

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 6861 of 2023

Petitioner :- Sukhvinder Singh

Respondent :- Harpreet Singh And 3 Others

Counsel for Petitioner :- Abhishek Tiwari,Alok Kumar Dubey

Counsel for Respondent :- Rajesh Kumar Mishra

Hon'ble Jayant Banerji,J.

1. Heard Shri Atul Dayal, learned Senior Advocate assisted by Shri Abhishek Tiwari, learned counsel for the petitioner and Shri H. N. Singh, learned Senior Advocate assisted by Shri Rajesh Kumar Mishra, learned counsel for the defendant-respondents.

2. This petition has been filed seeking to challenge the order dated 4.4.2023 passed by the Civil Judge (Junior Division), Rampur on the application 7C of the plaintiff-petitioner filed for temporary injunction in Original Suit No. 114 of 2023 (Sukhwinder Singh vs. Harpreet Singh and others). Further under challenge is an order dated 6.5.2023 passed by the District Judge, Rampur, in Civil Misc. Appeal No. 19 of 2023 dismissing the appeal of the plaintiff-petitioner filed against the aforesaid order dated 4.4.2023.

3. On behalf of the petitioner, it is stated that a suit for declaration of a Will deed dated 22.11.2022 as void and for permanent injunction was filed with regard to the suit property. It is stated that the suit property is agricultural in nature and the defendants had already instituted a suit under Section 144 of the UP Revenue Code, 2006 for declaration before the revenue court with regard to the same suit property as in Original Suit No. 114 of 2023. It is stated that in the suit filed before the revenue court initially an order granting ad-interim temporary injunction was passed. The trial court in Original Suit No. 114 of 2023 had declined to grant an ad-interim temporary injunction on the ground that such an injunction was already granted by the revenue court. Thereafter, it is stated that in the suit filed before the revenue court, an application under Order 7 Rule 11 CPC was filed by the defendants therein which application came to be allowed and the plaint was rejected. It has been stated that the order of the revenue court is subject to challenge in a superior court.

4. It is stated that while considering the application 7C, the trial

court has rejected it on the ground that the petitioner-plaintiff has not been able to establish either his possession or his title to the suit property. It is further stated that the trial court has recorded a finding that no mortgage deed that is stated to have been executed in favour of the petitioner was filed, which led to rejection of the application for temporary injunction.

5. The aforesaid Order dated 4.4.2023 was subject to challenge in Civil Misc. Appeal No. 19 of 2023 before the District Judge, Rampur by the plaintiff-petitioner which came to be dismissed by the order dated 6.5.2023. The contention of the learned counsel for the petitioner is that subsequently the mortgage deed has been filed before the trial court and therefore, the reason for rejection of the application for temporary injunction no longer exists.

6. Sri H.N. Singh, learned Senior Advocate, has strongly opposed this petition on the ground that the petitioner has no title whatsoever with regard to the property in dispute and neither is he in possession. It is further stated that the alleged mortgage deed is a fictitious document which has anyway not been filed before the trial court by the petitioner which was his best evidence. It is stated that under the circumstances, the trial court and the appellate court were justified in rejecting the application 7C as well as the appeal, respectively.

7. I have perused the reasons recorded by the trial court and the appellate court in passing the orders impugned. An observation was made that no mortgage deed has been filed by the plaintiff-appellant and neither has he filed any revenue records with respect to the suit property that would evince his name thereon. It was noted that the defendant-respondent is recorded as a bhumidhar with transferable rights in the revenue record. It was accordingly held that no document has been filed that could establish a prima facie case regarding title of the plaintiff. It was held that there is neither any balance of convenience in favor of the plaintiff and no irreparable injury would be caused to the plaintiff. Therefore, the appeal was dismissed.

8. I find no error or illegality in the orders impugned and therefore, interference in this petition is declined and it is, accordingly, **dismissed**.

Order Date :- 19.10.2023

A. V. Singh

(Jayant Banerji, J.)