

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

**CM (M) No. 112/2022 c/w  
CCP (S) No. 213/2023**

Reserved On: 10<sup>th</sup> of December, 2024  
Pronounced On: 2<sup>nd</sup> of January, 2025.

**Bashir Ahmad Najar**

**... Petitioner(s)**

**Through: -**

Mr M. M. Dar, Advocate with  
Mr U. M. Banday, Advocate.

**V/s**

**Bashir Ahmad Shah & Ors.**

**... Respondent(s)**

**Through: -**

Mr Mubashir Mushtaq, Advocate.

**CORAM:**

**HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE  
(JUDGMENT)**

**CM (M) No. 112/2022:**

01. The Petitioner, through the medium of this Petition filed under Article 227 of the Constitution of India, seeks setting aside of two Orders: one dated 25<sup>th</sup> of April, 2022 passed by the Court of learned Munsiff, Pulwama (for short "the Trial Court") in the Suit filed by the Plaintiff/Petitioner herein titled '**Bashir Ahmad Najar v. Bashir Ahmad Shah & Ors.**', whereby an application for interim relief filed by the Plaintiff/Petitioner herein, along with the Suit, was dismissed; and the other dated 24<sup>th</sup> of June, 2022 passed by the Court of learned Additional District Judge, Pulwama (Appellate Court) in the appeal preferred by the Plaintiff/Petitioner herein against the aforesaid Order dated 25<sup>th</sup> of April, 2022 passed by the Trial Court, thereby dismissing the said appeal.

02. The case of the Petitioner herein, as emerges from the perusal of the file, is that he claims to be the owner in possession of a piece of land measuring 13 Marlas, comprising of Survey Nos. 1668 (03 Marlas) and 1669 (10 Marlas), situated at Koil, Pulwama. It is stated that the said land has been given to the Petitioner by way of gift from its erstwhile owner and that the Petitioner was using the pathway upto the said land from the said survey numbers, starting from the main road as his ingress and egress upto the said land, but the Respondents herein started raising construction on their land in such a manner that the said ingress and egress of the Petitioner got blocked.

03. The Petitioner further claims that he, although, made several requests to the Respondents not to block the said ingress and egress with respect to his land, but, the Respondents categorically refused to accede to the requests so made by the Petitioner, thereby forcing the Petitioner to approach the Revenue authorities concerned with a formal application, which, as on date, is pending before the Tehsildar, Pulwama. In the said application, a report is stated to have been sought by the Tehsildar concerned from the field agency, but despite certain initiatives having been taken by the Petitioner before the Revenue authorities, the Respondents herein did not stop the construction and continued to violate the easementary rights of the Petitioner.

04. Faced with the aforesaid circumstances, the Petitioner claims to have been constrained to approach the Court of learned Principal District Judge, Pulwama by way of a Suit for permanent injunction, which was assigned to the learned Trial Court for adjudication under law. On notice issued by the Trial Court, the Respondents, as Defendants, filed a detailed Written Statement in opposition to the said Suit filed by the Plaintiff/Petitioner herein, whereafter, vide Order dated 25<sup>th</sup> of April, 2022, the learned Trial Court, after hearing the arguments of the parties with respect to grant or otherwise of the interim relief, dismissed the application for

grant of interim relief filed by the Plaintiff/ Petitioner only on the basis of Written Statement filed by the Respondents herein and also while misinterpreting the '*Iqrar Nama*' in the shape of agreement that 02 Marlas of land have been given to the Plaintiff/ Petitioner for ingress and egress, in addition to the land gifted to him, as such, the Plaintiff/ Petitioner is not entitled for utilization of the said pathway.

05. Being aggrieved of the aforesaid Order passed by the Trial Court, the Plaintiff/ Petitioner herein filed a miscellaneous appeal against the same before the Court of learned Additional District Judge, Pulwama, however, the learned Appellate Court dismissed the appeal vide Order dated 24<sup>th</sup> of June, 2022, primarily, on the ground that the case of the Plaintiff/ Petitioner herein, does not fall within the purview of Section 15 of the Easementary Act and that there is no specific mention made by the Plaintiff/ Petitioner in his Suit that he is using the said pathway, for the last 20 years.

06. The Petitioner herein has, through the medium of the present Petition, assailed the aforesaid Orders passed by the Courts below on the ground that same have been passed without examining the records properly and even without taking into consideration the vital issues involved in the Suit. It is stated that the Courts below, while assuming the satisfaction that the agreement so entered between the ex-owner of the land and the Petitioner has specifically stated that the Petitioner will be given 02 Marlas of land for ingress and egress in addition to the land actually gifted to him, have not taken into consideration the fact that the said 02 Marlas of land were meant for pathway which the Petitioner, as on today, has kept open to be utilized by him through the land of the Respondents. It is pleaded that the impugned Orders passed by the Courts below have, in fact, deprived the Petitioner from utilizing his pathway, inasmuch as, the Respondents are raising the construction on spot in such a manner that same will definitely

subject the Petitioner to an irreparable loss which will not be compensated later on, by any means whatsoever.

07. On notice having been issued, the Respondents have filed their Objections in opposition to the instant Petition, wherein it has been stated that the Petitioner has failed to show as to what prejudice would be caused to him, in case the Respondents are allowed to carry on the construction of their residential house. It is further stated that the learned Trial Court, while declining to grant interim relief in favour of the Plaintiff/ Petitioner, has cautiously protected the rights of the Plaintiff/ Petitioner by observing that any construction carried out by the Defendants/ Respondents herein shall be subject to the outcome of the Suit and, as such, the Petition filed by the Petitioner before this Court has no merit or substance.

08. The Respondents have further stated that the Petitioner has not come before this Court with clean hands, inasmuch as, he has been resorting to forum shopping. It is pleaded that the Petitioner had initially approached the Revenue authorities concerned with reference to his grievance of ingress and egress, however, since he could not succeed in the said proceedings, he, thereafter, filed the Suit for permanent injunction before the Trial Court by suppressing the material facts and documents, including the 'Declaration Deed' as well as the '*Iqrar Nama*' in the shape of 'Agreement to Sell' entered into by and between the Petitioner and the erstwhile owner. In the end, it has been urged that the Petition filed by the Petitioner, being misconceived, be dismissed with costs.

09. The learned Counsel appearing for the Petitioner argued that the Petitioner had been given 02 Marlas of land by one of the cousins of the Respondents and that the Petitioner had been using those 02 Marlas of land for purpose of ingress and egress with respect to his land since the year 1997 till it was blocked by the Respondents, which is apparent from the agreement of 1997 with the erstwhile owner. He further argued that the Trial Court had wrongly declined the interim relief of temporary injunction

to the Petitioner in his Suit, which was also upheld by the First Appellate Court in the Civil Miscellaneous Appeal preferred by the Petitioner herein. The learned Counsel contended that the Petitioner has suffered a lot in view of the Orders impugned in this Petition and prayed that the said Orders be set aside, so that the right of the Petitioner to ingress and egress is not blocked by the Respondents by raising construction on spot.

10. The learned Counsel appearing on behalf of the Respondents, on the other hand, argued that this Petition is not maintainable, simply for the reason that the impugned Orders have been passed by the Courts below having regard to the factual material before them and this Court, in this Petition under Article 227 of the Constitution, cannot resort to appreciate the factual matrix of the case in view of its limited and sparingly used power of superintendence over the Courts below. He has further argued that the Trial Court has taken a specific view on the interim application filed by the Plaintiff/ Petitioner herein, after hearing both the parties and having regard to the facts and circumstances of the case, and that, thereafter, the learned First Appellate Court has also appreciated the same and reached to a concurrent finding. He argued that against two concurrent findings returned by the Courts below, the Petitioner herein cannot raise any further ground, so as to seek intervention of this Court through the medium of the instant Petition and prayed that the Petition be dismissed.

11. Heard learned Counsel for the parties, perused the pleadings on record and considered the matter.

12. The Apex Court in a case titled '**Shalini Shyam Shetty & Ors. v. Rajendra Shankar Patil**', reported as **2010 (8) SCC 329**, while dealing with the scope of the powers of the High Court for exercising jurisdiction vested in it under Article 227 of the Constitution of India, at Paragraph No. 62, held as under:

“In exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law

or fact or just because another view than the one taken by the Tribunals or Courts subordinate to it is a possible view. In other words, the jurisdiction has to be very sparingly exercised.”

13. The Trial Court, after consideration of the pleadings by the parties and the documents placed on record with respect to grant or otherwise of interim relief, had come to the conclusion that the Petitioner herein, as Plaintiff, had not made out any case for grant of interim relief, however, having said so, the Trial Court further ordered that the construction, if any, raised by the Defendants/ Respondents herein on spot shall be at their own risk and cost and shall be removed in case the Plaintiff/ Petitioner herein succeeds in his Suit. Both, the Trial Court as well as the First Appellate Court have taken one view of the matter and this Court, under supervisory jurisdiction vested in it and in view of the law laid down by the Apex Court in the Judgment rendered in **Shalini Shyam Shetty's** case (*supra*), even if it is of a different view than the one taken by the Courts below, cannot substitute its opinion. Both the Courts below, vide the impugned Orders, having regard to the facts and circumstances of the case, have rightly declined the *ad-interim* relief in favour of the Plaintiff/ Petitioner herein.

14. Viewed thus, in the considered opinion of this Court, the Petitioner has failed to make out any case for indulgence of this Court under Article 227 of the Constitution of India. The present Petition, therefore, is found to be devoid of any merit and substance and is, accordingly, **dismissed**, along with the connected CM(s). The impugned Orders passed by the Courts below are upheld. Interim direction(s), if any subsisting as on date, shall stand vacated.

**CCP (S) No. 213/2023:**

15. In this Contempt Petition, the Petitioner has sought initiation of contempt proceedings against the Respondents for their deliberate and

CM (M) No. 112/2022 c/w  
CCP (S) No. 213/2023

willful disobedience of the Order dated 8<sup>th</sup> of July, 2022 passed by this Court in CM (M) No. 112/2022.

16. In view of the Order passed in the main Petition, out of which the present Contempt Petition emanates, hereinabove, the proceedings in this Contempt Petition are **closed** and the Contempt Petition shall stand **disposed** of, accordingly.

17. Registry to place a copy of this Order on each file.

**SRINAGAR**

January 2<sup>nd</sup>, 2025

"TAHIR"

- i. Whether the Judgment is approved for reporting? Yes.

