

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

Case:- WP(C) No. 1691/2019

Suram Singh, age 67 years, S/o Late Appellant(s)/Petitioner(s)
Sh. Ram Singh, R/o Village Pakhian
Misriwala, Tehsil Jammu (North),
District Jammu.

Through: Mr. R. K. S. Thakur, Advocate.

Vs

1. Raghbir Singh, S/o Late Sh.
Lachman Singh, R/o Village
Pakhian Misriwala, Tehsil Jammu
(North), District Jammu.

....Contesting respondent(s)

2. Sh. Ratan Singh.

3. Sh. Sakinder Singh.

4. Sh. Sunit Singh.

5. Sh. Kamal Singh

All sons of Late Sh. Lachman Singh,
all residents of village Pakihan
Misriwala, Tehsil Jammu (North),
District Jammu.

..... Proforma respondent(s)

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

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(30.05.2025)

1. The petitioner herein, as being plaintiff, filed a civil suit for declaration with consequential relief for injunction against the respondents herein, as being the defendants, on 03.04.2019 before the Court of learned City Judge, Jammu.

2. In terms of an order dated 03.04.2019, the trial court of learned City Judge, Jammu came to direct issuance of notice in the civil suit.

3. In response to the petitioner's application filed under Order 39 rule 1 & 2 Code of Civil Procedure Svt. 1977 seeking temporary injunction, the trial court of learned City Judge, Jammu came to direct maintenance of *status quo* by the parties to the suit with regard to the suit property that being land comprised in khasra no. 567 min (old) and 118 (new) measuring 4 kanals 15 marlas in village Mishriwalla, tehsil Jammu (North) district Jammu alleged to be jointly owned and possessed by the parties to the suit.

4. The respondents, as being defendants, caused their appearance in the civil suit by filing a written statement on 15.04.2019, and, simultaneously, challenged the interim order dated 03.04.2019 of the learned City Judge, Jammu in an appeal on file no. 44/Appeal before the court of learned 2nd Additional District Judge, Jammu.

5. This appeal of the respondents/defendants came to be decided and disposed of by the appellate court of learned 2nd Additional District Judge, Jammu in terms of an order dated 29.04.2019 holding the directions as given in the order dated 03.04.2019 to be perverse and illegal and, accordingly, was set aside allowing the appellant-Raghubir Singh, being one of the five defendants and sole appellant, to continue with the house construction activity at the site subject to filing an undertaking that in case of his failure in the suit, the appellant to compensate the respondent/plaintiff, to the extent of his share in the suit property

as per the market value of the land which may come in share of the respondent in the suit land.

6. Feeling aggrieved of the adjudication of the said appeal of the appellant-Raghubur Singh by the court of learned 2nd Additional District Judge, Jammu, the petitioner, as plaintiff, has approached this Court with the present petition under section 104 of the Constitution of Jammu and Kashmir as it was then in force for exercise of supervisory jurisdiction to examine the legality and validity of the order dated 29.04.2019 passed by the court of learned 2nd Additional District Judge, Jammu.

7. A perusal of the impugned order and the manner in which the appeal came to be disposed of by the appellate court of learned 2nd Additional District Judge, Jammu would show that it literally rendered the application of the petitioner/plaintiff for temporary injunction infructuous whereas the same was yet to be adjudicated upon by the trial court of the City Judge, Jammu and in that the domain of the trial court of learned City Judge, Jammu was taken over by the appellate court of 2nd Additional District Judge, Jammu by recourse to appellate jurisdiction under order 43 of the Code of Civil Procedure, Svt. 1977.

8. The manner in which the appellate court of 2nd Additional District Judge, Jammu came to intervene in the matter while the trial court of City Judge, Jammu was still to apply and express its

application of mind to the adjudication of the temporary injunction application of the petitioner was uncalled for to say the least.

9. An appeal under Order 43 rule 1(r) of the Code of Civil Procedure, 1908 against an adjudication made under Order 39 rule 1, 2, 2-A, 4 or 10 of the Code of Civil Procedure, 1908 is reckoned to be an appeal on principle in the sense that an order passed by the trial court in exercise of jurisdiction under Order 39 rule 1, 2, 2-A of the Code of Civil Procedure, 1908 is said to be a discretion based order passed on the principles of law settled in the matter of grant or non-grant of temporary injunction in a civil suit and, therefore, an appeal under Order 43 rule 1(r) of the Code of Civil Procedure, 1908 against such an order is not meant to be in the mode and mould of a regular civil 1st appeal under section 96 read with Order 41 of the Code of Civil Procedure, 1908 whereby an appellate court can examine a judgment passed in a civil suit inside out in terms of facts as well as law attending the given case.

10. In an appeal under Order 43 rule 1(r) of the Code of Civil Procedure, 1908, an appellate court is supposed to examine as to whether a trial court has granted or declined a temporary injunction in a given suit in favour or against the plaintiff by examining *prima facie* case, balance of convenience and irreparable injury aspect of the case or not.

11. If a given order is passed based upon the said three aspects of grant of temporary injunction, then the discretion exercised by a

civil court seized of the suit is not meant to be substituted by the discretion of the appellate court from point of being of superior position.

12. An appellate court under Order 43 rule (r) of the Code of Civil Procedure, 1908 can surely come up with an exhibit of better discretion in exercise of jurisdiction under Order 43 rule 1(r) of the Code of Civil Procedure, 1908 but not by a hierarchical discretion of being an appellate court.

13. In the present case, it is not known to this Court as on date as to how the respondent No. 1-Raghubir Singh has been able to make use of impugned order dated 29.04.2019 in his favour in the context of the status of the suit property but be that as it may, the outcome of temporary injunction application is going to govern the future course of things with respect to the suit property.

14. Thus, the order dated 29.04.2019 passed by the court of learned 2nd Additional District Judge, Jammu on file No. 44/Appeal titled **“Raghubir Singh Vs. Suram Singh and others”** is set aside.

15. The trial court of learned City Judge, Jammu is directed to undertake the adjudication of the temporary injunction application filed in the suit by the petitioner as plaintiff and dispose of the said application within a period of next two months with or without assistance from learned counsel for the respective parties in the civil suit.

16. Nothing observed by the court of 2nd Additional District Judge, Jammu in its order dated 29.04.2019 be reckoned to be of any persuasive effect upon its application of mind by the trial court of learned City Judge, Jammu.

17. A copy of this order be sent to learned City Judge, Jammu for notice and for responding indulgence in the matter.

18. Disposed of.

(RAHUL BHARTI)
JUDGE

JAMMU
30.05.2025
Shivalee

