

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

*Reserved on: 28.10.2021*

*Pronounced on: 03.11.2021*

MA No. 17/2021  
CM No. 8002/2021

Samitra Devi .....Appellant(s)

Through: Mr. G.S. Thakur, Advocate

**Versus**

Shree Kumar Kotwal and others .....Respondent(s)

Through: Mr. R.D. Singh Bandral, Advocate  
Mr. Vikram Rathore, Advocate

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**

**JUDGMENT**

1. Through the medium of this appeal, the appellant seeks setting aside of the order dated 17.09.2021 passed by the court of learned Principal District Judge, Baderwah (for short the "*Trial court*") in a civil suit titled "*Samitra Devi vs Shree Kumar Kotwal and others*", whereby dismissed the application for grant of stay, on the grounds tailored therein.
2. It is contended in the appeal that the appellant filed a civil original suit for declaration with permanent prohibitory injunction to the effect that the appellant by virtue of document executed by her husband late Krishan Lal and his brothers namely Shree Kumar Kotwal and Om Kumar Kotwal way back in the year 1967 in favour of the appellant, is the absolute owner in continuous peaceful possession and occupation

of land bearing Khasra No. 1456 measuring 1 kanal 14 marlas situated at revenue village Udrana, Tehsil Bhaderwah. It is averred that since the appellant who is in cultivating possession of the suit land, the respondent No. 1 filed a petition for partition before the Tehsildar, Bhaderwah seeking the relief of partition of the land in different khasra numbers, as such the respondents have no right to maintain their claim over the suit land. It is further submitted that the respondent No. 1, husband of the appellant, respondent No. 2, husband of respondent No. 3 and father of respondent Nos. 4 to 6 have jointly sold the land falling under Khasra Nos. 351, 355, 358, 362, 363 and 367 measuring 37 kanals, besides this the respondent No. 1 has also forged the record of joint property falling under Khasra No. 1543 measuring 19 marlas by recording his name in the revenue record and sold land measuring 2 kanals 11 marlas falling under Khasra No. 3229 min without the consent and knowledge of other co-sharers. Thus the parties are managing the affairs of their respective shares, as such respondent No. 1 has no claim over the suit property.

3. It is contended that along with the main suit the appellant has also filed an application in terms of order 39 Rule 1 & 2 CPC which has been rejected by the Trial court after considering the written statement filed by defendant/respondent on the ground that the same is devoid of merit.
4. It is contended that the case set up by the appellant before the Trial court is that the land is under the cultivating possession of the appellant since 1967 on the basis of the alleged document which is 50

years old and as per section 91 of the Evidence Act the document which is 30 years old need not to be proved and the presumption can be drawn in favour of the genuineness of the document.

5. Learned counsel for the respondent has resisted the appeal and urged for its dismissal.
6. Heard the learned counsel for the parties and considered the matter.
7. In the above contextual discourse, whereby this Court, while deciding the case in hand *qua* grant or refusal of temporary injunction, should delve deeper into the facts and circumstances of the case or not. Answer thereto is in negative. The reason being, if this Court discusses the factum of the suit property, it would tantamount to deciding the whole case and giving a particular opinion on the subject matter of the case. So better it would be to confine the present discussion to the impugned as appellant is only aggrieved thereof and seek setting-aside thereof.
8. The Trial court has, after making a discussion of the facts of the case, taken into account the requirements and ingredients for grant or refusal of the temporary injunction. The Trial court has rightly discussed the provisions of Order XXXIX Rule 1 of the Code of Civil Procedure as also the three cardinal principles for grant of the temporary injunction, viz. prima facie case; balance of convenience; and irreparable loss.
9. The Supreme Court in case of *Skyline Education Institute (Pvt.) Ltd vs. S.L. Vaswani*, AIR 2010 SC 3221 has said that once the court of first instance exercises its discretion to grant or refuse the relief of

temporary injunction, the appellate court should be loath to make any interference. However, the Supreme Court, while saying so, has made it clear that if the appellate court comes to the conclusion that the discretion exercised by the trial court in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done, then interference in such circumstances would warrant.

- 10.** Order XXXIX of the Code of Civil Procedure envisions as to temporary injunctions and interlocutory orders. Rule 1 thereof provides:

“1. Cases in which temporary injunction may be granted. —Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.”

- 11.** Rule 1 of Order XXXIX, thus, says and envisages that in the event in a suit it is by affidavit or otherwise proved that any property, which is in dispute in a suit, is in danger of being wasted, damaged or alienated

by any party to the suit or wrongfully sold in an execution of a decree or that the defendant threatens or intends to remove or dispose-off his property with a view to defrauding his creditors or that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property, which is in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff or otherwise causing injury until the disposal of the suit or until further orders. It is necessary to be seen that if the property in dispute is tried to be wasted, damaged, alienated, sold, disposed-off or there are chances of dispossessing the plaintiff from any property, which is in dispute in the suit and/or which may cause injury to the plaintiff concerning any property, which is in dispute in the suit, the Court may grant the temporary injunction. So, grant of temporary injunction is not to put an end to the litigation, but it is a beginning of the litigation and grant of the temporary injunction is aiming at preserving the property, which is in dispute in the suit because if the temporary injunction is refused to be granted, it would pave way for either of the parties before the Court to alienate, sell, dispose of and/or change the nature of the property, which is in dispute in the suit and in such situation the purpose of litigation would be futile and/or endless for both the parties. Thus, as can be professed from the Rule 1 of Order XXXIX, grant of

