

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

CM(M) No. 143/2025
CM No. 3240/2025

1. **Som Dutt S/o Maggar Ram, R/o Ward No. 17,** Petitioner(s)
Tehsil & District Kathua, Age 79 years;
2. **Gopal Dass, S/o Som Dutt, R/o Ward No. 17,**
Tehsil & District Kathua, Age 50 years.

Through: Mr. V.B. Bhushan, Advocate.

Vs

Madan Lal S/o Hans Raj, R/o Ward No. 17, ... Respondent(s)
Tehsil & District Kathua.

Through:

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

ORDER(ORAL)
30.05.2025

1. Through the medium of the instant petition filed under Article 227 of the Constitution of India, the petitioners seek the correction/modification in the order dated 23.04.2025 passed by the Court of learned Sub-Judge (Special Mobile Magistrate), Kathua (*hereinafter referred to as the, "trial Court"*) to the extent that the impugned order has an effect of disposal of the application filed by the petitioners instead of dismissal of the same.

2. The case of the petitioners, as raised through the instant petition is that a suit for injunction simplicitor was filed by the respondent/plaintiff against them in respect of a patch of land falling under Khasra No. 514 min situated at Village Chak Dewan Kripa Ram, Tehsil and District Kathua, in which he filed his written statement, whereafter the learned trial Court framed the issues and directed him to lead evidence in the first instance. That he by way of examination-in-chief filed his affidavit and besides, some of his witnessess filed

their affidavits, in which the khasra number came to be inadvertently and out of a clerical mistake mentioned as 562 instead of 514 min, with further inadvertence in respect of the location of the suit land as Taraf Tajwal, Tehsil and District Kathua instead of Chak Dewan Kripa Ram, Tehsil and District Kathua. That he subsequently filed an application before the learned trial Court, seeking permission to place on record fresh affidavits of the witnesses including himself in place of the earlier affidavits. That the learned trial Court disposed of his application through the impugned order, whereby his prayer for placing on record the fresh affidavits of the witnesses in place of the earlier affidavits came to be rejected with the liberty to file additional or fresh affidavits in addition to the earlier affidavits. That the learned trial Court, however, through the concluding sentence of the impugned order dismissed his application.

3. It is the case of the petitioners/defendants that the learned trial Court in view of the observations made through the impugned order and the relief granted had to dispose of the application accordingly and not to dismiss the same. The petitioners/defendants have, accordingly, invoked the powers of this Court vested in it under Article 227 of the Constitution of India for passing the necessary orders to meet the ends of justice.

4. Perused the impugned order and heard learned counsel for the petitioners/defendants.

5. In view of the relief sought through the medium of the instant petition, the Court is of the opinion that the matter can be disposed of even at this threshold stage by making the necessary correction/modification in the impugned order.

6. The instant petition is, accordingly, ***disposed of*** with the opinion/observation of the Court that the impugned order dated 23.04.2025 has the effect of disposal of the application of the petitioners/defendants, on which the same was passed and not of the dismissal of the same.

7. The petitioners/defendants can approach the learned trial Court and file their fresh affidavits, as also of their witnesses in accordance with the permission having been granted by the learned trial Court itself.

(Mohd. Yousuf Wani)
Judge

Jammu
30.05.2025
Ram Krishan

