

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 7036 of 2023

Petitioner :- Smt. Sudha Sharma And 2 Others

Respondent :- Rajesh Sharma And 3 Others

Counsel for Petitioner :- Dharmendra Kumar Tripathi, Aditya Shankar Tewari

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner.

2. This petition has been filed seeking the following relief:

"(I) Direct the defendants-respondents not to create any hindrance and to maintain status quo over the property in question with regard to nature and possession of the suit property, during the pendency of interim injunction application (6C) filed by the plaintiffs-petitioners in Original Suit No.204/2023, Smt. Sudha Sharma and others Vs. Rajesh Sharma and others before the Court below.

(II) Direct the court below to decide the interim injunction application (6C) filed by the plaintiffs-petitioners in Original Suit No.204/2023, Smt. Sudha Sharma and others Vs. Rajesh Sharma and others within stipulated period to be specified by this Hon'ble Court and till then no 3rd party right shall be created by the defendants- respondents.

(III) Issue any other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(IV) Award the cost of present petition in favour of the petitioners."

3. It appears that the plaintiff-petitioners has instituted a suit for permanent injunction in respect of the property situated in Mohalla Olandganj, Pargana Haveli, Tehsil Sadar, District Jaunpur. It is admitted by the learned counsel for the petitioner that the plaintiffs purchased a part of the property in dispute by means of a sale deed dated 31.3.2006 and the defendants purchased the remaining part of the suit property by a sale deed dated 10.5.2006. It is stated that when the defendants started making efforts to sale their part of the suit property to a third party, the plaintiff-petitioners made an overture to the defendants to purchase the property and since the defendants refused, the aforesaid injunction suit was filed seeking a decree in the following term:

"अ- स्थाई व्यादेश की आज्ञा पारित करके प्रतिवादी सं०-1 व 2 को आदेश दिया जावे कि वे इमारत मुन्दर्ज जैल के आवासीय भाग में वादीगण एवं उसके परिवार के उपयोग, उपभोग में किसी प्रकार का कोई व्यवधान उत्पन्न न करें, और न उसे किसी बाहरी व्यक्ति के पक्ष में किसी प्रकार अन्तरित अथवा हस्तान्तरित करें और न चार्ज क्रियेट करें और वादीगण के पक्ष में इमारत मुन्दर्ज जैल का विक्रय विलेख निष्पादित करने से विरत न रहे।"

4. The contention of the learned counsel for the petitioners is that given the provisions of Section 44 of the Transfer of Property Act, 1882, the petitioner is entitled to injunction and as such the application 6C filed by the plaintiff-petitioners deserves to be allowed. Learned counsel for the petitioners also presses for a direction to the defendant-respondents not to create any hindrance and to maintain status quo over the suit property during pendency of the temporary injunction application 6C.

5. Learned counsel for the petitioner was asked to address the Court on the aspect of the maintainability of the suit for injunction given the provisions of Section 38 read with clause (e) of Section 41 of the Specific Relief Act, 1963, and as to how the provision of Section 44 of the Transfer of the Property Act would create any obligation or contract in favour of the petitioner, for prevention of breach of which, injunction could be granted. However, the same could not be demonstrated.

6. Under the circumstances, the relief as sought for is declined and the petition is **dismissed**.

7. Registrar (Compliance) is directed to send a copy of this order to the concerned court within a period of fifteen days from today.

Order Date :- 31.10.2023

A. V. Singh

(Jayant Banerji, J.)