

Neutral Citation No. - 2023:AHC:200582

Court No. - 51

Case :- WRIT - C No. - 30174 of 2023

Petitioner :- Gaya Prasad And 10 Others

Respondent :- State Of U.P. And 35 Others

Counsel for Petitioner :- Arvind Kumar Arya

Counsel for Respondent :- C.S.C.,Pradeep Singh

Hon'ble Chandra Kumar Rai,J.1.

1. Heard counsel for the petitioners, Mr. Shridhar Tripathi, learned Standing Counsel for the State-respondents and Mr. Pradeep Singh, learned counsel for respondent No.36/Gram Panchayat.

2. The instant petition has been filed against the order dated 27.07.2023 passed by respondent No. 2 in Suit No. 116 of the UP Revenue Code 2006.

3. Learned counsel for the petitioners submitted that suit for partition filed by petitioner has been dismissed in arbitrary manner as not maintainable. He further submitted that suit for partition was filed in accordance with entry of plot in dispute, as such the suit was very much maintainable under Section 116 of UP Revenue Code. He further submitted that order impugned is wholly illegal and without jurisdiction, as such, the alternative remedy will not come in the way of petitioner to challenge the same under Article 226 of the India before this Court.

4. On the other hand, learned Standing counsel for the State-respondents and learned counsel for the Gaon Sabha submitted that

order impugned has been passed after hearing to the learned counsel for the petitioners as such petitioners should avail proper remedy of appeal. They further submitted that dispute will be examined in accordance with law in appropriate forum, as provided under Third Schedule of U.P. Revenue Code 2006 as such, the writ petition is liable to be dismissed on the ground of alternative remedy.

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

6. There is no dispute about the fact that suit for partition under Section 116 of UP Revenue Code 2006 filed by the petitioners has been dismissed as not maintainable.

7. The order impugned can be challenged in appeal as provided under Third Schedule of U.P. Revenue Code of 2006, 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
1	2	3	4	5
116	Suit for division of a holding	Sub-Divisional Officer	Commissioner	Board

8. In view of the provisions contained under the Third Schedule of U .P. Revenue Code, 2006 and Rules framed thereunder, **the instant petition is dismissed on the ground of alternative remedy.**

9. It is provided that petitioners can file appeal within a period of three weeks from today along with the prayer for condonation of delay. If the appeal is filed before Appellate Court/ Commissioner as mentioned above, the same shall be decided in accordance with law, taking liberal view on delay condonation matter expeditiously after affording proper opportunity of hearing to the parties.

Order Date :- 16.10.2023

PS*