Sr. No. 148

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case:- CM(M) No. 277/2024
CM No. 7426/2024

Gullan Devi and another

…..Appellant(s)/Petitioner(s)

Through: Mr. Ajay Kumar, Advocate

Vs

Girdhari Lal and another

….. Respondent(s)

Through:

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

ORDER
23.12.2024

01. Through the medium of this petition under article 227 of the Constitution of India, the petitioners, who are the plaintiffs in a civil suit filed before the court of Additional Munsiff (Special Mobile Magistrate), Udhampur, find themselves aggrieved so as to question of an order dated 05.08.2023 passed by the trial court whereby their application for appointment of a commissioner for spot inspection and for actual possession position in respect of the suit land came to be refused.

02. This order dated 05.08.2023 came to be assailed in an appeal before the court of Principal District Judge, Udhampur which, vide its order dated 10.10.2024, rejected the appeal holding it as not maintainable given the fact that the Code of Civil Procedure, 1908 does not provide scope for an appeal against an order refusing to appoint a commissioner.

03. This Court finds nothing wrong, factual or legal, in the order dated 10.10.2024 passed by the Principal District Judge, Udhampur and also in the order dated 05.08.2023 passed by the trial court.

04. This Court has been apprised by the learned counsel for the plaintiffs/petitioners herein that the suit for permanent prohibitory injunction filed by them is of 2017 institution in which not even the issues have been framed and even temporary injunction application under Order 39 rule 1 & 2 of the Code of Civil Procedure, 1908 has also not been decided yet.

05. Be that as it may, the trial court is apprised of its duty to act with due dispatch in the matter of disposing of temporary injunction application that too in a civil suit whereby permanent prohibitory injunction decree is being sought. The civil suit for permanent prohibitory injunction filed in the year 2017 by every stretch of understanding should have been decided by this time but the suit is said to be in a state of infancy.

06. This Court leaves it to the better discretion of the trial court to address the matter and give the trial of the case due priority.

07. ***Dismissed***.

(RAHUL BHARTI)
JUDGE

JAMMU
23.12.2024
Muneesh

Muneesh Sharma
2024.12.26 13:28
I attest to the accuracy and
integrity of this document