

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9086 of 2023

Petitioner :- Ravi Pandey

Respondent :- Smt. Sujana Siddharth

Counsel for Petitioner :- Suresh Singh, Ritesh Singh

Counsel for Respondent :- Anand Swaroop Gautam

Hon'ble Jayant Banerji, J.

1. Heard Shri R.N. Nigam (Advocate Roll- A/R 0849/2012), Advocate holding brief of Shri Suresh Singh, Advocate appearing for the petitioner.

2. This petition has been filed with the following prayer:

"i- set aside the Judgment and order dated 18-7-2023 passed by Additional District and Session Judge Court No.9, Gorakhpur in Misc. Appeal No. 237 of 2022 Ravi Pandey vs. Smt. Sujana Siddharth and the Judgment and order dated 24-5-2022 passed by the Civil Judge, Junior Division Court No.3 Gorakhpur in original suit No. 604 of 2022 Smt. Sujana Siddharth Vs. Ravi Pandey."

3. It appears that the plaintiff-respondent instituted a suit bearing Original Suit No.604 of 2022 seeking a decree of permanent injunction from interfering in the ownership and possession of the area marked as ABCD in the plaint map having an area of 2,200 square feet situated on plot No. 106 in Mauja- Gulariya, Tappa- Khutahan, Pargana- Haveli, Tehsil- Sadar, District- Gorakhpur, and not to interfere in the construction work of the plaintiff and to remove the constructions made by the defendant on the said plot and pay damages of Rs. 20,000/-. A written statement was filed.

4. It appears that an application 7C under Order XXXIX Rules 1 and 2 read with Section 151 CPC was filed by the plaintiff-respondent seeking temporary injunction. By the order dated 24.5.2022, the application was disposed of with a direction to the parties to the suit to maintain status quo with regard to the area marked as ABCD in the plaint map. The defendant filed Miscellaneous Appeal No. 111 of 2022 (wrongly mentioned in the prayer as Miscellaneous Appeal No. 237 of 2022). By the impugned judgment and order dated 18.7.2023, the appeal of the defendant was dismissed and the order of the trial court directing parties to maintain status quo was affirmed.

5. The contention of the learned counsel for the defendant is

that the defendant had purchased the suit property and his name was recorded in the revenue records in the Khatauni. It is stated that the mutation proceedings were contested by the plaintiff but despite the contest, mutation was ordered to be made by the competent court in favour of the defendant. It is contended that under the circumstances, defendant being a recorded tenure-holder, no injunction could be granted against him.

6. Shri Anand Swaroop Gautam, learned counsel for the plaintiff-respondent has opposed the petition on the ground that the orders impugned have been passed by the courts after taking into account the factual situation existing as well as the fact that the sale deed was executed in favour of the plaintiff with regard to the suit property prior to the date of sale deed executed in favour of the defendant-petitioner.

7. A perusal of the order dated 24.5.2022 passed by the Additional Civil Judge (Junior Division), court No.3, Gorakhpur disposing of the application 7C, reflects that in favour of the plaintiff, a sale deed was executed on 29.6.2016, who is claiming title to the said land on the basis of the said sale deed.

8. The contention of the defendant was noticed, in which it was stated that the defendant was making construction on the suit property and had purchased the property by means of a registered sale deed dated 21.8.2019. It was noted that the name of the defendant was recorded in the Khatauni. However, the trial court has observed that recording the name in Khatauni does not confer title and it is a matter of trial as to which of the two vendors of the respective sale deeds of 29.6.2016 and 21.8.2019 was the owner in possession of the suit property. It was noted that since the sale deed of the plaintiff is prior in time, as such, *prima facie* case and balance of convenience exists in her favour and, accordingly, for protection and maintenance of the suit property, the order of maintenance of status quo was passed.

9. The appellate court in the impugned order dated 18.7.2023 has referred to the findings made by the trial court and has observed that title is not decided by mutation in the revenue records and given the fact that the property in dispute was purchased by the plaintiff prior to the defendant, the *prima facie* case and balance of convenience exists in her favour. Accordingly, it was observed that if the property is not maintained and protected, the plaintiff would suffer irreparable loss. Accordingly, the appeal was dismissed.

10. Though the legal position being urged by the counsel for the

plaintiff that no injunction can lie against the recorded tenure-holder has substance, however, it is not a hard and fast rule. There may be instances, depending on the facts and circumstances of a case, where suitable injunction may be granted. The fact remains that admittedly there exists a sale deed in favour of the plaintiff that has been executed nearly three years prior to the date of execution of the sale deed in favour of the defendant.

11. Under the circumstances, the competing rights of the parties need to be protected qua the suit property which is required to be preserved pending adjudication. As such, interference in the orders impugned is declined and this petition is **dismissed**.

Order Date :- 29.11.2023

K.K.Tiwari

(Jayant Banerji, J.)