

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 8949 of 2023

Petitioner :- Smt.Shakuntala And 2 Others

Respondent :- Sanjay Agarwal And 2 Others

Counsel for Petitioner :- Krishna Kanhaiya Soni

Counsel for Respondent :- Atul Kumar Singh

Hon'ble Jayant Banerji,J.

1. Heard Sri Aditya Singh, holding brief of Sri Krishna Kanhaiya Soni, learned counsel for the petitioners and Sri Mahesh Kumar Dubey, (AOR No. 0104/2012) holding brief of Sri Atul Kumar Singh, learned Advocate appearing for all the respondents.

2. When this matter was listed on 11.12.2023, the following order was passed:-

"1.Heard Shri Aditya Singh (AOR No.A/A 0139/2012) holding brief of Shri K.K. Soni, learned Advocate for the petitioners and Shri Mahesh Kumar Dubey (AOR No.0104/2012) holding brief of Shri Atul Kumar Singh, learned Advocate for all the respondents.

2. This petition has been filed seeking setting aside the order dated 29.09.2022 and decree dated 07.10.2022 passed by the Additional Civil Judge (Junior Division), Court No.5, Moradabad as well as the order dated 27.07.2023 passed by Special Judge (E.C. Act)/Additional District and Sessions Judge, Court No.4, Moradabad.

3. At the outset, a preliminary objection has been raised by the learned counsel for the respondents regarding maintainability of this petition on the ground that an application under Section 5 of the Limitation Act filed by the petitioners for preferring the first appeal against the decree dated 07.10.2022 has been dismissed and, therefore, no petition under Article 227 of the Constitution of India would lie. Learned counsel has relied upon a judgment of a coordinate Bench of this Court dated 30.03.2020 passed in the matter of Smt. Rama Devi & Anr. vs. Additional District & Sessions Judge, Room No.3, Faizabad and Anr. in Misc. Single No.31997 of 2019.

4. At this stage, learned counsel for the petitioners seeks an adjournment to enable him to look into the judgment and make his submissions.

5. As prayed, the case is passed over."

3. Learned counsel for the petitioners states that in view of the judgment of this Court in Smt. Rama Devi (supra), the petitioners would pursue their alternative and appropriate remedy before the court concerned and, therefore, he seeks leave of the Court to withdraw this petition.

4. This petition is, accordingly, **dismissed** as withdrawn.

Order Date :- 16.12.2023

sfa/

(Jayant Banerji, J)