

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9745 of 2023

Petitioner :- Ramsakal Tiwari

Respondent :- Shriram

Counsel for Petitioner :- Prem Chand Srivastava

Counsel for Respondent :- Vinay Kumar Mishra

Hon'ble Jayant Banerji,J.

1. Heard Shri J.S. Pandey (AOR No.A/J 0217/2012), holding brief of Shri Prem Chand Srivastava, Advocate appearing for the plaintiff-petitioner and Shri Vinay Kumar Mishra, Advocate appearing for the defendant-respondent.

2. This is the plaintiff's petition seeking to challenge the orders dated 10.08.2016 passed by the Civil Judge (Junior Division), Kushi Nagar at Padrauna in Original Suit No.360 of 2012 and 09.08.2023 passed by the Additional District Judge, Court No.3, Kushi Nagar in Misc. Civil Appeal No.19 of 2021 (Ramsakal Tiwari vs. Shree Ram).

3. It appears that the petitioner filed a suit seeking cancellation of a sale-deed dated 02.05.2011 in respect of a part of Plot No.422 area 0.21 hectares and further a direction to the defendant not to alienate the suit property. By the order impugned dated 10.08.2016, the temporary injunction has been refused while rejecting the application 6C filed by the plaintiff-petitioner on the ground that no injunction can be granted against a co-tenure holder and respective shares have not been partitioned and, therefore, *prima facie* case has not been established.

4. By the another impugned order dated 09.08.2023, the miscellaneous civil appeal filed before the Additional District Judge was dismissed and the order dated 10.08.2016 passed by

the trial court was affirmed holding that the plaintiff had admitted execution of the sale-deed. The name of the defendant-respondent, Shree Ram, was ordered to be entered as a bhumidhar with transferable rights in the suit property in place of the plaintiff-appellant by an order dated 04.04.2015 passed by the revenue court under Section 34 of the Land Revenue Act. That apart, the plaintiff had stated that he executed the sale-deed and wanted rectification regarding the identity of the property. It was, accordingly, held that the plaintiff did not have a *prima facie* case in his favour.

5. The sole contention of the learned counsel for the petitioner is that the suit property ought to be protected during pendency of the suit and hence the injunction ought to be granted.

6. Given the observations/findings recorded by the trial court and the appellate court, no interference is called for when the admitted fact that the plaintiff-petitioner and the defendant-respondent are co-tenure holders over the suit property is not denied. There is, therefore, no error in the orders impugned that would merit interference.

7. At this stage, the learned counsel for the petitioner prays that the suit being of the year 2012 may be directed to be decided expeditiously. No grounds for expeditious disposal are made out. The oral prayer sought is, therefore, rejected.

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

Order Date :- 6.11.2023
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(Jayant Banerji, J.)