

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

CR No. 17/2020
CM No. 649/2020
Caveat No. 948/2020

Raj Kumar & anr. Petitioner(s)

Through:- Mr. G. S. Thakur, Advocate

V/s

Rajesh Mahajan & ors.Respondent(s)

Through:- Mr. D. S. Saini, Sr. Advocate with
Mr. Raman Kumar, Advocate for
caveators.

Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The suit for permanent prohibitory injunction was filed by the petitioners herein (hereinafter to be referred to as 'plaintiffs') against the respondents herein (hereinafter to be referred to as 'defendants'). The defendants filed their written statement objecting to the maintainability of the suit on various grounds and soon thereafter the plaintiffs filed an application for withdrawal of the suit with a permission to file fresh for the same cause of action.

02. This application was dismissed by the learned 1st Additional Munsiff, Jammu vide order dated 22.01.2020, holding that there is no sufficient ground for grant of permission to withdraw the suit and to file a fresh one.

03. The plaintiffs being aggrieved of the order of trial Court dated 22.01.2020, have filed this petition under Article 227 of the Constitution of India questioning the legality of this order. Plaintiffs suit was for permanent prohibitory injunction restraining the defendants from

interference in the suit land either by encroachment or otherwise directly or indirectly or through their agents as well.

04. It is settled law that the suit for injunction on such grounds has a recurring cause of action as and when cause arises or there is a fresh threat of interference.

05. Be that as it may, it is not a question of general interpretation but the suit even otherwise suffers from a formal defect because the boundaries of the land have not been specified under Order-7 Rule-3 of CPC. It was for the Presiding Officer who should have pointed out this at the time of entertaining the plaint because although reference to *Tatima Shajra* is made but it is not enclosed with the copy of the Sale Deed, in the absence of which, it is not possible to locate the boundaries of the land, in case the suit land is enclosed with boundaries even then Site plan should have been enclosed indicating the land owned by the persons on four sides. It is admitted case of the plaintiffs that their land is on either side of the road which made the production of the Site Plan as per requirement of Order-7 Rule-3 CPC mandatory. Assuming that the defendants want to include other property in the suit, that can be a subject-matter of debate whether the suit including any other property would be affected by Order-2 Rule-2 of CPC or the cause of action that could be decided only after fresh suit is filed.

06. Moreover, this suit was filed in January, 2020 and the written statement was also filed, therefore, it could not be a ground for not allowing the application.

07. Accordingly, the present petition under Article 227 of Constitution of India is allowed and order impugned dated 22.01.2020 is set aside.

The plaintiffs are permitted to withdraw the suit and they are entitled to file a fresh suit.

08. Disposed of in the aforesaid terms.

(Sindhu Sharma)
Judge

JAMMU

03.02.2020

Ram Murti

Whether the order is speaking : Yes
Whether the order is reportable : Yes/No.

