

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9030 of 2023

Petitioner :- Rasool And Another

Respondent :- Vyas Muni And 18 Others

Counsel for Petitioner :- Satyendra Nath Tiwari

Counsel for Respondent :- Rajesh Kumar Dubey

Hon'ble Jayant Banerji,J.

1. Heard learned counsel for the petitioner and Shri Rajesh Kumar Dubey, learned counsel appearing for the respondent no. 1.

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

"i. Issue an order or direction for calling the records of the case and set aside the impugned order dated 06-05-2023 (Annexure-3) passed by Additional District Judge, Court No. 3, Deoria in civil revision no. 24 of 2022 (Rasool vs. Vyas Muni) and order dated 07-04-2022 (Annexure-2) passed by Civil Judge (JD, Court No. 24 Deoria) in misc. case no. 32 of 2022 in the execution case arising out of original suit no. 598 of 1976.

ii. Issue an order or direction in the suitable nature to restraining the trial court to not demolish the house of the petitioner.

iii. Issue any such other and further suitable order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case."

3. It appears that the aforesaid Original Suit No. 589 of 1976 was filed by the predecessors of the respondent-first set which was decreed on 30.1.2009 ex-parte. The decree was put to execution.

4. A perusal of the impugned order dated 7.4.2022 reveals that an application 3C filed by the petitioners, who are the judgment debtors, under Section 47 CPC stating that they had filed an application under Order 9 Rule 13 CPC, was dismissed on 6.8.2016. Against that, the petitioners had filed a Misc. Appeal No. 32 of 2016 that was dismissed on 22.10.2018. Whereafter, a Misc. Petition Under Article 227 No. 8979 of 2019 was filed before the High Court. The judgment and order dated 18.1.2020 passed in the aforesaid petition filed by the Rasool against Vyas Muni and 19 others was perused on the website of the High Court which reflects that the petition was dismissed with the observation that if the defendants are aggrieved by the decree, they can approach the appellate court. The order dated 7.4.2022 further reveals that in the

application 3C, the appeal was stated to be under consideration and therefore, the proceedings for execution was sought to be set aside.

5. The executing court while referring to the provisions of Section 47 and Order 41 Rule 5 CPC found that no such orders can be passed on the application and accordingly, the application 3C was rejected. The petitioners filed a revision being Civil Revision No. 24 of 2022 in the court of District Judge, Deoria which appears to have been transferred for adjudication to the court of the Additional District Judge, Court No. 3, Deoria, who, by means of a judgment and order dated 6.5.2023 has dismissed the revision.

6. The contention of the learned counsel for the petitioner is that the suit property is not identifiable inasmuch as the plaint was amended during pendency of the suit and decree was made after the judgment dated 29.11.2008, in which the amended site map was incorporated. It is stated that the number of the suit property has not been mentioned correctly in the decree due to which the suit property is not identifiable. Learned counsel has also referred to the consideration of his objection made by the revisional court in paragraph no. 9 of the judgment and order dated 6.5.2023 passed by the revisional court in this regard. Learned counsel has further relied upon a judgment of the Supreme Court in the matter of **Pratibha Singh and another Vs. Shanti Devi Prasad and another** reported in **2003 (2) SCC 330** in paragraph no. 17 of which the Supreme Court observed that where the property is not definitely identified and the suit as to the immovable property has been decreed, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured by resorting to the provisions of Section 152 or Section 47 CPC depending upon the facts and circumstances of each case while taking into account which of the two provisions would be more appropriate, just and convenient to invoke. It is stated that the Supreme Court further observed that in the alternate the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. It is stated that in the Supreme Court's judgment, it was observed that a decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission.

7. Shri Rajesh Kumar Dubey, learned counsel for the respondent no. 1 has strongly opposed the petition and has stated that the contention of the learned counsel for the petitioner is misconceived as the application under consideration before the executing court

which was disposed of by the impugned order dated 7.4.2022 was only for the purpose of setting aside the execution proceedings on the ground that an appeal was pending against the decree. It is stated that no interim order passed by the appellate court has been produced by the petitioner before the executing court as yet and therefore, the occasion did not arise for setting aside the execution proceedings.

8. A perusal of the order of the revisional court reveals that the objection regarding non-identification of the suit property and its measurement is subject matter of another application 50C filed under Section 47 CPC which appears to have been separately registered as miscellaneous case. The objection raised in application 3C appeared to be quite different from what may have been raised in application 50C filed by the petitioners. It is pertinent to mention here that neither the application 3C nor the application 50C have been filed with this petition for perusal of the same by the Court.

9. Having considered the paragraph 17 of the aforesaid judgment of the Supreme Court, it is for the executing court to ensure that in case the immovable property in the suit is not definitely identified, then as far as practicable, the decree be not permitted to be defeated as a result of the same. The discretion, therefore, is of the executing court in this regard which is to be exercised judiciously and appropriate steps are required to be taken expeditiously so that the process for execution itself is concluded expeditiously in the suit of 1976.

10. This petition calls for no interference and it is **dismissed**.

Order Date :- 8.11.2023

A. V. Singh

(Jayant Banerji, J.)