

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9431 of 2023

Petitioner :- Avaneesh Kumar Pandey

Respondent :- Ramjeet Pandey And 9 Others

Counsel for Petitioner :- Shree Prakash Giri,Jagannath Singh

Counsel for Respondent :- Shiva Priya Prasad

Hon'ble Jayant Banerji,J.

1. Heard Shri Shree Prakash Giri, learned counsel for the plaintiff-petitioner. Shri S.K. Chaubey, Advocate has filed a vakalatnama on behalf of the defendant-respondent No. 1, Ram Jeet Pandey, in Court, which is taken on record. He is assisted by Shri Shiva Priya Prasad, Advocate.

2. Challenge in the petition has been made to an order dated 20.07.2023 passed by the Civil Judge (Senior Division), Jaunpur rejecting the interim application 6-C filed in Original Suit No.200 of 2022 (Avaneesh Kumar Pandey vs. Ramjeet & Ors.) whereby the prayer of grant of temporary injunction has been rejected. Further under challenge is an order dated 08.08.2023 passed by the District Judge, Jaunpur in Misc. Appeal No. 120 of 2023 filed against the order dated 20.07.2023 passed by the trial court, which too has been dismissed.

3. It appears that the plaintiff-petitioner instituted the aforesaid suit seeking a decree of permanent injunction against the defendant Nos. 1 to 10 restraining them from interfering in the ownership and possession of the plaintiff with regard to the immovable property shown in the plaint map with the alphabets E, F, G, H and not to interfere in any way and not to make any constructions thereof. In the plaint, the plot number was not specified. However, it was stated in the schedule that the site

map is of the disputed property situated in the village Purani Bazaar Badlapur, Pargana-Rari, Tehsil-Badlapur District Jaunpur. Alongwith the plaint, an application 6-C was filed seeking temporary injunction restraining the defendants from interfering in the ownership and possession of the plaintiff over the area reflected in the plaint map as E, F, G, H. An objection was filed by the defendant No. 1 and the application 6-C came for consideration before the trial court. The application was dismissed.

4. The contention of the learned counsel for the petitioner is that earlier several suits were filed with regard to the property in dispute which came to be dismissed and the area marked as A, B, C, D was accepted to be the abadi of the plaintiff. It is stated that the plaint map clearly reflected the location of the suit premises and as such the courts have misdirected themselves in observing that the property in dispute is unidentifiable. It is contended that the suit property is admittedly abadi and, therefore, the suit for partition filed under Section 116 of the U.P. Revenue Code, 2006 by the defendants was not maintainable as the revenue court has no jurisdiction thereon. It is stated that the Sub-Divisional Officer had stayed an order dated 22.10.2021 by its own order dated 18.05.2022 in this regard. It is further stated that an oral partition had taken place between the parties a long time back and the plaintiff got his share which is the area marked as E, F, G, H on the plaint map and is situated on Plot No.256.

5. Learned counsel for the respondent has opposed the petition and has submitted that the identification and location of the plot in dispute marked as E, F, G, H in the plaint map itself is in dispute, as is clearly reflected in the orders of the trial court and the appellate court. It is contended that since there is a dispute,

the matter requires to be adjudicated and only after evidence is led can it be determined by the court as to where the suit property is situate. It is contended that this is not a case for grant of temporary injunction.

6. A perusal of the order impugned dated 20.07.2023 reflects that the trial court has observed that in the plant, there is no mention as to on which Arazi is the abadi of the plaintiff situate. It was noted that only in the replication filed by the plaintiff, bearing paper no. 49-A, it has been mentioned that the suit property is situated in Plot No.256, having an area of 50 decimals, and it is recorded in the revenue records as abadi. On the basis of a *prima-facie* consideration with regard to the location of the suit property, the trial court observed that the location of Plot No.256, as stated in the plaint map, appears to be different from the revenue map with regard to the same plot. It was noted that the report of the Amin alongwith a site plan, was filed as paper nos. 17-C and 18-C, in which it was reflected that to the east of the house, the house of one Brijesh has been shown, against which no objection has been filed by the plaintiff, but in the revenue map, Plot Nos.258 and 259 are situated to the south of Plot No.257 and the boundaries of which are not adjacent to the boundary of Plot No.256. Accordingly, it was observed that at this stage, on the basis of *prima-facie* consideration of the documentary evidence, it is not evident that areas marked as A, B, C, D and on the plaint map are situated on Plot No. 256, as is the contention of the plaintiff. It was noted that, admittedly, on Plot No. 256, the names of parties and other persons are recorded jointly in the revenue records. The Khatauni filed by the defendant, being paper no.34-C, reflected that on Plot Nos.256 and 257, other than the parties to the suit, the names of other people were also recorded, as bhumidhar with transferable rights. It was noted

that it is an admitted case that with regard to the aforesaid plot, mutual partition has taken place, but who has received which part of the property in the mutual partition, that would be a matter of facts and circumstances, and the evidence. Accordingly, the application 6-C was dismissed. The appellate court too in the impugned judgment dated 08.08.2023 has referred to the observations made by the trial court and, after applying its mind independently, has dismissed the appeal.

7. This Court in jurisdiction under Article 227 of the Constitution of India is not an appellate forum. A *prima facie* finding with regard to non-identifiability of the plot in the suit has been recorded by the trial court and the appellate court and, as such, this Court will not enter into the analysis made by the courts unless they are demonstrated to be patently erroneous, which has not been done in the present case. The courts have categorically observed that the identifiability of the plot in dispute would be a matter of evidence at the appropriate stage and is not a case for grant of temporary injunction. I, therefore, find no such error or irregularity in the orders impugned that would merit interference.

8. This petition is, accordingly, **dismissed**.

Order Date :- 30.11.2023

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(Jayant Banerji, J.)