

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 7826 of 2023

Petitioner :- Pankaj Srivastava And 2 Others

Respondent :- Malti Devi And 6 Others

Counsel for Petitioner :- Ram M. Kaushik, Abhishek Ghosh, Ashish Agrawal, Umesh Tripathi

Counsel for Respondent :- C.S.C., Arun Kumar

Hon'ble Jayant Banerji, J.

1. Heard Shri Ashish Agrawal, learned counsel appearing for the defendant-petitioners and Shri Arun Kumar, learned counsel appearing for the Kanpur Development Authority. Learned Standing Counsel represents the respondent no. 3 and 4.

2. Though, several prayers have been made in the instant petition, learned counsel for the petitioner has pressed prayer no. (a) and (b), which are as follows:

"a) Issue a suitable order or direction for setting aside the order dated 03.03.2023 passed by Learned District Judge, Kanpur Nagar in Civil Revision No. 166 of 2022 under Section 115 C.P.c., 1908 (Annexure No. 1 to the Petition);

b) Issue suitable order or direction for setting aside the Order dated 17.05.2022 passed by the Learned Civil Judge (Sr. Div.) rejecting the Application under Order 7 Rule 11 of the Petitioners. (Annexure No. 3 to the Petition);"

3. It is contended by learned counsel for the petitioners that proceedings under Section 24 of the UP Revenue Code, 2006, (hereinafter referred to as the 'Code, 2006') were instituted by the petitioners against the Kanpur Development Authority, Public Works Department and Vishwakarma Nagar Sahkari Awas Samit in the year 2016, seeking demarcation of plot no. 97, 98M, situated in Village Daheli, Sujampur, and for granting possession. It is fairly stated by him that the application for demarcation was rejected by the Sub-Divisional Officer and the appeal filed before the Commissioner was dismissed. Thereafter, the petitioners filed a revision before the Board of Revenue being Revision no. 472 of 2021, which is pending and in which an interim order directing the parties to maintain status quo was passed and which order is being extended from time to time. It is his contention that thereafter an

Original Suit No. 731 of 2021 was filed by plaintiff-respondent No. 1, Malti Devi, against the petitioners and the proforma defendant-respondents seeking a decree of permanent injunction in respect of Plot No. 99M situated in Village Daheli, Sujampur, Kanpur Nagar. The contention is that in view of the pendency of the revision before the Board of Revenue that arose out of the proceedings under Section 24 of Code, 2006 and given the bar operating in view of the provisions of Section 206 of Code, 2006, the civil suit filed by the plaintiff-respondent was barred and accordingly, an application 63C was filed by the petitioners under Order 7, Rule 11(d) of the C.P.C. seeking rejection of the plaint. It is further his contention that another application 64C was filed seeking stay of the proceedings of the suit as the same was subsequently instituted. It is contended that the suit for injunction is liable to be rejected or at least, the proceedings ought to be stayed in view of Section 10 of the C.P.C. but the trial court and the revisional court have misdirected themselves in rejecting the applications 63C and 64C filed on behalf of the petitioners.

4. Learned counsel for the respondents have strongly opposed the petition and have stated that the trial court and the revisional court were justified in rejecting the applications filed by the petitioners.

5. I have perused the record of this petition. The application 63C is stated by the learned counsel for the petitioners to be at page no. 84 of this petition, which is an application under Section 151, Section 10 and under Order 7 Rule 11 C.P.C.. A perusal of the application reflects that the first ground taken was that the plaintiff had no cause of action. The second ground was that the suit was barred under Section 10 of the C.P.C., as with regard to the same subject matter and between the same parties the matter is pending before the Board of Revenue. The third ground was that the suit is an abuse of the process of law. The fourth ground is that the suit is barred by non-rejoinder of parties and the fifth ground is that the plaintiff ought to pay the ad valorem court fee in the valuation of the property in issue.

6. Section 24 of the Code, 2006, provides for the Sub-Divisional Officer to decide by summary inquiry any dispute regarding boundaries on the basis of the existing survey maps or, where the same is not possible, in accordance with the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, on the basis of such maps. But if this is not possible, boundaries shall be fixed on the basis of actual possession. The Sub-Divisional Officer is also empowered to put into possession a party who has been wrongly dispossessed and a time period of three months is prescribed for

conclusion of the proceedings for demarcation. Under sub-section (4) of Section 24, an appeal has been provided before the Commissioner. Section 206 of the Code, 2006, provides for the jurisdiction of civil courts and revenue courts which bars the jurisdiction of the civil courts to entertain any suit, application or proceeding to obtain a decision or order on any matter which the State Government, the Board of Revenue, any revenue court or revenue officer is, by or under the Code, 2006, empowered to determine, decide or dispose of. Further, civil courts are barred to exercise jurisdiction over any of the matters as specified in the Second Schedule; and no court other than the revenue court or the revenue officer as specified in Column 3 of the Third Schedule shall entertain any suit, application as specified in Column 2 thereof. The Second Schedule provides for matters excluded from the jurisdiction of the civil court and clause (1) thereof provides any question regarding the demarcation of the boundaries or fixing of boundary marks. In the Third Schedule, the Sub-Divisional Officer is the court or officer of original jurisdiction who would decide any application under section 24. As reflected in the application filed under section 24 of the Code, 2006, that has been enclosed as an Annexure No. 6 to this petition, the petitioners have instituted the proceedings against three parties who are named aforesaid and specifically in respect of plot no. 97 and 98M. The plaintiff-respondent no. 1 is not a party therein. However, it has been pointed out by learned counsel for the petitioner during course of his arguments that later, the plaintiff-respondent had filed a restoration application before the Sub-Divisional Officer in the aforesaid proceedings under section 24. Be that as it may. In the aforesaid suit of 2021, as referred to above, the property in dispute is situated on plot no. 99M in village Daheli, Sujampur, in respect of which injunction has been sought.

7. As observed above, the proceedings under Section 24 of the Code, 2006, are summary in nature while an injunction suit as filed by the plaintiff-respondent is a regular suit. I have perused the plaint and the order of the trial court dated 17.5.2022 and the judgment and order of the revisional court dated 3.3.2023 while dismissing the application filed under Order 7 Rule 11 C.P.C. read with Section 10 C.P.C.. The courts have noticed that the plot in dispute are different and therefore, it would not be barred under Section 10 of the C.P.C.. It was further found that the plaint is not liable to be rejected under Order 7 Rule 11 C.P.C.. The revisional court has mentioned that the plaintiff-respondent has filed the suit for permanent injunction in respect of Plot No. 99M. On record were the sale deeds executed by the cooperative society in favour

of Ram Lakhan Sharma and also a sale deed dated 26.12.2015 executed by Ram Lakhan Sharma in favour of the plaintiff-respondent regarding Plot No. A-26/2, area 55.74 sq. meters situated on Plot No. 99M. The revisional court noticed that the plaintiff in the suit for injunction is not seeking correction of the boundaries but has sought a decree of permanent injunction. It was also observed that given the nature of the suits filed between the parties, the distinction in plot number concerned, the suit would also not be barred under Section 10 of the C.P.C.. It was stated that the relief sought in the proceedings under Section 24 of the Code, 2006, and the relief sought in the plaint filed by the plaintiff-respondent were different. It is pertinent to mention here that it is one thing to state that in case the plot of the plaintiff-respondent is not demarcated, then she would not be entitled to injunction. However, it is a completely different thing to state that in the suit for injunction filed by the plaintiff-respondent, the plaint is liable to be rejected on that ground.

8. Under the circumstances, I see no error or illegality in the orders impugned that may merit interference in this petition. This petition is accordingly **dismissed**.

9. It is made clear that any observation made herein are for the purpose of adjudication of this petition only.

Order Date :- 28.10.2023

A. V. Singh

(Jayant Banerji, J.)