

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8140 of 2023

Petitioner :- Smt. Ram Pyari And 2 Others

Respondent :- Padmesh Chandra Tripathi And 7 Others

Counsel for Petitioner :- Deepak Kumar Pandey,Ashish Kumar

Counsel for Respondent :- Mohit Kumar

Alongwith

Case :- MATTERS UNDER ARTICLE 227 No. - 8147 of 2023

Petitioner :- Dileep And 2 Others

Respondent :- Padmesh Chandra Tripathi

Counsel for Petitioner :- Deepak Kumar Pandey,Ashish Kumar

Counsel for Respondent :- Mohit Kumar

Hon'ble Jayant Banerji,J.

1. Heard Sri Ashish Kumar, learned counsel for the petitioners and Sri Mohit Kumar, learned counsel appearing for the contesting respondent no.1.

2. The aforesaid Petition No. 8140 of 2023 arises out of Original Suit No. 232 of 2023 (Smt. Ram Pyari and others Vs. Padmesh Chandra and others) seeking a decree of permanent injunction with regard to the agricultural plot marked as Aa,Ba, Sa, Da in the plaint map challenging the order dated 3.5.2023 passed by the Civil Judge (Junior Division), Kannauj, dismissing the application 6C of the petitioners-plaintiffs and the order dated 31.5.2023 passed by the District Judge, Kannauj in Misc. Appeal No. 27 of 2023 dismissing the appeal of the petitioners-plaintiffs. The Misc. Petition No. 8147 of 2023 arises out of suit bearing Original Suit No. 243 of 2023 (Padmesh Chandra Tripathi Vs. Dileep Singh and others), in which orders dated 3.5.2023 and 31.5.2023 passed by the Civil Judge (Junior Division) Kannauj in Original Suit No. 243 of 2023, and, the District Judge, Kannauj in Misc. Civil Appeal No. 26 of 2023 respectively have been challenged, whereby, respectively, the application 6C of the plaintiff-respondent was allowed and the appeal filed by the defendant-petitioners has been dismissed.

3. The aforesaid disputes arose with regard to two sale deeds dated 23.3.2023 and 27.3.2023 having an area of 2106.59 sq. meter stated to be executed by a co-tenure holder of plot No. 163

in favour of Padmesh Chandra Tripathi (respondent No.1 in the aforesaid petitions).

4. The suit property in both suits is the same.

5. Learned counsel for the petitioners has contended that admittedly the suit property was not partitioned by metes and bounds, but an informal mutual settlement had taken place between the co-tenure holders with regard to their portions. It is, therefore, contended that an order of status quo ought to have been passed in the interest of justice for protecting the suit property from being damaged.

6. It is, further contended that the injunction as granted by the trial court in Original Suit No. 243 of 2023 should not have been granted inasmuch as, an order of status quo ought to have sufficed and the appeal filed by the petitioner ought to have been allowed.

7. In the short counter affidavit filed on behalf of respondent no.1 in both the aforesaid petitions, it has been stated that during the pendency of the present petitions, the petitioners have filed a partition suit under Section 116 of the U.P. Revenue Code, 2006 regarding the same suit property which was registered as Suit No. 2322 of 2023 in the court of Sub-Divisional Magistrate, Kannauj. It has also been stated in the affidavit that interim injunction dated 3.8.2023 was also granted in favour of the petitioners.

8. Learned counsel for the petitioners has not denied that an injunction was granted in favour of the petitioners by the Revenue Court. However, it has been stated by him that on an application filed by the respondent no.1, the injunction granted was vacated.

9. Having heard learned counsel for the parties, it is evident from the record that two suits for injunction simplicitor being Original Suit No. 232 of 2023 and 243 of 2023 were filed between the contesting parties. It is conceded by both the counsel for the parties that in the facts and circumstances of the present case, the suits would not be maintainable.

10. Once a suit for partition is pending between the parties with regard to the agricultural land which is the main relief sought in the suit for partition filed before the revenue court, then, as held in the Full Bench of this Court in **Ram Awalamb Vs. Jata Shankar; AIR 1969 Alld. 526**, it is only the Revenue Court, which will have the jurisdiction in the matter. Given the fact that the petitioners are pursuing their alternative appropriate remedy before the Revenue

Court, no interference is called for in these petitions. The parties may move the trial court in the aforesaid Original Suit No. 232 of 2023 and Original Suit No. 243 of 2023 for withdrawal of the suits, if they are so advised.

11. These petitions are, accordingly, **dismissed**.

Order Date :- 4.12.2023

sfa/

(Jayant Banerji, J)