC cannot be appointed before the framing of issues as held by Hon'ble High Court of J&K in Civil Revision No. 60/2006 titled "*Manzoor Ahmed & Ors. V. Assad Ullah & Ors*". It is pertinent to mention herein that occasion to seek elucidation on or to determine the matters appearing in O.XXVI R.9 CPC would arise in a suit after framing of the issues and recording of evidence which stage had not yet reached in the suit pending before the Court of Munsiff Kathua.

It is also stated that the petitioner in their written statement have objected to the maintainability of the suit on the ground that the suit property has not

been properly described and does not contain description to identify it thus making it non-identifiable. Moreover, the respondents have not annexed any tatima shajra with the plaint and now respondents wants to fill up the lacuna left in the suit by getting the Commission appointed through the Court which is not permissible.

It is also stated that the order directing the Commissioner to demarcate the suit land will amount to creation and collection of evidence which is against the mandate of settled law.

Issue notice in the main petition as well as in CM, returnable within a period of four weeks. Requisites for service within one week.

List on 02.09.2023.

Meanwhile, subject to objections and till next date of hearing, impugned order dated 26.05.2023 passed by the Learned Munsiff, Kathua shall stay.

Alteration/modification/vacation on motion.

(MOKSHA KHAJURIA KAZMI)
JUDGE

JAMMU
17.07.2023
Renu