

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

Case:- CM(M) No.102/2022

Mehar Singh & Anr.

..... Petitioner(s)

Through: Mr. Amit Kumar Sharma, Advocate

Vs

S. Jaspal Singh & Ors.

.....Respondent(s)

Through: Mr. Jasmeet Singh, Advocate

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

ORDER
(24.11.2025)

1. The institution of present petition took place on **26.08.2022** whereby supervisory jurisdiction of this Court under article 227 of the Constitution of India came to be solicited by two petitioners with respect to an order passed by the civil court in a civil suit preferred by them, purportedly leaving them aggrieved to come up with the present petition.
2. The two petitioners, namely, Mehar Singh & Darbar Singh are the plaintiffs in a civil suit filed by them on **03.01.2017** before the Court of Munsiff, Akhnoor against three defendants, namely, Babu Singh, Jaswant Singh & Hazara Singh who are three respondents in the present petition.
3. Said civil suit on file **No.01/Main/2017** is for a decree of permanent prohibitory injunction restraining three

respondents from interfering into the peaceful possession of the petitioners with respect to the suit land falling under khasra **No.1544** measuring **3 kanals and 8 ½ marlas** and also land measuring **4 kanals 18 marlas** in khasra **No.1551** situated in village Nardi, tehsil Akhnoor and district Jammu, and also for restraining the respondents from raising any sort of construction on the suit land illegally or forcibly.

4. Along with their suit, the petitioners had filed an application for grant of temporary injunction wherein, by virtue of an order dated **03.01.2017**, the court of learned Munsiff, Akhnoor came to direct the petitioners as well as respondents to maintain status quo on spot with regard to the suit land/property.
5. The court of learned Munsiff, Akhnoor, by virtue of an order dated **10.01.2017**, in response to an application filed by the petitioners came to direct SHO Police Station, Akhnoor to implement the status quo direction as given in order dated **03.01.2017** by visiting the spot personally and stopping the construction work of house and fencing of suit land and submit a compliance report.
6. The respondents came to cause their appearance in the civil suit on **20.01.2017**.

7. On **01.02.2017**, date fixed in the said civil suit, the petitioners came forward with an application seeking appointment of Tehsildar, Maira Mandrian as a Commissioner to identify khasra **Nos.1544** and **1551**, by reference to which the suit land of the petitioners is said to be comprised therein.
8. On the other hand, the respondents came forward with an application for permission to complete the ongoing construction on the land located in khasra **No.1542 (6.13 kanals)** with an averment that subject to the final outcome of the civil suit, if permitted, the construction would remain subject to its fate.
9. By virtue of two separate orders of the same date i.e., **01.02.2017**, the court of Munsiff, Akhnoor first came to make absolute the interim direction of the status quo as given in order dated **03.01.2017** by directing both sides to maintain status quo on spot with respect to the suit land till final disposal of the suit.
10. Vide another order of same date i.e, **01.02.2017**, the court of Munsiff, Akhnoor came to appoint Naib Tehsildar, Maira Mandrian as Commissioner with a direction to go on spot and identify the land measuring **3 kanals 8 ½ marlas** in khasra **No.1544** and land measuring **4 kanals 18 marlas** in **khasra No.1551**

situated in village Nardi, tehsil Akhnoor and district Jammu and submit a detailed report.

11. Naib Tehsildar, Maira Mandrian came forward with a purported Commissioner's report dated **16.03.2017** in which the commission was said to have been carried out only with respect to khasra **No.1551** and not with respect to khasra **No.1554** on account of reasoning that there are standing crops in view of which the identification of said khasra number to the extent of the petitioners' suit land was not feasible.
12. In response to said suit, three respondents herein submitted their written statement on **01.02.2017**, denying the assertions and averments made in the plaint by the petitioners and stating that it is the respondent No.1-Babu Singh who is raising construction upon his own land bearing Khasra **No.1542** measuring **6.13 kanals** situated at Nardi, tehsil Akhnoor and district Jammu and that the respondents have no concern with the land bearing khasra **Nos.1544 & 1551**. It further came to be submitted by the respondents in their written statement that it is the petitioners who, under the garb of the suit, intending to cause loss to the respondent No.1-Babu Singh.

13. After submission of the said Commissioner's report, the suit was put to evidence wherein both sides came forward leading their respective evidence.
14. On the basis of the plaint and the written statement, the trial court of Munsiff, Akhnoor by virtue of an order dated **15.07.2017** came to frame following issues:-
- (i) Whether plaintiffs are in exclusive possession of suit land? OPP**
 - (ii) Whether defendants have no right, title or interest upon the suit land? OPP**
 - (iii) Whether defendants are forcibly trying to interfere into the suit land? OPP**
 - (iv) Relief.**
15. Before the civil suit came to be filed by the petitioners, the petitioner No.1-Mehar Singh had first approached Tehsildar Maira Mandrian with an application for demarcation of land related to khasra **Nos.1550 & 1551** alleging therein that the respondents have encroached upon his land on boundary falling between khasra **Nos.1550 & 1551** since 1994.
16. In response to the said application of the petitioner No.1-Mehar Singh, the Tehsildar Maira Mandrian by his report **No.TMM/OQ/2016-17/80** dated **25.06.2016** had reported that the status of the land mentioned in the reports made by the Sub-ordinate Revenue Officials is obtaining since long between

parties and that demarcation requires to be confirmed as per present status of record, spot position and on the basis of detailed report submitted by the field staff.

17. By reference to the Commissioner's report, the petitioners came to aver that instead of carrying out the commission, Naib Tehsildar, Maira Mandrian has come forward with so called demarcation report of demarcation done on **25.06.2016**.
18. On behalf of the petitioners, objections dated **19.10.2019** came to be filed to the report submitted by the Naib Tehsildar, Maira Mandrian as a Commissioner, stating that the Commissioner's report be dismissed and treated as null and void.
19. In terms of order dated **19.10.2019**, the court of learned Munsiff, Akhnoor came to refer to the objections filed to the Commissioner's report and also the reluctance on the part of the counsel for the petitioners to cross-examine the witnesses produced by the respondents.
20. The court of learned Munsiff, Akhnoor came to observe that the acceptance of the Commissioner's report, in view of the objections registered by and from the end of the petitioners would be considered at the time of final hearing of the arguments in the suit and, thus,

directed both sides to file written arguments in the case in view of the closure of evidence having taken place.

21. It is in the backdrop of the aforesaid state of proceedings in the civil suit that the petitioners came forward with an application purportedly under section 151 under J&K Code of Civil Procedure, Svt., 1977 seeking a direction unto the Naib Tehsildar, Maira Mandrian as a Commissioner to come forward with a complete Commissioner's Report after completing the commissioned task.
22. It is in response to this application of the petitioners that the Court of learned Munsiff, Akhnoor came forward with impugned order dated **18.07.2022** by dismissing the application of the petitioners with a concern registered that file is pending for final arguments for the last **2 ½ years** and it has occurred to the petitioners to come forward with the application seeking a direction unto the Commissioner to come forward with the complete Commissioner's report is nothing but an intent to defer and delay the final adjudication.
23. The learned Munisff, Akhnoor came forward with the observation that apart from the Commissioner's Report already on record, there is other evidence on record of

the suit file from both sides on the basis of which the adjudication of the civil suit can take place.

24. When this Court examines the facts and circumstances of the case, as borne out from the scanned record of the civil suit solicited from the court below, this Court is convinced that right from the very beginning, the manner of passing of interim orders by the civil court is far from being judicial in nature and purpose.
25. The manner in which the petitioners came forward as plaintiffs in seeking enforcement of interim direction through the Police clearly meant that the petitioners were suffering from no doubt about the location of their suit land and that was the reason for them to insist for enforcement of the interim direction through the Police, which came to be granted, meaning thereby even the court was convinced that identification of khasra numbers was not in issue.
26. Given the fact that the evidence has been led by both sides to their satisfaction and the suit is now awaiting its final adjudication, the stage at which the petitioners came forward insisting for revisit by the Naib Tehsildar as a Commissioner, for which the commission was originally ordered, would now be putting cart before the horse.

27. Therefore, this Court is not inclined to grant indulgence in the matter at the instance of the petitioners.

28. The petition is, thus, dismissed with an observation that the dismissal of this petition would not prejudice the rights of the petitioners in case of fate of their civil suit going against them, which surely would entitle them to avail civil first appeal wherein, any order passed by the trial court becomes amenable for challenge along with the judgment and decree. In this regard, this Court refers to provisions of section 105 of the J&K Code of Civil Procedure, Svt., 1977 as the trial of the suit is taking place under said Code.

29. ***Dismissed.***



(RAHUL BHARTI)
JUDGE

JAMMU
24.11.2025
Sneha