

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 6919 of 2023

Petitioner :- Rampreet

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Brahma Nand Tripathi,Ravindra Kumar Dubey

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Brahma Nand Tripathi, learned counsel for the petitioner and Sri R.K. Gupta, learned AGA for the State.

2. This petition has been filed with the submissions that the petitioner is 70% disabled person. He is having four real brothers. One of them, Ramniwas died on 01.05.1990 and his share in the property was inherited by rest of his three brothers including the petitioner and his mother. In 2012, his brother-Ram Ashish, in collusion with an outsider Ramlal, got executed a sale deed in 2012 of the share in property belonging to his dead brother by putting some third person in place of Ramniwas. Later on petitioner's real brother Ram Ashish got executed another sale deed in his favour on 22.07.2021 from Ramlal. It is further submitted that the applicants-Ram Gati and Rampreet (the petitioner herein) filed an application under section 156(3) Cr.P.C. against his brother-Ram Ashish and 3 others. The trial court, without appreciating the facts and ignoring the fact that a cognizable offence is being disclosed from the allegations in the application, dismissed the same, observing that the matter appeared to be civil in nature. It is further contended that the revisional court affirmed the order passed by the trial court, without giving thoughtful consideration to the facts as disclosed in the application and also ignoring the illegality committed by the trial court.

3. I went through the papers on record including the application moved under section 156(3) Cr.P.C. Admittedly, a civil suit no. 597 of 2012, in respect of the property in question filed by the petitioner and his two brothers including Ram Ashish, who is respondent no. 3 in the instant petition, is pending with regard to same property. A copy of the plaint of OS no. 597 of 2012 is on record. Perusal whereof reveals that a civil suit has been filed by the petitioners Rampreet and his two real brothers namely, Ram Ashish and Ram Gati. It may be noted that Ram Ashish, one of the plaintiffs is respondent no. 3 herein. The aforesaid suit has been filed against one Ramlal Yadav, who is respondent no. 2 herein. The suit has been filed for cancellation of a registered sale deed dated 31.03.2012 executed in favour of Ramlal. The plaint case is that all the brothers had share in the property and Ramlal got executed a sale deed of the share of Ramniwas by impersonation. Interestingly, now one of the brothers Ram Ashish is siding with Ramlal and they are respondent no. 3 and 2 respectively in the instant petition. Not a single order passed in the above civil case, has been placed before the trial court or before the revisional court or even before this court to prima facie show that any order by the civil court (interim or otherwise) was ever passed in favour of the petitioner.

4. The Supreme Court has, in a number of cases discouraged the practice of converting a case of civil nature into criminal case. The Supreme Court in the case of ***Mohd. Ibrahim and others vs. State of Bihar and others (2009)8 SCC 751*** wherein it was held that practice of converting a case of civil nature into criminal case is becoming quite prevalent. The judgment given by the Allahabad High Court in case of ***Smt. Anjum vs. State of U.P. 2008(61) ACC 181*** wherein the court described the discretionary powers regarding lodging of an F.I.R. and investigation thereon. The court held that any malafide attempt to put the legal machinery in motion should be dissuaded.

5. In my view, the trial court rightly drew the inference that the matter appeared civil in nature. This inference is based on material on record. The revisional court committed no error in affirming the aforesaid order.

6. In view of the above, I do not find any good ground to interfere in the impugned orders, hence this petition is **dismissed**.

Order Date :- 6.11.2023

#Vikram/-