

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

**CR No. 24/2023
CM No. 4804/2023**

Suram Singh Appellant(s)/Petitioner(s)

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

vs

Lal Chand and others Respondent(s)

Through: Mr. Gaurav Jamwal, Advocate
Mr. Vikas Pankaj Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**ORDER
27.12.2024**

ORAL

Heard learned counsel for the parties and perused the record.

1. In the instant revision petition, the petitioner herein has challenged order dated 31.07.2023 (for short 'the Impugned Order') passed by the Munsiff, Kathua (for short 'the Trial Court') in execution petition titled as ***"Suram Singh vs. Lal Chand and others"***.
2. **Facts** giving rise to the filing of the instant petition would reveal that the plaintiff/petitioner herein filed a suit for permanent prohibitory injunction before the court below in respect of land measuring 2 Kanal 18 Marlas covered under survey No. 109 min, situated at Village Rakh Hoshiyri, Tehsil Kathua claimed to have been purchased by the plaintiff/petitioner herein in terms of sale deed dated 31.03.1999 from one Munshi Ram, whereafter taking over the possession of the said land, a mutation bearing No. 584 as well is stated to have been attested in favour of the plaintiff/petitioner herein on 16.11.2005 by the

Tehsildar, Kathua and the fact of plaintiff/petitioner herein being in possession of the said land is also stated to have been consequently recorded in the Khasra Girdawari by the Patwari Halqa and the defendants/respondents herein were alleged to have, without any right and being strangers to the suit property, started interfering into the said land of the plaintiff/petitioner herein and refused to refrain therefrom despite request of the plaintiff/petitioner herein resulting into institution of the suit.

3. The defendants/respondents herein having entered appearance before the court below after being summoned, filed written statement to the suit, *inter alia*, stating therein that the suit of the plaintiff/petitioner herein is unwarranted and uncalled for and that instead of the plaintiff/petitioner herein, they are in actual physical possession of the land in question covered in survey No. 109 min.

4. On the basis of pleadings of the parties, the court below have had framed following two issues on 19.10.2010:-

- 1) *Whether the plaintiff is the owner and in possession of land measuring 02 Kanal 18 Marlas comprising of Khasra No. 109, situated at Rakh Hoshiary, Tehsil and District Kathua? OPP.*
- 2) *Whether the defendants without any right or authority are interfering over the suit land and have collected huge construction material on spot? OPP.*

5. The plaintiff/petitioner herein in order to prove the aforesaid issues, appeared as his own witness besides examining two more witnesses, namely, Parmanand and Raj Kumar (Patwari), whereas the defendants/respondents herein i.e. Bishan Dass and Lal Chand

appeared as their own witnesses besides examining one Jaswant Singh as their witness.

6. The court below after considering the pleadings of the parties, material on record, inasmuch as the evidence led thereof before it by the parties, decided issue No. 1 (Supra) in favour of the plaintiff/petitioner herein and against the defendants/respondents herein, holding that the plaintiff /petitioner herein is the owner and in possession of land measuring 02 Kanal 18 Marlas covered under Khasra No. 109, situated at Rakh Hoshiary, Tehsil and District Kathua and consequently while deciding issue No. 2 (Supra), held that the defendants/respondents herein have no right or authority to interfere over the suit property and conclusively determined the suit in terms of judgment and decree dated 16.04.2013, thereby allowing the same and permanently restrained the defendants/respondents herein from interfering in any manner in the ownership and possession of the plaintiff over the land measuring 02 Kanal 18 Marlas covered under survey No. 109, situated at Rakh Hoshiary, Tehsil and District Kathua.
7. The plaintiff/petitioner herein initially had filed an execution petition before the court below for execution of the aforesaid judgment and decree, which execution petition, however, came to be dismissed on 26.04.2018, aggrieved whereof, the plaintiff/petitioner herein filed a revision petition before this Court, which came to be decided on 05.09.2019, while observing that the Executing Court could not have dismissed the execution petition and ought to have sought correction of the survey number in the decree being survey No. 109 and

consequently directed the court below while confirming that the plaintiff/petitioner herein is the registered owner of the land in question possessing a registered sale deed in his favour as the main evidence, the court below could summon the Patwari for demarcation of land, as that would help in putting an end to the avoidable litigation.

8. The court below after taking up the execution petition for reconsideration pursuant to the order dated 05.09.2019 passed by this Court, ordered demarcation of the land in question by the Patwari concerned and upon receipt of a report from the Patwari dated 10.08.2021, dismissed the execution petition by holding that the plaintiff/petitioner is not in possession of the land in question as per the report of the Patwari, as the Patwari had reported that on spot the total land available is 02 Kanal 18 Marlas and is in the ownership of Suram Singh and land measuring 1 Kanal 2 Marlas is with the Irrigation Department whose inteqal is 517 and remaining land 1 Kanal 16 Marlas is in possession of Lal Chand S/o Nanak Chand R/o Rakh Hoshiyri.
9. Record would further reveal that the court below has not considered the matter in its right perspective and has overlooked the purport and spirit of judgment and decree obtained by the plaintiff/petitioner herein inasmuch as the observation of the Court made in order dated 05.09.2019, wherein the ownership and possession of the plaintiff/petitioner herein has been endorsed qua the land in question. The matter thus requires reconsideration by the court below.

10. Accordingly, the instant petition is allowed and the impugned order is set aside with direction to the court below to revisit and reconsider the matter and to pass appropriate order in accordance with law.
11. **Disposed of along with the connected application.**

(JAVED IQBAL WANI)
JUDGE

Jammu
27.12.2024
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

