

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9027 of 2023

Petitioner :- Arun Kumar Kesarwani And Another

Respondent :- Amit Kesarwani And 3 Others

Counsel for Petitioner :- Sunil Kumar Upadhyay

Hon'ble Jayant Banerji,J.

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

"A. to set aside the judgment and order and formal dated 13.07.2023 passed by the Civil Judge (S.D.)/F.T.C., Prayagraj in Original Suit No.79 of 2004 (Arun Kumar Kesarwani and another Vs. Amit Kesarwani and others) and in Original Suit No.767 of 2004 (Shashiprabha and others Vs. Arun Kumar Kesarwani and others)."

2. It appears from the perusal of the order impugned dated 13.7.2023 that it was passed on an application 19C filed by the plaintiff seeking to consolidate the Original Suit No. 79 of 2020 and Original Suit No. 767 of 2004. Objections were filed on the aforesaid application and the parties were heard. The trial court observed that the present suit, that is Original Suit No. 79 of 2020, is filed for a decree of declaration regarding House No. 69/54 situated at Mohalla- Kucha Rai Ganga Prasad, Pargana and Tehsil-Sadar, District- Allahabad. On the other hand, Original Suit No.767 of 2004 (Shashiprabha and others Vs. Arun Kumar Kesarwani and others) is filed for permanent injunction. In Original Suit No. 79 of 2020 (Arun Kumar Kesarwani and another Vs. Amit Kesarwani and others), no written statement has yet been filed by the defendants. In Original Suit No. 767 of 2004, it is at the stage of cross-examination of DW-1.

3. Under the circumstances, it was observed that consolidation of both suits are not in the interest of the justice.

4. Consolidation of suits is governed by Order IV-A of the CPC that was introduced in the state of Uttar Pradesh by way of State amendment with effect from 1.1.1977, which leaves it to the discretion of the court concerned to consider their joint trial where it is of the opinion that such is expedient in the interest of justice. In the present case, the trial court has expressed his opinion that consolidation of both the suits is not in the interest of justice.

5. I see no reason to interfere in the order passed. This petition is, accordingly, **dismissed**.

Order Date :- 1.11.2023
K.K.Tiwari

(Jayant Banerji, J.)