

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8098 of 2023

Petitioner :- Ram Autar (Since Deceased) And Another

Respondent :- Radhey Shyam (Since Deceased) And 5 Others

Counsel for Petitioner :- Anand Kumar Srivastava, Bhawesh Pratap Singh

Counsel for Respondent :- Shubham Dwivedi, Sandeep Kumar Dubey

Hon'ble Jayant Banerji, J.

1. Heard Sri Vikas Khandelwal and Sri Bhawesh Pratap Singh, learned counsel for the petitioner. No one appears for the respondent.

2. The petitioner/judgment-debtor has challenged an order dated 17.7.2023, passed by the Additional Civil Judge (Junior Division) in Execution Suit No. 4 of 2015 (Radhey Shyam Vs. Babu Lal).

3. This petition has been filed by the judgment-debtor/defendant in Original Suit No. 37 of 1978, which suit was partly decreed on 10.2.1981 pursuant to a judgment and order dated 30.1.1981.

4. The contention of the learned counsel for the petitioner is that in the suit, six reliefs were sought which were;

(1) The construction shown as 'Aa', 'Ba', 'Sa' 'Da' in the site plan existing on plot No. 250 situated in Mauza Sarfuddinpur, Pargana Jhunsi, district Allahabad be demolished,

(2) the defendants be evicted from the area marked 'Aa', 'Ba', 'Sa', 'Ya', 'Ra', 'Da' on plot no. 250 and the plaintiff be given possession thereof,

(3) a decree of permanent injunction be granted restraining the defendants from interfering in the possession of the plaintiff on an area of 2 Bigha 4 Biswa 15 Dhur on plot no. 250 and from restraining them from making any construction thereon and from cutting any trees standing on that plot,

(4) if during the pendency of the suit, possession of the plaintiff is found to have been taken away, then possession of the plaintiff be restored,

(5) cost of the case be given to the plaintiff from the defendants and

(6) any other relief that may be required to be granted in favour of the plaintiff be granted.

5. By the aforesaid decree dated 10.2.1981, the suit was partly decreed to the extent that permanent injunction was granted restraining the defendants from interfering in the possession of the plaintiff in any way on plot no. 250 area 2 Bigha 4 Biswa 15 Dhur situated in Mauza Sarfuddinpur, Pargana Jhunsi, district Allahabad. The plaintiff's suit was dismissed with regard to the other reliefs.

6. When the matter was argued on 1.11.2023, the counsel for the petitioners had argued that the application dated 6.9.2021 appearing on page No. 96 of the present petition was paper No. 4C in the execution proceedings and the submission was that by means of paper No. 4C, relief of possession was sought, which decree was not even granted by the trial court.

Accordingly, the Court had dictated an order in open Court. However, later, while revising the order, it appeared that document numbers of the some documents had to be verified from the original record of the suit and the original record was also required to be perused. Accordingly, the case was listed on 8.11.2023. On 8.11.2023, the following order was passed:

“1. Pursuant to the order dated 1.11.2023, a scanned copy of the record of the execution case has been produced.

2. From perusal of the same, it is evident that the application dated 6.9.2021 (page no. 96 of the petition) which was sought to be portrayed by Mr. Vishal Khandelwal, Advocate, brief holder of Mr. Bhawesh Pratap Singh, learned counsel for the petitioner on 1.11.2023 as Paper No. 4C, is not marked as Paper No. 4C in the original record but is marked as Paper No. 19C. Paper No. 4C is an application dated 16.8.2015 which has been enclosed with this petition at page 93. Relying upon the oral submissions made by the counsel for the petitioner, an order was dictated in open court.

3. On perusal of the original record, the fact scenario, prima facie, appears to be quite different.

4. The matter requires further consideration.

5. Put up this matter tomorrow at 10:00 AM peremptorily for further hearing. Mr. Vishal Khandelwal, Advocate, holding brief of Mr. Bhawesh Pratap Singh and Mr. Bhawesh Pratap Singh, learned counsel for the petitioner shall both remain present in the Court tomorrow.”

7. On perusal of the original record, it appears that paper No. 4C is dated 6.8.2015 and by that application, execution of the decree, as granted by the Court, was sought. However, by that application, the relief as reflected in the application dated 6.9.2021, had not been sought. As a matter of fact, in the original record the document paper dated 6.9.2021 is paper No. 19C, which is yet to be disposed of by the executing court.

8. It is pertinent to mention here that paragraph Nos. 14 and 15 of this petition read as follows:

“14. That the respondent no.1 moved an application dated 6.9.2021 seeking permission from the concern execution court for ensuring possession of the concerning property from the petitioner/defendant. A true copy of the application dated 6.9.2021 is being filed herewith and marked as Annexure No.6 to this petition.

15. That the aforesaid application moved by the respondent no.1 partly allowed by the learned lower court vide order dated 17.11.2021 bearing Paper No.4C and direction has been issued to the Court Amin with the direction to assure the execution of decree dated 30.1.1981 after information for the parties and submitted report to the concern court fixing date 6.12.2021. A true copy of the order dated 17.11.2021 is being filed herewith and marked as Annexure No.7 to this petition.”

9. It is, therefore, evident that the counsel for the petitioners had advanced arguments on the basis of a document, the number of which was wrongly portrayed to the Court during submissions made. Moreover, the averments made in the aforesaid two paragraphs of the petition, falsely indicate that the application dated 6.9.2021 is paper No. 4C. A comparison of paper No. 19C appearing in the original record and the document appearing on page No. 96 of the petition reflects that the document on Page No. 96, *prima facie*, is a photocopy of paper 19C appearing in the original record. It appears that on the paper No. 19C, the alpha-numeric ‘19C’ which clearly appears written on the original record, has been erased or concealed while making the photocopy that appears on Page No.96 of the petition.

10. I have perused the order impugned dated 17.7.2023. It is an order dismissing an application 63C made in execution proceeding No.4 of 2015. The document 63C has been filed along with the second supplementary affidavit dated 5.10.2023 which appears to be an application under Section 47 and 151 CPC that is filed on behalf of the judgment-debtor which is dated 13.3.2023. In this application it was prayed that status quo on the operation of an order dated 28.6.2022 of the Sub-

Divisional Officer Phoolphur, Prayagraj, be directed, till the disposal of the execution proceedings with regard to the plot No. 250 area 0.4690 hectares. The trial court considered the objections 68C filed by the decree-holder in which it was stated that the order dated 28.6.2022 was passed by the Sub-Divisional Officer Phoolphur, Prayagraj for placing the boundary marks on plot No.250 and that the High Court had, in a writ petition directed the Sub-Divisional Officer to comply with its own order dated 28.6.2022. It was observed that after compliance, the defendants / judgment debtors had no right to interfere in the possession of the decree holder. The executing court noticed that the Sub-Divisional officer in a case No. 6085 of 2022 (by order dated 28.6.2022) had approved the demarcation report dated 20.11.2019 made by the Revenue Inspector and had directed the boundary marks to be fixed. In pursuance therefor, the revenue team, after information to the parties took steps for fixing the boundary marks in presence of the parties over the disputed site. It was noted that, previously, by an order dated 17.11.2021, the court bailiff was issued a warrant for compliance of the order dated 30.1.1981 passed by the trial court, but since the property in dispute could not be identified, the court bailiff had applied for demarcation proceedings to be done with the cooperation of the Revenue Department. It has been stated in the order that the Sub-Divisional Officer has passed an order under Section 24 of the U.P. Revenue Code, 2006. Under the circumstances, the application 63C was dismissed.

11. I find no illegality or error in the impugned order that would merit interference in this petition. In the original record, there is a report of the court bailiff dated 11.09.2023 which is

numbered as paper No.75Ka, the contents of which are as follows:

" न्यायालय अपर सिविल जज (क०श्रे0) कक्ष संख्या 18, इलाहाबाद

इजरावाद संख्या-4/2015

राधेश्याम बनाम बाबूलाल

फर्द कार्यवाही

महोदय जी,

मा० न्यायालय के आदेश के अनुपालन में उभयपक्षों को पंजीकृत डाक द्वारा देने के पश्चात् निश्चित नियत तिथि 8.09.2023 को बस्थान ग्राम शर्फुद्दीनपुर परगना झूंसी तहसील फूलपुर, प्रयागराज लगभग 2:00 बजे दिन पहुँचा। वहाँ पर पहले से उपस्थित डिक्रीदार एवं मदयून डिक्री एवं साक्षीगण तथा अन्य संबन्धित व्यक्ति उपस्थित मिले। उपस्थित लोगों को अपने आने का आशय बताकर एवं मा० न्यायालय के आदेश से अवगत कराया। विवादित स्थल पर काफी मात्रा में कच्चे निर्माण व घास फूस की झोपड़ियाँ निर्मित हैं। विवादित स्थल के अंदर मदयून डिक्री एवं उनके सहयोगी लोगों द्वारा मुझे अंदर जाने नहीं दिया गया एवं लड़ाई झगडा पर अमादा हो गये। विवादित संपत्ति के अंदर न जाने देने के कारण संपत्ति की शिनाख्त नहीं हो सकी। मौके की विषम परिस्थिति होने के कारण माननीय न्यायालय के आदेश का अनुपालन नहीं हो सका। पुलिसबल सहायता प्रदान करने की कृपा करें। बिना पुलिसबल के शिनाख्त की कार्यवाही संभव नहीं है। महोदय जी के समक्ष आख्या सादर प्रेषित है।

भवदीय

sd/- (illegible)

11.9.23

अमित कुमार तिवारी कोर्ट अमीन

जनपद न्यायालय, इलाहाबाद"

12. It is evident from the aforesaid bailiff's report that when the court bailiff, after giving information by registered post to both of the parties, reached the site on 08.09.2023 around 2:00 P.M, he was met by the decree-holder and the judgment-debtor along with other witnesses and prominent persons of the locality and it was found that on the plot in dispute, temporary

constructions and huts were existing and the judgment-debtor and his people did not permit the court bailiff to enter the plot in dispute and were intent on entering into an altercation. As such, he could not enter into the disputed premises and so he could not identify the property. It is stated that in view of the dangerous situation at the site, the order of the High Court could not be complied with and, therefore, the court bailiff sought police assistance as without police assistance, the property could not be identified.

13. It is noted that the second supplementary affidavit was filed on 06.10.2023 but these facts have not been brought on record. It appears that the petitioners are concealing facts and making misleading statements.

14. Under the circumstances and in view of the observations made above, this petition is **dismissed** with cost of Rs.25,000/- to be deposited with the High Court Legal Services Committee, High Court, Allahabad within a period of twenty days, failing which the Registrar General shall get the same recovered as a fine within a period of one month thereafter.

15. However, it is important to mention here that the appeal of the petitioner / judgment debtor under sub-section (4) of Section 24 of the U.P. Revenue Code, 2006, against the order of demarcation passed by the Sub-Divisional Officer appears to be pending before the court of the Commissioner. This Court by its order dated 11.7.2023, passed in the aforesaid Writ – C No. 20564 of 2023, had directed the Commissioner to decide the stay application moved by the petitioner. Thus till the decision by the Commissioner on the appeal is not made and that order becomes final, it cannot be said that the order of

demarcation passed by the Sub-Divisional Officer with regard to the disputed land has attained finality.

16. It is clarified that any observation made herein shall not be taken as opinion of this Court on the merits of the case of either of the parties.

Order Date :- 9.11.2023

K.K.Tiwari

(Jayant Banerji, J.)