

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9504 of 2023

Petitioner :- Shyam Singh And 3 Others

Respondent :- Ganga Sagar And Another

Counsel for Petitioner :- Raj Kumar Pandey

Hon'ble Jayant Banerji,J.

1. Heard learned counsel for the petitioners.

2. This petition has been filed seeking the following relief:-

"i. Set-a-side the order dated 22/05/2023 passed by Additional District Judge, Court No.26, Kanpur Nagar in Misc. Civil Revision No.06 of 2020, Shyam Singh and others and Ganga Sagar and another and order dated 02/04/2018 passed by Small Cause Court Judge, Kanpur Nagar in original suit no.1304 of 2013 Ganga Sagar Vs. Karan Singh (Annexure no.4 and 7 to the petition)."

3. It appears that the plaintiff-respondents instituted a suit against the defendant-petitioners bearing Original Suit No.1304 of 2013 seeking specific performance of an registered agreement to sell dated 20.05.2012 in respect of Arazi No.120(M) area 1.6080 hectares. Further a decree of permanent prohibitory injunction was sought. It appears that the petitioners filed an application paper no.51-C2 dated 28.08.2016 under Order 1 Rule 10(2) of the CPC seeking impleadment as necessary parties. In the affidavit filed in support of the application, it was stated that the petitioners are sons of defendant-respondent Karan Singh and that their grand-father, namely Bhagwan Singh, had executed an unregistered Will-deed on 23.01.1991 in respect of the suit property and, therefore, on the basis of the Will, they are the necessary parties. By the impugned order dated 02.04.2018, the application 51-C2 was dismissed. Against the aforesaid order, a revision was filed by the petitioners, being Civil Revision No.6

of 2020, which was dismissed by the impugned order dated 22.05.2023 passed by the Additional District Judge, Court No.26, Kanpur Nagar.

4. The contention of the learned counsel for the petitioners is that the trial court has failed to look into the aspect of the rights of the petitioners on the basis of the unregistered Will-deed that would entitle them to be impleaded as parties in the suit for specific performance.

5. The order of the trial court dated 02.04.2018 reflects that the registered agreement to sell dated 20.05.2012 is on record on the basis of which the plaintiffs have sought specific performance. It was noted that the agreement to sell dated 20.05.2012 reflected that the defendant had executed the registered agreement to sell in the year 2012, whereas the defendant's father had died in the year 1991. The trial court noticed that in the circumstances, after the death of his father, the defendant was the sole owner of the suit property and an agreement to sell was executed between the plaintiff and the defendant. The defendant is still owner in possession of the suit property and who is still alive. Under the circumstances, it was observed that the applicants have no right to be impleaded as necessary parties and the application 51-C2 was dismissed.

6. The revisional court has referred to the khatauni paper no.10-C pertaining to the disputed suit property, which was on record, in which the name of the defendant-Karan Singh was recorded as bhumidhar with transferable rights. Accordingly, it was held that the plaintiffs/revisionists were not necessary parties and neither are they proper parties inasmuch as the suit in dispute is with regard to the specific performance and not in respect to title to the suit property. The revision was, accordingly, dismissed.

7. Since the name of the defendant-Karan Singh has been found to exist in the khatauni who was recorded as bhumidhar with transferable rights with regard to the suit property while the names of the petitioners were not reflected therein, and the fact that the specific performance of the registered agreement to sell dated 20.05.2012 executed by the defendant-Karan Singh is sought, there is no error warranting interference in the orders impugned.

8. Learned counsel for the petitioners has stated that the trial court has wrongly recorded the death of the grand-father of the applicants in the year 1991, whereas he had died in the year 1992. However, that is not a material error that would affect the merit of the orders impugned.

9. Under the circumstances, this petition is **dismissed**.

Order Date :- 30.10.2023

SK

(Jayant Banerji, J.)