

**(2004) 04 J&K CK 0009**  
**In the Jammu And Kashmir High Court**  
**Case No : C. Rev. 135 of 2003**

|                              |    |            |
|------------------------------|----|------------|
| Mohd. Afzal Shah             | Vs | APPELLANT  |
| Ghulam Ahmad Shah and Others |    | RESPONDENT |

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**Date of Decision :** 09-04-2004

**Acts Referred:**

Jammu and Kashmir Civil Procedure Code, 1977 — Order 39 Rule 1, Order 39 Rule 2, 115

**Citation :** (2004) 2 JKJ 570

**Hon'ble Judges :** Syed Bashir-Ud-Din, J

**Bench :** Single Bench

**Advocate :** M.Y. Bhat, for the Appellant; M.I. Hussain, for the Respondent

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## Judgement

Syed Bashir-Ud-Din, J.—Revision petitioner/plaintiff filed injunction suit in the court of Munsiff Sub Registrar, Srinagar. Alongwith an

application was moved for grant of interim relief in the nature of restraining and injuncting the defendants (respondents to the revision ) from

interfering with the possession of plaintiff-applicant over the suit property. The initial direction was confirmed subsequently after the other side filed

objections by order June 16, 2003. Defendants filed an appeal against the order. The additional District Judge, Srinagar by order dated 30.9.2003

accepted the appeal and has set aside the order of the court below. Against this order the present revision petition is filed.

On 7.4.2004 during the course of the arguments counsel for the parties in the circumstances referred in the order sought two days time to come

with the compromise deed. However, when the matter was taken up on board today the counsel for the parties presented their respective

compromise drafts. Strangely, neither counsel accepted nor consented to draft

prepared by the other counsel/other side, having failed to arrive at a settlement/compromise, the matter after concluding the arguments is taken up for final disposal.

2. Orders of the trial court as also the appellate court have been perused. Record is also examined.

3. It is not far away to find from record that the suit property is purchased by the plaintiff Mohd. Afzal Shah from one Gh.Nabi Rather. The said

Gh.Nabi Rather had purchased the property from his predecessors-in-title Mohd. Maqbool & Ors by a sale deed executed and registered on

13.1.1981. In this sale deed as also site plan attached to the sale deed it is clearly shown that the title on spot with structure is over 1425 Sqft. and

the egress and ingress to grave yard is distinctively marked on the Easter side of the land. Gh.Nabi Rather has sold this land and structure to

plaintiff Mohd. Maqbool Shah, by sale deed executed on 27.4.2000 and registered on 15.5.2000. In this sale deed the extent of the land in SFT is

now shown as 1740.3 sft/ and the site plan shows that the pathway to grave-yard is omitted though a strip of land measuring 5'9" on North and 5'

.3" on southern side and 31' .9" in length is shown on the eastern side of the site plan. The said Gh.Nabi Rather predecessor-in-title of plaintiff has

appeared before the Commissioner appointed by the court and has stated that he has only sold 1425.6 sft of land to plaintiff. This land

admeasuring 1425.6 sfts he himself purchased from his predecessor-in-title Mohd. Maqbool Shah and Ors. The Commissioner who went for the

spot inspection and investigation clearly stated that the strip of land used as path-way to connect a public lane to the grave-yard and shrine of

Akram Shah on spot at Shampora Nowhatta Srinagar did exist and was used for egress and ingress by the concerned to enter and come out of

grave-yard and the shrine although till about 1&1/2 month earlier to filing of instant suit for injunction before court below. Even the ex-owner and

predecessor-in-title of the revision petitioner has before the Commissioner unequivocally stated that the path-way did so exist and was preserved

on spot for access to the Shrine and grave-yard. The appellate court has also noted that recording of excess land of about 315.3 sft. by plaintiff, is

managed clandestinely on distortion of facts. The existence and removal of wooden door at entrance point on the strip of land used for passage

and path-way to Shrine and grave-yard and its use for ingress and egress is prima-facie made out from Commissioner's report. First blocking the passage and managing to enclose it forcibly, and then misusing and abusing the process of law to perpetuate the act of forcible occupation of the passage, is pointedly and distinctly noted by the appellate Court from record. The appellate court has also on material found that the plaintiff has approached the court with unclean hands with the purpose and object of perpetrating his action of forcible blocking the passage and continuing its occupation. Not only so, plaintiff though passage/pathway is not transferred to him under sale or otherwise, has deceitfully in a clandestine manner shown it as party of the land and house purchased by him. In the circumstances, prima-facie coming to the conclusion, on material that plaintiff is not entitled to equitable relief of interim injunction cannot be said to be not on 'terra firma.' The appellate court has referred to some of the judgments and taken note of the case law reported in Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, to conclude that a trust-passer and one who takes law in his own hands cannot be granted any protection under law may be in the form of interim injunction. On such conclusion the trial court order has been set-aside and the application for grant of temporary injunction has been rejected.

4. On notice of aforesaid facts and circumstances and the features of the case, the exercise of powers within jurisdiction by the appellate court cannot be said to be in violation of law, vitiated or to suffer from any legal infirmity. The appellate court has exercised discretion within para-meters of law fairly and with reasons. The cardinal principles to serve as guidelines for issuance or refusal of discretionary relief within the ambit of injunction laws, of prima-facie case, balance of convenience and irreparable loss cannot be said to have been lost sight of. Not only so the cognizance is also taken of the fact that while exercising equity jurisdiction a party is to approach the court with clean hands. The order is reasoned one within para-meters of law. This revision has no merits.

5. In the above view of the matter while dismissing the revision petition, the court below would see to it all steps are taken to ensure and court is under legal duty to so ensure smooth and uninterrupted passage and unhindered egress and ingress over the strip of land referred above as

pathway to reach the grave-yard and Shrine, parties are directed to appear before the court below on 20.4.2004.

6. Send copy of the order alongwith record to trial court in advance to the above date fixed for appearance. Also inform appellate court of this

order and send converted part record to appellate court.