

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 6615 of 2023

Petitioner :- Firoz Ali And Another

Respondent :- Nehrun Nisha And 2 Others

Counsel for Petitioner :- Ajeet Dixit, Abhinav Singh, Diwakar Mishra, Mohd. Naushad Ahmad Khan

Hon'ble Jayant Banerji, J.

1. Heard Shri Diwakar Mishra, learned counsel for the petitioners.
2. This petition is filed by the judgment debtor seeking to set aside an order dated 27.4.2023 passed by the District Judge, Sonbhadra in Civil Revision No. 9 of 2023 (Firoz Ali and Another Vs. Nehrun Nisha and Others).
3. It appears from the first supplementary affidavit filed by the petitioners that the suit of the respondent-decree holder was dismissed and the appeal filed by the plaintiff was partly allowed. A copy of the decree that has been filed along with the supplementary affidavit states as follows:
"

आदेश

28.9.2020 अपील आंशिक रूप से स्वीकार की जाती है। तथा विद्वान विचारण न्यायालय द्वारा पारित निर्णय व डिक्री दिनांकित 10.1.2020 अपास्त किया जाता है। एवं वादी गण का वाद आंशिक रूप से डिक्री करते हुए यह अवधरित किया जाता है कि वादी गण व प्रतिवादी सं० 01 व 02 वाद ग्रस्त सम्पत्ति के स्वामी नहीं हैं। किन्तु संयुक्त रूप से अध्यासीन हैं। एवं वादी गण का वाद वादग्रस्त संपत्ति के स्वामी घोषित किये जाने के संबंध में खंडित किया जाता है। एवं प्रतिवादी सं० 01 व 02 को निषेधित किया जाता है। कि वे वादी गण के वाद पत्र के अंश के अक्षर ख, छ, च, ग से दर्शायी गयी सम्पत्ति संयुक्त

अध्यासन से निष्कासित न करे और वादीगण के संयुक्त अध्यासन में न कोई व्यवधान उत्पन्न करें और न ही वाद ग्रस्त सम्पत्ति का विक्रय स्वयं अनन्य रूप से करें। यह स्पष्ट किया जाता है कि पक्षों को नजूल भूमि आवंटित कराने के संबंध में यदि कोई अवसर हो तो उसे प्राप्त करने का अधिकारी होगा। और भूमि के स्वामी अर्थात् राज्य को भी यह अधिकार होगा कि वह वादी गण व प्रतिवादी संख्या 1 व 2 के विरुद्ध यथा स्थिति निष्कासन हेतु विधिक कार्यवाही कर सकते हैं।

मामले के तथ्य एवं परिस्थितियों में पक्षकार अपना - अपना वाद व्यय स्वयं वहन करेंगे।"

4. It appears that thereafter Nehrun Nisha filed an execution application asking that a mound of bricks that have been placed by the judgement debtor to the east of the house of the plaintiffs be removed and the Kacha house that has fallen, that be reconstructed. In the aforesaid execution case, which is numbered as Execution Case No. 4 of 2022, an application 18E was filed by the petitioner-judgement debtor in which it was stated that no decree was passed for removal of the bricks. It was stated that with regard to the mound of bricks, the case is engaging the attention of the High Court and, therefore, the application for execution is defective. By the order dated 28.2.2023, the executing court rejected the application 18E. The revision filed by the petitioner challenging the order dated 28.2.2023 was unsuccessful and it was dismissed by the order dated 27.4.2023.

5. The contention of the learned counsel for the petitioner is that the execution application is misconceived inasmuch as the decree was not made with regard to removal of any bricks but the executing court is proceeding to consider the application for execution.

6. A perusal of the order dated 28.2.2023 reflects that the executing court has referred to paper No.17Ga/2, which is a site plan prepared by the court bailiff which does not reflect any mound of bricks it was, therefore, observed that at the time of filing of the suit, there was no mound of

bricks in the courtyard to the east of the house of the plaintiff. Accordingly, the application 18E was rejected.

7. The revisional court considered the objections filed and the fact that the second appeal filed before the High Court was dismissed due to non prosecution and, therefore, there is no occasion to stay the execution of the decree. The order of the executing court was found to be justified and was affirmed.

8. Learned counsel for the petitioner has not been able to dispute the fact that in the suit the report of the Amin, as proved, contained a site plan which did not reflect any mound of bricks on the east side of house of the plaintiff.

9. As such, the order dated 28.2.2023 and the order of the revisional court dated 27.4.2023 cannot be faulted. No interference is called for in this petition and this petition is, accordingly, **dismissed**.

Order Date :- 3.11.2023

K.K.Tiwari

(Jayant Banerji, J.)