

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

Case:- CM(M) No. 155/2023

Romesh Chander (Age-62 years) Appellant(s)/Petitioner(s)
S/o Late Sh. Maru Ram
R/o VPO Domana Tehsil Jammu
North District Jammu.

Through: Mr. Rakesh Chargotra, Advocate.

Vs

Som Datt Salgotra, S/o Late. Sh. Respondent(s)
Sarsa Ram, R/o VPO Domana, Tehsil
Jammu, North District Jammu.

Through: Mr. Mohd. Latief Malik, Advocate.

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

ORDER
(02.05.2025)

1. A civil suit has been preferred by the respondent against the petitioner which is pending in the court of learned 2nd Additional Munsiff (JMIC), Jammu.
2. In the civil suit, the respondent is asking for a decree of permanent prohibitory injunction for restraining the petitioner from indulging in the demolition of the boundary wall 9 inches in width and 5 feet average height, though at some point it is said to be 12 feet in height, with running length of 100 feet which boundary wall is said to be separating khasras No. 1051 and 1048.
3. Khasra No. 1051 is said to be the one whereat the residential house constructed by the father of the respondent is said

to be located whereas in khasra No. 1048 the petitioner's residential house is said to be located.

4. The boundary wall forming the subject matter of the civil suit is said to be made up of bricks and cement with joint contribution by the father of the petitioner as well as of the respondent and that is meant to be co-used by both sides.

5. It is in this context that the respondent alleged a cause of action in his favour against the petitioner that the petitioner was intending the demolition of the boundary wall and in the process intended to construct a bathroom and latrine by utilizing the commonly constructed boundary wall.

6. In response to the civil suit, the petitioner came forward with the written statement meeting out the allegations and the averments made in the suit by the respondent admitting that the petitioner intends to construct a washroom/bathroom.

7. In his written statement, the petitioner said that he undertook the construction of bathroom on his side of his land property across the boundary wall by appropriating the portion of wall falling on his side and that being a reasonable use of the wall even if it is said to be a common wall.

8. The petitioner further averred in the written statement that the respondent from his side of the property has also appropriated

the common wall for the purpose of construction of kitchen for his residential premises.

9. The court of 2nd Additional Munsiff, Jammu by virtue of an order dated 10.07.2023 in response to an application filed way back on 14.03.2017 by the respondent seeking appointment of the Commissioner, came to oblige by appointing a Commissioner being Tehsildar Jammu North with a scope of commission to visit the spot personally to demarcate the suit property as per revenue record and submit its report as per actual position within 15 days.

10. A bare perusal of the impugned order would show that once the civil suit is self relatable only to the wall, as suit property, so obtaining between khasra Nos. 1048 and 1051, being an admitted position from the both sides, there was no scope whatsoever for the court of 2nd Additional Munsiff, Jammu to go for demarcation of the suit property as per revenue record. The trial court has not spelt out as to what is the suit property which is meant to be subjected to inspection by a commission.

11. The 2nd Additional Munsiff, Jammu has also not spelt out as to whether the appointment of the Commissioner is taking place by taking recourse to Order 26, or for that matter to Order 39 rule 7, of the J&K Code of Civil Procedure, Svt. 1977 relatable to the time when a civil suit was filed being the Code in operation.

12. In view of this serious lacuna in the order itself, the appointment of the Commissioner was misconceived and, in fact,

was going beyond the brief of the civil suit filed by the respondent. Therefore, the order dated 10.07.2023 is set aside.

13. This Court is taking cognizance of the fact that the institution of the civil suit is that of May, 2015 and is going to complete 10 years of its institution on the expiry of the current month of May, 2025.

14. A suit for permanent prohibitory injunction relatable to the common wall use pending for ten (10) long years is a very sad commentary on state of affairs of adjudication of civil suit before the court of 2nd Additional Munsiff, Jammu.

15. It is being reported by both sides that no evidence so far has been led in the suit meaning thereby the suit is still struggling with the stage where only written statement has come on record and nothing further in the suit has happened.

16. The court of 2nd Additional Munsiff, Jammu is directed to adjudicate and dispose of the suit within a period of next one year by holding effective proceedings on each and every date of hearing without affording any adjournment on any pretext except for very genuine cause/reason which may calls for adjournment unavoidable.

17. Extension of time in disposal of the civil suit beyond given period of one year to be sought by the 2nd Additional Munsiff,

Jammu by laying a motion to said effect bearing reasons before this Court.

18. A copy of this order be sent to the 2nd Additional Munsiff, Jammu for notice and compliance.

19. Before proceeding with the adjudication of the suit, the trial court is advised to consult itself with Order 10 read with Order 15 of the J&K Code of Civil Procedure, Svt. 1977 which warrants disposal of a civil suit at its inception stage, by bearing in mind the contradictory relief which the respondent has claimed in the suit.

20. Disposed of.

JAMMU
02.05.2025
Shivalee



(RAHUL BHARTI)
JUDGE

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