

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8677 of 2023

Petitioner :- Sarvesh Kumar And 3 Others

Respondent :- Vijay Singh And Another

Counsel for Petitioner :- Virendra Pratap Pal

Hon'ble Jayant Banerji,J.

1. Heard Shri Virendra Pratap Pal, learned counsel for the petitioners.

2. This petition has been filed seeking the following relief:

"A) Issue an order to set-aside the impugned order dated 09-04-2021 passed by the Learned Additional Civil Judge (J.D.) Court No. 2/Judicial Magistrate Kanpur Dehat, in Original Suit No. 895 of 2018 (Sarvesh Kumar and others Vs. Vijay Singh and Another) passed Under Order 39 Rule 1 and 2 read with Section 151 C.P.C. (Filed as Annexure No. 6 to this petition)

B) Issue an order to set-aside the impugned order dated 07-04-2023 passed by Additional District Judge/FTC (14 Vitt Ayog), Kanpur Dehat, in Misc Appeal No. 07 of 2022 (Sarvesh Kumar and others Vs Vijay Singh and Another) passed Under Order 41 Rule 1 read with Section 151 C.P.C., (Filed as Annexure No. 8 to this petition)

C) Issue an order or direction to the respondents directing /restraining them to not create interference into the peaceful possession and use of the petitioners over the specific part of the Arazi No. 319 area 0.9890 hectare, situated at Sithumathana, Pargana and Tehsil- Rasulabad. District- Kanpur Dehat. as prayed in the interim injunction application No. 6G filed Under Order 39 Rule 1 and 2 read with Section 151 C.P.C. in the Original Suit No. 895 of 2018 (Sarvesh Kumar and others Vs. Vijay Singh and Another)."

3. It appears that the Original Suit No. 895 of 2018 was filed by the petitioners in the court of the Civil Judge (Junior Division), Kanpur Dehat, seeking relief of permanent injunction with regard to the area marked as अ, ब, स, द, on the northern part of agricultural land No. 319, Area 0.6890 Hectares, situated Mauja-Sithaumathana, Pargana and Tehsil- Rasulabad, District- Kanpur Dehat. In the aforesaid suit, an application under Order XXXIX Rule 1 and 2, read with section 151 CPC, dated 1.12.2018, was also filed in which temporary injunction was sought for restraining the defendants from interfering in any part of the aforesaid agricultural plot. Objection was filed by the defendants, and by the

impugned order dated 9.4.2021, the application for temporary injunction 6C was dismissed. The appeal filed by the petitioners being Miscellaneous Civil Appeal No. 7 of 2022 was also came to be dismissed by means of the impugned judgment and order dated 7.4.2023.

4. The contention of the learned counsel for the petitioners is that in the plaint map, the area was clearly defined in respect of which permanent injunction was sought. It is stated that the trial court as well as the appellate court have gone on the 'technical ground' that the application for temporary injunction related to the entire plot No. 319 and not the area marked as अ, ब, स, द, on the plaint map. It is further stated that since the area was specifically mentioned by the letters अ, ब, स, द, both in the plaint and the plaint map, it could not be said that the immovable property in respect of which injunction was sought, was not clearly defined in the plaint as is the mandate of Order VII Rule 3 CPC.

5. I perused the record of this petition. The plaint map appears on page No. 28. The plot No. 319 is an L-shaped plot with an arm extending to the west on the northern side of plot No. 319. Plot No. 318 is on the western side of plot No. 319, which is stated to belong to the defendants. As such, adjacent to two sides of plot No.318, plot No. 319 lies. The area marked as अ, ब, स, द, on the plaint map does not mention the dimensions thereon.

6. Though the petitioner has enclosed a photocopy of a document stated to be the land map obtained from the office of the revenue record room, Kanpur Dehat, which appears on page No.41-A, the dimensions of the plot No. 319 appearing on the northern side which are marked as अ, ब, स, द, in the plaint map, are not mentioned. By the impugned order dated 9.4.2021, the trial court has observed that to the north of plot No. 319, a part of plot No. 313 exists which belongs to the Gaon Sabha. It was noted that with regard to the ownership of plot No. 319, there is no dispute between the parties but the area in dispute that is marked as अ, ब, स, द, on the plaint map, its boundaries and dimensions are disputed. It was noted that no measurement has been provided by the plaintiff with regard to the area marked as अ, ब, स, द.

7. The appellate court has noted the difference in the relief sought in the plaint and in the application for temporary injunction. It was noted that no temporary injunction could be granted in respect of a

property which is not a subject matter of dispute in the plaint. It was further noted that neither the boundaries nor the measurements of the area marked as अ, ब, स, द, are mentioned. Accordingly, it was observed that given the non-compliance of the provisions of Order VII Rule 3, no decree could be issued in respect of the suit property.

8. On perusal of the record, it *prima facie* appears that the area of the suit property and the dimensions thereof have not been specified in the plaint. It is further evident that the application for temporary injunction seeks a relief that is different from the relief sought in the plaint itself.

9. Under the circumstances, no interference is called for and this petition is **dismissed**.

Order Date :- 28.11.2023

K.K.Tiwari

(Jayant Banerji, J.)