

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

CM(M) 382/2023

FAROOQ AHMAD ZARGAR AND ANR.

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

Through: Mr. G. N. Sofi, Advocate

Vs.

NISAR AHMAD LONE

...Respondent(s)

Through: Mr. Syed Wasiq, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER

14.05.2025

1. In this petition filed under Article 227 of Constitution of India, the order passed by learned Principal District Judge, Anantnag, whereby he has while setting aside the order passed by the court of Munsiff, Anantnag (Trial court) dated 19.07.2022, directed the parties to maintain status quo, is being challenged and sought to be set-aside.
2. In brief, as is evident from the pleadings of the parties in the order under challenge, a dispute with regard to possession over a piece of land, which according to the petitioner is owned and possessed by him, whereas case of the respondent-plaintiff is that it has fallen in his share on the exchange in lieu of residential house which was constructed at Mohalla Shabsahab, Ashajipora, Anantnag, has arisen. The respondent/ plaintiff is claiming his possession and right over of this piece of land on the basis of oral agreement. No documentary evidence is on the record, except an oral statement and the pleading that there had been an

oral agreement between the parties; by virtue of which this piece of land has been given to him. There is, thus, nothing on record.

3. The Trial court, while taking into consideration the case put forth by the parties as well as the revenue record, has decided the application filed by the respondent/plaintiff under Order 39 Rule 1 and 2 CPC moved alongside the suit passed the order dated 19.07.2022; para 10 thereof is taken note of:

“...From the pleadings and documents annexed therewith, it appears that there is nothing on record which would substantiate the claim of the plaintiff being owner in possession of the land measuring 10 Marlas under Survey No. 1903. The plaintiff is claiming his right on the basis of oral arrangement but recent revenue records are still showing the defendant No. 1 as owner in possession of the suit property. Further, the plaintiff's claim is that the defendants had given the suit land under Survey No. 1903 in exchange of the old residential house with the land measuring 02 Marlas 04 Sirsai falling under Survey No. 2634. If the fact is so, then the plaintiff ought to have included both the Survey No's i.e. survey No. 2634 & 1903 as a subject matter of dispute because the claim over survey No. 1903 is sought in exchange of land under Survey No. 2634. The plaintiff cannot seek relief with respect to property belonging to defendants without establishing his right over the property which has been given in exchange to the defendants. The plaintiff fails to show prima facie case in his favour. Moreover, the balance of convenience lies more in favour of defendants being owners in possession of suit property and in case injunction is granted with respect to suit Survey No, it will cause irreparable loss to the defendants.”

4. As is evident from the record and not disputed, the revenue record in respect of the piece of land, which is bone of contention between the parties, still exists in the name of petitioner/defendants, and the said record with reference to the possession is not in favour of the respondent/plaintiff. Whether or not there had an oral agreement between the parties, finding about that cannot be given at this stage because it would depend upon the evidence which may be led by the parties before the Trial court. Till then entries in the revenue record are prima facie evidence, are to be respected, as such.

5. Appellate court has, while relying upon the pleadings of the parties and submissions made in the appeal that it has fallen in the share of the respondent/plaintiff, has passed the order of status quo, whereby parties have been directed to maintain status quo, though no finding with regard to the possession has been recorded and the order of status quo without there being any prima facie finding with regard to the possession would be vague because in such a situation both the parties can claim to be in possession and that will create further dispute because both of them would be putting the claim of being in possession of the suit property.
6. So far as the evidentially value of the revenue record is concerned, it is to be acted upon unless and until it is rebutted, but at this stage, the only evidence on record is the revenue record which depicts it in possession of the defendant/petitioner herein and this finding has a prima facie value at this stage and the respondent/plaintiff can rebut such presumption during the course of the trial by producing the evidence.
7. Therefore, it is worthwhile to mention here that as per the record on file, defendants/petitioners are prima facie in possession of the suit property. Parties shall maintain status quo. There shall be no third-party interest created in the property in question and no improvement shall be made till disposal of the suit. With these observations, this petition is **disposed of** along with connected CM(s).

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
14.05.2025
"Imtiyaz"