

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

Case:- RSA No. 5/2021
CM Nos. 8426/2021, 8764/2021, 4691/2021 & 2560/2021
c/w
CCP(S) No. 273/2021

1. Manzoor Hussain, age 62 years.
2. Farid Hussain, age 60 years.
3. Abdul Hamid, age 57 years.
4. Gulzar Hussain age 55 years all sons of Aaz Din.
5. Mohd. Rafiq, age 40 years, S/o Soni,
All residents of Badyal Qazian, Tehsil
Suchetgarh, District Jammu.

.....Appellant(s)

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

Vs

1. Syed Mohasin Abbas, S/o Syed Ghulam Rasool Shah, R/o Badyal, Qazian Tehsil Suchetgarh, District Jammu, at present, Mohalla Baba Jiwan Shah, Jammu.
2. Fatima W/o Tanvir Ahmed alias Babli, R/o Mohalla Baba Jewan Shah, Jammu.
3. Zameer Abbas S/o Tanvir Ahmed alias Babli, R/o Mohalla Baba Jewan Shah, Jammu.
4. Zaheer Abbas, S/o Tanvir Ahmed alias Babli, R/o Mohalla Baba Jewan Shah, Jammu.
5. Jaffar Abbas, S/o Tanvir Ahmed alias Babli, R/o Mohalla Baba Jewan Shah, Jammu.
6. Tahira D/o Tanvir Ahmed alias Babli, R/o Mohalla Baba Jewan Shah, Jammu.
7. Sidra Jeffry D/o Tanvir Ahmed alias Babli, R/o Mohalla Baba Jewan Shah, Jammu.
8. Naib Tehsildar, Chakroi, Tehsil Suchetgarh (R. S. Pura).

..... Respondent(s)

Through: Mr. A. P. Singh, Advocate for R-1.

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

ORDER
(14.05.2024)

1. The appellants herein are the plaintiffs in a civil suit on file No. 19/Civil of the court of the Sub-Judge (Chief Judicial Magistrate), Jammu. In the said civil suit, the appellants have named twelve persons/officials as

defendants. The respondents No. 1 to 7 herein are said defendants No. 1 to 7 and the respondents No. 8 to 12 are the defendants No. 8 to 12 in the civil suit.

2. The appellants' civil suit is for decree of permanent prohibitory injunction restraining the respondents or any other person claiming under or through them from interfering into the peaceful possession of the appellants in respect of the suit land measuring 43 kanals and 6 marlas comprising khasra No. 763, 767, 768, 769, 770 situated at village Badyal, Qazian, tehsil Suchetgarh, district Jammu in any manner whatsoever or dispossessing the appellants from the suit land otherwise than by due course of law.

3. In the plaint, the appellants have stated the suit land to be an evacuee property meaning thereby permanent prohibitory injunction decree is being sought by the appellants not only against the private respondents but even against the respondents No. 1 to 7 who are the administrative as well as statutory authorities in the form of the Deputy Commissioner, Jammu, Assistant Commissioner (Revenue), Jammu, Sub Divisional Magistrate, R. S. Pura, Tehsildar Suchetgarh and Naib Tehsildar Chakroi, tehsil.

4. The respondent No. 1, as the defendant No. 1, appeared in the suit and sought the rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

5. The trial court of the Sub-Judge (Chief Judicial Magistrate), Jammu came to allow the said application of the respondent No. 1 and rejected the plaint on the ground that the civil court has no jurisdiction to hear and decide the *lis inter se* the parties. The premise on which the trial court came to hold it

lacking the jurisdiction to entertain the suit filed by the appellants is by reference to the nature of the land and the Jammu & Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006 creating bar for entertainment of a civil suit by a civil court.

6. The court of the Sub-Judge (Chief Judicial Magistrate), Jammu by virtue of an order date 29.06.2020 rejected the plaint of the appellants. Since, this order dated 29.06.2020 amounted to a decree under the Code of Civil Procedure, 1908 under section 2(2) so came to be challenged in a civil 1st appeal under section 96 read with Order 41 of the Code of Civil Procedure, 1908.

7. Para-8 of the trial court order dated 29.06.2020 sums up as to why the trial court held it lacking jurisdiction and that is by referring to the fact that the suit property being custodian property and civil court having no jurisdiction to hear and decide the suit. The civil 1st appeal preferred by the appellants (plaintiffs) against the said decree of rejection of the plaint before the appellate court of learned 1st Additional District Judge, Jammu on file No. 2340/2020/JKJM020024462020 also resulted in dismissal of the said civil 1st appeal which resulted in confirmation of the finding of the law as returned by the trial court with respect to the lack of jurisdiction to entertain the civil suit.

8. In the present civil 2nd appeal, the appellants have come forward agitating the fact that both the courts below have fallen in error by approaching the maintainability of the civil suit from the angle of application of the Jammu & Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006 and also by overlooking the fact that the suit for permanent prohibitory injunction

between the appellants and the respondents was matter of a private nature having nothing to do with the Jammu & Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006.

9. This Court in terms of requirement of section 100 of the Code of Civil Procedure, 1908 came to frame the substantial question of law in terms of an order dated 22.03.2021 and the said substantial question of law is as under:

“Whether both the Trial Court and the First Appellate Court erred in law in rejecting the plaint under Order 7 Rule 11 CPC without first adverting to the nature and character of the suit property in the light of the contentions urged by the parties about the applicability or otherwise of the provisions of Section 3 of J&K Agrarian Reforms Act and J&K Evacuees' (Administration of Property) Act, Svt. 2006.”

10. Section 100 of the Code of Civil Procedure, 1908 always keeps it open for this Court to revisit upon the plea of the respondent/s as to whether a civil 2nd appeal does involve the substantial question of law as proposed and framed. In this case, learned counsel for the respondent No. 1 is maintaining that the case does not involve the substantial question of law as framed or on any other aspect.

11. A perusal of the substantial questions of law as framed would show that this Court while framing it escaped noticing para-8 of the order dated 29.06.2020 of the trial court of Sub-Judge (Chief Judicial Magistrate), Jammu which categorically referred and reproduced the fact that the suit property is an

evacuee property and on that the civil court is lacking jurisdiction to entertain a suit.

12. This observation of fact by the trial court in its order is not alien to what the appellants as plaintiffs have pleaded in their own plaint themselves stating the nature of the suit property to be an evacuee property with respect to which they came forward for a suit for permanent prohibitory injunction not only against private individual/s but even against the public officials/statutory authorities and, therefore, the nature of the suit was more than that of permanent prohibitory injunction complexion suit. If the suit so filed by the appellants is to be decreed as it is that would mean even the public officials are to be enjoined forever from dealing with the suit property.

13. The appellants have set up their purported possessory claim *qua* the suit property not by reference to any grant/allotment under the Jammu & Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006 meaning thereby the appellants are equally alien to the suit property as they intend to claim the respondents No. 1 to 7 are. So in that scenario, the appellants in state of trespassers *qua* the evacuee property are meaning to injunct not only the private respondents No. 1 to 7 whom the appellants reckoned to be prospective trespassers but even the public officials who by no stretch of imagination can be said to be with a mindset of the trespassers. If the appellants would not have impleaded the public officials in the civil suit, the appellants could have been heard to say that their suit simplicitor for permanent prohibitory injunction even with respect to an evacuee property against third person may be held to be

maintainable in light of the judgment of this Court in the case titled “**Tariq Hameed Kara Vs. Ghulam Mohi-ud-din Wani and others**” reported in **2005(2) JKJ 427 (HC)** but that is not the factual situation in the case as this Court cannot reckon that the suit filed by the appellants is actually against the private individuals but is equally aimed against the public officials.

14. Mr. A. P. Singh, learned counsel appearing for the respondent No. 1 has cited a judgment of this Court titled “**Chaman Lal Sharma Vs. Chandu Ram**” in **OW104 No. 133/2015** which covers this factual aspect of this case on all fours.

15. Jammu & Kashmir State Evacuees’ (Administration of Property) Act, Svt. 2006 itself envisages the situation that a civil suit regarding an evacuee property if taken cognizance by a civil court then in that eventuality, the civil court is supposed to notify the Custodian Evacuees’ Property. This is what is the mandate of section 35 of the Jammu & Kashmir State Evacuees’ (Administration of Property) Act, Svt. 2006. The legislative intendment of the section 35 is that even if a civil suit/revenue suit with respect to an evacuee property has come to be taken cognizance by or before the civil/revenue court, then the Custodian Evacuee is not to be kept uninformed because at the end of the day, the adjudication of a civil suit/revenue suit is going to effect no other property than the evacuee property of which the Custodian is a statutory caretaker and manager.

16. In the facts and circumstances of the case, even if this Court were to reckon that the reasoning given by the court below is not fully valid to non-suit

the appellants still the conclusion and the basis for that conclusion that the suit property is an evacuee property as stated by the appellants themselves in the plaint, as such, the final outcome which came out from the civil court of the Sub-Judge (Chief Judicial Magistrate), Jammu and the appellate court of the 1st Additional District Judge, Jammu cannot be held to be wrong and, therefore, the suit filed by the appellants is held to be barred under section 31 of the Jammu & Kashmir State Evacuees' (Administration of Property) Act, Svt. 2006 leaving the appellants well within their right to approach the concerned jurisdiction under the said Act with respect to the subject matter of the suit. Nothing observed herein shall in any manner be taken to be an observation acting upon the merits and demerits of the respective cases of the appellants as well as the private respondents as well as the public officials.

17. Disposed of.

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18. In view of the order passed in RSA No. 5/2021, this contempt petition is also closed.

(RAHUL BHARTI)
JUDGE

JAMMU
14.05.2024
Shivalee

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