

**Court No. - 1**

**Case :- MATTERS UNDER ARTICLE 227 No. - 7139 of 2023**

**Petitioner :-** Balak Ram

**Respondent :-** Kaptan Singh And Another

**Counsel for Petitioner :-** Vivek Saran

**Hon'ble Jayant Banerji,J.**

1. Heard learned counsel for the petitioner.

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

*"i. To set aside the judgement and order dated 25.05.2023 passed by the Additional District Judge/Trying Rape Cases (POCSO Act), Etawah in Misc. Civil Appeal No. 14 of 2023.*

*ii. To set aside the order dated 10.02.2023 passed by Civil Judge (Junior Division) Etawah, in Application No. 6 Ga of the petitioner in Original Suit No. 992 of 2022.*

*iii. To allow the Application no. 6 Ga of the petitioner in Original Suit No. 992 of 2022 and to restrain the defendants/respondents from interfering in peaceful enjoyment and possession of the petitioner/plaintiff in the suit-property till the conclusion of the Original Suit No. 992 of 2022.*

*iv. Award cost of the petition to the petitioner."*

3. It is stated by the learned counsel that a suit for injunction was filed by the petitioner-plaintiff seeking a relief of permanent injunction with regard to the suit property, the boundaries of which were mentioned in the schedule and in the plaint map. Objection was filed by the other side and counsel for the parties were heard. By the order dated 10.2.2023, the trial court has rejected the application for temporary injunction holding that the property in dispute is not identifiable. The appellate court, while affirming the

order of the trial court, has dismissed the appeal by means of the impugned order dated 25.5.2023.

4. The contention of learned counsel for the petitioner is that the trial court had decided the application for temporary injunction on the ground that the plot was not identifiable, whereas the appellate court has dismissed the appeal on the ground that the possession of the plaintiff has not been demonstrated over the plot in question.

5. Learned counsel has referred to Annexure No.4 to the petition in an attempt to demonstrate that the Amin report shows the boundaries and possession of the plaintiff, which are corroborated by the boundaries mentioned in the plaint and the plaint map.

6. A perusal of the grounds of appeal that has been filed by the petitioner itself reveals that the plaintiff claims to be the allottee of a plot of land which is a part of plot No.37. That being the case, the order of the trial court stating that the plot in dispute is not identifiable cannot be disputed. It is not the case of the petitioner that in the allotment made, the plot was clearly demarcated during the allotment. Though the plot in dispute was allotted to the petitioner's father by the Gram Sabha, however, the Gram Sabha has not been made party in the suit.

7. The trial has relied upon the provisions of Order 7, Rule 3 CPC and a judgment of this Court in the case of **Smt. Phoolmati Devi vs. Maniklal 2005 (2) AWC 1823**, while rejecting the application. The reason and rationale adopted by the trial court has not been demonstrated by the learned counsel for the petitioner to suffer from any error that may warrant interference. The possession of the petitioner over a specific part of the land which, as per the own statement of the petitioner is a part of the large plot No.37, cannot

be said to be conclusively established while deciding the application for temporary injunction, unless and until evidence is led.

8. Under the circumstances, interference is declined and this petition is **dismissed**.

**Order Date :-** 12.10.2023

K.K.Tiwari

(Jayant Banerji, J.)