

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

Reserved on : **01.11.2023**
Pronounced on: **30.12.2023**

CM(M) No. 74/2022

Parshotam Lal

.....Petitioner(s)

Through:- Mr. Rajinder Singh Jamwal, Advocate

v/s

Rajeev Kumar and others

.....Respondent(s)

Through:- Mr. Moti Sharma, Advocate

Coram:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
ORDER

1. Through the medium of the instant petition filed under Article 227 of the Constitution of India, petitioner has sought the relief of dismissing/quashing the suit titled ***Rajeev Kumar vs. Parshotam Lal and others*** pending before the Court of 1st Civil Subordinate, Judge (Spl. Mobile Magistrate), Jammu on the ground that he filed a civil suit before the Court of 2nd Additional Munsiff, Jammu in the year 2015 for permanent prohibitory injunction restraining the defendants/respondents herein from interfering in the possession of land falling under Khasra No.865, Khewat No. 3 and Khata No. 175 measuring 2 kanals situated at Village Ranjan and restraining the defendants/respondents herein from raising construction thereby closing the pathway leading to the aforesaid suit land left out at the

time of partition as a path, in which parties to the suit entered into compromise and compromise decree was passed on 21.01.2016; that the respondent No. 1-Rajeev Kumar filed a suit before Court of 1st Civil Subordinate, Judge (Spl. Mobile Magistrate), Jammu thereby challenging the consent decree, to which he was not a party. In the said suit vide order dated 16.0.2019 status-quo order was passed with respect to the land and path falling under the above stated khasra number. Thereafter respondent No. 1-Rajeev Kumar filed an application for clarification of the order dated 16.05.2019 by virtue of which the Court has made absolute the status quo order, however, the said application was dismissed by the learned Magistrate vide order dated 31.12.2019.

2. Learned counsel for the petitioner submits that the petitioner filed an appeal before the Additional Sessions Judge, Jammu against both the orders dated 16.05.2019 and 31.12.2019, wherein he filed his written arguments mentioning that the consent decree cannot be challenged by the 3rd Party as the consent decree is binding upon the parties in the suit and moreover, the consent decree was passed with respect to prohibitory injunction whereby no right has been decided. The said appeal was dismissed vide order dated 30.05.2022.
3. The respondent No. 1 has filed objections to the maintainability of the instant petition, by stating that the petitioner/plaintiff filed a suit for permanent prohibitory injunction against the respondent Nos. 2 and 3 before the 2nd Additional Munsiff, Jammu and claimed the pathway on the basis of rough sketch, to which respondents Nos. 2 and 3 filed written statement and admitted the suit of the petitioner. On

21.01.2016, 2nd Additional Munsiff Jammu passed the decree in favour of the petitioner and against the respondents 2 and 3, whereby both respondents were restrained from interfering in the peaceful possession of the petitioner/plaintiff over the land falling under Khasra no, 865 Khata no,175 Khewat no. 3 measuring 2 kanals situated at Village Ranjan, Tehsil Bhalwal, District, Jammu with a further direction not to make any interference in the pathway /road total length and breadth which are 150ft and 10 ft. respectively. It was further directed that the decree shall be binding upon the parties to the suit and shall have no effect on the right of any third person and, if any third party claims any right with respect to both the suit property and the pathway the matter shall be heard afresh. The further stand taken by the respondent No. 1 in the objections is that the petitioner came on the land of the respondent no.1 and started measuring the land as per the decree passed by the Court and respondent no.1 requested the petitioner not to cast clouds over his legal right with respect to possession. On 05.06.2018, the respondent no.1 challenged the judgment /decree dated 21.1.2016 passed by the Court of 2nd Additional Munsiff, Jammu as nullity, non-existent, illegal in the eyes of law as the same does not confer any right in favour of the petitioner with consequential relief of permanent prohibitory injunction. It is stated that the respondent no. 1 has also raised a house over the above said land and also have fruit trees and lawn on the left over land covered with protective wall. On 05.06.2018, trial Court passed the interim order and directed the parties to maintain status-quo with respect to land measuring 02 Kanal 1Marla falling under Khasra

no.865 min situated at village Ranjan Tehsil, Bhalwal, District Jammu. Thereafter the petitioner filed written statement and file was kept for argument on interim application. On 16.5.2019, the interim order was made absolute till the final disposal of the suit. Thereafter the petitioner moved an application for clarification of the orders dated 16.05.2019 and 06.06.2019, however, the said application was dismissed. Thereafter, the Appellate Court set aside the order dated 06.06.2019 and directed the Court below to decide the application of the petitioner afresh on merits. On 31.12.019 the Appellate Court held that there is no such revenue record available on file which shows that pathway existed in the revenue record. The further stand taken by respondent No. 1 is that he has not been arrayed as a party to the suit wherein the decree has been passed, as such, same is not binding upon him and that the petitioner till date has not challenged the order dated 16.05.2019.

4. Now it has to be seen that as to whether the petitioner has made out a case warranting exercising of the power under Article 227 of the Constitution of India for quashing the aforesaid suit titled ***Rajeev Kumar vs. Parshotam Lal and others*** pending before the trial Court.
5. Heard learned counsel for the parties and perused the material on record.
6. The power under Article 227 is one of judicial superintendence that cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no court could ever have reached them.

7. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in administration in larger public interest whereas Article 226 is meant for protection of individual grievances. It has been held by the Supreme Court in ***Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329***, that “*the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline*”. The object of superintendence under Article 227, both administrative and judicial, is to maintain the efficiency, smooth and orderly functioning of the entire machinery of the justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of the justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. The Supreme Court in ***Managing Director (MIG) Hindustan Aeronautics Ltd. BalanagarHydrabad and another v. Ajit Prasad Tarway Manager (Purchase & Store) Hindustan Aeronautics Ltd. BalanagarHydrabad, AIR 1973 SC 76***; and ***Kokkanda B. Poondacha & Ors. v. K. D. Ganapathi & another, AIR 2011 SC 1353***, after recapitulating what has been observed in ***Shalini Shyam Shetty’s*** case (supra) qua Article 227, held that

“learned Single Judge of the High Court totally ignored the principles and parameters laid down” by the Supreme Court “for exercise of power under Articles 226 and 227 of the Constitution qua an interlocutory order passed by the Subordinate Court and set aside the order of the trial Court without assigning any tangible reason.”

8. It is apt to mention here that the power under Article 227 is broader than that conferred on the High Court by Article 226. For example, through its power to issue certiorari under Article 226, High Court can annul the decision of a Tribunal while under Article 227 can issue further directions in the matter. But under Article 227, the High Court does not sit as a Court of appeal inasmuch as, it is also not permissible to a High Court on a petition filed under Article 227 to review or reweigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision. The power of superintendent conferred by Article 227 is supervisory and not appellate jurisdiction.

9. 13. As per settled proposition of law laid down by the Supreme Court in *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad* (supra) *Mohd. Yunus* (supra) and *Kokkanda B. Poondacha* (supra) that if any order is passed by subordinate Court under its vested discretionary jurisdiction, then the same could not be interfered with by the High Court either under revisional jurisdiction under Section 115 of CPC or under supervisory jurisdiction vested under Article 227 of the Constitution of India.

10. Heard learned counsel for the parties and perused the record.

11. Record of the file reveals that a suit was initially filed by the petitioner before the trial Court bearing File No. 259/Civil of 2015, in which he sought a decree of permanent prohibitory injunction restraining the respondents Nos. 2 and 3 (Sanjeev Kumar and Kamal Kumar). The parties to the suit i.e. petitioner and respondents 2 and 3 are stated to have entered into a compromise and trial Court vides order dated 21.01.2016, disposed of the said suit.
12. After passing of the aforesaid decree, a suit came to be filed by the respondent No. 1- Rajeev Kumar, wherein he sought a declaration that the judgment and decree dated 21.01.2016 passed by the Trial Court be declared as nullity, non-existent and illegal in the eyes of law. The suit filed by the respondent No. 1 was disposed of by the trial Court vide order dated 16.05.2019. Thereafter, the plaintiff/respondent No. 1 had also filed an application before the trial Court for clarification of order dated 16.05.2019, which was dismissed vide order dated 31.12.2019. The plea taken by the petitioner that the consent decree cannot be challenged by a third party, as the consent decree is binding upon the parties in the suit and that the consent decree was passed in respect to prohibitory injunction whereby no right has been decided. This plea of the petitioner lacks merit as the suit filed by respondent No. 1-Rajeev Kumar in the Court of 1st Civil Subordinate; Judge (Spl. Mobile Magistrate), Jammu against the consent decree is maintainable as he was also in possession of the suit land in question. He has also raised a house over the said land, however, he was not made a party to the suit in which the consent decree was passed. As both the parties are claiming right over the alleged pathway, therefore,

before deciding the rights of the parties in regard to the pathway, perusal of the revenue record is necessary and this can be done on the basis of evidence which may be produced by both the parties before the Trial Court in the suit filed by respondent No. 1.

16. Writ petition is disposed of in the above said terms.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
30.12.2023
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