

(2022) 09 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 2, 56 Of 2022

Yasir Ahmad Sheikh And Others

APPELLANT

Vs

Abdul Salam Sheikh And Others

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 31, 34

Citation : (2022) 09 J&K CK 0020

Hon'ble Judges : Rahul Bharti, J

Bench : Single Bench

Advocate : F. A. Wani

Final Decision : Dismissed

Judgement

Rahul Bharti, J

The petitioners are the sons of the respondent nos. 1 & 2. The respondent nos. 1 & 2 have filed a civil suit for declaration with consequential relief of permanent prohibitory injunction and mandatory injunction against the petitioners as being the contesting defendants and the suit is on the file of the Court of learned Munsiff, Pampore.

Through the said civil suit, the respondent no. 1 in particular has come to challenge a document which is in the form of a sale deed dated 23.01.2019 in terms whereof, a purported sale of piece of land measuring 18 marlas falling under survey no. 135 situated at Kadlabal (Pulpar Area), tehsil Pampore, district Pulwama executed by the respondent no. 1 in favour of the petitioners is said to have been taken effect on the sale consideration of Rs.10,55,700/-. Upon the said piece of suit land there is a residential house existing in which the respondent no.

1 & 2 and also the petitioners are reported to be residing.

Accompanying the said suit was an application filed by the respondent nos. 1 & 2 for seeking temporary injunction relief in which the trial court of learned Munsiff Pampore vide its order dated 09.10.2020 came to direct maintenance of status-quo with respect to the possession over the said property and also no third party interest creation qua the said property till the conclusion of the trial.

This order dated 09.10.2001 being passed under Order 39 rule 1 & 2 CPC, 1908 came to be questioned in a civil miscellaneous appeal under Order 43 rule 1(r), CPC, 1908 before the Court of Additional District Judge, Pulwama by the petitioners. The lower appellate Court of learned Additional District Judge Pulwama by undertaking a thorough examination of facts in the light of the state of law as propounded in the reported judgements on the subject came to dismiss the said appeal of the petitioners thereby upholding the order dated 09.10.2021 as passed by the learned Munsiff, Pampore.

Against the said two orders of the courts below, the petitioners have come to seek and ask for an exercise of supervisory jurisdiction of this Court under article 227 of the Constitution of India. The main premise upon which the petitioners are banking upon to assail the said two orders is by reference to the fact of the purported sale deed made by the respondent no. 1 in favour of the petitioners with respect to suit land for the alleged sale consideration of Rs.10,55,700/-.

Learned counsel for the petitioners' submissions sound as if in law there is no scope whatsoever for maintaining a civil suit for seeking declaration with respect to illegality/fraud attending execution of an instrument, which in the present case is the sale deed, qua an immoveable property which in the present case is the said piece of land. The provisions of the Specific Relief Act, 1963 in terms of section 31 & 34 provide for a suit for declaration and also for cancellation of an instrument whether or not a person challenging by way of a civil suit an instrument concerning immoveable property is able to succeed or not is a question to be decided and determined by a given civil court upon the basis of a full-drawn trial in a civil suit.

Thus the trial Court in its discretion in the present has come to put in place an interim injunctory direction which is commensurating with the physical position obtaining with respect to the suit property as the same having been confirmed by the lower appellate Court vide its order dated 21.12.2021 there is no illegality/infirmity whatsoever attending the said two orders which can be upset by this Court in exercise of its supervisory jurisdiction under article 227 of the Constitution of India. Hence the petition is found meritless and dismissed accordingly.