

Court No. - 40

Case :- WRIT - C No. - 12627 of 2022

Petitioner :- Babban Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- O.P. Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Shri O.P. Tiwari, learned counsel for the petitioner and Shri Sharad Chandra Upadhyay, learned Standing Counsel.

2. Present writ petition has been preferred for following reliefs:-

"(I) Issue a writ, order or direction to the respondent no.2 to decide the pending application of the petitioner for appointment to the receiver on the disputed land in question, after considering the gravity of the matter as per law, dispose it within stipulated period as soon as it possible.

(II) Issue a writ, order or direction to the respondent no.2 to take appropriate action to maintain peace and harmony on the disputed land in question by giving appropriate directions during pendency of the present miscellaneous petition or till the final decision in this petition."

3. The entire claim has been set up by the petitioner on the basis of proceeding under Section 145/146 CrPC. He submits that initially receiver was appointed over the disputed property and once he died, the petitioner has preferred the present writ petition for a direction to the respondents to appoint another receiver.

4. On the other hand, learned Standing Counsel raised an objection regarding the maintainability of the writ petition on the ground that highly disputed facts are involved in the present matter. Between the parties Second Appeal Nos.966, 967 and 968 of 2009 are pending consideration in which learned Single Judge vide order dated 18.9.2009 has directed for maintaining status quo over the property in dispute until further orders. The said Second Appeals are stated to be still pending consideration. As such it is submitted that once regular proceeding qua property in dispute is pending consideration before learned Single Judge, merely on the basis of proceeding under Section 145/146 CrPC, substantial right cannot be created in favour of either of the parties. Said rights can only be settled in regular proceeding, which is engaging attention before learned Single Judge.

5. Considering the aforesaid objection, once the Court has inclined to dismiss the writ petition, learned counsel for the petitioner fairly states that he is not inclined to press the present writ petition. However, leave may be accorded to the petitioner to press his claim before the pending second appeals.

6. In view of above, the writ petition is **dismissed** as not pressed with leave as aforesaid.

Order Date :- 1.11.2023

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