
(2020) 12 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 109, 5755, 5757, 5768, 5758 Of 2020, Caveat No. 1290 Of 2020

Ghulam Hassan Pirzada And Anr

APPELLANT

Vs

Ghulam Mohammad And Ors

RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2020) 12 J&K CK 0035

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Majid Bashir, S. S. Bashir, Shafqat Nazir

Final Decision : Dismissed

Judgement

1. The present petition has been filed by the petitioners for quashing the order dated 05.11.2020, passed by learned District Judge, Kupwara by virtue

of which appeal filed by the petitioners against order dated 19.08.2019, by virtue of which the interim order dated 04.05.2018 was vacated, was

dismissed.

2. The sole contention raised by the petitioners in the present petition is that both the courts below have not appreciated the fact that in the survey No.

1066/635 (total land 5 kanals), land measuring 2 kanal 5 marlas is recorded in the ownership and possession of petitioners, whereas land measuring 2

anal 15 Marlas is recorded in favour of respondents. The contention of the petitioners is that there is a pathway, which passes through the land

comprising survey No. 1066/635 and when the respondents were trying to forcibly encroach upon the said property, suit for permanent prohibitory

injunction was filed and the court of learned Munsiff, Kupwara (hereinafter

referred to be as the trial court) vide order dated 04.05.2018 directed the parties to maintain status quo. Subsequently, when written statement was filed by the respondents, it was pleaded by them that there is nothing on record to demonstrate that the land comprising survey No. 1066/635 constitutes the pathway as well. It was also pleaded by the respondents in the written statement that another suit with regard to survey No. 648 was also pending between the parties, but the petitioners did not disclose the same.

3. The learned trial court after hearing both the parties, vacated the order of status quo vide order dated 19.08.2019 and the same was impugned by the petitioners before the appellate court. The learned appellate court upheld the order passed by the trial court vide order dated 05.11.2020. The present petition has been filed assailing both these orders.

4. Learned counsel for the petitioners has vehemently argued that both the trial court as well as appellate court have committed a grave illegality that there is nothing on record to demonstrate that the pathway/approach road passes through survey No. 1066/635 and further submitted that it was a matter of trial.

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

6. Perusal of the material placed on record reveals that both the courts below have returned the findings on facts after meticulously examining the

pleadings as well as documents placed on record by the respective parties. So far as the petition under section 227 of the Constitution of India is

concerned, Honâ??ble the Apex Court in *Shalini Shyam Shetty and another vs. Rajinder Shanker Patil*, 2010 (8) SCC 329, has categorically held that

under Article 227 of the Constitution of India, High Court cannot rectify merely the legal or factual errors and it is only when there are jurisdictional

issues, the High Court can exercise its supervisory jurisdiction.

7. I have also gone through the record. I do not find any illegality, perversity and jurisdictional error in both the orders passed by the trial court as well

as appellate court as there is nothing on record to demonstrate that the pathway/approach road passes through the land of survey No. 1066/635.

8. In view of this, this petition is found to be without merits and is, as such, dismissed.