

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 3694 of 2023

Petitioner :- Smt. Sarchana Devi

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Santosh Kumar Shukla, Kulveer Singh

Counsel for Respondent :- G.A., Jagdish Prasad Mishra

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Santosh Kumar Shukla, learned counsel for the petitioner, Sri Jagdish Prasad Mishra, learned counsel for the respondent and learned A.G.A. for the State.

2. This petition under Article 227 has been filed claiming following reliefs:

(i) To issue an appropriate order or direction by setting aside the judgment and order dated 03.03.2023, passed by Additional Session Judge, court No.1 Muzaffarnagar in Criminal Revision No. 280 of 2022 (Phool Singh and others Vs. State of U.P. and Others).

3. The relevant facts are as below:

4. In respect of Khata No. 520, Khasra No. 1050 area 3.0530 hectare, a report under section 145 Cr.P.C. was submitted on 27.03.2019. An order under section 145 (1) was passed by S.D.M. Jansath, directing the parties to adduce the evidence with regard to possession over property in question. The petitioner as well as respondent nos. 3 to 6 produced their evidence. The S.D.M. Jansath, heard both the sides and passed an order on 20.10.2022 giving a finding that Sarchana Devi (the petitioner herein) was in possession of disputed land i.e. 1/2 of Plot No. 1050. The order said that the Thana Incharge, Jansath is, therefore, directed that the possession of Sarachna Devi over the disputed land is not disturbed and that peace and tranquility is maintained. The opposite side, Phool Singh and three others filed a Revision No. 280 of 2022. The revisional court allowed the revision mainly observing that the trial court, without adequate evidence on record wrongly inferred that Sarchana Devi had possession over the property two months before she was forcibly dispossessed and that trial court failed to appreciate the evidence. Revisional court further observed that the trial court did not consider material evidence and did not record reasons for drawing inference of possession of petitioner over property.

4. The submissions of the petitioner are that the disputed land was in the name of Sher Singh. He executed a will deed on 06.01.2000 in favour of Sarachna Devi and she became owner of half share in the property and rest half share went to respondent nos. 3 to 6. The will deed dated 06.01.2000 was registered on 29.10.2018. The will deed was challenged by respondent nos. 3 to 6 by way of Case No. 638 of 2018 (Phool Singh Vs. Smt. Sarchana and others) The petitioner submits that respondent nos. 3 -6 could not obtain any interim order in their favour in the above civil case; the respondents could not establish their possession over the disputed land; therefore, the S.D.M. rightly passed an order dated 20.10.2022, directing the police to not let any person interfere

in possession of Smt. Sarachana Devi. After passing of aforesaid order, wife of Phool Singh-respondent no.3 approached the court of S.D.M. and moved a separate application that she had purchased the disputed land through registered sale deed on 20.03.2006 and that petitioner was trying to cut a popular tree standing on her land. A report was called from Lekhpal, which said that Sarchana Devi had possession of half share and that a misconceived application has been filed by wife of respondent no.3.

5. The arguments of the petitioner are that the witness Rambhool, examined from the side of respondent nos. 3 to 6, later on, gave an affidavit that he was pressurized to give statement in favour of respondents; the same kind of affidavit was given by another witness Jeevan, who also said that the petitioner and respondent nos. 3 to 6 are in respective possession of half share in the property; there was overwhelming evidence to establish possession of petitioner but the Additional Sessions Judge remitted the matter without considering the relevant facts and circumstances. The impugned order is contradictory, till the will deed is cancelled by civil court, it shall be taken as valid. The order passed by revisional court is erroneous. Hence, is liable to be set aside.

6. The petition is vehemently opposed by the respondents mainly on the ground that the observations of the revisional court are valid and sound. These observations are based on material on record which was ignored by the learned trial court. The trial court had not considered the fact that the will deed was executed in the year 2000 and was registered in the year 2018 and that evidence of the said deed alone is not sufficient to establish possession. There was in fact, no evidence to establish that the petitioner has been in de facto possession over the property. The trial court passed the order without appreciating the material on record and without considering the fact that Sarchana Devi failed to establish her possession over the disputed portion. The trial court had failed to give a concrete finding as regard possession over the property and the reasons for arriving at the same.

7. Next, it is contended by the private respondents that the trial court has been directed by the revisional court to decide the matter afresh and that the hearing before the trial court is at a mature state. The petitioner has ample opportunity to put his side of story before the trial court and agitating the matter under Article 227 at this stage is neither legal nor appropriate.

8. I went through the impugned order and other material on record. From the papers on record it appears that both the sides claimed title on the property on the basis of two will deeds executed at different times. The claim of the petitioner is based on will deed of the year 2000 which was registered in the year 2018. The opposite side have a case based on registered will deed dated 02.09.1999 on the basis whereof their names were entered in revenue record in the year 2000 and they were in possession ever since. The contention of the respondents is that there was no dispute as regard possession over the property and there was no apprehension of disturbance of peace and that the dispute was deliberately raised by Sarchana Devi with *mala fide* intention. Though, they have been in peaceful possession over the property since last more than 18 years and entries in their favour existed since then. The trial court overlooked the fact that whole of plot no.1050 was attached though respondents were co-sharers.

9. The learned court or revision mainly made following observations.

That the Magistrate has to find out as to which party was in actual possession at the relevant time; that unless there has been forcible and wrongful dispossession of a party within two months next before the date on which the report of police officer or that information as received by the Magistrate, no question arises for application of proviso to Section 145 (4); the learned trial court overlooked this point that there was no case for application of section 145 (4) and wrongly applied the legal provisions; such facts were ignored that the *prima facie* dispute arose only after registration of will deed in 2018 and not before that and that revenue entries existed in the name of respondent since more than 18 years. The revisional court further expressed doubts as regards identification of portion of the disputed land besides several other observation. It expressed a view and rightly so that Magistrate had to confine itself on the issue of de facto possession.

10. The Allahabad High Court in **Prabhakar Tiwari Vs. State of U.P. and 5 others in Matter under Article 227 No. 10770 of 2022** decided on 09.10.2023 has observed in para-10 as follows:

"10. From the provisions of law, an undisputed position emerges that rival claims have to be considered, (irrespective of the fact whether or not they touch upon the right to title or the ownership over the property), to find out as to whether any party is/has been/was in possession on such material dates as above. For this limited purpose, the Magistrate can sift through the oral and documentary evidence produced by the parties. The Magistrate is empowered to adjudicate the question of de-facto possession and no more."

11. In my opinion, the learned revisional court touched upon some important material/evidence, which ought to have been considered by the learned trial court. The observations of the revisional court are sound and are based on material on record. Where material facts are overlooked or facts of such nature are ignored which result in failure of justice, it is the duty of the court to point out the same. In my opinion, there is no good ground to interfere in the order of the revisional court. This petition is liable to be dismissed, and is therefore **dismissed**.

Order Date :- 6.11.2023

Sumit Kumar