

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9418 of 2023

Petitioner :- Arun Kumar Kushwaha

Respondent :- Alok Kumar Maurya And 5 Others

Counsel for Petitioner :- Vinod Kumar,Lal Ji Maurya

Counsel for Respondent :- C.S.C.

Hon'ble Jayant Banerji,J.

1. Heard Shri Vinod Kumar, learned counsel for the applicant.

Civil Misc. Amendment Application No.3 of 2023

2. This application has been filed for amending the array of parties and remove the proforma respondent nos.6 and 7 from the description of the parties mentioned in the aforesaid petition. However, the respondent no.7, it appears, has already been deleted earlier.

3. Learned Standing Counsel has no objection to the deletion of the respondent no.6-State of Uttar Pradesh, from the array of parties.

4. I have perused the petition. In the plaint, the State of Uttar Pradesh is not arrayed as a party.

5. The application is, accordingly, allowed. Let the amendment be carried out during course of the day.

Order on Petition

6. This petition has been filed seeking the following reliefs:-

"i) Direct the respondents/defendants not to raised illegal construction upon the disputed land/plot in question till the disposal of 6c2 application.

ii) Direct the learned court below to decide the 6c2 application of plaintiff/petitioner filed in Civil Suit No. 151 of 2023 (Arun Kumar Kushwaha Vs. Alok Kumar Maurya & others) within stipulated period of time which may be specified by this Hon'ble Court.

iii) Any suitable other and further order or direction which this Hon'ble

Court may deem fit and proper under the Circumstances of the case.

iv) Award the cost of the petition in favour of petitioner."

7. It is contended by the learned counsel for the petitioner that Original Suit No.151 of 2023 was filed by the petitioner in the court of the Civil Judge (Senior Division), Fatehpur seeking a decree of partition and injunction. It is stated that the suit property is a house. In the aforesaid suit, an application seeking temporary injunction was filed, which is stated to be pending.

8. The contention is that the defendants are making constructions without partition of the ancestral house of the petitioner and as such, an injunction ought to be granted.

9. A perusal of the record reveals that only an extract of the order-sheet has been enclosed with the petition reflecting the order dated 15.7.2023 in which service of notice on the respondent nos.2 to 5 has been deemed to be sufficient, while fresh notice has been directed to be issued to the defendant-respondent no.1.

10. In view of the facts and without entering into the merits of the matter as well as without considering the aspect of maintainability, which may also be considered by the trial court, this petition is **disposed of** directing the trial court to endeavour to decide the application 6-C2 without granting any unnecessary adjournment to either of the parties, provided the defendants are duly served and there is no legal impediment.

11. The Registrar (Compliance) is directed to send a copy of this order to the concerned court within fifteen days, for information.

Order Date :- 6.12.2023/SK

(Jayant Banerji, J.)