HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No.108/2024

Reserved on: 05.12.2025
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Mohd. Bashir Age 70 years S/o Shri Ismail
R/o Village Bathooni Tehsil and District Rajouri ...Petitioner(s)

Through:-Mr. S.H.Rather, Advocate

V/s

1. Nazir Begum W/o Shri Ismail
   R/o Village Bathooni Tehsil and District Rajouri

2. Wazir Hussain
3. Kalu
   Both respondents No.2 & 3 sons of Sahib Din
   R/o Thuddi Tehsil & District Rajouri

...Respondent(s)

3. AC (Defence), Rajouri

….Proforma Respondent

Through:- Mr. N.D.Qazi, Advocate for R-1 to 3

Coram: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner has called in question order dated 20.02.2024 passed by the Court of learned Sub-Judge (CJM), Rajouri (hereinafter to be referred as "the trial Court) in an application filed by respondent Nos. 2 and 3 for transposing them as plaintiffs in a pending suit for declaration filed by respondent No.1 titled "Nazir Begum v. Mohd. Bashir and others.

FACTUAL MATRIX

2. Facts leading to the filing of this petition, as pleaded by the petitioner, are that father of the petitioner, namely, Sh. Ismail, after death of his wife, namely Kesar Bi, mother of the petitioner, contracted second marriage with respondent No.1. After the death of father of respondent No.1, father of the petitioner took care of not only respondent No.1, being his wife, but other members of respondent No.1's family including mother, Noor Begum, and her two brothers i.e. respondent Nos. 2 and 3. According to the petitioner, respondent Nos. 2 and 3, who are brothers of respondent No.1, also abandoned their mother Noor Begum and it was the petitioner who use to take care of said Noor Begum, by treating her as his own mother, and provide all basic amenities of life.

3. Case of the petitioner is that said Noor Begum, out of her own free will and without any undue influence or coercion, out of total 61 kanals of land, bequeathed land measuring 21 kanals and 4 marlas comprising in Khasra No.833 min situated at village Muradpur, Tehsil and District Rajouri in favour of the petitioner, which, it is contended by the petitioner, was in response to the love and care shown by him towards said Noor Begum. Rest of the land has been devolved upon respondent Nos. 1 to 3. It is contended that the fact of bequeathing of the property in favour of the petitioner was within the knowledge of respondent Nos.1 and 3. After the death of said Noor Begum, testator, the will made in favour of the petitioner was acted upon and mutation No.758 came to be attested in favour of the petitioner.

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4. Respondent No.1 filed a civil suit in the month of September, 2017, thereby seeking a declaration to the effect that will deed dated 19.12.2007 executed by Noor Begum in favour of the petitioner, which was duly registered with Sub-Registrar, Rajouri with respect of the suit land, is null and void and inoperative over the rights of the plaintiff-respondent No.1 herein. The petitioner stated to have filed his written statement in the suit besides filing an application under Order VII Rule 11 CPC for rejection of the plaint, which is pending disposal before the trial Court.

5. During pendency of the application filed Under Order VII Rule 11 CPC, respondent Nos.2 and 3, who were proforma defendants in the suit filed by respondent No.1, filed an application for transposing them as plaintiffs in the pending suit. The petitioner contested the said application by filing reply. The trial court vide order impugned allowed the application of respondent Nos. 2 and 3, thereby transposing them as plaintiff Nos. 2 and 3. It is this order of the trial Court, which has been challenged by the petitioner in the instant writ petition.

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6. Learned counsel for the petitioner would argue that the suit filed by respondent No.1 was liable to be dismissed being barred by limitation because according to Article 63 of Schedule-I of the Limitation Act, forgery of an instrument registered has to be questioned within three years of its registration and in the instant case, the will deed in question was registered on 18.12.2007 and suit was filed in the month of

October, 2017. He further states that even application filed by respondent Nos. 2 and 3 also deserved to be rejected on the ground that the application for their transposition was filed after more than five years of filing of the suit. Learned counsel for the petitioner further contends that the objections filed by the petitioner were not considered by the trial Court while allowing the application for transposition. It is submitted that the application came to be allowed by the trial Court only on the basis of admission made by respondent No.1, who is hand in glove with respondent Nos. 2 and 3 and that the application filed by respondent Nos. 2 and 3 was an afterthought coined only to counter the application filed by the petitioner under Order VII rule 11 CPC for rejection of the suit.

7. On the contrary, learned counsel for the respondents argues that the order of the trial Court is in consonance with law and does not require any interference by this Court in exercise of extraordinary writ jurisdiction. It is submitted that respondent Nos. 2 and 3 are the real brothers of respondent No.1, who filed the suit before the trial Court, as such, have all rights and interests in the properties left by their mother, Noor Begum. While justifying the order of the trial Court, learned counsel would argue that the transposition of respondent Nos. 2 and 3 as plaintiffs has not changed the nature and scope of civil suit; rather it would advance the cause of justice.

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8. Heard learned counsel for the parties and perused the material available on record.

9. Indisputably, respondent Nos. 2 and 3, who have been transposed as plaintiffs by the trial Court by way of impugned order, are the real brothers of the original plaintiff i.e. respondent No.1. The subject matter of the suit wherein respondents Nos. 2 and 3 are transposed as plaintiffs relates to the estate left behind by their mother.

10. Plea of the petitioner that the suit filed by respondent No.1 is barred by limitation, is not required to be considered in these proceedings because the petitioner has already availed remedy by filing an application under Order VII Rule 11 CPC, thereby seeking rejection of the suit being barred by limitation, which is stated to be still pending before the trial Court.

11. Perusal of the record would indicate that there is technical flaw in the application filed before the trial Court seeking transposition of respondent Nos. 2 and 3 as plaintiffs. The contents of the application indicates that the same was prepared to be filed by the plaintiff/respondent No.1 herein, however, the same appears to have been signed by respondent Nos. 2 and 3, who were arrayed as proforma defendants in the original suit. The record further shows that the petitioner did point out technical flaw in the application, however, the trial Court without considering the objection, came to the conclusion that the claims of proforma defendants/respondent Nos. 2 and 3 herein,

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is not inconsistent with that of plaintiff and by such transposition nature and scope of civil suit will not be changed or enlarged.

12. Undoubtedly, the trial Court has erred in not considering the technical objection raised by the petitioner, however, the conclusion drawn by the trial Court cannot be faulted because admittedly, the will, which is the subject matter of challenge in the civil suit filed by respondent No.1, pertains to the estate left behind by the mother of the respondent Nos.2 and 3. The respondent Nos.2 and 3, being the legal heirs of the deceased, have a direct and substantial stake in the determination of the validity of the said Will. Their rights in the estate are inseparably linked with the outcome of the proceedings. Consequently, the transposition of the respondents as plaintiffs in the suit cannot be held to be illegal. Rather, such transposition advances the cause of justice by ensuring that all persons claiming an interest in the estate are aligned on the same side and the real controversy between the parties is effectively adjudicated without multiplicity of proceedings.

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13. In the case of **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others, (1987) 2 SCC 107,** the Supreme Court has laid emphasis on the Courts adopting a liberal and justice oriented approach. Relevant extract of the judgment (supra) is reproduced hereunder:-

> "When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
>
> ……

> It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

14. Further, the Supreme Court in the case of **State of Nagaland v. Lipok AO and others, (2005) 3 SCC 752** observed that in cases where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred.

15. It is settled principle of law that the High Court can exercise its powers under Article 227 to correct fundamental jurisdictional errors or grave procedural irregularities that result in manifest injustice, but it should ordinarily refrain from interfering with orders on the basis of minor technical defects, particularly where such interference would impede, delay, or otherwise defeat the broader cause of justice. The Supreme Court in **Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329,** formulated following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution:-

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> *"(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.*
>
> *(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.*
>
> *(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode*

of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, `within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

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> *(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*
>
> *(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.*
>
> *(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*
>
> *(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."*

16. As per principles laid down by the Supreme court, this Court can exercise its jurisdiction vested under Article 227, when the subordinate court or tribunal has acted without jurisdiction, in excess of jurisdiction, or failed to exercise jurisdiction vested in it; there is patent perversity in the order, gross and manifest failure of justice, or the order shows grave dereliction of duty or flagrant abuse of fundamental principles of law or procedure. This Court cannot re-appreciate evidence or correct mere errors of fact or law.

17. If the order of the trial Court is found to be incorrect on the account of technical defect, the best option available is to set aside the order and remand the matter to the trial Court for consideration afresh. However, setting aside the order impugned in this petition mere on technicalities

and remanding the parties to the trial Court for consideration of the application afresh would defeat the cause of justice, in that, by no stretch of reasoning, it can be said that respondent Nos. 2 and 3, who have been transposed as plaintiffs in the suit, have no substantial stake in the determination of validity of the will, subject matter of the civil suit, alleged to have been executed by their mother.

18. In view of the above, technicalities pointed out by the petitioner, in the order impugned are required be ignored to pave way for the substantial justice to be done to the parties because it would sub-serve the cause of justice. Neither any perversity is found in the order impugned nor has there been gross or manifest failure of justice, more so there is no violation of basic principles of justice warranting interference by this Court in exercise its power of superintendence.

18. Accordingly, this writ petition found to be without merit, hence dismissed.

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(Moksha Khajuria Kazmi)
Judge

Jammu.
16.12.2025
Vinod.

Whether the order is speaking : Yes
Whether the order is reportable: No

Vinod Kumar
2025.12.16 02:21
I attest to the accuracy and
integrity of this document