

Court No. - 51

Case :- WRIT - C No. - 28231 of 2023

Petitioner :- Uttim Chauhan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ashraf Ali

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. Ashraf Ali, learned counsel for the petitioner and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. The instant writ petition has been filed for the following relief:

"(I) to issue a writ, order or direction in the nature of mandamus directing the authority concerned to correct the deficiency in the order dated 08.12.2022 passed in the partition Case No.T202005440308273 (Uttim Chauhan Vs. Lachiya) under Section 116 of U.P. Revenue Code, 2006 within stipulated time as fixed by this Hon'ble Court."

3. Learned counsel for the petitioner submitted that preliminary decree as well as final decree has been passed in arbitrary manner in the suit for partition filed under Section 116 of U.P. Revenue Code 2006. He further placed the final decree passed in the suit on 08.12.2022 in order to demonstrate that there is illegality in the order passed by the Court under Section 116 of U.P. Revenue Code, 2006. He further submitted that proper opportunity has also not afforded to the petitioner as such impugned judgment and decree is liable to be set aside/ recalled.

4. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondent submitted that under Schedule III prepared under U.P. Revenue Code, 2006 against the order of Sub Divisional Officer appeal is provided before Commissioner and Second appeal before Board of Revenue.

He further submitted that writ petition is liable to be dismissed on the ground of alternative remedy.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that suit for partition filed under Section 116 of U.P.Z.A.& L.R. Act has been decreed

7. The perusal of Third schedule of U.P. Revenue Code, 2006 will be relevant, which is as under:

THIRD SCHEDULE
[See Sections 206, 207 and 208]

Section	Description of suit application or proceedings	Court or Officer of original jurisdiction	First Appeal	Second Appeal
116	Suit for division of a holding	Sub-Devisional Officer	Commissioner	Board

8. The perusal of the schedule III as mentioned above fully reveals that against the judgment and decree under Section 116 of U.P. Revenue Code, 2006 remedy of appeal is available before the Commissioner.

9. In view of the remedy of appeal available before the Commissioner, writ petition for mandamus under Article 226 of the Constitution of India cannot be entertained and the writ petition is dismissed on the ground of alternative remedy against the judgement and decree passed in partition suit.

Order Date :- 8.11.2023
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