

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

CM (M) No. 21/2023

Sohan Lal

.....Petitioner(s)

Through: Mr. H L Koul, Advocate

Vs

Bua Ditta & Ors

..... Respondent(s)

Through: Mr. S M Chowdhary, Advocate

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
22.05.2025

1. Reply in the matter has already been filed.
2. Learned counsel for the parties are ready to argue the matter finally.
3. **Admit.**
4. Heard learned counsel for both the sides.
5. Impugned in the instant petition filed under Articles 226 and 227 of the Constitution of India is the order dated 23.01.2023 passed by the Court of learned 3rd Civil Subordinate Judge (Special Excise Mobile Magistrate), Jammu (hereinafter referred to as the '*the trial Court*' for short) in case titled "*Bua Ditta vs Sohan Lal & Ors*" bearing File No. 272/2015, while disposing of a miscellaneous application filed by the present petitioner-defendant No.1 with the prayer for permission to complete the construction/renovation work of his house constructed over the suit property.
6. Brief facts of the case relevant for disposal of the instant petition, are that a civil litigation between the parties is pending disposal before the learned trial Court in respect of the land measuring 34 Kanals and 12 Marlas

comprised under Khasra No. 4 min (05 Kanals 08 Marlas), Khasra No. 8 min (06 Kanals 15 Marlas), Khasra No. 13 (01 Kanal 04 Marlas) and Khasra No. 36 min (21 Kanals) situated at Village Chatha Barjala, Jammu. That a decree came to be passed by the learned trial Court long earlier and on 03.09.1993 in a civil suit bearing File No. 204/Civil, Instituted on 30.08.1993, in favour of the petitioner (plaintiff therein) and against one Indru S/o Bhagu R/o Chatha Barjala, Jammu in respect of the suit land. The said decree came to be assailed by the Bua Ditta-legal heir of Indru prior to the filing of the pending civil litigation before the learned trial Court. The earlier challenge to the said decree dated 03.09.1993 came to be withdrawn by Bua Ditta under some legal guidance to exhaust the alternative remedy available. Finally, the said decree dated 03.09.1993 came to be assailed by Bua Ditta through the medium of a civil suit for declaring the same as null and void which is pending disposal before the learned trial Court. The operation of the said decree stands kept in abeyance by the learned trial Court with further direction for maintenance of the status quo by the parties.

7. The present petitioner, defendant No.1 in the pending suit, filed an application before the learned trial Court seeking permission to complete the construction/renovation of the house constructed on the suit land which was dismissed by the learned trial Court through the order impugned.
8. Learned counsel for the petitioner-defendant No.1 during his arguments very vehemently submitted that the family of the petitioner has been badly suffering for want of shelter as the house constructed on the suit land by the petitioner is without any rooftop. That the order impugned has the implication of deprivation of the fundamental right to life of the petitioner

and his family, guaranteed under Article 21 of the Constitution. He submitted that the suit land stands decreed in favour of the petitioner-defendant No.1, as such, the learned trial Court was obliged to provide permission to the petitioner-defendant No.1 to complete the construction/renovation of the under construction house, more particularly, the laying of the rooftop. He submitted that the petitioner-defendant No.1 has got a strong prima facie case in his favour and the balance of convenience also tilts towards him who is also likely to suffer an irreparable loss in case the required permission is not granted.

9. Per Contra, learned counsel for the respondent-plaintiff submitted that the impugned order does not suffer from any illegality or incorrectness for having been passed on the sound principles of the law and justice. He submitted that the suit land is basically hit by the provisions of Agrarian Reforms Act 1976 (hereinafter referred to as 'the Act' for short) as the same was acquired by the predecessor of the respondent/plaintiff by virtue of the operation of Sections 4 and 8 of the Act. That the petitioner-defendant No.1 by practicing fraud and deception got a decree obtained from the learned trial Court way back on 03.09.1993 when same could not have been so transferred under the garb of Court decree in pursuance of the provisions of Section 31 of the Act in force at that time. That the said decree was thrown to challenge subsequently by the respondent-plaintiff which earlier suit was however withdrawn under some legal guidance whereafter an another suit was filed before the learned trial Court seeking the declaration of the said decree dated 03.09.1993 as null and void which is pending disposal. That the learned trial Court has through an interim order kept the operation of the decree in abeyance and directed the parties

to maintain status quo on spot. That the petitioner-defendant No.1 started construction of a house on the suit land during the subsistence of the interim status quo order only to make an illegal attempt for rendering the suit of the respondent-plaintiff infructuous. He submitted that the learned trial Court has passed a very detailed and reasoned order rejecting the application of the petitioner-defendant No.1 seeking permission to complete the construction/ renovation of the house by laying the rooftop.

10. I have perused the record of the petition and copies of the documents enclosed with the same. I have also accorded consideration to the rival arguments advanced on both the sides.
11. In the light of the aforesaid perusal and consideration, this Court is of the considered opinion that the order impugned does not suffer from any illegality. The suit land is reported to be hit by the Agrarian Reforms Act. In the civil suit pending before the parties through which the challenge has been thrown to the impugned decree dated 03.09.1993, the learned trial Court has stayed the operation of the same and directed the maintenance of the status quo. The petitioner-defendant No.1 is reported to have started construction of the house during the pendency of the suit and even after the passing of the order of status quo. This Court cannot be approached for legalizing the alleged illegal act under the pretext of constitutional guarantees. The learned trial Court has mentioned in the impugned order that as per the report dated 12.10.2018 of the Tehsildar concerned, the petitioner had not demolished any old house on the suit land who for the purpose of raising a new house has laid the plinth on the suit land. Thus, there appears to be no reason to disagree with the opinion of the learned trial Court that the petitioner-defendant No.1 filed application before the

trial Court seeking permission to complete the renovation by laying the rooftop, subject to filing of an undertaking only to create a new evidence and to frustrate the suit of the respondent-plaintiff. There appears to be no merit in the instant petition, which is, accordingly, dismissed.

(Mohd. Yousuf Wani)
Judge

Jammu
22.05.2025
Vijay

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

