

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) 61/2022 c/w
CM(M) 213/2021

GULLA KHAN

...Appellant(s)/Petitioner(s)

Through: Mr. S. H. Thakur, Advocate

Vs.

FEYAZ AHMAD KHAN AND ORS.

...Respondent(s)

Through: Mr. Altaf Mehraj, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE



These two petitions have been filed by petitioner challenging Principal District Judge Bandipora's Orders dated 21.12.2021 in Civil Miscellaneous Appeal bearing File no.23 and dated 28.03.2022 in Appeal bearing File no.14, both titled as *Fayaz Ahmad Khan and others v. Gulla Khan*, whereby the Appellate Court has set-aside Orders dated 15.09.2020 and 23.09.2020, passed by Munsiff, Bandipora. Impugned order dated 21.12.2021 is worthwhile to be reproduced hereunder:

“...I have gone through the ratio laid down in these authorities considered the nature of the controversy involved and after weighing the convenience or inconvenience which may be caused to the parties and also keeping into consideration the interests of justice, it would be proper if the appellants are allowed to construct the house in the place where the already constructed the house was located and where the foundation for reconstruction of new house in place of old house has been laid by the appellants. It is however made clear that in case upon partition, this portion falls in the share of the respondent/plaintiff, the appellants shall not claim any compensation from the plaintiff. The construction to be made by the appellants mentioned above shall be at the cost and peril of appellants. In case the Court on the final conclusion passes any order regarding the entitlement of this portion of land where the construction is made by the appellants in the share of the respondents/plaintiff, the appellants cannot claim any compensation or damages from the respondents. In case the trial court passed any with regard to the demolition of the construction to be made, the appellants shall have to remove this construction at their own cost and peril. The appellants shall file undertaking before the trial court to the effect that they shall not claim any compensation/damages from the plaintiff/respondent in case the trial

court comes to the conclusion that the respondent/plaintiff is held entitled to this portion of land where the house is to be constructed.
This appeal shall, therefore, stand disposed of and the trial court order is modified to the extent as indicated above. Order be conveyed to the trial court.”

When the instant matters came to be taken up today for consideration, learned counsel for the respondents fairly conceded to the position of law that both the orders impugned are not in tune with the provisions of law and submitted that if the orders are set aside, respondents have no objection to it.

In view of the submissions made by counsel for respondents and in view of the fact that orders passed by the appellate court have been passed in total disregard of provisions of law, therefore, both the petitions stand allowed and orders impugned are hereby set aside. The Trial court to proceed with the trial strictly in accordance with the law.

Learned counsel for respondents submits that he may be given opportunity if he is aggrieved of any order to be passed by the Trial Court, he may take recourse of remedy as may be available under law.

Both the petitions are disposed of along with connected CM(s).

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
07.03.2025

“Imtiyaz”