
Mohiuddin Parray And Others Vs State Of J&K And Others

Other Writ Petition No. 1226 Of 2012

Court: Jammu And Kashmir High Court (Srinagar Bench)

Date of Decision: Nov. 5, 2020

Hon'ble Judges: Sanjeev Kumar, J

Bench: Single Bench

Advocate: H. Furrahi, N. H. Shah

Final Decision: Dismissed

Judgement

Sanjeev Kumar, J

1. The petitioners claim that they are owners in possession of a piece of land measuring 20 kanal 16 marlas falling under Survey Nos. 344, 345 and

346 situated at Wahidpora Tehsil Sonawari, District Baramulla. Owing to some dispute with regard to possession of the subject land between the

petitioners and the State Forest Corporation, a suit was filed in the Court of Sub-Judge, Baramulla, under the title Maqsood Ahmad Parray and others

v. Managing Director, State Forest Corporation and others. The suit was decreed by the Court of Sub Judge, Baramulla, vide its decree dated 18th

February, 1995 and the petitioners were declared to be in rightful possession of the subject land.

2. The petitioners claim their possession on the basis of aforesaid decree and have filed this petition to restrain the official as well as private

respondents from interfering in their peaceful possession.

3. Respondent Nos. 6, 7 and 8 have filed their objections and have taken the stand that the decree relied upon by the petitioners was obtained by them

by fraud and without arraying the rightful owners of the suit land as party respondent(s). It is submitted that respondent No.6,7 and 8, who are the

members of the Wakf Committee, Bangipora, have filed a suit for cancellation of the decree obtained by the petitioners by fraud in the Court of

learned Munsiff, Sumbal. The petitioners herein, who have been arrayed as respondents in the aforesaid suit, have already filed their written

statements and have taken all the pleas which they have raised in this petition. It is submitted that the petitioners, with a view to frustrate the suit filed

by the Wakf authorities, have filed the instant petition.

4. Having heard learned counsel for the parties and perused the record, I am of the view that this petition raises complicated disputed questions of

fact, which are otherwise subject matter of a suit filed by the Wakf authorities before the Court of Munisff, Sumbal. From the decree placed on

record by the petitioners, it clearly transpires that the petitioners have not been held to be the owners of the subject land but have been only declared

in possession. The suit decreed was between the petitioners and the State Forest Corporation, therefore, prima facie not binding on the respondents.

5. Be that as it may, the fact remains that the respondents have already taken their remedy and have filed a suit before the Court of Munisff, Sumbal

for seeking declaration of the decree as null and void. As rightly contended by the respondents, the petitioners have already taken all the available

pleas, as have been raised by them in this petition, in the aforesaid suit. Needless to say that to adjudicate and decide the complicated disputed

questions of fact between the parties, right forum is a civil Court. It is also noteworthy that this Court while issuing notice in this petition in terms of

order dated 13th September, 2012 also provided that the respondents shall not interfere with the subject matter except in accordance with law. I am,

thus, of the view that even if, the writ petition of the petitioners were to be allowed, the petitioners will not be entitled to any other relief except the

relief they have already got by way of interim direction.

6. This petition is, thus, found to be not maintainable and the same is, accordingly, dismissed. However, there could be no exception to the interim

direction issued by this Court which otherwise is the law of land that the respondents shall not interfere with the subject land except in accordance

with law. The dispute between the parties is already subjudice before the civil court and the parties are, thus, well advised to contest the matter before

the civil court.