

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

**LPAOW no. 30/2013  
CMA no. 36/2013  
Caveat no. 394/2013**

Date of order: 16.04.2013

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Kuldip Singh and Ors v. Krishna Devi and Ors

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**Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice.  
Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge.**

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**Appearing counsel:**

For the Appellant(s) : Mr. O. P. Thakur, Advocate.  
For the respondent(s) : Mr. Abhinav Sharma, Advocate.  
Mr. Sunil Dutt Sharma, Advocate.

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- i) Whether to be reported in Press, Journal/Media : Yes/No  
ii/ Whether to be reported in Digest/ Journal : Yes/No
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M. M. Kumar, CJ

1. The instant appeal under Clause 12 of the Letters Patent is directed against judgment and order dated 20.02.2013 rendered by the learned Single Judge of this Court dismissing OWP no. 1354/2010. The Writ Court has up held the order dated 14.09.2010 passed by the learned Sub Judge Jammu who has dismissed the application filed by the appellant-petitioners for placing on record an old sale deed.

2. The appellant-petitioners have filed a suit for declaration to the effect that the sale deed 29.05.1999 registered in the Court of Sub Registrar Mufassil Jammu on 02.06.1999 executed by their father in favour of respondent nos. 1 to 5 was null and void. According to the claim made by the appellant-

petitioners the suit property was agricultural land and the same was their ancestral property.

3. The private respondent no.1 raised the objection that the land was exclusively owned by one Janak Singh the predecessor-in-interest of the petitioners. The appellant-petitioners filed an application under Order 13 Rule 2 of the Code of Civil Procedure for placing on record the sale deed which was registered more than 65 years back. The learned Sub Judge rejected the application on 14.09.2010, opining that the sale deed was in possession of the appellant-petitioners which was withheld by them. Another reason cited was that at this belated stage the old sale deed would spring surprises for the private respondents, particularly when appellant-petitioners have concluded their evidence.

4. The aforesaid order was questioned before the learned Single Judge by invoking jurisdiction under Article 227 of the Constitution. The learned Single Judge by placing reliance on para nos. 80, 81 and 82 of the judgment of Hon'ble the Supreme Court rendered in case of *Shalini Shyam Shetty v. Rajendra Shankar Patil, 2010 AIR SCW 6387*, concluded that against the interlocutory order once the revision is barred under the provisions of the amended CPC then the petition under Article 227 of the Constitution would also not be maintainable. The learned Single Judge also placed reliance on para 62 of the judgment of Hon'ble the Supreme Court in Shalini Shyam

Shetty's case (supra) where distinction has been drawn between Article 226 and 227. The learned Single Judge also placed reliance on another judgment of Hon'ble the Supreme Court rendered in case of **Kokkanda B. Poondacha and ors v. K. D. Ganapathi and anr, 2011 AIR SCW , 1737.**

5. We have heard the learned counsel for the parties at a considerable length. Learned counsel for the respondents has raised a preliminary objection that neither the writ petition nor the Letters Patent Appeal would be maintainable as is abundantly clear from para 62 and 80 of the judgment rendered by Hon'ble the Supreme Court in Shalini Shyam Shetty's case (supra).

6. Mr. O. P. Thakur, learned counsel for the appellant-petitioners has made an attempt to persuade us to accept his submission that High Court, in exercise of jurisdiction under Article 227 can still issue directions to the subordinate Courts to exercise jurisdiction where the subordinate courts have refused to exercise jurisdiction which vests in it or refrained from exercising the jurisdiction. The aforesaid submission has been advanced on the basis of observations made in the judgment of Hon'ble the Supreme Court in the case of **Surya Dev Rai v. Ram Chander Rai and ors, AIR 2003 SC 3044.**

7. Having heard the learned counsel for the parties we are of the considered view that the opinion expressed by the learned Single Judge with regard to maintainability of the writ

petition under Article 227 of the Constitution is unassailable. The revision petition under Section 115 of the Code of Civil Procedure against an interlocutory order has now been barred and admittedly would not be maintainable. If that be so then ordinarily a writ petition under Article 227 of the Constitution would also not be maintainable until and unless the order passed by the subordinate Court is of such a nature as to fall within the parameters laid down by Hon'ble the Supreme Court in para 62 in Shalini Shyam Shetty's case (*supra*).

8. The question then is as to what would be the remedy in the hands of the appellant-petitioners against an interlocutory order like the one in hand passed by the learned Sub Judge on 14.09.2010, rejecting their application for placing on record the sale deed which was more than 65 years old. We are of the considered opinion that the appellant-petitioners are not without a remedy because under Order 43 Rule 1-A CPC non-appealable order passed by the subordinate Judge can still be subjected to challenge in regular 1st appeal or by filing cross objections which may have to be preferred against the final judgment and decree. Therefore, the appellant-petitioners are not without a remedy and could always challenge such like order under Order 43 Rule 1-A if such a necessity is felt. The judgment of the learned Single Judge to that extent is modified and the right of the appellant-petitioners to challenge the order of the learned Sub Judge dated 14.09.2010 is kept intact.

However, this judgment shall not be considered to have taken any view with regard to the maintainability of the Letters Patent Appeal. The aforesaid question has been left open.

6. The appeal stands disposed of.

**(Dhiraj Singh Thakur)**  
**Judge**

**(M. M. Kumar)**  
**Chief Justice**

**Jammu,**  
**16.04.2013**  
Anil Raina, Secy.