HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: **13.11.2024**
Pronounced on: **06.02.2025**

CM(M) No. 8/2021

1. **Anjani Gupta** …..Appellant(s)/Petiti
Age 61 years W/O Sh. Ashok Kumar
Gupta R/O 395 Extension-1/A, Trikuta
Nagar, Jammu

Through: Mr. Rakesh Chargotra, Advocate.

vs

1. **Sunita Kohli** ….. Respondent(s)
W/O P.K Kohli
R/O H. No. 23-A, Sector-9,
Trikuta Nagar Jammu.

Through: Mr. S. M. Choudhary, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India for setting aside the order dated 07.03.2020 passed by the court of learned 1st Additional District Judge, Jammu (for short 'the Appellate Court') in Misc. Appeal titled "*Sunita Kohli vs. Anjani Gupta"*, whereby the learned Appellate Court while directing the parties to maintain status-quo vis-a-vis the suit property, has set aside the order dated 11.10.2018 passed by the court of learned Special Municipal Mobile Magistrate, Jammu (for short 'the Trial Court'), whereby the learned trial court had dismissed the application for grant of interim relief filed by the respondent.

2. Brief facts necessary for disposal of the present petition are that the respondent filed a suit for permanent prohibitory injunction against the petitioner for restraining her (petitioner) from interfering in her peaceful and uninterrupted possession over the plot No. 43, Lane No. 15 comprising survey No. 660 min measuring 40 × 80 feet (12 Marlas) situated at Revenue Village Sunjwan at present Greater Kailash, Residential Colony, and further restraining her from damaging the boundary wall around the said plot and raising any kind of construction over the suit land in any manner whatsoever on spot. The description of the above-mentioned plot, mentioned in the plot, is as under:

North	-	Vacant plot of Mr. Sharma
South	-	Lane No. 15 of Greater Kailash Colony
East	-	Plot No. 44 of Sh. Ajay Mengi
West	-	Plot of Dr. Bali.

3. It was pleaded by the respondent that she had purchased the above-mentioned plot by virtue of a duly registered sale deed on 07.02.1991 from one Chet Singh S/o Sh. Bhag Singh and immediately thereafter, the respondent constructed the boundary wall around the suit land and shed. It was stated that in the year 2006, one Chand Kumari from whom, the petitioner had allegedly purchased the land measuring 1 kanal comprising survey no. 653 situated at Sunjwan started interfering with the ownership/possession of the respondent. On her application, the Assistant Commissioner Revenue, Jammu directed the subordinate staff to conduct the demarcation and till demarcation, not to issue any document pertaining to the suit land. Aggrieved of the said direction, Chand Kumari filed revision petition before Divisional Commissioner Jammu, who vide order

dated 06.06.2008 set aside the directions issued by Assistant Commissioner, Revenue, Jammu and directed Deputy Commissioner to constitute a commission comprising of Revenue Officers to visit spot and to identify both survey Nos. 653 and 660 and deliver the possession of the same on spot within one month. Pursuant to the directions passed by the Divisional Commissioner, Jammu, a commission headed by Tehsildar, Settlement Jammu after conducting the demarcation submitted the report dated 22.10.2011 to Deputy Commissioner, Jammu. It was also stated that the reference was made by Divisional Commissioner to Financial Commissioner, Revenue, J&K for disposal under law, which was still sub-judice. During pendency of reference on 05.02.2015, the Joint Financial Commissioner constituted another Commission to conduct the fresh demarcation in presence of both the parties, confirmed the demarcation conducted earlier vide report dated 22.10.2011, wherein the respondent had been shown to be in settled possession of the suit land. It was also stated that in the year 2015, the petitioner and her husband attempted to evict the respondent from the suit land, in respect of which FIR No. 43/2015 u/s 447,427,428 was registered with Police Station, Gangyal. When the petitioner and her husband again attempted to forcibly evict the respondent from the suit property, she filed the suit against the respondent.

4. Alongwith the suit, an application for interim relief was also filed and the learned trial court vide order dated 03.06.2017 temporarily restrained the petitioner from causing any sort of interference with the possession of respondent till next date of hearing.

5. The petitioner filed her written-statement, stating therein that the erstwhile owner-Chand Kumari had purchased the land measuring 1 Kanal comprising Khasra No. 653 min situated at village Sunjwan, Tehsil Jammu by virtue of sale deed dated 16.04.1971 and after its purchase, the Revenue Field Agency, after verifying the physical possession of Chand Kumari, attested the mutation No. 785, whereby the sale deed and possession of erstwhile owner was reflected in the revenue record but some private colonizers started developing the colony near the plot of erstwhile owner and caused interference in her peaceful possession, therefore, she filed a civil suit, which was decreed in her favour by virtue of judgment dated 10.05.2004 whereby the private colonizers/defendants therein, were restrained from causing interference in the possession of erstwhile owner over the suit land. Thereafter, the erstwhile owner applied for issuance of Fard-Intikhab-Jamabandi and Akas of the land for its transfer, which was initially prepared and issued but subsequently, on the application filed by Sunita Kohli before Assistant Commissioner, Revenue, Jammu for demarcation of land, Assistant Commissioner, Revenue, Jammu directed Naib-Tehsildar not to renew the same vide order dated 11.10.2006. The aforesaid order was called in question by Chand Kumari before the Divisional Commissioner, Jammu by way of a revision petition and the Divisional Commissioner, Jammu vide order dated 06.06.2008 accepted the revision petition by making reference to the Financial Commissioner (Revenue) Jammu for its disposal, who transferred the same to the Joint Financial Commissioner (Revenue) with powers of Financial Commissioner (Revenue) J&K, Jammu. During

pendency of the reference, a commission was appointed, who submitted an *ex parte* report and finally the Assistant Commissioner (Revenue), Jammu submitted a detailed report pursuant to order dated 05.02.2015 of Joint Financial Commissioner, Jammu stating therein that the disputed plot is under the physical possession of petitioner. It was also stated that the respondent has concealed the aforesaid facts and approached the Court with unclean hands and committed fraud by withholding report of ACR, as such, the suit of the plaintiff was liable to be dismissed. The erstwhile owner had filed the revision petition against the respondent and she was contesting the matter at the time of filing of the suit and once the Revenue Authorities have decided in favour of the petitioner, the respondent has no cause of action. The property now belongs to the petitioner, as the erstwhile owner had sold the same to the petitioner by virtue of the sale deed dated 10.09.2008 duly registered by Sub-Registrar, Jammu on 12.09.2008, regarding which the mutation also has been attested in her favour. It is also stated that the sale deed relied upon by the respondent was executed on the basis of dasti site plan, and the sale deed and the site plan attached with the same do not speak about the description and dimension of the land, as alleged in the plaint and the respondent, being out of possession of the property was trying to occupy part of the property of the petitioner. As per the dasti site plan, the dimension of the plot is 80 × 40 feet and is being claimed to be situated at the front side of lane No. 15 of Greater Kailash Colony, Sunjwan, which means that length of the plot is 80 feet along road side and width of the plot is 40 feet and the other person Ajay Mengi is also claiming to have purchased plot No. 44 of 80 ×

40 feet situated on front side, which means that length of the plot of said Ajay Mengi alongside the road side is 80 feet whereas the width is 40 feet, but the aforesaid dimension and description is contrary to position existing on spot and proves that the contentions of the respondent are misconceived.

6. After the respondent filed the response, the learned trial court vide its order dated 11.10.2018 dismissed the application for grant of interim relief by holding that the respondent has not been able to demonstrate her possession. The respondent assailed the order dated 11.10.2018 passed by the learned trial court and the learned Appellate Court vide its order/judgment dated 07.03.2020 set aside the order dated 11.10.2018 passed by the learned trial court and directed the parties to maintain status quo till disposal of the suit by the learned trial court.

7. The petitioner has now approached this Court for assailing the order dated 07.03.2020 passed by the learned Appellate Court on the following grounds:

i. That the Appellate Court has failed to appreciate that there was dispute with regard to demarcation and dispute of demarcation is amenable to the jurisdiction of Revenue Courts and as such only Revenue Authority can determine and settle the dispute of demarcation and the dispute was finally settled by the highest Revenue Court i.e. Joint Financial Commissioner, J&K, Jammu, vide its detailed judgment, as such, the dispute cannot be re-determined by the civil court because the civil court has no jurisdiction to decide the identity of the land in an injunction

suit and can only grant injunction if the respondent is in possession and her possession is interfered with, but in the instant case, the Commissioner's report clearly shows that the petitioner is in possession and there is a judicial finding on the basis of the report, as such the claim of Sunita Kohli merits no consideration.

ii. That the erstwhile owner, namely, Chand Kumari was in physical possession of the suit land and her possession was protected by the court of learned Munsiff, Jammu and when it was disturbed, the Revenue Authorities in view of the judgment and decree had restored the same and the erstwhile owner Chand Kumari had obtained the Fard Intikhab Jamabandi for transfer of the land but its renewal was wrongly prohibited by the Assistant Commissioner Revenue, Jammu on the application/motion of Sunita Kohli, irrespective of the fact that Sunita Kohli was stranger to the suit land.

iii. That the learned Appellate Court had relied upon two ex parte reports submitted during the pendency of reference before the court of Joint Financial Commissioner, J&K, Jammu irrespective of the fact that the aforesaid reports submitted by the Tehsildar and relied upon by the Appellate Court were ex parte and in fact rejected by the Joint Financial Commissioner, Jammu because the Joint Financial Commissioner, Jammu had shown its dissatisfaction over the demarcation report and appointed the superior officer/ACR, Jammu as Commissioner to

demarcate the land, who submitted a report indicating that the disputed land belongs to the petitioner and said report was never objected by the respondent as per information of the petitioner. The reports of the Tehsildar which are contrary to the judicial finding of the Joint Financial Commissioner, J&K, Jammu were required to be ignored by the Appellate Court, but the learned Appellate Court has relied upon those reports and has not taken note of the order passed by the Joint Financial Commissioner, J&K, Jammu.

iv. That the respondent was aware about the report of the Assistant Commissioner Revenue, Jammu but the same was concealed from the learned trial court while obtaining the interim relief because the report was against the respondent.

v. That the petitioner had got the site plan approved and wanted to raise construction of her residential house but the respondent, having no right over the land, filed a suit to stop the construction of the petitioner and the learned Appellate Court while passing the order impugned has not rightly appreciated three principles i.e. prima facie case, balance of convenience and irreparable loss while setting aside the order passed by the learned trial court.

8. Mr. Rakesh Chargotra, learned counsel for the petitioner has vehemently argued that the respondent has concealed the report submitted by the Assistant Commissioner, Revenue Jammu before the Joint Financial commissioner Revenue, Jammu despite the fact that the respondent was

aware about the same and, as such, she was not entitled to any relief, but the learned Appellate Court has not considered this vital aspect of the case and has placed reliance upon two *ex parte* reports regarding which the learned Joint Financial Commissioner, Revenue, Jammu has expressed his dissatisfaction. He has further argued that in another suit titled *Ajay Mengi vs. Anjani Gupta*, in the site plan annexed with that sale deed, the dimension of the land in that sale deed, has also been mentioned as 80 × 40 feet and if description of the land stated in the plaint of the respondent is accepted, then the aforesaid dimensions and description is contrary to the position existing on spot. He has further argued that the respondent has shown the plot of one Ajay Mengi towards eastern side of her plot and likewise in the suit filed by Ajay Mengi, he has referred the plot of Sunita Kumari towards eastern side of his plot, which is impossible, and it clearly establishes the falsity of the claim of the respondent and Ajay Mengi. He has placed reliance upon the judgments of Hon'ble the Supreme Court in cases titled **S. P. Changalvarya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs,**[1], **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and others**[2], **Iqbal Basith and others vs N. Subbalakshmi and others**[3], **Bengal Ambuja Housing Development Ltd. vs. Pramila Sanfui and others** [4], **Municipal Corporation of Delhi vs. C. L. Batra** [5], **AssadullahAhanger vs. Abdul Ahad Ahanger** [6]. Reliance has also been

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[1] 1994, AIR (SC) 853
[2] 2008 AIR (SC) 2033
[3] 2021 (2) SCC 718
[4] 2015 AIR (SC) 3729
[5] 1994 (5) SCC 355
[6] 1994 AIR (SC) 853

placed on the judgment passed by this Court in case titled **Raj Kumar and another vs. Paramjit Singh**[7]**.**

9. Per contra, Mr. S. M. Choudhary, learned counsel for the respondent has argued that the judgment and decree relied upon by the petitioner passed in favour of Chand Kumari cannot be relied upon as the respondent was not party to the said decree and he further submits that a wrong finding has been returned by the learned trial court that the possession of the land was handed over to the Chand Kumari after following due procedure of law. He has raised preliminary objection in respect of maintainability of petition under Article 227 of the Constitution of India, as disputed questions of facts are involved in the instant petition, which can be enquired into only during trial. He further submits that there is no jurisdictional error on part of the Appellate Court while passing the order impugned.

10. Heard learned counsel for the parties and perused the record.

11. The respondent is claiming to be the owner in possession of land comprising survey No. 660 min measuring 40 × 80 feet (12 Marlas) situated at Revenue Village Sunjwan, purchased by her through the medium of sale deed dated 06.02.1991, which she claims to have covered by constructing a boundary wall. It is also alleged by the respondent that she has constructed shed on the same.

12. On the contrary, the petitioner claims to be the owner of 1 Kanal of land comprising survey No. 653 situated at Revenue Village Sunjwan by virtue of sale deed dated 10.09.2008 executed by Chand Kumari, who in turn had

[7] Law Finder Doc Id#2428040.

purchased the same from one Thakur Singh vide sale deed dated 16.04.1971.

13. It is evident that the contesting parties are claiming their possession in respect of the suit land though as per respondent, the same falls in survey No. 660 min and as per the petitioner, the same falls in survey No. 653 situated at village Sunjwan.

14. From the record, it is evident that two cross revision petitions were decided by the Divisional Commissioner, Jammu vide order dated 06.06.2008 and it was observed that there was no dispute at all but the same was created by the then Naib Tehsildar, Bahu and his field staff. On the one hand, after demarcation they had located and identified survey Nos. 653 and after their satisfaction delivered the possession to Chand Kumari and also issued Fard Intikhab in respect of the said land in her favour but when Chand Kumari approached for renewal, the same was denied to her without any just cause. With these observations, the order passed by the Assistant Commissioner Revenue, Jammu was held to be contrary to law and accordingly reference was made to the Financial Commissioner Revenue, J&K, Jammu.

15. Vide order dated 05.02.2015, the Assistant Commissioner Revenue, Jammu was appointed as Commissioner, who submitted a report dated 11.05.2017 and came to the conclusion that the demarcation and identification of exact survey number of the disputed plot could not be established by the Commission, however, it is clear that the spot is in possession of Smt. Chand Kumari and now Smt. Anjani Gupta since 1999 on the basis of the decree passed by the Munsiff Court and the possession

was handed over by the Revenue Department after following due procedure of law.

16. Simultaneously, Assistant Commissioner (Revenue) Jammu also stated that Survey No. 652 lies between the survey nos. 653 and 660 and the same has been sold to one Subash Chander, whereas on the spot if the disputed plot is considered as survey No. 660, then the adjoining should be survey No. 652 and across it should be 653. It is also observed by the Commissioner that whole of the colony has been laid and sold out by the developers through their owners and that way they had utilized the plot of Chand Kumari in their lay out and a portion of it might have been utilised in the lanes. In lieu of 1 Kanal land of plot of Chand Kumari, the developers seem to have left a plot measuring 80 feet × 80 feet regarding which a decree was later granted by Munsiff court. This plot is definitely not as per tatima of plot purchased by Chand Kumari out of survey no. 653 in the year 1971. The Joint Financial Commissioner vide order dated 16.10.2017, by considering the report submitted by the Assistant Commissioner Revenue as mentioned above accepted reference made by the Divisional Commissioner, Jammu. It is contended by the petitioner that the respondent has concealed the material facts from the learned trial court in respect of the report of the Assistant Commissioner Revenue.

17. A perusal of the suit reveals that it was filed on 03.06.2017, meaning thereby that the reference was decided by the Joint Financial Commissioner J&K after filing of the suit. The learned Appellate Court has taken note of the report of Assistant Commissioner dated 11.05.2017, which depicts that the plot/land is in possession of the petitioner. The

petitioner has raised disputed questions of facts, by contending that the aforesaid dimension and description of the plots in both the sale deeds are contrary to the position existing on spot, and the learned Appellate Court also observed that there are conflicting claims of the parties and till the claims of the parties are adjudicated/determined, the subject matter of the suit is required to be protected.

18. The contention of the petitioner that the respondent has shown the plot of one Ajay Mengi towards eastern side of her plot and in the suit filed by Ajay Mengi, he has referred the plot of Sunita Kumari towards eastern side of his plot, which is impossible, and it clearly falsifies the claims of the respondent and Ajay Mengi, cannot be considered being a question of fact, while exercising jurisdiction under Article 227 of the constitution of India. The judgments relied upon by the learned counsel for the petitioner are not applicable in the present facts and circumstances of the case and are distinguishable on facts.

19. In ***Garment Craft v. Prakash Chand Goel***[8]**,** the Hon'ble Supreme Court of India has held as under:

> **15.** Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [*Celina Coelho Pereira* v. *Ulhas Mahabaleshwar Kholkar*, (2010) 1 SCC 217] **The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in**

[8] (2022) 4 SCC 181

> **appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.**
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> **16.** Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber* v. *Dass Estate (P) Ltd.* has observed
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> "*6*. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. **It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record.** The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."
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> (emphasis added)

20. In view of above, this court does not find any jurisdictional error on the part of the learned Appellate Court, which may warrant interference at the end of this court under Article 227 of constitution of India.

21. Accordingly, the petition is **dismissed.**

(RAJNESH OSWAL)
JUDGE

Jammu
06.02.2025
Sahil Padha

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

KARAM CHAND
2025.02.07 11:44
I attest to the accuracy and
integrity of this document