

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

02

WP(C) No. 622/2025

1. Chanchal Singh aged 75 yrs Appellant(s)/Petitioner(s)
S/O Late Bajjar,
2. Ranjeet Singh aged 55 yrs.
3. Sham Singh aged 58 yrs.
4. Angrez Singh aged 45 yrs
5. Yashpal Singh aged 43 yrs
All sons of Chanchal Singh,
All residents of Barnai,
Tehsil Jammu North District,
Jammu

Through: Mr. S.H Ashrafi, Advocate.

vs

1. Learned Sub Judge Special Railway Respondent(s)
Magistrate Jammu
2. Bindu Singh Jamwal,
W/O late Sh. Rudraksh Dev Jamwal.
3. Ojeswani Jamwal
D/O Late Sh. Rudraksh Dev Jamwal
Both residents of Suramgarh,
Barnai, Tehsil Jammu North
District Jammu

Through: Mr. Koushal Parihar, Advocate.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
17.03.2025

01. After arguing for a while, when confronted with the maintainability of the instant petition, Mr. Ashrafi, seeks withdrawal of the instant writ petition with liberty to avail appropriate remedy under law before the competent court, where he has already preferred an application under Section 10 of the Civil Procedure Code (CPC), on behalf of the petitioners, seeking stay of the proceedings in the suit preferred by the private respondents titled "*Bindu Singh Jamwal and Anr*" vs. *Chanchal Singh & Ors*" on the ground that the instant matter before the Court has already been directly and substantially an issue in a previously instituted suit seeking permanent prohibitory injunction against the plaintiff/non-applicant in the

said suit before the Court of learned 2nd Subordinate Civil Judge Passenger Tax Jammu instituted on 30.11.2023 bearing Civil Suit No. 11442/2023 titled “*Chanchal Singh & Anr. Vs. Bindu Singh Jamwal and Anr.*” with respect to the land bearing khasra No. 78 measuring 02 kanals & 17 marlas being the subject matter situate at Village Barnai Tehsil Jammu North, District Jammu whereas according to the petitioner, the aforesaid suit bearing no. 839 of 2024 has been subsequently filed and instituted on 03.10.2024 on the same subject of the same land in question between the parties. The petitioners have appeared before the competent Court of learned Sub-Judge Special Railway Magistrate Jammu, as caveators and after hearing both the parties at length, the learned trial Court has passed order dated 12.11.2024 by virtue of which the defendants (petitioners herein), have been restrained from any kind of interference in the suit property and have been directed not to create any third party interest with respect to the suit property till disposal of the main suit and the application preferred by the respondents herein, plaintiff therein.

02. While parting with the aforesaid order, it has been observed by the learned trial Court that the observations made in the aforesaid order were just for disposal of the said application and shall not be construed as an expression of opinion on the merits or demerits of the case of the main suit. The petitioners instead of availing the remedy as available under law against the aforesaid order has chosen to file the aforesaid application under Section 10 of CPC which is yet to be adjudicated by the competent Court in which the other side has yet to file reply.

03. Mr. Koushal Parihar, learned counsel appearing on behalf of the private respondents no. 2 and 3 submits that he has yet to file reply in the aforesaid application and the petitioner without waiting for the outcome of the said application and without seeking appropriate remedy under law against the order

dated 12.11.2024 has rushed to this Court by filing the instant petition under 226 of the Constitution of India which is not maintainable.

04. Confronted with the aforesaid circumstances, learned counsel for the petitioner seeks withdrawal of the instant petition with a liberty to pursue the appropriate remedy already assailed by filing an application under Section 10 of Civil Procedure Code before the competent court. The writ petition, as such, is **dismissed as withdrawn**. However, learned trial Court is expected to proceed further in the matter and decide the said application expeditiously after providing an opportunity of being heard to the respondents/plaintiffs therein.

Jammu
17.03.2025
Abinash



(Wasim Sadiq Nargal)
Judge