

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
CM(M) 178/2023

ABDUL SALAM PARRAY

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

Through: Mr. Rizwan-un-Zaman, Advocate

Vs.

RAJA JI BHAN AND ORS.
(FLORICULTURE GARDENS AND
PARKS)

...Respondent(s)

Through: Mr. Alla Ud Din Ganai, AAG with
Ms. Shaila Shameem, Assisting counsel

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

02.07.2025

1. The petitioner is aggrieved of order dated 26.06.2023, whereby his application for his impleadment as defendant in civil suit titled as Raja Ji Bhan vs. Union of India and others, has been rejected.
2. A suit has been filed by Raja Ji Bhan through his Attorney Riyaz Ahmad Zargar against the Union of India; Director Floriculture, Gardens and Parks Kashmir; District Floriculture Officer Anantnag, Kashmir; and Executive Officer Municipal Council Anantnag, Kashmir, seeking declaration and Injunction. The prayer made in the suit is as under:

“...It is therefore, most respectfully prayed that decree may be passed for;

1. Declaration, declaring that municipality/defendant no. 02 incapable of increasing the rate of rent unilaterally and of claiming the rent at unilateral enhanced rates.
2. Permanent prohibitory injunction, restraining whereby the defendant no. 02 permanently from causing any sort of waste or interference with the suit property comprising of Twelve rooms on the ground floor and the ground attached to it by any means and under any pretext whatsoever, be also restrained permanently from making representations or cause to be represented to the general public or other departments of having a right or competence to deal with the suit property the details of which have been set forth hereinabove, the defendant no. 02 be also restrained permanently from causing any sort of waste or interference with the enjoyment of the plaintiff over the suit property and with the enjoyment of any such person duly authorized by the plaintiff to take care and apply the property for and on behalf of the

plaintiff and with the enjoyment of the property by any person claiming through the plaintiff.

3. Mandatory injunction, commanding the defendant no. 01 to immediately withdraw from the ground (subject matter of the demise) and restore the ground to the status as it had at the time of the deceased migrating from the valley.
4. Mandatory injunction, commanding the defendants to pay such amount as compensatory costs for unauthorized occupation of the ground by the defendant no. 01 this honorable court finds due on computations based on the prevalent market rates of rent in the locality for the assets of equivalent value and utility.
5. The plaintiff may be granted the costs of the suit.”

3. When the suit was filed, an application came to be made by the petitioner herein seeking his impleadment as respondent. Impleadment is sought by him precisely on the ground that he has interest in the suit property, therefore, he is a necessary/proper party for the adjudication of the suit.

4. Mr. Rizwan-un-Zaman, Advocate appearing for the petitioner, while relying on the grounds taken in the application, has submitted that since the petitioner was given management of the School by the Deputy Commissioner, Anantnag, because the said property had been a migrant property, as such, he is a necessary party to be so impleaded. He also submits that appointment of the petitioner was made during the proceedings which were taken by Deputy Commissioner under the provisions of the Jammu & Kashmir Migrant Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. The application of the petitioner was considered by the Trial court and same came to be dismissed vide order dated 26.06.2023. The Trial court has dealt with the application in detail and passed the following order, operative portion of which is reproduced as under:

“...Heard, perused and considered.

The main ground taken by the applicant is that Shri M. L. Bhawn executed a General Power of Attorney in favour of the applicant herein

and one Abdul Rashid Bhat to transact and manage the affairs of the school. Ld. counsel for the applicant has further contended that Shri K. K. Raina also executed a Power of Attorney in favour of the applicant herein and also an agreement to sell. Ld. counsel for the non-applicant/plaintiff has stated that the attorney/s executed are with respect to transacting and managing the affairs of the school/administration and as such has no bearing upon this case as the present case has been filed against the Municipal authorities with respect to unilateral enhancement of rent. Ld. counsel for the non-applicant/plaintiff has further stated that Shri M. L. Bhawn has now expired and as such the Power of Attorney executed by him also loses its force.

Perusal of the suit reveals that the suit has been filed against official defendants only and the prayer sought is as regards unilateral increase in the rate of rent of the suit property. The application at hand seeks impleadment of Shri Ab. Salam Parray defendant in the suit on the ground that Shri M. L. Bhawn one of the proprietors of Montesoori School Anantnag executed a General Power of Attorney in the year 2001 in favour of the applicant and one other person to transit and manage affairs of the school and to represent the principal in the court of law. Shri M. L. Bhawn also executed an agreement to sell in favour of applicant and one other person in respect of affairs, assets of the school. The applicant is thus praying that vital interest of the applicant are involved in the case and thus is a necessary party for the disposal of the case. Perusal of the documents appended with the plaint reveals that Power of Attorney has been executed in favour of applicant Shri Abdul Salam Parray wherein it is mentioned that due to disturbed situation in the valley the executant Shri M. L. Bhawn has migrated to Jammu and handed over the charge of Principal of the school to Shri Ab. Salam Parray. The attorney is made to the extent that they shall receive the fees, arrears etc. from the students and they shall be qualified to appoint staff members of the school and settle the terms and conditions of appointment, that they shall deposit the fees and other charges in their accounts and withdraw and utilize the same for the benefit of the school, that they shall preserve the possession of building and the assets of the school in proper manner and in the event of any theft, mischief etc. can take legal action against anyone who violates the rights etc.

It is clear from the Deed that the powers of Principal and management have been given by virtue of the power of attorney and the executants including the applicant have been empowered to deal with the management and day to day affairs of the school. However, no powers of tenancy or matters arising thereof have been conferred upon the executants. As regards the sale deed/agreement to sell various assets of the school comprising of furniture, matting, lockers, almirahs, laboratory equipment's, library books etc. have been sold for a consideration and thus the said sale deed also confers no right which can be dealt with by the present application. Another Power of Attorney on record given by Shri K. K. Raina in favour of applicant herein also gives the same rights as other attorneys and no rights as to tenancy have been given by way of power of attorney. It is clear that the present suit is only against Municipal authorities as regards unilateral enhancement of rent. The plaintiff being son of late M. L. Bhan is a tenant of the property wherein the school is located and he has every right of management of the demised properties as against the landlord, in case his rights are violated. The applicant herein by way of power of attorney appears to have right

in the nature of administration and management of the school affairs only. The applicant does not appear to have any leasehold right in person or by way of power of attorney, as such does not appear to be a necessary and proper party in the suit at hand.

Order 1 rule 10 (2) of CPC provides that the court may at any stage of proceedings either upon or without the application of either party and on such terms as may appear to the court to be just order that the name of any party who ought to have been joined whether as plaintiff or defendant, or whose presence before court may be necessary in order to enable the court effectively and completely to adjudicate upon, and settle all questions involved in the suit and array such person as a party in the proceedings.

As observed supra also the applicant herein does not appear to be a proper and necessary party to the suit at hand as no leasehold rights or right of tenancy has been conferred upon him by virtue of power of attorney. Moreover the executant who has given the power of attorney as already admitted to have died earlier. The applicant may have a right in the administration and affairs of the school however, in the present case where rights of tenant/tenancy are involved, he appears neither to be a necessary nor proper party. Viewed thus the application fails. Accordingly, the application at hand is dismissed as the applicant has failed to establish a case for impleadment as party defendant in the above titled suit. Be made part of the main suit.”

5. Having regard to the order and the reasoning given in it, I do not find any illegality in the order impugned, because no relief has been claimed by the plaintiff therein which would affect any of the rights of the petitioner. The relief prayed for by the plaintiff in the suit is specific as he seeks a declaration so as to declare that municipality cannot increase the rate of rent unilaterally and/or claim enhanced rent unilaterally. The plaintiff has sought prohibition against municipality from causing any sort of interference in the suit property. Thus, the relief so claimed does not in any way affect any of the rights of the petitioner herein. Secondly, the plaintiff has sought a direction against the respondent no.1 for vacating the premises occupied by it. The directions, if any, to be passed in the suit would be regarding the defendants and the relief claimed is *in personam* and not *in rem*. It is specifically against the defendants

named in the suit and any order passed in the suit would be binding on them only.

6. Therefore, I do not find illegality in the order impugned passed by the Trial court. Resultantly, the instant petition is **dismissed**.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
02.07.2025
"Imtiyaz"

