

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

CM(M) 140/2022 CM(4403/2022)

Vikas Bhat

...Petitioner(s)

Through: Mr. Wajid Mohammad Haseeb, Advocate &
Mr. Rouf Parray, Advocate

Rakish Bhat and Ors.

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

03.03.2026

1. The petitioner-Vikas Bhat came forward with this petition filed on **16.08.2022** thereby invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India bearing a cause of action emanating from passing of an order dated **05.08.2022** by the Court of learned 4th Additional District Judge, Srinagar in a civil suit preferred by the respondent No. 1-Rakish Bhat.

2. The respondent No. 1-Rakish Bhat is real brother of the petitioner-Vikas Bhat

3. The respondent No. 1-Rakish Bhat has laid a civil suit on **File No. 39/Civil of 2021** filed on **23.09.2021** before the court of learned 4th Additional District Judge, Srinagar.

4. In his said suit, the respondent No. 1-Rakish Bhat has named seven defendants with defendant No. 1-Badri Nath Bhat being his father and the present petitioner-Vikas Bhat figuring as defendant No. 2.

5. In his civil suit, the respondent No. 1-Rakish Bhat has sought a decree of declaration, partition and permanent prohibitory injunction with respect to suit property comprising 7 kanals and 15 marlas along with a three storied residential house and a cow shed comprised in khasra Nos. 48, 49, 50, 566 and 567 min in Mouza Zewan, Srinagar, referring the same to be an ancestral property co-shared by him along with the defendants.

6. In his plaint in paragraph No. 5, the respondent No. 1-Rakish Bhat however comes forward with an assertion and averment that the suit property is under the sole care and control of the defendant No. 1-Badri Nath Bhat (father) who by virtue of his status is not

allowing the parties to use and enjoy their shares as per their entitlement and, in particular, deprives the respondent No. 1-Rakish Bhat of use and enjoyment of the suit property.

7. Accompanying the suit, the respondent No. 1-Rakish Bhat has also preferred an application for grant of temporary injunction in terms of Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908.

8. In response to said application for temporary injunction, the Court of learned 4th Additional District Judge, Srinagar, by virtue of an ex parte ad-interim order dated **24.09.2021**, came to restrain the seven (07) defendants from alienating the suit property and also from creating any third party interest.

9. The petitioner-Vikas Bhat as defendant No. 2, joined by father-Badri Nath Bhat, as defendant No. 1, came forward with written statement negating the suit claim of the respondent No. 1-Rakish Bhat.

10. The said two defendants i.e., the petitioner-Vikas Bhat as well as defendant No. 1-Badri Nath Bhat also submitted their reply/objections to the temporary injunction application of the respondent No. 1-Rakish

Bhat in which final adjudication from the Court of learned 4th Additional District Judge, Srinagar is still awaited.

11. During currency of ex parte ad-interim order dated **24.09.2021**, the respondent No. 1-Rakish Bhat came forward with an application bearing no reference as to under which provision of the Code of Civil Procedure, 1908, same is meant to be maintained but seeking a direction in his favour for use, enjoyment and occupation of the respective share from and of the suit property along with other legal heirs/shareholders with a further prayer to direct the SHO Police Station concerned to ensure the occupation and enjoyment of the respective shareholders of the suit property.

12. The trial Court of learned 4th Additional District Judge, Srinagar has obliged the respondent No. 1-Rakish Bhat by issuance of an order dated **05.08.2022** thereby directing the SHO Police Station, concerned, without even identifying and naming of which Police Station, to implement order dated **24.09.2021** vis-à-vis the suit property and also to ensure that the parties to the suit, in particular, the respondent No. 1-Rakish Bhat is not dispossessed

forcibly from his share of the suit property and his possession is directed to be protected from any disturbance from the defendants No. 1 to 4.

13. It is passing of this order dated **05.08.2022** which has brought the petitioner-Vikas Bhat with the present petition to this Court under Article 227 of the Constitution of India and this Court has no iota of doubt that the petitioner has no other legal remedy except approaching this Court with a well meaning petition with respect to the manner in which the Court of learned 4th Additional District Judge, Srinagar has come to exercise jurisdiction without citing and quoting any provision of law under which, as a civil Court, 4th Additional District Judge, Srinagar enabled has itself to grant injunctory directions which literally amounts to non-suiting the defendants in their cause and defence to the suit of the respondent No. 1-Rakish Bhat and simultaneously delivering a de facto decree in the hands of the respondent No. 1-Rakish Bhat vis-à-vis the suit property.

14. The very fact that the respondent No. 1-Rakish Bhat in his own plaint has taken up position that it is the defendant No. 1-Badri Nath Bhat who is in sole

care and control of the suit property is a definite pointer to the scenario that the respondent No. 1- Rakish Bhat is not in operative possession of suit property by any stretch of claim and authority and, therefore, the Court of learned 4th Additional District Judge, Srinagar ought to have stayed away from granting blanket indulgence in response to the application so preferred by the respondent No. 1- Rakish Bhat for seeking a direction unto the SHO Police Station, concerned.

15. The Court of learned 4th Additional District Judge, Srinagar ought to have kept itself within its jurisdictional bound and for that purpose what was required to be done at first instance is that the pending temporary injunction application of the respondent No. 1-Rakish Bhat ought to have been disposed of on merits rather than keeping it on board as a spectator for last more than five years.

16. The very fact that the temporary injunction application is remaining on the docket of a Court of learned 4th Additional District Judge, Srinagar is not a good reflection with respect to efficiency of adjudication in relation to a civil suit.

17. This Court is not privy to information as to the cause which has prevented the Presiding Officer of the Court of learned 4th Additional District Judge, Srinagar in not attending to this aspect of lapse of commitment with respect to adjudication of a temporary injunction application so pending adjudication for the last more than five years and instead venturing to complicate the matter by way of passing of impugned order which per se is illegal and warrants to be set aside.

18. Accordingly, this petition is allowed and the impugned order dated **05.08.2022** passed by the Court of learned 4th Additional District Judge, Srinagar on **File No. 145/M (Application)** is hereby set aside.

19. The Court of learned 4th Additional District Judge, Srinagar is hereby directed to dispose of the pending temporary injunction application in the civil suit within a period of thirty days (30) days by or before 6th April, 2026.

20. Registrar Judicial, Srinagar is directed to forward a copy of this order to the Court of learned 4th

Additional District Judge, Srinagar for the sake of notice and compliance.

21. Disposed of.

**(RAHUL BHARTI)
JUDGE**

SRINAGAR:

03.03.2026

"Mir Arif"

