

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 7509 of 2023

Petitioner :- Rambabu Singh And 13 Others

Respondent :- Abhishek Singh And 8 Others

Counsel for Petitioner :- Shyam Singh Sengar

Hon'ble Jayant Banerji,J.

1. Heard learned counsel for the petitioners.

2. This petition has been filed seeking the following reliefs:-

"(a) To set aside the impugned order dated 18.03.2023 passed by Additional District Judge Court No.7, Kanpur Nagar in Civil Misc. Appeal No.85/2022 (Rambabu Singh and others Vs. Abhishek Singh and others) and to stay the effect and operation of the impugned order dated 02.07.2022 passed by Additional Civil Judge (Junior Division) Court No.11, Kanpur Nagar in Original Suit No.1252/2021 (Rambabu Singh and others Vs. Abhishek and others) whereby application under order 39 Rule 1 of C.P.C. (6C application) have been rejected by the both the court below.

(b) To call for record of the court and status quo to be maintain and to directed to both the parties to maintain status quo during pendency of the trial.

(c) Issue any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(d) award cost of the petition in favour of the petitioners."

3. It appears that Original Suit No. 1252 of 2021 was filed by the petitioners in the court of Civil Judge (Junior Division), Kanpur Nagar seeking a decree of permanent injunction in respect of an undivided agricultural land bearing Plot No.159 area 1.3530 hectares situated in Village Fattepur Dakshin, Tehsil-Kanpur Sadar, District-Kanpur Nagar in which an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC was also filed seeking temporary injunction. After considering the objections filed by the defendants, by the impugned order dated 2.7.2023, the trial court dismissed the

application. In the miscellaneous appeal filed under Order 213, being Misc. Appeal No.85 of 2022, the appellate court dismissed the appeal of the petitioner-plaintiffs.

4. The contention of the learned counsel for the petitioners is that the petitioners are in possession of the plot in dispute since the time of their ancestors whose names were recorded in the khatauni of 1311F. It is stated that the relevant record in this respect was also filed before the court which was not considered.

5. A perusal of the order of the trial court reflects that it had considered the khatauni on the record that was paper no. 9-C in which the defendants were recorded as bhumidhar with transferable rights, but the names of the plaintiffs were not reflected therein. It was further stated by the trial court that the land in question is agricultural land and in the revenue records submitted by the plaintiffs, no interest or right of the plaintiffs with regard to the suit property was reflected. It was further noticed by the trial court that in respect of the suit property, a suit for declaration is pending before the court of Additional Sub-Divisional Officer, Kanpur Nagar. Accordingly, it was found that no prima facie case in favour of the plaintiffs existed and the application for temporary injunction was dismissed.

6. The appellate court also referred to the aforesaid khatauni which reflected the names of the defendants as bhumidhar with transferable rights for the fasli years 1427-1432 and that the names of the plaintiffs did not appear in the khatauni for the said fasli years. It was noticed that in respect of the village, proceedings for chakbandi were concluded a long time ago. It was further noted that a suit for declaration under Section 144 of the U.P. Revenue Code, 2006 was filed before the revenue court which is pending. The appellate court further noticed that

under the provisions of Section 146 of the Code, 2006, adequate reliefs can be sought by the plaintiffs in the suit for declaration, including the relief for appointment of receiver and grant of injunction. Accordingly, the appeal was dismissed.

7. It has not been disputed by the learned counsel for the petitioners that a declaratory suit is pending before the court of Additional Sub-Divisional Officer under Section 144 of the Code, 2006. Provision for injunction is provided in Section 146 of the Code, 2006.

8. Be that as it may, the settled position of law needs no iteration that no injunction can be granted against any recorded tenure-holder by a person who is not a recorded tenure-holder. The petitioners are already seeking their remedy under the provisions of Section 144 of the Code, 2006.

9. Under the circumstances, no interference is called for in the present petition and the same, accordingly, **dismissed**.

Order Date :- 30.10.2023
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(Jayant Banerji, J.)