

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR  
(Through Virtual Mode)**

**Case:** CM(M) No.164/2023

**Pronounced on:** 22.05.2024

Mohammad Rafiq Rather, aged 55 years  
S/o Mohammad Yousuf Rather  
R/o Wussan Kangan, Ganderbal

..... Appellant(s)

Through :- Mr. Z. A. Qureshi, Sr. Advocate with  
Ms. Monisa Maqsood, Advocate

**Vs**

Sara Banoo  
W/o Mohammad Anwar Rather  
D/o Mohammad Yousuf Rather  
R/o Wussan Kangan, Ganderbal

.....Respondent(s)

Through :- Mr. Lone Altaf, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

**JUDGMENT**

**22.05.2024**

**01.** The petition under Article 227 of the Constitution of India has been preferred by the petitioner against order dated 15.07.2022 passed by the learned Court of Munsiff Kangan and order dated 11.07.2023 passed by the learned Court of Principal District Judge, Ganderbal in the suit filed by the respondent against the petitioner. The interim application filed by the respondent against the petitioner herein in a suit was disposed of by the trial Court with the direction that the respondent is temporarily restrained from causing the obstruction in the cultivation of suit property till the disposal of

main suit. The court also restrained respondent herein from creating third party interest or change the nature of the suit property for the purposes other than cultivation. The appeal preferred by the respondent against the said order was dismissed by the Appellate Court vide order dated 11.07.2023.

**02.** The petitioner shall be referred as defendant and the respondent as plaintiff for the purposes of discussion in the petition in hand.

**03.** The plaintiff filed a suit with the averments that the parties are descendants of common ancestor. The plaintiff is the sister of the defendant. The property falling under Khasra No.822 measuring 5 kanals and 14 Marla situate at Mouza Wussan, Ganderbal has fallen under the share of the plaintiff on being partitioned and is enjoying the same for the last more than three decades. The defendant though has no right in the suit property yet is causing interference in the same.

**04.** The defendant filed the written statement controverting the stand of the plaintiff that the property has been partitioned between the parties. The defendant is in possession of 04 Kanal of land out of suit property yet the plaintiff has attempted to disposes him from the property which forced the defendant from filing suits seeking recovery of possession to the extent of 01 Kanal and 03 marlas as the defendant was dispossessed by the plaintiff from that piece of land. The suit land remained barren for last ten years and was not under cultivation and it was only last year that the plaintiff tried to utilize the land.

**05.** Mr. Z. A. Qureshi, learned senior counsel appearing for the petitioner-defendant has argued that both the courts while passing the impugned order have not considered the facts of the case in right perspective and have based the findings which are not as per the record. The courts relied upon one and ignored the other revenue report without any reason. The revenue record otherwise also does not record the possession of the plaintiff is also argued by the defendant. The pleading regarding the defendant having alienated his share in the property is also vague assertion of the plaintiff in the suit.

**06.** Mr. Lone Altaf, learned counsel for the plaintiff has argued that the petition is not maintainable as the concurrent findings have been recorded by both the courts and require no interference by this Court. The counsel has submitted that both the trial Courts have gone through the facts of the case extensively before passing the impugned order. He has also referred to the earlier suit filed by the defendant.

**07.** The petitioner-defendant has taken the Court through the two revenue reports in order to plead that both the courts erred in depending upon one of the reports while ignoring the other and that the two reports dated 15.09.2021 given by the Tehsildar, Kangan are contrary to each other.

**08.** In fact, one so called report dated 15.09.2021 is the parawise reply to the writ petition 1541/2021 by Tehsildar, Kangan and addressed to Sr. AAG of the High Court. The other report is also addressed to Sr. AAG in the same writ petition. Whereas one report/communication states of 2 kanals and 17 Marlas under survey No.822 Min. having been recorded in the name of petitioner, the

other report states of 5 kanal and 14 marls of land in physical possession of Masam Sara, plaintiff of the suit. This report also states of 02 Kanal and 17 Marlas recorded in the Jamabandi. Another report dated 14.02.2022 by Tehsildar, Kangan addressed to Deputy Commissioner, Ganderbal in the appeal proceeding filed by defendant against the Tehsildar, Kangan is on the file. As per the same land falling under survey No.882 is in physical possession of both the parties. The courts while deciding the matter have not only taken into consideration the reports but other material also available on the file. The suit filed earlier by the defendant has also been referred in the orders passed by the Courts. The suit filed by Mohd Rafiq stood withdrawn by him.

**09.** The argument of the plaintiff herein is that in view of the conflicting revenue reports that were filed, the trial Court should have constituted a team of revenue officials to report regarding the possession of the party in the property in question. The court is not in agreement with this argument raised by the defendant herein. This court is not to hold as to how the trial Court should have proceeded in the matter though the different revenue reports were before the trial Court for perusal. As stated above, the defendant had filed suit earlier before the Munsiff Court, Kangan and that suit was withdrawn. The order passed by the Munsiff Court on 23.06.2021 in case titled Mohd. Rafiq Rather Vs. Sara Bano and others makes out that the defendant herein had also filed suit relief of possession of the land which was subject matter of the suit. Of course, the liberty is granted to the defendant to institute the suit afresh if

the cause survives in favour of the petitioner. The Appellate Court has considered the reports which have been referred by the defendant during the course of argument and also effect of the suit filed by the petitioner and withdrawn by him. The appellate Court has considered the pleadings in the suit filed by the plaintiff and withdrawn by him and has held that the plaintiff in that suit has pleaded constructive possession generally.

**10.** The Court finds no reason to give its own interpretation to the facts mentioned in the documents placed on record of which the Courts through impugned order have given findings.

**11.** It is trite proposition of law that this Court while exercising power of superintendence will not interfere with the orders passed by the Courts unless there is manifest miscarriage of justice. This Court will not normally interfere even if there is some wrong committed on facts or law by the Courts below. Article 227 cannot be invoked only for the reason that the petitioner feels aggrieved of the order impugned in the petition. The compelling circumstances have to be made out by the aggrieved party against the order impugned in the petition requiring interference by the Court.

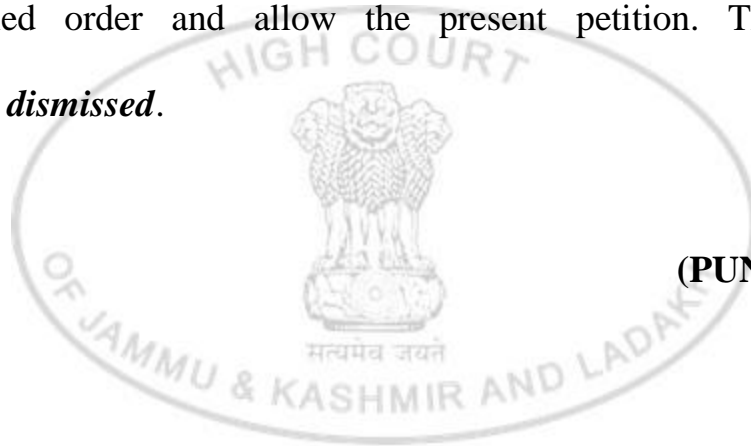
**12.** In AIR 2015 Supreme Court 3269 titled *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors.*, it has been held that 'an error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a

patent error which can be corrected by certiorari but not a mere wrong decision’.

**13.** The court is not convinced that the orders passed by the Courts below require any interference of sort in the facts and circumstances of the case.

**14.** The learned trial Court has taken care of the controversy involved and issues which require determination in the suit in hand and also protected the rights of the parties. The appellate Court has confirmed the order of the trial Court with valid reasons.

**15.** In the light of above discussion, the Court finds no reason to set aside the impugned order and allow the present petition. This petition is, accordingly, *dismissed*.



**(PUNEET GUPTA)  
JUDGE**

**Jammu**  
22.05.2024  
Shammi

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