

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

CR No. 33/2013(O&M)

**Reserved on 01.09.2023
Pronounced on 10.11.2023**

Bashir Ahmed Bhat, Age 72 years
S/o. Abdul Rehman Bhat, R/o.
Ward No. 10, Rajouri.

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

Through: Mr. U. K. Jalali, Sr. Advocate with
Ms. Shivani Jalali, Adv.

Vs

1. Bilal Ahmed
2. Farooq Ahmed
3. Ayaz Ahmed
4. Mohd. Naheem
5. Abdul Gafoor
Sons of Lt. Manzoor Ahmed
Residents of Thanamandi, District
Rajouri
6. Nazira Begum W/o. Late Manzoor
Ahmed Residents of Thanamandi,
District Rajouri

..... Respondent(s)

Through: Mr. Gagan Basotra, Sr. Adv. with
Mr. Sahil Gupta, Adv.

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

JUDGMENT

1. “As long back as in 1872 (when the CPC of 1859 was in operation), it was observed by the Privy Council that, “*the difficulties of a litigant in India begin when he has obtained a decree*”. The situation, we are afraid, is no better even today. These observations have been made by the Hon’ble Supreme Court of India in the year 2023 in case titled “**Pradeed Mehra v. Harijivan J. Mehta**”, 2023 INSC 958. In the present case, the

petitioner, who at the time of filing of this petition was 72 years of age (as mentioned in the petition), started his litigious journey in the year 1997 when he was 56 years of age but has not been able to taste the fruits of the decree earned by him in the year 2003 and upheld by the 1st Appellate Court as well as by this Court, till date when he has attained the age of 82 years.

2. The petitioner had filed a suit for recovery of possession of one single storeyed shop situated at Village Thanamandi, which as per the case set up by the petitioner had been illegally occupied by the respondents. It was pleaded in the plaint by the petitioner that he had constructed a shop measuring 16'x11' on the part of the land measuring one marla comprising survey No. 113 min, situated at village, Thanamandi, which was purchased by him from one Sohan Lal by virtue of a sale deed dated 08.08.1996. The petitioner had earlier filed a suit for permanent prohibitory injunction against the respondents but during the pendency of the said suit, the respondents forcibly occupied the shop and placed the shutter on the shop. The petitioner thereafter withdrew the suit as the same had been rendered infructuous.
3. The respondents objected to the suit preferred by the petitioner by filing a written statement, thereby pleading that Sohan Lal had no right or concern with the land comprising survey No. 113 min, measuring 01 kanal, 15 marlas and the whole of the land had been in possession of respondent Nos. 1 and 2 since 1969-70 by virtue of an affidavit and agreement to sell

dated 29.06.1976 executed by the original owner of the land, namely, Vishwa Nath.

4. After the trial of the suit, the learned Sub Judge, Rajouri (hereinafter to be referred as the 'Trial Court') decreed the suit vide decree dated 30.09.2003 in favour of the plaintiff, petitioner herein. The decree was assailed by the respondent Nos. 1 and 2 by way of an appeal before the learned Principal District Judge, Rajouri (hereinafter to be referred as the '1st Appellate Court') and the 1st Appellate Court vide its judgment dated 20.04.2009 dismissed the said Civil 1st Appeal. It needs to be mentioned here that while the appeal was pending before the learned 1st Appellate Court, an application was filed by the respondent Nos. 1 & 2/appellants therein under Order 41 Rule 27 of the Code of Civil Procedure (CPC) for placing on record the report of the Commissioner that the shop was constructed over the land comprising survey No. 168/383 and not survey No. 113 min and the said application was dismissed by the learned 1st Appellate Court. Thereafter, the respondent Nos. 1 and 2 preferred the Civil 2nd Appeal and that too was dismissed by this Court vide its judgment dated 17.11.2009.
5. The petitioner filed a petition for execution of the decree dated 30.09.2003 passed by the learned trial court but the same was dismissed by the learned JMIC (Munsiff), Thanamandi (hereinafter referred to as 'the Executing Court') vide its order dated 20.03.2013 on the ground that the description/schedule of the shop existing on spot did not tally fully with the schedule mentioned in the plaint, as it tallied only on two sides i.e.

western and northern side of the shop, which was identified by the petitioner.

6. The petitioner has filed the present petition thereby impugning the order dated 20.03.2013 passed by the learned Executing Court on the grounds that in the order impugned, the learned Executing Court has laid much emphasis by pointing out some differences qua the exact description and location of the property, but oblivious to the fact that at the time of filing of the suit, there was a big chunk of open space around the suit property mainly occupied by the judgment debtors, which position was changed by subsequent developments in the surrounding areas of the suit shop. It is also urged that the respondents had repeatedly raised the issue that the suit shop actually fell in survey No. 383/168 instead of khasra No. 113 min, but the respondents could not succeed before the 1st Appellate Court as well as the 2nd Appellate Court. It is also stated that the Executing Court is absolutely wrong in appointing the Commissioner for spot verification, particularly when the Executing Court has no power to upset the findings of all the Courts and the Executing Court ought to have remained confined to its jurisdiction without stretching too far the observations made by this Court in its order dated 03.09.2011 in the revision petition, as this Court had only observed that the execution should be done strictly in accordance with the description given in the plaint.
7. Mr. U. K. Jalali, learned Senior Counsel appearing for the petitioner has vehemently argued that the order impugned has been wrongly passed by the learned Executing Court, more particularly when the respondents

before the trial court in their written statement had specifically stated that the petitioner had no concern with the land comprising survey No. 113 min and the land measuring 1 kanal and 5 marlas is in possession of respondent Nos. 1 and 2 pursuant to the agreement to sell dated 29.06.1976 and it were the respondent Nos. 1 and 2 who had constructed the shop. Mr. Jalali further contended that there was no dispute in respect of the location of the property as the respondents filed the written statement in respect of the shop claimed to have been owned by the petitioner and constructed by him and when the suit was decreed, for the first time the respondent Nos. 1 and 2 sought to raise the dispute in respect of the survey numbers before the 1st Appellate Court by seeking permission to place on record the report of the Commissioner but their prayer was not acceded to and rejected. He has further submitted that this Court while dismissing the appeal preferred by the respondent Nos. 1 & 2, had taken note of the defence raised by the respondents in their written-statement and had returned a finding that the contention of the respondents that they were in possession of 1 kanal and 5 marlas of land was not supported by any document. He further argued that with the passage of time, certain changes took place in the surroundings of the suit shop and the learned Executing Court could not have rejected the execution petition filed by the petitioner only on the ground that on two sides, the description of the suit shop as mentioned in the plaint did not tally with the position existing on spot. Learned senior counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in

Satyawati v Rajinder Singh and anr, (2013) 9 SCC 491, Ravinder Kaur v Ashok Kumar (2003) 8 SCC 289 and Narinder Singh and others v Kishan Singh (D) th. LRs and others, AIR 2002 SC, 2603.

8. *Per contra*, Mr. Gagan Basotra, learned Senior Counsel appearing for the respondents has vehemently argued that the suit shop did not exist on the land comprising survey No. 113 min of Village Thanamandi, but over the land comprising survey No. 383/168 and further that the description of the suit shop as mentioned in the plaint did not tally with the position existing on spot, as such, the order impugned passed by the learned Executing Court does not suffer from any illegality or infirmity. He further argued that factual findings have been returned by the learned Executing Court and the same cannot be disturbed while adjudicating the revision petition. Learned senior counsel has relied upon the judgments of the Supreme Court in **Addisery Raghavan v Cheruvalath Krishnadasan, (2020) 6 SCC 275, Rahul S. Shah v Jinendra Kumar Gandhi and others, (2021) 6 SCC 418 and Shafiqur Rehman Khan and another v Smt. Mohd. Jahan Begum and others, (1982) 2 SCC 456.**
9. Heard learned counsel for the parties and perused the record of the Executing Court as also the record of the Trial Court.
10. The record divulges that the warrant of possession of the shop was issued but the same could not be executed, as it was found that the shop did not fall within survey No. 113 min. On 22.02.2011, the warrant of possession of the suit shop was issued to the Reader of the District Court for execution with the assistance of Assistant Commissioner (Revenue),

SDPO and SHO Thanamandi. The Assistant Commissioner (Revenue) vide his report dated 23.03.2011 stated that the shop was existing in survey Nos. 383 & 168 min and not in survey No. 113 min, as such, the warrant could not be executed. Thereafter, fresh warrant was issued on 18.08.2011 by directing the office to mention proper boundaries of the suit shop and a perusal of the report dated 05.09.2011 submitted by the Assistant Commissioner (Rev), Rajouri reveals **that the shop was existing in survey No. 383 (State land) and 168 (road) but the boundaries of the property in the plaint tallied with the location of the shop on spot.** The reference to the order dated 03.09.2011 passed by this Court was also made in the said report.

11. It needs to be noted here that the respondents had filed a revision petition and the same was disposed of by this Court vide order dated 03.09.2011, thereby directing that the warrant of possession be executed strictly in terms of the plaint. Assistant Commissioner (Rev), Rajouri sought further directions from the Executing Court in light of the order passed by this Court. Thereafter, pursuant to directions of this Court vide order dated 03.09.2011, fresh warrant for execution of decree was issued on 21.11.2012. A report was submitted by the Nazir that the description of the shop on spot did not tally with description of the suit shop as mentioned in the plaint.
12. A perusal of the record of the Executing Court further reveals that the Executing Court being confronted with the contradictions in the reports submitted by the Assistant Commissioner Revenue, Rajouri, Reader of the

District Court, Rajouri and Nazir directed the Tehsildar Thanamandi to constitute a team of officers/officials of the Revenue Department under his supervision and conduct the demarcation of the decreed shop as per the position existing on 06.11.1997 i.e. the date of filing of the suit and the present position supported by the revenue record.

13. The Commissioner conducted the demarcation and prepared the dasti khaka (site plan) and thereafter submitted a report No. OQ/574 dated 04.02.2013 along with revenue record i.e. khasra girdhawari of kharif for the year 1997 and 2012. The learned Executing Court after comparing the description of the surroundings of the shop as mentioned in the plaint and with the description of the surroundings of the shop as mentioned in the report dated 04.02.2013 returned the finding that the description of the surroundings of the shop as mentioned in the plaint tallied only on two sides i.e. western and northern sides of the shop existing on the spot and dismissed the execution petition by placing reliance upon the directions issued by this Court while disposing the revision petition vide order dated 03.09 2011.
14. The only issue arising for the determination by this Court is as to whether the learned Executing Court has wrongly exercised the jurisdiction vested in it for the purpose of executing a decree by refusing to execute the decree on the ground that the description of the shop existing on the spot tallied only with the two sides of the description of the shop as mentioned in the plaint.

15. Before this Court proceeds ahead to consider the above mentioned issue, it needs to be noted that the controversy sought to be settled by the Executing Court subsequently, was in fact invited by the Executing Court itself by confusing itself with the various reports from the Assistant Commissioner (Rev), Rajouri, Nazir of its own court and Reader of the District Court Rajouri. Once the report dated 05.09.2011 was submitted by the Assistant Commissioner (Rev) Rajouri that the boundaries of the suit property tallied with spot position, the learned Executing Court ought to have directed the concerned officer to execute the decree but it appears that the learned Executing Court in compliance to the order dated 03.09.2011 directed the execution of decree strictly in terms of the order dated 03.09.2011. It needs to be noted that in the objections to the execution petition filed by the respondents, it was only stated by them that there is a lot of variation in the description in the suit property, whereas the fact remains that in the written statement filed by the respondents before the learned trial court no such objections qua the location as well as identification of the suit were raised by the respondents and rather it was the positive case of the respondents that they had constructed the suit shop on the land comprising survey No. 113 min at village Thanamandi, obtained by them by virtue of agreement to sell dated 29.06.1976 from Vishwanath. The defendants/respondents contested the suit all along till the same was decreed by the learned trial court. Before the 1st Appellate court, an application under Order 41 Rule 27 of the CPC was also filed by the respondents that the suit shop was constructed in survey No. 383/168

and not in survey No. 113 min in village Thanamandi, a stand contrary to the pleadings in the written statement. The contention of the respondents was rejected by the 1st Appellate Court with observation that it was an afterthought. The respondents initially laid their claim that they had constructed the shop on survey No. 113 min, which the respondents could not establish by any cogent evidence. The description of the suit shop has been mentioned in the plaint and the respondents never ever disputed the location as well description of the suit shop either before the Trial Court or the Appellate Courts. In *Ravinder Kaur v. Ashok Kumar*, (2003) 8 SCC 289, the Hon'ble Apex Court has held as under:

20. This opinion of the High Court, in our considered view, is wholly erroneous for more than one reason. **The objection that the learned Judge referred to in the impugned order raised by the respondent herein was in regard to the correctness of the site plan. As noted earlier, this very issue was specifically raised in the original ejection proceedings and was held against the respondents based mainly on the admission of the first respondent which we have already extracted hereinabove. At the cost of repetition, we must restate that this question of identity of the property was never again raised in the appeal before the Appellate Authority, in the revision before the revisional authority, namely, the High Court or in the SLP before this Court. In such circumstances, we fail to understand how this very issue can be reargued in the execution proceeding by the tenants. It is also to be noticed that the executing court has rightly observed that reopening of this issue would amount to asking that court to go behind the decree which is impermissible in law.** We must note, this finding of the executing court is not even noticed by the High Court in the impugned order. The High Court also did not take into consideration the reasoning of the Coordinate Bench of the same High Court in the dismissal order made in CRP No. 5175 of 2002 on 29-10-2002 which while rejecting the similar contention of the respondents had specifically observed that the attempt of the tenants was with a view to delay their ejection. In such a factual background, we think the impugned judgment is wholly erroneous having no legal or factual basis to sustain it. We also must notice that the High Court in the impugned order has made an observation which in effect, in our opinion, makes the execution proceedings liable to be dismissed. The said observation is as follows:

“In the present case, it is proved on the record that the shop regarding which the decree-holder was seeking possession during execution proceedings was not the one regarding which the ejectment order had been passed by the Rent Controller. Neither the description had tallied nor the boundaries tallied.”

(emphasis added)

16. The Hon’ble Supreme Court of India in the case of **Satyawati v Rajinder Singh and anr, (2013) 9 SCC 491**, has held as under:

“8. Looking to the facts of the case, in our opinion, **the High Court was not right while confirming the order passed by the Executing Court for the reason that the Executing Court had taken into account certain other reports for the purpose of rejecting the execution proceedings and for coming to the conclusion that the decree was not executable.**

9. Looking to the facts of the case and upon hearing the learned counsel, **we are of the view that the order passed by the Executing Court dated 16th March, 2009, which has been confirmed by the High Court is not correct for the reason that the Executing Court ought not to have considered other factors and facts which were not forming part of the judgment and the decree passed in favour of the appellant- plaintiff. Once the decree was made in favour of the appellant- plaintiff, in pursuance of the judgment dated 19th January, 1996 delivered by the District Judge Faridabad, in our opinion, the Executing Court should not have looked into other reports which had been submitted to it afterwards.”**

(emphasis added)

17. The Hon’ble Supreme Court of India in the case of **Narinder Singh and others v Kishan Singh (D) th. LRs and others, AIR 2002 SC, 2603**, has held as under:

“14 We have perused relevant records. We have also considered the contentions raised by learned senior counsel appearing for both the parties. The Executing Court has given clear and cogent reasons for not accepting the objections taken by the appellants in the petition filed under section 47 of the Code of Civil Procedure. Even so, we have perused the relevant documents on record to satisfy ourselves that there is no erroneous statement of fact in the order passed by the Executing Court. We are satisfied that the order does not suffer from any such error. We are also satisfied that the approach of the Executing Court in the matter is legal and proper. **It is clear to us that the judgment-debtors are making a last ditch effort to prevent the decree-holders from getting full benefit of the decree passed in their favour. As noted earlier the plea that Karam Singh had no liability to pay any part of the mortgage debt and his property having been released from the mortgage in 1956 could not be a part of the**

suit property in the present case, was neither taken at trial of the suit nor before the Court in the final decree proceeding. Though in the order passed on the petition filed under Order 34 Rule 8 read with Section 151 of the CPC to make the decree final the fact that Sarbans Singh was declared an insolvent person in the proceeding under the Provincial Insolvency Act was noted, no plea that the preliminary decree did not cover the land of Karam Singh or his share in the suit land appears to have been taken. In the facts and circumstances, the Executing Court rightly rejected the objections raised by the appellants against execution of the decree. The High Court was, therefore, justified in declining to interfere with the order of the Executing Court.”

18. The description of the suit shop as pleaded in the plaint, is as under:

North-Shops of Nazir Ahmed Ganai,

South-land of Manzoor Ahmed, father of respondent Nos. 1 to 5 and husband of respondent No. 6 under the occupation of GREF Department

East- Land of Manzoor Ahmed under the occupation of GREF Department

West- Road, Rajouri-Thanamandi to Bafliaz.

19. In the report dated 04.02.2013 relied upon by the learned Executing Court, the description of the shop on spot has been mentioned as under:

North-shop of Gafoor Ahmed Ganai

South-Path/Road leading to Police Station, Thanamandi,

East-Vacant land measuring 3ft. x 6 ft. owned by State.

West-Road Thanamandi to Poonch.

20. If the description of the shop as mentioned in the plaint is compared with the description of the shop as mentioned in report dated 04.02.2013, it is found that the description of the suit shop as well as shop existing on spot is same, as was initially mentioned by the Assistant Commissioner (Rev), Rajouri in its report dated 05.09.2011. So far as eastern side is concerned,

vacant land has been mentioned in both the plaint and report dated 04.02.2013 but in the plaint, the vacant land has been shown to be that of Manzoor Ahmed under the possession of GREF, whereas in the report dated 04.02.2013, the vacant land has been reflected as owned by the State. Thus, it is evident that the vacant land is mentioned on the eastern side of the property as described in the plaint as well as in the report. Similarly, on the southern side in the plaint, the vacant land of Manzoor Ahmed has been mentioned whereas in the report dated 04.02.2013, path/road leading to Police Station, Thanamandi has been mentioned. It is nowhere mentioned in the report dated 04.02.2013 as to whether the path or road is existing on the State land or has been constructed on the private land. Even otherwise, it is not at all relevant once the property was capable of identification on spot in light of description mentioned in the plaint and in fact, was rightly identified by the Assistant Commissioner (Rev) in its report dated 05.09.2011, when no objection in respect of the location as well as identification of the suit property was raised by the respondents in the written statement. The Executing Court was only concerned in respect of the identification of the property and once the northern and western side of the suit property tallied with the position existing on spot even as per the findings of the Executing Court, more particularly in view of the existence of the shop of one Nasir Ahmed Ganai, it could not have been held by the learned Executing Court that the description of the suit shop did not tally with the position existing on spot.

It assumes significance as identification of the property was never disputed by the respondents in any court.

21. In **Pradeep Mehra Vs. Harijivan J. Jethvan Jetjwa, 2023 INSC 958**, it has been observed as under:

11. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in *Dhurandhar Prasad Singh v. Jai Prakash University*, (2001) 6 SCC 534, in para 24, it had stated thus:

“24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”

13. The reality is that pure civil matters take a long time to be decided, and regrettably it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years-----.

(emphasis added)

22. The observation of the Hon’ble Supreme Court in **Rahul S. Shah v Jinendra Kumar Gandhi and others, (2021) 6 SCC 418**, holds good in the instant case also and the same are reproduced as under:

“24. In respect of execution of a decree, Section 47 of CPC contemplates adjudication of limited nature of issues relating to execution i.e., discharge or satisfaction of the decree and is aligned with the consequential provisions of Order XXI. [Section 47](#) is

intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of [Section 47](#) is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. **However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.**

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given under **Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial.** For example, the judgment debtor sometimes misuses the provisions of Order XXI Rule 2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.”

(emphasis added)

23. It appears that the learned Executing Court got swayed by the observation made by this Court while disposing of the revision petition vide order dated 03.09.2011 that the warrant of possession be executed strictly in terms of the plaint. This approach of the learned Executing Court cannot be countenanced, more particularly when the suit property was properly described by the petitioner in the plaint and the description/identification of the property was not disputed by the respondents. With the passage of time, the surroundings of the suit property may change but once the description of the property was sufficient for its identification, the learned

Executing Court could not have rejected the execution petition by observing that on two sides, description of the said property did not tally with the position existing on spot, more particularly when there was vacant land on eastern side and on the southern side, though the pathway was shown on the Southern side. It would be apt to take note of the observations made by the Hon'ble Apex Court in "**Ravinder Kaur v. Ashok Kumar**", (2003) 8 SCC 289, which are extracted as under:

22. All these facts apart, we notice that nowhere in the petition the respondent tenants claim to be in possession of any shop other than Shop No. 3 in regard to which they have suffered an eviction order. It is not their case that they are also in possession of some other property in regard to which there is no eviction order but the landlord is trying to take possession in these execution proceedings. We have specifically asked the learned counsel appearing for the respondents that apart from Shop No. 3 belonging to the appellant, are the respondents in possession of any part of the property bearing No. EK 172/2 situated at Chowk Panjeer, Jalandhar. The learned counsel was not able to give any satisfactory reply to our question which would only mean that the respondents are not in possession of any other property other than Shop No. 3 leased out to them in the abovementioned property belonging to the appellant. That is also why they prayed for restoration of possession. Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system.

(emphasis added)

24. It was urged by the learned Senior Counsel for the respondents that the finding on fact has been recorded by the Executing Court, therefore, the same cannot be re-appreciated by this Court in a revision petition. This contention of the learned Senior Counsel deserves to be rejected because whole of the controversy was created by the Executing Court itself and

then only, it proceeded to determine the same. Though the judgment of the Hon'ble Supreme Court of India in "**Kishore Kumar Khaitan v. Praveen Kumar Singh**", (2006) 3 SCC 312, pertains to the scope of the jurisdiction of the High Court under article 227 of the Constitution of India to interfere with the finding of the fact recorded by the court subject to its supervisory jurisdiction but the observations are relevant in the instant case as well, which are as under:

"13. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction. Here the jurisdiction to grant an interim mandatory injunction could be exercised on entering a finding that on the day the order for maintaining the status quo was passed, the plaintiff was in possession and a day after the interim order was passed, he was in fact dispossessed. The interim direction to maintain status quo was an ex parte order. From the order of the Additional District Court it is not possible to come to the conclusion that on a proper advertence to the relevant materials, prima facie clear findings had been rendered by that court on these aspects. The prima facie infirmities attached to the letter said to create the tenancy cannot also be ignored, since that transaction is the foundation of the plaintiff's claim of possession."

(emphasis added)

25. In view of all what has been said and discussed above, this Court is of the considered view that the order dated 20.03.2013 passed in **File No. 01/Execution titled "Bashir Ahmed Bhat v. Bilal Ahmed & Ors"** is not sustainable in the eyes of law and is, accordingly, set aside. Learned Executing Court is directed to execute the decree in respect of the suit shop which is fully described in the plaint and identifiable on spot. The

matter is remanded back. Parties shall appear before the learned Executing Court on 01.12.2023.

26. The revision petition is disposed of accordingly.
27. Record of the Trial Court as well as Executing Court be sent back forthwith.

(Rajnish Oswal)
Judge

JAMMU
10.11.2023
Rakesh PS

Whether the order is speaking: Yes
Whether the order is reportable: Yes

