

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

CSA No. 9/2014

IA Nos.1/2014 & 2/2014

Reserved on: 30.07.2024

Pronounced on: 07 .08.2024

1. Aabid Nazir Zargar
2. Heena Nazir Zargar
3. Imran Nazir Zargar
Sons of Late Nazir Ahmad Zargar

4. Shahzada Begum
Wd/o Late Nazir Ahmad Zargar
Residents of Sangri Colony, Kanispora,
Baramulla, Kashmir

...Appellant(s)

Through:- Mr.Manzoor A Dar, Advocate with
Mr. Javid, Advocate

V/s

1. Mehrajudin Kakroo
S/o Late Ghulam Rasool Kakroo
R/o Kanli Bagh Baramullah
(Brother of deceased respondent)

2. Nighat
W/o Javid Ahmad Kakroo
R/o Baramullah (Sister)

3. Ruqaya
W/o Gayasudin Saraf
R/o Baramullah (Sister)

4. Afroza
W/o Mir Tariq Ahmad
R/o Pir bagh Srinagar (sister)

...Respondent(s)

Through:- Mr. J. H. Reshi, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. This civil second appeal by the appellants is directed against the judgment and decree dated 14th June, 2014 passed by the learned Principal District Judge, Baramulla [“First Appellate Court”] in civil first appeal No.01 titled Aabid Nazir Zargar and others v. Nazir Ahmed Kakroo, whereby the First Appellate Court has confirmed and upheld the judgment and decree of eviction passed by the learned Sub Judge, Baramulla [“the Trial Court”] against the appellants in a suit titled Nazir Ahmed Kakroo v. Nazir Ahmad Zargar.
2. This appeal was admitted to hearing on 3rd February, 2015 on the following substantial questions of law:
 - i) Whether failure to frame the issue regarding comparative advantage and disadvantage of the parties in the event ejection, or otherwise makes Trial Court judgment and decree liable to be set aside.
 - ii) Whether Trial Court finding on issue No.2 is based on “no evidence” and therefore perverse.
3. Later on, at the time of hearing of the matter, an additional substantial question of law was framed on 30th July, 2024, which reads thus:

“Whether the subsequent event i.e. death of the original plaintiff, who has obtained a decree of eviction against the defendant (predecessor-in-interest of the appellants herein) on the ground of personal necessity, which has ceased to exist with his death, would defeat the right of the reversioners of the plaintiff to seek eviction of the appellants on the basis of such decree?

4. Before I advert to the substantial questions of law subject to which this civil second appeal is admitted to hearing, I deem it appropriate to briefly notice few material facts. The predecessor-in-interest of the appellants i.e. father of appellant Nos.1 to 3 and husband of appellant No.4, namely, Nazir Ahmad Zargar was tenant of one Nazir Ahmed Kakroo, the predecessor-in-interest of the respondents in respect of a shop situated in Main Chowk, Baramulla. The shop was stated to be under the tenancy of Late Nazir Ahmad Zargar since 14th September, 2001 by virtue of a rent deed executed between the parties. With a view to seeking eviction of Late Nazir Ahmad Zargar, who is now survived by the appellants, Late Nazir Ahmed Kakroo, who is now represented before me through his reversioners, filed a suit for ejectment before the Trial Court. The suit was contested by the defendant-Nazir Ahmed Zargar and on the basis of pleadings of the parties, following six issues were struck out:

- “1. Whether the defendant has violated the term and condition of the rent deed? (OPP)
2. Whether The shop is required for personal necessity of the plaintiff? (OPP)
3. Whether the defendant has proved as a bad tenant? (OPP)
4. Whether the defendant has paid the entire rent ? (OPD)
5. Whether the suit of the plaintiff is not maintainable? (OPD)
6. Relief.

To what relief the plaintiff is entitle for.”

5. The parties led their respective evidence and ultimately the Trial Court after hearing both the parties decided all the issues in favour of the plaintiff-Nazir Ahmed Kakroo and passed a judgment and decree of ejection against the defendant- Nazir Ahmad Zargar on 30th December, 2011. It seems that after passing of the judgment and decree, the defendant- Nazir Ahmad Zargar passed away and consequently the legal heirs of Late Nazir Ahmad Zargar challenged the judgment and decree of the Trial Court by way of an appeal filed before the First Appellate Court.
6. The First Appellate Court vide judgment and decree impugned in this appeal upheld the judgment and decree of eviction passed by the Trial Court on the ground of “personal necessity” of the landlord Late Nazir Ahmed Kakroo. It may be pertinent to note

here that “personal necessity” projected by Late Nazir Ahmed Kakroo, who had retired as a judicial officer, was to set up advocate’s office in the suit shop to make his living comfortable.

7. Be that as it may, feeling aggrieved of the impugned judgment and decree passed by the First Appellate Court the appellants have filed the instant civil second appeal. The additional substantial question of law was framed on 30th July, 2024 on the basis of an application filed by the appellant that during the pendency of the civil second appeal the sole plaintiff in the suit i.e. Nazir Ahmed Kakroo had passed away and, therefore, the “personal necessity”, if any, existing during his life time had ceased to exist. It was, thus, pleaded that due to subsequent event the judgments and decrees passed by both the Courts below are required to be set aside. Both the parties were heard on the additional substantial question of law as well.
8. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that in view of the subsequent event i.e. death of the landlord, namely, Nazir Ahmed Kakroo, who had set up a case of his own “personal necessity” and not of a bona fide requirement of his dependants or reversioners in the suit has now ceased to exist.
9. As a matter of fact, the deceased landlord is not survived by any dependant or direct legal heir. The respondents before this Court

are the reversioners (brothers and sisters). It was not at all the case of the deceased landlord that he would require the suit shop for establishing his reversioners for earning their livelihood. The “personal necessity” pointed out by the deceased landlord was that he was a retired District Judge and, therefore, had a *bona fide* requirement of the suit shop for establishing his lawyer’s office. Obviously, this requirement ceased to exist on the death of the landlord.

10. It is true that basic rule is that the rights of the parties should be determined by reference to the date of institution of the suit or proceedings and the suit/action should be tried at all stages on the cause of action as it existed at the time of commencement of action. This, however, does not mean that events/happenings after the institution of the suit are required to be ignored altogether. It is always within the jurisdiction of the Court to take note of the changed circumstances and consider their impact on the pending action accordingly.
11. It is trite law that a Court of law may take into account subsequent events, *inter alia*, in the following circumstances:
 - i) The relief claimed originally has, by reason of subsequent change of circumstances, become inappropriate; or

ii) It is necessary to take notice of the subsequent events in order to shorten the litigation; or

iii) It is necessary to do so in order to do complete justice.

12. This Court has already considered this issue in some details in **Mst. Noora Bibi v. Sujan Singh Rally** (MA No.54/2015 decided on 15th May, 2023), **JKJ ONLINE 84554**. In paragraph Nos.23 to 27 the law on the subject is elaborately discussed. Paragraph Nos.23 to 27 of the judgment are reproduced hereunder:-

“23) Apart from what has been held hereinabove, the developments that have taken place during the pendency of this appeal, also cannot be ignored. The landlady has died and is survived by the legal heirs who are continuing with this appeal. The two of the legal heirs of the landlady i.e., her sons, namely, Mohammad Shafi Shakdar and Bashir Ahmad Shakdar, have retired from service. It is claimed by them that they would require the suit shop for personal use and occupation. The occupier too has died and is succeeded by his legal heirs who are in occupation of the suit shop and reportedly running their business of goldsmith.

24) It is true that basic rule is that the rights of the parties should be determined by reference to the date of institution of the suit or proceedings and the suit/action should be tried at all stages on the cause of action as it existed at the time of commencement of action. This, however, does not mean that the events happening after the institution of the suit are required to be ignored altogether. It is always within the province of the Court to take note of the changed circumstances and consider their impact on pending action accordingly. As is held by the Hon’ble Supreme Court in the case of **Kedar Nath Agrawal (dead) and another vs. Dhanraji Devi (dead) by L. Rs and another**, [2004 AIR SCW 5789], a Court of law may take into account the subsequent events, inter alia, in the following circumstances: stupefy

(i) *The relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or*

(ii) *It is necessary to take notice of subsequent events in order to shorten litigation; or*

(iii) *It is necessary to do so in order to do complete justice.*

25) What is held by the Supreme Court in paragraph 31 reads thus:

“In view of the settled legal position as also the decisions in Pasupuleti Venkateswarlu and Hasmat Rai, in our opinion, the High Court was in error in not considering the subsequent event of death of both the applicants. In our view, it was power as well as the duty of the High Court to consider the fact of death of the applicants during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their in-laws, obviously, the said fact was relevant and material. The ratio laid down by this Court in Rameshwar, would not apply to the facts of this case as it related to agrarian reforms. Likewise, Gaya Prasad, does not carry the matter further. There during the pendency of proceedings the son for whom requirement was sought had joined Government Service. In the instant case, the requirement was for the applicants, who died during the pendency of writ petition. Gaya Prasad is thus clearly distinguishable.”

26) In a latter case of **Sheshambal (dead) through LRs. Vs. Chelur Corporation Chelur Building and others, [(2010) 3 SCC 470]**, the Apex Court was dealing with similar case. Observations of the Court made in para 17, 18 and 19 are quite pertinent and, therefore, the paras are set out below:

17. While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted.

18. That proposition of law is, in our view, fairly settled by the decisions of this Court in Pasupuleti Venkateswarlu case [(1975) 1 SCC 770]. Krishna Iyer, J. (as His Lordship then was) has in his concurring judgment lucidly summed up legal position in the following words: (SCC pp. 772-73, para 4)

“4. ... If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice—subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to

confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

19. *To the same effect is the decision of this Court in Om Prakash Gupta case [(2002) 2 SCC 256] where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit yet the court has power to mould the relief in case the following three conditions are satisfied: (SCC p. 263, para 11)*

“11. ... (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.”

27) From the above discussion, we can deduce following principles:

(i) Ordinarily right to relief must be judged by reference to the date of suit or the legal proceedings.

(ii) This is, however, not without exception and if subsequent to the filing of suit, certain developments take place that have bearing on the right of relief claimed by a party, such subsequent events cannot be shutout from consideration.

(iii) In such situation, what is required to be done by Court is to examine the impact of those subsequent developments on the right to relief claimed that by a party and if necessary moved relief suitably so that same is tailored to meet the changed situation obtaining on the date the relief is actually granted.

(iv) Moulding of relief would be dependent upon satisfying following conditions:

(a) That the relief as was claimed originally is by reason of subsequent developments rendered in appropriate or incapable of being granted.

(b) That doing so would shorten the litigation and enable doing complete justice.

(c) That the subsequent events are to the notice of Court promptly and in accordance with rules of procedure so that opposite party is not taken by surprise.”

13. In view of the aforesaid settled legal position, it cannot be gainsaid that in view of the subsequent event i.e. death of the landlord late Nazir Ahmed Kakroo, *bona fide* requirement of the shop for establishment of a lawyer's office has ceased to exist. Since the suit was not for eviction of the defendant on the *bona fide* requirement of his dependants or even the reversioners, as such, the judgments and decrees passed by both the Courts below cannot be maintained. In the absence of specific plea claiming eviction of the appellants on the ground of “personal necessity” of the legal heirs/dependants of the landlord- Nazir Ahmed Kakroo, the respondents, who are reversioners, cannot be permitted to continue with the suit. The reversioners of Late Nazir Ahmed Kakroo, who have claimed to have succeeded to his estate including the suit shop, if they require the suit shop for *bona fide* personal necessity, may have a fresh cause of action to file suit for eviction against the appellants.
14. The contrary judgments relied upon by Mr. J.H.Reshi, learned counsel appearing for the respondents, are beside the point and are of no help to the respondents. In the case of **Kusum Lata Sharma v. Arvind Singh, 2023 Live Law (SC) 368**, a suit for eviction of the defendant was filed by the landlord on the ground of “personal

necessity” of accommodating his family members, who were dependant upon the landlord for their residence. The case set up by the landlord in the aforesaid case was that the residential accommodation available with him was totally insufficient for him and his family members. In such situation, Hon’ble Supreme Court held that since the plea of *bona fide* requirement was not only confined to the landlord alone but it also included the requirement of his family members. In the instant case the requirement is purely personal for establishing the office of a lawyer, which could have been established only by the landlord Nazir Ahmed Kakroo, who had retired as a District Judge and had a license to practice law. He had not even impliedly referred to the requirement of his brothers and sisters qua the use of suit shop. Rest of the judgments referred by Mr. J.H.Reshi are on substantial questions of law. Suffice it to say that the questions formulated by this Court including additional substantial question of law framed on 30th July, 2024 are indubitably substantial questions of law raised by the appellants.

15. The additional substantial question of law, as discussed above, is, therefore, decided in favour of the appellants and against the respondents. As a result, the judgments and decrees passed by both the Courts below i.e. Trial Court dated 30.12.2011 and First Appellate Court dated 14.06.2014 are not sustainable and deserve to be set aside. Since this appeal is being allowed on the additional substantial question of law discussed above, as such, I do not deem

it necessary to discuss and decide the other substantial questions of law framed by this Court vide order dated 03.02.2015.

16. For the foregoing reasons, this appeal is allowed and the judgments and decrees passed by both the Courts below are set aside.

Record be sent back.

(Sanjeev Kumar)
Judge

Srinagar
07 .08.2024
Vinod, PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes