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**(2015) 11 J&K CK 0020**  
**In the Jammu And Kashmir High Court**  
**Case No : LPAOW No. 180 of 2015**

Asif Nazir Mir

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 27-11-2015

**Acts Referred:**

**Citation :** (2016) 2 JKJ 48

**Hon'ble Judges :** Mr. N. Paul Vasanthakumar, CJ. and Mr. Tashi Rabstan, J.

**Bench :** Division Bench

**Advocate :** Mr. R.A. Jan, Sr. Advocate With Mr. Mohsin Qadri and Mr. Abu Bakar, Advocates, for the Appellants/Petitioners; Mr. M.A. Qayoom, with Mr. Javed Ahmad, Advocates, for the Respondents

**Final Decision :** Dismissed

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## Judgement

Mr. Tashi Rabstan, J.- This Appeal is directed against the judgment and order dated 05.06.2015 passed by the Writ Court in OWP No.

1997/2013 and order dated 17.08.2015 passed in Review Petition No. 28/2015, whereby the learned Single Judge has dismissed the writ petition

as also the review petition.

2. The facts-in-brief are that the writ petitioner filed a Civil Suit for declaration and permanent injunction against his father Nazir Ahmad Mir and

two sisters that the Will Deed executed by his father on 29.08.2012 and duly registered before the Sub-Registrar, Srinagar regarding his various

properties be declared as null and void. Learned trial Court on 16.09.2013 directed the parties to maintain status-quo with respect to the suit

property. On 04.12.2013, father of writ petitioner, respondent No.7 herein, lodged FIR No. 127/2013 under Sections 307, 452, 354 and 506

RPC at Police Station Nigeen against his son alleging therein that his son along

with his wife had trespassed into his house, assaulted him and his daughter and put them in wrongful restraint. On 14.12.2013 writ petitioner also lodged a counter complaint against his father under Section 156(3)

Cr.P.C. before the learned Chief Judicial Magistrate, Srinagar.

3. Meanwhile, writ petitioner also filed a petition under Section 561-A Cr.P.C. before this Court seeking quashing of FIR No. 127/2013 on the

ground that he was being unnecessarily harassed by the police at the instance of his father despite the fact that he is the owner of ancestral house

situated at Nigeen Hazratbal, Srinagar, but he along with his family was not allowed to enter in the house by his father. The said petition later on

came to be disposed by this Court with certain direction to the father-son duo and the concerned Investigating Officer.

4. Meanwhile, the civil suit No. 108/N filed by the writ petitioner also came to be dismissed by the trial Court on 30.05.2015 for want of prosecution.

5. After disposal of the petition under Section 561-A Cr.P.C., writ petitioner filed OWP No. 1997/2013 in this Court, whereby besides seeking

adequate security cover, he sought a direction to the concerned police not to create any sort of impediment as regards the entry of petitioner's

family in the ancestral house situated at Nigeen, Hazratbal, Srinagar on the ground that the police was acting at the hands of his father, i.e.,

respondent No. 7 herein.

6. Learned Single Judge after thoroughly discussing the pleadings of the parties dismissed the writ petition in limine at the admission stage itself with

the observation that as the writ petitioner himself has taken a stand in the plaint that the property-in-question was inherited by his father, therefore,

it cannot lie in his mouth that he is the owner of said property, that too in presence of his father or he has any right of entry therein. Learned Single

Judge also held that the police is within its powers to take all appropriate measures to ensure safety of the life and property of writ respondent No.

7-Nazir Ahmad Mir, father of writ petitioner-appellant herein. Feeling aggrieved, the writ petitioner filed Review petition No. 28/2015, however,

the same too came to be dismissed by the learned Single Judge vide order dated 17.08.2015. Hence the present appeal.

7. We have heard learned counsel appearing for the parties and perused the file.

8. In our view the judgment and orders passed by the learned Single Judge are well founded and well reasoned, based on cogent findings; the same, therefore, do not require any interference in the present appeal, that too when the writ petitioner had himself admitted in the plaint that the property-in-question was inherited by his father. So far as the contention of petitioner regarding his dispossession from the ancestral house is concerned, the same is subject matter of civil dispute, which cannot be adjudicated in the present appeal. It is well settled proposition of law that disputed questions of facts cannot be allowed to be agitated in writ proceedings.

9. Whether the High Court is entitled to go into the disputed questions of fact in a writ petition filed under Article 226 of the Constitution of India is already decided by Hon'ble the Supreme Court.

(a) In (1976) 1 SCC 292 *Arya Vyasa Sabha and others v. The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and others* the view taken by the High Court that disputed questions of fact are to be left open to be decided before the Civil Court was upheld by Hon'ble the Supreme Court.

(b) In the decision reported in (2003) 4 SCC 317 *Rourkela Sharmik Sangh v. Steel Authority of India Ltd. and Another* it is held that the disputed questions of fact could not be entertained in the writ proceedings. In paragraph 19, the Supreme Court held as follows:

19. The question as to whether the workmen concerned had been continuously working for a period of ten years so as to enable them to derive benefit of the judgment of this Court in *R.K. Panda case* (1994) 5 SCC 304) was essentially a question of fact.

In paragraph 22, Hon'ble the Supreme Court further held as follows:

22. A disputed question of fact normally would not be entertained in a writ proceeding. This aspect of the matter has also been considered by a Constitution Bench of this Court in *Steel Authority of India Ltd. v. National Union Waterfront Workers* ((2001) 7 SCC 1).

(c) In (2006) 9 SCC 256 *Himmat Singh v. State of Haryana and others* Hon'ble the Supreme Court held that the statement of the appellant

or the 5th respondent was correct or not could not ordinarily be tested in writ proceedings and it is well known that in writ petition ordinarily such

a disputed question of fact could not be entertained.

(d) In yet another decision reported in (2007) 7 MLJ 687 Food Corporation of India v, Harmesh Chand Hon'ble the Supreme Court held as

follows:

Since the facts were seriously disputed by the appellant and no factual finding could be recorded without consideration of evidence adduced by the

parties, it was not an appropriate case in which the High Court ought to have exercised its jurisdiction. The parties could have approached a civil

court of competent jurisdiction to adjudicate the matter.

(e) Hon'ble the Supreme Court in the decision reported in 2009 (1) Supreme 52 Ranjit Singli v. State of Punjab and others has also taken a

similar view.

10. Therefore, we do not find any ground to take a view other than the one taken by the learned Writ Court. The judgments cited by the learned

counsel for appellant are also of no help to the appellant herein keeping in view the facts and circumstances of the case. This appeal is, accordingly,

dismissed along with connected miscellaneous petition, if any. No costs.

11. Before parting with the matter, we make it clear that any observation made by this Court in the writ order or in this appeal shall not be

construed as rendering a finding on any issue between the parties, and all issues are permitted to be agitated in the Civil Court, which will decide all

issues on its own merits.