

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 6785 of 2023

Petitioner :- Budhiram Prasad Gupta

Respondent :- Amarnath Gupta And 8 Others

Counsel for Petitioner :- Jamwant Maurya

Hon'ble Jayant Banerji,J.

1. Heard learned counsel for the petitioner.
2. Second Supplementary affidavit filed today is taken on record.
3. This petition has been filed seeking the following relief:

"(i). To issue an order or direction to Civil Judge (J.D.) Saidpur Ghazipur to restore the possession of the plaintiff/petitioner which is prior to passing the interim order dated 05.05.1999 to the extent of his share on Aaraji No. 543 area 1/3 of 2Biswa 18 Dhure situated in the Village Dhimapar, Tehsil-Saidpur, District-Ghazipur which marked by word D1, C2, C1, EFG in the suit no. 228 of 1999 Budhiram Vs. Musey and others.

(ii) To issue an another order directing the Civil Judge (J.D.) Saidpur Ghazipur to decide the case no. 228 of 1999 and Misc. Case No. 36/2023 under order 39 Rule-2 Budhiram Vs. Amarnath and others pending before the court.

(iii). To issue an order directing the respondent no.1 and 9 to pay compensation to the tune of Rs. 10 Lacs towards the mental, physical agony and distress suffered by the petitioner due to wrongful and illegal dispossession of the petitioner from his own property and towards raising the construction over the property of the petitioner by the respondent no. 1 and 9

(iv). To issue any order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(v). Award the cost of petition in favour of the

petitioner."

4. It appears that an Original Suit No. 228 of 1999 was filed, seeking a decree of permanent injunction with regard to the suit property which is stated to be agricultural land bearing Arazi No.543, Khata No.145. It is stated that the plaintiff and the defendant first and second set are owners in possession of Plot No. 543, Area 0-2-18 corresponding to Khata No. 145 situated in village- Bhimapar, Pargana- Bahariyabad, Tehsil- Saidpur, District Ghazipur, which was mutated in their names. Thereafter the plaintiffs became the owners in possession of 1/3rd part of that property. It is stated in the plaint that the defendant first set and the defendant second set started creating disturbances in the plaintiffs' possession and, therefore, the suit for injunction was filed. On 5.5.1999, an ad-interim injunction was granted by Civil Judge (Junior Division), restraining the defendant first set from damaging the plot or the rooms made thereon, and not to take any foundation or create any fresh construction, and maintain status quo. It is stated that the aforesaid injunction order has been extended from time to time. Thereafter, the petitioner and other plaintiffs filed an application under Order No. 39, Rule 2A, which came to be numbered as Miscellaneous Case No. 36 of 2023.

5. Another application under Section 151 CPC, dated 3.5.2023, was filed with a prayer that the part of the plaintiffs' property pertaining to the suit property, be restituted as on date when suit was filed. This application has been filed as annexure SA-1 to the first supplementary affidavit filed on 19.9.2023. A certified copy of the aforesaid application is also stated to be filed as annexure SA-2 to the second supplementary affidavit that has been filed today.

6. The contention of the learned counsel for the petitioner is that

the trial court be directed that apart from deciding the application filed under Order 39, Rule 2A, it should decide the application dated 3.5.2023 under Section 151 CPC. In support of his contention, learned counsel has relied upon paragraph Nos. 18 and 19 of the judgment of the Supreme Court in the case of **Meera Chauhan Vs. Harsh Bishnoi and another** reported in **(2007) 12 SCC 201**.

7. Evidently, the trial court has granted an ad-interim injunction against a co-tenure holder. Though in the application under Order 39, Rule 2A, it is alleged that a violation of the order of the temporary injunction occurred on 31.11.2022, however, it is stated in paragraph No. 13 of the petition that the application under Order 39, Rule 2A, CPC was filed on 21.04.2023. As far as the judgment of the Supreme Court is concerned, in paragraph Nos. 18 and 19 thereof, which paragraphs have been referred by learned counsel for the petitioner, it is stated as follows:

"18. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the court can, by exercising its inherent power put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

19. It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the court can order restoration of possession to the party wronged."

8. Given the aforesaid observations of the Supreme Court, initially it has to be determined by the trial court whether any violation of the order of ad interim injunction has taken place or not. Secondly, it has to be determined by the aid of evidence as to what is the

extent of the violation, if any, and whether the plaintiffs/applicants have been dispossessed. These facts will have to be co-related to the alleged partition that has been said to have taken place between the parties with regard to the agricultural plot, which again is a question of fact that may be disputed.

9. This Court has no reason to doubt that the aforesaid applications would be dealt by the trial court in due course. In the facts and circumstances of the case, interference is declined and this petition is **dismissed**.

10. Learned counsel for the petitioner has urged that the suit is pending since 1999 and, therefore, the trial court be directed to decide the same expeditiously. Since, this Court is not *prima facie* satisfied whether a suit for injunction simplicitor would be maintainable in the facts and circumstances of the case, the request is declined.

11. The Registrar (Compliance) is directed to send a copy of this order to the concerned Court within fifteen days.

Order Date :- 12.10.2023

K.K.Tiwari

(Jayant Banerji, J.)