

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CM(M) No. 230/2023
CM No. 7268/2023**

Tara Chand

.....Appellant(s)/Petitioner(s)

Through: Mr. V. B. Gupta, Advocate

Vs

Naresh Kumar and Anr,

..... Respondent(s)

Through: Mr. Masood Ahmad, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

**ORDER (ORAL)
08.11.2024**

1. The petitioner is aggrieved of order dated 09.11.2023 passed by the court of learned Sub Judge (Special Mobile Magistrate), Kathua (hereinafter to be referred the trial court), whereby the application submitted by the petitioner under Order 8 Rule 9 CPC for filing replica to the written statement filed by the respondents has been rejected in part to the extent of replying the factual assertions made in the written statement that the respondents have been recorded in possession of the suit property in the revenue records i.e. Jamabandi 1999-2000, Khasra Kirdawri, 1998 and Kharief, 2022.
2. Mr. Gupta submits that the petitioner has not been permitted to rebut the averments made by the respondents by the learned trial court with regard to the revenue entries mentioned in preliminary objections.
3. Mr. Masood Ahmad, learned counsel for the respondents submits that the revenue record placed on record by the respondents, alongwith their written

statement, is their defence and mere non-denial of the same by the petitioner does not amount to the admission of the averments made in the written statement.

4. Heard and perused the record.
5. The judgments referred by the learned trial court reveals that the learned trial court was of the view that the petitioner is not required to deny the case of the defendants put forth in the written statement.
6. The averments made in the preliminary objection No. 2 of the written statement are in fact the defence of the respondents/defendants before the learned trial court and mere not replying the same would not amount to admission of the averments made in the written statement on the part of the petitioner, more particularly when the documents mentioned in the written statement are required to be proved during trial.
7. In view of the above, this Court does not find any reason to show indulgence in the matter, more particularly when this a petition under Article 227 of the Constitution of India and the rights of the parties has not been decided by the learned trial court. Accordingly, the petition is dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
08.11.2024
Karam Chand Secy.