

(2023) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 114, 3984, 3985 Of 2023, Cav No. 1136 Of 2023

Sandeep Chand And Anr

APPELLANT

Vs

Bandhana Anthal And Ors

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Order 39 Rule 4, Order 43 Rule 1(r)

Citation : (2023) 07 J&K CK 0002

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : Poonam Kumari, F.A. Natnoo, Tariq M Mughal

Final Decision : Dismissed

Judgement

Rahul Bharti, J

This petition is under article 227 of the Constitution of India filed by the petitioners who are the plaintiffs in a civil suit titled "Sandeep Chand and anr vs. Bandhana Anthal and ors" pending before the Court of Munsiff, Chenani. In the present petition, the petitioners are seeking to get an order dated 17.06.2023 passed by the trial court of Munsiff Chenani examined by this Court.

In terms of the said order dated 17.06.2023, the trial court of Munsiff, Chenani has allowed the application filed by the defendant no. 2-Mandeep Chand in the civil suit, who is respondent no. 2 in the present petition, and permitted him to undertake construction at the second floor of a school building known as Saraswati Academy situated at Ward no. 5, Chenani, tehsil Chenani district Udhampur. This direction of allowing the respondent no. 2/defendant no. 2 to undertake the construction at the second floor of a school building is in the wake of an order dated 17.06.2023 passed by the Court of Munsiff Chenani in terms whereof the said Court came to direct maintenance of status quo by both the parties qua the suit property till final disposal of the civil suit.

Thus, the order being challenged in the present petition is in the form of variation under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 and as such Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 provides the remedy of an appeal against the order of such nature.

That being the position, this petition is held to be not maintainable in view of availability of remedy of appeal at the disposal of the petitioners. Accordingly, this petition is dismissed along with connected applications.

Caveat no. 1136/2023 also stands discharged.