
(2007) 05 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 14 Of 2007

Ghulam Mohammad Dar

APPELLANT

Vs

Assadullah Reshi and others

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 1 Rule 10

Citation : (2010) 3 JKJ 387 : (2007) 2 SriLJ 577

Hon'ble Judges : Bashir Ahmed Kirmani, J

Bench : Single Bench

Advocate : Abdul Qayoom, Advocates appearing for the Parties

Judgement

1. Vide order dated 20.04.2004 passed in civil suit no. 65 of 2001 captioned ""Gh. Mohammad Dar Vs. State"" the learned trial Judge allowed an

application purporting to have been filed by strangers to suit for their impleadment in the array of respondents and directed their impleadment as

such. This order was sought to be reviewed by present petitioners plaintiffs before trial court chiefly on the ground that the precedence quoted by

them before the Court below were not dully appreciated with the result that learned trial Judge committed an error apparent on the face of record.

This application too was dismissed with the result that petitioners are in this revision petition for quashment of both the orders aforesaid on the

ground that the law eited by petitioners in favor of their contention was not duly appreciated by the court below either at the time of allowing the

impleadment application of during consideration of the review petition with the result that learned trial Judge landed into an error and passed the

order in violation of law. During course of submissions petitioner's counsel reiterated these contentions while none was present to be heard for

respondents.

2. I have heard learned counsel and considered the matter. Features appearing to have influenced the mind of learned trial Judge below at the time

of passing impugned orders are just that the persons seeking impleadment in the suit claimed to be coowners/cosharers in the subject matter and

secondly that such were necessary parties for disposal of the suit, because in their absence the matter could not be fully adjudicated upon and,

accordingly, their prayer for impleadment as defendants in the suit prevailed. On consideration of the matter, few more questions appear to arise;

first, the persons claiming impleadment in the matter being acknowledged as coowners/coshares and alleged to contest their respective rights in the

matter ex facie appears to add the element of the title dispute between the petitioner plaintiffs and newly added defendants between whom the

matter would pertain to the dispute of title inter se while in its original form the suit was purely injunctive in nature with the petitioner plaintiff

seeking no relief against newly impleaded defendants nor alleging any interference by them in the suit land; secondly, that if petitioner does not in his

injunction suit claim any interference by newly added defendants nor seeks any relief against them what is it that they would claim to defend without

anything being alleged or prayed for against them and as such what could be the outcome of their impleadment other than converting the suit from

injunction into title dispute with enlarged area of litigation and thirdly that if newly added defendants wanted to stake their claim of ownership

whether joint or exclusive in the suit land against plaintiffs what prevented them from instituting an independent suit against them in which case they

would be placed safer as compared with their present placement where the plaintiff would be at liberty to withdraw his suit any moment.

Cumulatively, none of these questions appear to have been considered by learned trial Judge while ordering impleadment as done which

necessitates reconsideration of the matter at his level.

3. Accordingly, the revision petition is allowed and while setting aside the impugned order the matter is remitted back to learned trial Judge for

reconsideration of the whole issue after hearing parties afresh without, of course, being influenced by anything contained herein.

Disposed of.