

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

TrP(C) No.01/2024

MOHAMMAD FAROOQ DAR & ANR. ... PETITIONER(S)

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

MST. RAFEEQA JAN & ORS. ...RESPONDENT(S)

Through: - None.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

**ORDER
21.12.2024**

1) The petitioners, through the present petition, have invoked the jurisdiction of this Court under Section 24 of the Code of Civil Procedure, seeking transfer of the suit titled **Mohammad Farooq & anr. v. Rafeeqa Jan and Ors.**, from the Court of learned Sub-Judge (Special Mobile Magistrate) Budgam, to any other court of competent jurisdiction at District Srinagar.

2) According to the petitioners, the parties to the aforesaid suit are the descendants of late Wali Muhammad Dar, who owned estates at Bangroo Mohalla Safakadal, Noor Bagh and at village Niglu, Tehsil, Beerwa District, Budgam. It has been submitted that the respondents herein have filed a suit for partition in respect of the aforesaid

properties before the Court of learned 2nd Additional Munsiff, Srinagar, but the plaint in the said suit came to be rejected in terms of Order 7 Rule 11 CPC, whereafter the respondents have filed an appeal against the said order, which is pending disposal, before the Court of learned 2nd Additional District Judge, Srinagar

3) It has been submitted that the petitioners herein have filed a suit against the respondents in respect of the property situated in District Budgam before the Court of learned Sub Judge (Special Mobile Magistrate) Budgam, seeking a declaration that they are owners in possession of the said property with an injunction restraining the defendants/respondents herein from causing any interference in peaceful possession of the petitioners herein over the suit property. It has been contended that in view of the fact that the parties to both the suits reside at Srinagar and the nature of controversy involved in the two suits is similar, the same are required to be tried by one and the same court in District Srinagar.

4) The respondents despite service have not chosen to appear in this case and no reply has been filed to the transfer petition.

5) I have heard learned counsel for the petitioner and perused record of the case.

6) As is clear from the title of the petition as also from the title mentioned in the suits, one filed by the petitioners against the respondents and the other filed by the respondents against the petitioners, the parties reside at Srinagar. In the suit filed by the respondents against the petitioners, the subject matter is the properties situated both in District Srinagar as well as in District Budgam, whereas in the suit filed by the petitioners against the respondents, the subject matter is the property situated in District Budgam. The controversy involved in the two suits, prima facie, appear to give rise to similar issues. Therefore, it would not only be convenient for the parties but it would also be in the interests of just decision of the two suits that both the suits are tried by one court.

7) In view of the above, the instant petition is allowed and the suit titled **Mohammad Farooq & anr. v. Rafeeqa Jan and Ors.**, pending before the Court of learned Sub-Judge (Special Mobile Magistrate) Budgam is withdrawn from the docket of the said court and the same is transferred to the Court of Sub Judge (Judge Small Causes), Srinagar, for its disposal under law. The Court of learned Sub Judge (Special Mobile Magistrate) Budgam, shall transmit the

file/record of the above titled suit to the transferee court forthwith. The transferee court, upon receipt of the file/record of the suit titled from the Court of Sub Judge (Special Mobile Magistrate) Budgam, shall issue notice to the parties for appearance before it. It is further directed that in the event the appeal against the order of rejection of plaint passed by the learned 2nd Additional Munsiff, Srinagar, is accepted by learned 2nd Additional District Judge, Srinagar, the said Court shall also remand the case to the Court of Sub Judge (Judge Small Causes), Srinagar, so that both the suits are consolidated and tried together by the said court.

8) The petition shall stand disposal of.

9) Copies of this order be sent to the Courts of learned Sub-Judge (Special Mobile Magistrate) Budgam, 2nd Additional Munsiff, Srinagar, 2nd Additional District Judge, Srinagar, and Sub-Judge (Judge Small Causes), Srinagar for information and compliance.

(Sanjay Dhar)
Judge

Srinagar
21.12.2024
“Bhat Altaf-Secy”

Whether the order is reportable: **Yes/No**