

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

Case No.:- RSA No. 6/2021
CM Nos. 3711/2021, 3165/2021 & 3166/2021.

1. Mohammad Tufail, aged 65 years
S/o Mohammad Latief,
R/o Ujhan Tehsil Darhal,
District Rajouri.
2. Zahid Hussain, aged 63 years
S/o Mohammad Latief,
R/o Ujhan Tehsil Darhal,
District Rajouri.
3. Said Akhter, aged 61 years
S/o Mohammad Latief,
R/o Ujhan Tehsil Darhal,
District Rajouri.
4. Mohammad Younus, aged 55 years
S/o Mohammad Latief,
R/o Ujhan Tehsil Darhal,
District Rajouri.



सत्यमेव जयते

.....Appellant(s)

Through: Mrs. S. Kour, Sr. Advocate with
Ms. Manpreet Kour, Advocate.

Vs

1. Muzaffar Hussain
S/o Ghulam Hussain
R/o Ujhan Tehsil Darhal
District Rajouri.
2. Mohammad Naseeb
S/o Ghulam Hussain
R/o Ujhan Tehsil Darhal
District Rajouri.
3. Mohd. Amin
S/o Ghulam Hussain
R/o Ujhan Tehsil Darhal
District Rajouri.

4. Nazir Hussain
S/o Atta Ullah
R/o Ujhan Tehsil Darhal
District Rajouri.
5. Badar Hussain
S/o Atta Ullah
R/o Ujhan Tehsil Darhal
District Rajouri.
6. Shahbaz
S/o Noor Bakash
R/o Ujhan Tehsil Darhal
District Rajouri.
7. Khadam Hussain
S/o Ghulam Hussain
R/o Ujhan Tehsil Darhal
District Rajouri.

..... Respondent(s)

Through: Mr Raghav Sawhney, Advocate vice
Mr. Sachin Gupta, Advocate.

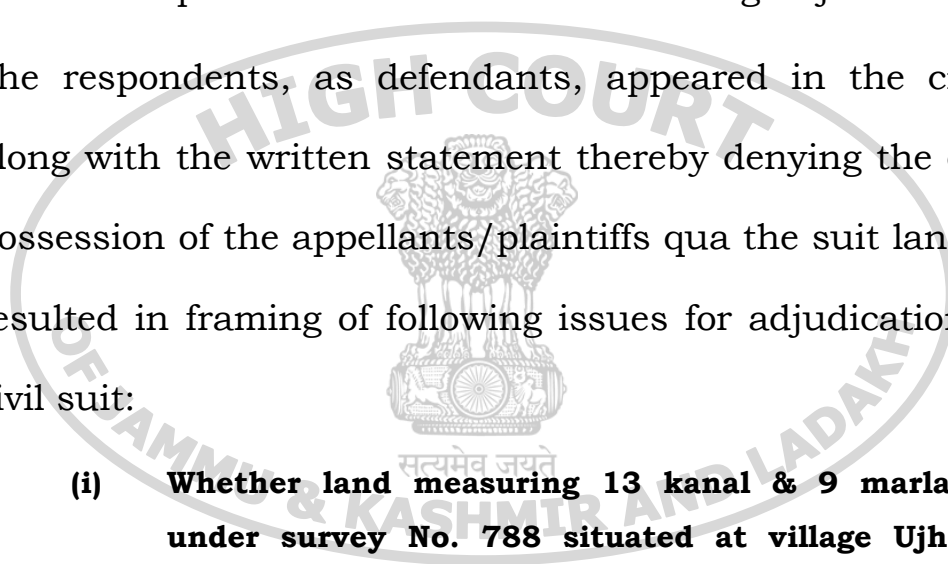
Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

07.05.2025

1. This is a civil 2nd appeal under section 100 of the Jammu and Kashmir Code of Civil Procedure, Svt. 1977 which has come to be preferred by the appellants, as being the plaintiffs, against the judgment and decree dated 27.03.2021 passed by the court of learned Principal District Judge, Rajouri in a civil 1st appeal on file No. 05/Appeal of 2019 preferred by the seven respondents herein, who figured as defendants in the civil suit,

before the court of learned Munsiff (Additional Special Mobile Magistrate), Thannamandi.

2. The appellants commenced the civil suit on file No. 31/Civil instituted on 01.08.2012 thereby seeking a decree for permanent prohibitory injunction for restraining the defendants No. 1 to 7 (respondents No. 1 to 7 herein) from causing any interference in the possession of the appellants/plaintiffs with respect to suit land measuring 13.9 kanals comprised in khasra No. 788 of village Ujhan.
3. The respondents, as defendants, appeared in the civil suit along with the written statement thereby denying the claim of possession of the appellants/plaintiffs qua the suit land which resulted in framing of following issues for adjudication of the civil suit:
 - (i) **Whether land measuring 13 kanal & 9 marlas falling under survey No. 788 situated at village Ujhan is in possession of the plaintiffs in which they have sown the crops? (OPP)**
 - (ii) **If issue No. 1 is proved in affirmative then whether defendants are causing interference in the suit land without any right or reason? (OPP)**
 - (iii) **Whether suit land is in possession of the defendants from time immaterial? (OPD)**
 - (iv) **Relief. O.P Parties.**
4. On behalf of the appellants, two witnesses came to be examined, namely, Mohammad Sadiq and Mohammad Asif

meaning thereby the appellants, as plaintiffs, did not choose to examine themselves as their own witnesses in support of their own case. The two witnesses produced by them were non-official witnesses to come and depose with respect to the claim of the appellants/plaintiffs qua the suit property being not related to the revenue record.

5. Likewise, the seven defendants came forward with two witnesses from their own end without bothering to examine themselves as their own witnesses. The witnesses produced by the respondents/defendants from their own end were also non-officials.
6. Thus, no document worth name came to be exhibited as evidence on the suit file for the trial court to refer itself to a document properly introduced and exhibited as an evidence for the purpose of drawing an inference with respect to the revenue record basis for claim and denial of possession of the suit property between the appellants/plaintiffs on one hand and the respondents/defendants on the other hand.
7. Still the trial court of learned Munsiff (Additional Special Mobile Magistrate), Thannamandi came forward decreeing the suit of the appellants/plaintiffs against the respondents/defendants vide judgment and decree dated 20.05.2016 thereby granting decree of permanent prohibitory injunction restraining the respondents/defendants from

causing interference in the suit land measuring 13.9 kanals comprising khasra No. 788 of village Ujhan.

8. Against the aforesaid judgment and decree dated 20.05.2016, the respondents/defendants preferred a civil 1st appeal on file No. 05/Appeal of 2019 before the learned Principal District Judge, Rajouri which appeal came to be allowed by reversing the judgment of the trial court and dismissing the suit of the appellants/plaintiffs.
9. The appellate court came up with a singular purported finding that it stands proved that the appellants/plaintiffs were not in possession of the suit property and, therefore, it could not have been said that the respondents/defendants were causing interference in the suit property.
10. This is how the present civil 2nd appeal came to get generated with the appellants being aggrieved plaintiffs finding their civil suit dismissed by the appellate court as against the decree granted by the trial court.
11. The institution of the present civil 2nd appeal came to take place on 05.04.2021.
12. Without formulation of substantial questions of law, the appeal came to be admitted in terms of the order dated 28.08.2024 which is a wrong admission to say the least as it is only by formulating the substantial questions of law that a

civil 2nd appeal is eligible to be admitted for final hearing and disposal on merits.

13. This Court is, therefore, proceeding to frame substantial question of law in the present civil 2nd appeal to the effect **as to whether without any evidence on record of the civil suit, could the trial court as well as the 1st appellate court come up with any finding of fact in relation to the claim of possession qua the suit property inter se the plaintiffs and the defendants?**
14. In the light of the aforesaid substantial question of law, when this Court examines the trial court judgment as well as that of the 1st appellate court, this court is left concerned to observe that both the trial court and the 1st appellate court acted as if novice in understanding of law.
15. The plaintiffs did not examine themselves as their own witnesses in support of their claim for possession qua the suit property. Likewise, the defendants also did not examine themselves as their own witnesses in support of their claim that they are in possession of the suit property as against the plaintiffs' claim.
16. From both the ends i.e., of the plaintiffs' end as well as of the defendants' end, no revenue side witnesses came to be examined to prove the revenue record position and still the trial court as well as the 1st appellate court came up with

opposite findings of fact, one in favour of the plaintiffs in the suit and one in favour of the defendants in the civil 1st appeal.

17. Finding of fact is something which is not to be conjectured by civil court or for that matter civil 1st appellate court. Evidence Act is meant for the adjudication of civil suits and also for criminal trials alike.
18. In the present case, it seems that the trial court as well as the civil 1st appellate court acted as if sitting as panchayats and disposing of the matters at their respective ends as per their respective discretion which is antithesis to the law of adjudication of a civil suit which is supposed to take place in accordance with the Code of Civil Procedure and the Evidence Act.
19. In the light of the aforesaid serious lacuna attending the adjudication of both the courts below, the civil 2nd appeal is allowed.
20. The judgment and decree dated 27.03.2021 passed by the 1st appellate court of learned Principal District Judge, Rajouri is set aside and so is the judgment and decree dated 20.05.2016 passed by the trial court of Munsiff (Additional Special Mobile Magistrate), Thannamandi is set aside.
21. The matter is remanded back to the trial court of learned Munsiff (Additional Special Mobile Magistrate), Thannamandi to be taken up for adjudication from the stage of framing of

issues onwards by affording the parties to the suit an opportunity of filing their list of witnesses along with deposit of diet expenses and then conducting the trial and carry out the adjudication.

22. Parties are directed to appear before the court of learned Munsiff (Additional Special Mobile Magistrate), Thannamandi on 05.06.2025.

(RAHUL BHARTI)
JUDGE

JAMMU
07.05.2025
Naresh/Secy.

