

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8929 of 2023

Petitioner :- Ram Pyare

Respondent :- Lallu And 3 Others

Counsel for Petitioner :- Ashok Kumar Singh

Hon'ble Jayant Banerji,J.

1. Heard Shri Ashok Kumar Singh, learned counsel for the petitioner.

2. This petition has been filed seeking to set aside the order dated 5.10.2021 passed by the Civil Judge (Junior Division), Bhadohi, Gyanpur and the order dated 25.5.2023 passed by the Additional Sessions Judge-II, Bhadohi, Gyanpur.

3. By means of the impugned order dated 5.10.2021, the application 6C filed by the petitioner seeking temporary injunction has been considered and both the parties have been directed to maintain the status quo with regard to the agricultural plot no. 1259, area 0.1430 hectares situated in village Taalsamdha, Taluka Asnao, Tehsil Aurai, District Bhadohi and not to make any new constructions. By the impugned order dated 25.5.2023, the Misc. Civil Appeal No. 48 of 2021 filed by the plaintiff-petitioner has been dismissed by the Additional District Judge-II, Bhadohi, Gyanpur.

4. It appears from the record that the aforesaid suit bearing Original Suit No. 312 of 2019 was filed before the Civil Judge (Junior Division), Bhadohi, Gyanpur seeking a declaration for declaring a sale deed dated 15.4.2015 as null and void and for permanent injunction with regard to suit property. An application for temporary injunction 6C was filed. After considering the application as well as the objections thereon, the trial court noticed the documents filed by the respective parties, wherein, it was reflected that the defendants nos. 2 to 4 were recorded as co-tenure holders over plot no. 1259 on the basis of a sale deed. It was noted that there was a dispute between the defendant no. 1 and the plaintiff pending in the court of consolidation court pursuant to which the name of the defendant no. 1 was deleted and the name of the plaintiff was mutated but, it was noticed that the parties to the suit have not filed any Khasra with regard to the suit property.

As such, the possession of the parties over plot no. 1259 was not clear. It was observed that the issue of possession can be decided by evidence. Accordingly, it was directed for maintenance of status quo and for the parties not to make any fresh constructions. The appeal of the plaintiff was unsuccessful and the misc. appeal was dismissed. It was observed by the appellate court that a mini trial cannot be held at the stage of consideration of the application 6C. It was observed that to maintain peace at the suit property, it was necessary to direct the parties to maintain status quo which is correct as per law. Accordingly, the order dated 5.10.2021 was upheld and appeal was dismissed.

5. Learned counsel for the petitioner has strongly pressed the petition and has pointed out and referred to Annexure No. 7 to this petition which is a Khasra showing the name of the petitioner over the suit property which Khasra is of the Fasli year 1428. A perusal of the order of the trial court dated 5.10.2021 reflects the documents that were filed by the parties. The Khasra referred to by the learned counsel for the petitioner does not appear in these documents. It is obvious that that document was not filed before the trial court.

6. Under the circumstances, the trial court is correct in observing that the factum of possession of the parties is not clear in view of the non-filing of the Khasra by any of the parties. The order of status quo as passed by the courts as well as the direction not to make any fresh constructions appear to be appropriate in the facts and circumstances of the case. As such, no interference is called for in this petition and it is **dismissed**.

Order Date :- 9.11.2023

A. V. Singh

(Jayant Banerji, J.)