

(2023) 08 J&K CK 0037
In the Jammu And Kashmir High Court
Case No : Civil Miscellaneous No. 166 Of 2023

Ghulam Mohi-Ud-Din Rather And Others	APPELLANT
Vs	
Ghulam Rasool Dar And Others	RESPONDENT

Date of Decision : 22-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2023) 08 J&K CK 0037

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Hakim Suhail Ishtiyag, Sheikh Irshad

Final Decision : Disposed Of

Judgement

Puneet Gupta, J

1. The petition is filed under Article 227 of Constitution Of India and seeks setting aside of order passed by the appellate court in the appeal filed against the order of trial court in the interim application whereby the trial court restrained the respondents from carving out any road through the disputed land. The appellate court by impugned order set aside the order of the trial court. The petitioners are the plaintiffs before the trial court and filed the suit with the averment that they are in possession of the land measuring 06 Kanals 07 Marlas falling in Survey No. 753 min situate at Ichgam Budgam and in front of the land of the plaintiffs main road is passing through Ichgam and Khansahib and the defendants, who have their land just behind the land of the plaintiffs, are adamant to carve out a link road to their land through the land of the plaintiffs.

2. The defendants have filed their written statement and stated that the pathway has been carved out through the land of the plaintiff No.1 and the pathway is being developed by the other respondents. The trial court passed the interim order which culminated into passing of final interim order in favour of the petitioners herein. The interim directions were made absolute.

3. Aggrieved by the order of the trial court, the defendants filed an appeal before the court of Additional District Judge, Budgam and vide impugned order dated 27.06.2023 the court allowed the appeal and set aside the directions passed by the trial court vide order dated 16.03.2022 read with order dated 23.11.2022. The appellate court allowed the appeal on the ground that the plaintiffs had misrepresented before the trial court while filing the suit. The appellate court reasoned that both the parties had raised shopping complexes on the land exchanged and that the respondent had constructed residential house upon the land of the appellants (respondents herein) which has been exchanged by the party. The court relied upon the revenue record and also some settlement taken between the parties. The court allowed the appeal mainly on the basis that the plaintiffs had suppressed the material facts before the trial court.

4. Learned counsel for the petitioners has submitted that the observations which led to the setting aside of the trial court order are without substance. The observations of the appellate court have give finality to the suit itself. The findings recorded by the appellate court are illegal and not based on facts.

5. Learned counsel appearing for the respondents, on the other hand, has submitted that the appellate court has rightly pointed out the fact that the plaintiffs have misrepresented the facts before the trial court and obtained the directions in their favour.

6. The court after going through the order of the trial court is of the view that the trial court had passed a detailed order after taking into consideration all aspects of the case. The consideration which weighed with the appellate court while upsetting the order of the trial court was that the plaintiffs have misrepresented the facts in the suit as the land between the parties stood exchanged on which they had also raised construction. The court also in its order referred to the demarcation report and the settlement which took place earlier between the parties.

7. The appellate court could not conclusively hold that the plaintiffs have not come with clean hands before the court. what has been exchanged and on what portion of the land the defendants could not carve out the road are some of the issues which may require to be determined in trial. The plaintiffs in the suit have raised the issue that the defendants intend to carve out a path which according to the plaintiffs was required to be left out by the defendants. The path is stated to be in vicinity of the area where the plaintiffs reside. Of course, the defendants deny the assertion of the plaintiffs in the written statement. Prima facie triable issues have arisen in the suit. The interim directions passed by the trial court if not sustained the same shall result into multiplicity of proceedings as if the path is carved out during pendency of the suit the same will impact the suit proceedings and the relief sought for by the plaintiffs in the suit if the suit is to ultimately succeed. The factors which weighed with the appellate court and make observations while setting set aside the directions passed by the trial court are not justified. The court dealt with the appeal as it was deciding the suit itself. The

court is of the view that the interference by the court in the order impugned is called for as the same is not sustainable in law.

8. The court in the petition like the present one is not to interfere with the order of the appellate court unless the order amounts to miscarriage of justice. The present case is such which warrants interference by this court in the order impugned in the petition.

9. Accordingly, the petition is allowed and the order of the appellate court is set aside. The directions passed by the trial court shall remain in force till disposal of the suit.

10. Disposed of.