

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 2806 of 2023

Petitioner :- Gulam Husain And 3 Others

Respondent :- Sadakat Husain And 2 Others

Counsel for Petitioner :- Lalit Kumar Misra

Counsel for Respondent :- Vinod Shankar Tripathi

Hon'ble Jayant Banerji,J.

1. Heard learned counsel for the petitioners and Shri Vinod Shankar Tripathi, learned counsel appearing for the respondent No.1 - Sadakat Husain, respondent No.2 - Mohd. Afsar Husain and respondent No.3 – Asim.

2. When the matter was listed on 21.3.2023, the following order was passed:

"It is argued by the learned counsel for the petitioners that though Caveat Application No. 33 of 2023 was filed by them in Original Suit No. 82 of 2023 (Sadakat Hussain Vs. Mohd. Afsar Hussain and others) filed by one Sadakat Hussain and though a reference of the same has been made in the order dated 06.02.2023, the injunction order was granted by the trial court on 06.02.2023. Apart from the same, the necessary ingredients for the grant of inter-locutory order namely prima facie case, balance of convenience and irreparable loss were not dealt with by the trial court while passing the aforesaid order. It is further argued that though in the earlier proceedings initiated by the parties before this Court, the plaintiff has lost his case but by concealing the aforesaid facts the suit in question has been filed in which he was able to obtain an ex-parte interim injunction. It is further argued that immediately after the aforesaid order was passed, a recall application was filed by him on 13.02.2023 but till date no orders were passed on the same and the interim injunction dated 06.02.2023 was extended by the trial court from time to time.

Matter requires consideration.

Issue notice to respondent nos. 1, 2 and 3. Steps be taken within ten days.

All the respondents are granted six weeks' time to file counter affidavit. Thereafter, the petitioners may file rejoinder affidavits within two weeks.

List after exchange of affidavits.

Till the next date of listing, the effect and operation of order date 06.02.2023 passed by Civil Judge (Senior Division), Small Causes, Bareilly in Original Suit No. 82 of 2023, copy of which is appended as Annexure No. 9 to the writ petition shall remain stayed. "

3. On 22.11.2023, the following order was passed:

"Heard Shri Lalit Kumar Misra, learned counsel for the petitioners and Shri Vinod Shankar Tripathi, learned counsel for the respondent no. 1.

Pursuant to the order of the Court dated 21.3.2023, notices by registered post were issued to the respondent nos. 1, 2 and 3. The office report of 30.10.2023 is as under:

"O.P. No. 1- Vakalatnama (2/23) filed on behalf of O.P. No. 1 by Shri Vinod Shankar, Adv is on record.

O.P. No. 2, 3- As per record neither acknowledgement nor undelivered cover has returned."

As such, the respondent no. 1 is represented and notice on the respondent nos. 2 and 3 is sufficient.

The matter has been heard for sometime.

Put up this matter on 24.11.2023 at 2:00 PM along with connected matter."

4. The contention of the learned counsel for the petitioners is that the petitioners are the Bhumidhar with transferable rights with regard to plot No.132 situated at Village- Newada Shekhan, Tehsil and District Bareilly and are in actual possession of the same, which fact is reflected in the Khatauni for the Fasli Year 1430-1431. Initially, the land was declared as surplus but pursuant to the Urban Land (Ceiling and Regulation) Repeal Act, 1999, a writ petition was filed by the petitioners being Writ petition No.55134 of 2016 (Gulam Husain and others Vs. State of U.P. and others), which was

disposed of by an order dated 22.11.2016 directing the Collector to scrutinize the claim of the petitioners and undertake an appropriate inquiry and pass a reasoned and speaking order disposing of the representation. It is stated that in compliance of the order of this Court dated 22.11.2016, a fresh representation was filed and the District Magistrate, Bareilly after obtaining report of the Revenue Authority as well as of the Prescribed Authority under the Urban Land (Ceiling and Regulation) Act, 1976 and also providing opportunity of hearing to the petitioners and other affected persons, passed an order dated 23.8.2017 deciding the representation in favour of the petitioners.

5. It is stated that pursuant to the order of the Collector, entries of the name of the petitioners were made in the Khatauni for the Fasli year 1430-1435.

6. It is stated that thereafter, respondent Mohd. Afsar Husain challenged the order dated 23.8.2017 before this Court by means of a Writ Petition No.40817 of 2017 and further an application was filed for withdrawal of the petition which was allowed by an order of the Court dated 9.5.2018. It is stated that thereafter, Mohd. Afsar Husain again filed a recall application for recalling the order dated 9.5.2018 passed by this Court, dismissing Writ Petition No.40817 of 2017, and it is stated that the recall application is pending.

7. It has been stated further in the petition that during pendency of the aforesaid recall application, an Original Suit No.30 of 2023 was filed by Mohd. Afsar Husain seeking permanent injunction against the petitioners regarding plot No.132, which is still pending and no interim orders has been passed. However, it is stated in the counter-affidavit of Sadakat

Husain that the aforesaid suit No.30 of 2023 was dismissed in default by an order of the trial court dated 22.2.2023.

8. In the present petition, it is further stated that Sadakat Husain filed another original suit bearing Original Suit No.82 of 2023 against Mohd. Afsar Husain and another without impleading the petitioners, with regard to the same plot in dispute, namely, plot no.132. It is stated that despite a caveat application being filed by the petitioners under the provision of Section 148A of CPC, no notice was served on the petitioners, and by an order dated 6.2.2023, an ad-interim injunction was granted by the trial court. It is stated that a stay-vacating application was filed on 13.2.2023 before the trial court for vacating the ad-interim injunction granted on 6.2.2023, which is not being decided.

9. Learned counsel for the respondent has opposed the petition and has stated that no caveat application was filed in the instant suit No.82 of 2023. He has further stated that without filing an impleadment application, the petitioners have no right to appear in the suit on the strength of the caveat application.

10. Perusal of the record of this petition reflects that Annexure No.7 encloses the plaint in Original Suit No.30 of 2023 filed by Mohd. Afsar Husain against the petitioners in respect of plot No.132 seeking permanent injunction. Annexure No.8 to this petition is the plaint in the Original Suit No.82 of 2023 filed by Sadakat Husain impleading Mohd. Afsar Husain and Asim only, as defendants seeking relief of permanent injunction with regard to plot No.132.

11. Learned counsel for the petitioners has pointed out that a caveat application was filed by the petitioners, which appears at page No. 69 of this petition and bears date of 21.1.2023.

12. A copy of the order of ad-interim injunction is enclosed as Annexure No.9 to this petition. A perusal of which reflects that the Civil Judge (Senior Division)/ Judge Small Cause, Bareilly has referred to the caveat application No. 33 of 2023 and has observed that the caveator is not a defendant in the suit. It has also been observed in the order that since the caveator is not a defendant in the suit, therefore, there is no need to give him notice of the application. Proceeding onwards, the court considered the no objection of the other caveator who was defendant No. 1, Mohd. Afsar Husain, in the suit as well as an application filed by the defendant No. 2 admitting the contents of the application for temporary injunction and further referred to a general power of attorney, a certificate of family members and a registered original sale deed, held that a *prima facie* case is made out in favor of the plaintiff and directed that the defendants will not interfere in the peaceful possession, use and construction to be made by the plaintiff over the land in dispute.

12. The course adopted by the Civil Judge in proceeding to grant injunction without notice to the caveator is not conceived in the Code of Civil Procedure. The provisions of Section 148A are as follows:

"148-A. Right to lodge a caveat.-- (1)Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court , any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred

to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period."

13. Any person who claims a right to appear before the Court on hearing of an application that is expected to be made or has been made in a suit or proceeding instituted or about to be instituted, has a right to appear before the Court on the hearing of such application. This is the basic principle of law which seems to have been ignored by the trial court. The provision does not speak of a party to the suit but of the right of the caveator to appear before the Court and his right to be served with a notice of the application. As such, the observation of the trial court that no notice is required to be given to the caveator as he is not a defendant, is fallacious.

14. It is true that the order dated 6.2.2023 has been passed in a suit in which the petitioners are not parties and, therefore, the order is not binding on them. However, this order would lead to multiplicity of proceedings and give rise to fresh suits which would complicate the issue. Had the petitioners, as caveators, been permitted to appear, they could have demonstrated their rights to be impleaded in the suit as necessary parties and could have brought before the Court the extant revenue records

evincing their names thereon, by which they could have demonstrated that they being the recorded tenure holders, no injunction could be issued against them. The application dated 13.2.2023 that has been filed by the petitioners for vacating the ad-interim injunction order, is stated to be pending.

15. The petitioners may file an appropriate application for impleadment in the Original Suit No.82 of 2023, alongwith a certified copy of this order which application shall be considered by the trial court in accordance with law.

16. The trial court shall thereafter proceed to consider the application 17C dated 13.2.2023 filed by the petitioners in accordance with law. The consideration of the application for impleadment and the application 17C shall be done by the trial court and order shall be passed thereon not later than two months from the date of filing of the impleadment application along with a certified copy of this order. This petition is, accordingly, **allowed**.

17. It is made clear that the observations made herein are for adjudication of this petition only and the trial court is required to consider the aforesaid impleadment application and 17C on their merits.

Order Date :- 24.11.2023
K.K.Tiwari

(Jayant Banerji, J.)