

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 10043 of 2023

Petitioner :- Smt Vijay Shree Singh And Another

Respondent :- Rajendra Pratap Singh

Counsel for Petitioner :- Ashok Pandey, Srestha Pandey

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioners.

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

"I. Issue a writ, order or direction in the nature of Certiorari calling for the records of the case and quash the impugned judgment dated 15.2.2023 passed in Civil Appeal No. 79 of 2015 (Smt. Vijay Shree Singh & another V/s Rajendra Pratap Singh) contained as Annexure no. 5 and order dated 03.02.2014 passed by Civil Judge (Sr. Division) Jaunpur in OS No. 304/2013 contained as Annexure no. 4 and consequential proceedings thereof."

3. By the impugned order dated 3.2.2014, the trial court has rejected the application 6C filed by the petitioner-plaintiff seeking permanent injunction with regard to the suit property. By the impugned order dated 15.2.2023, the appeal filed by the petitioners being Misc. Civil Appeal No. 79 of 2015 was dismissed.

4. It appears from perusal of the record that an Original Suit bearing No. 304 of 2013 was filed by the petitioners against Rajendra Pratap Singh, who is stated to be the husband of the petitioner-plaintiff No. 1 and father of the petitioner-plaintiff No. 2, seeking a decree of permanent injunction with regard to the suit properties mentioned in Schedule A and B of the plaint. It appears that, thereafter, on 21.09.2016, the plaint was amended to incorporate the name of Bank of Baroda as the defendant no. 2. However, no corresponding relief or averment was incorporated in the plaint as a result of the amendment.

5. It appears that the petitioner no. 1 and the defendant no. 1 had availed of some financial facility from the L.I.C. Housing Finance Limited and there appears to be a default in payment of the installments and it is stated in paragraph 10 of this petition that the defendant had sold the property to some other person, who had been impleaded as a party to the proceedings and had filed the written statement also. It is stated by the learned counsel that the party impleaded in the suit was the Bank of Baroda, who had filed the written statement. However, the written statement of the Bank of Baroda, the learned counsel states, has not been filed.

6. By the order impugned dated 3.4.2014, the trial court has observed that as far as the property mentioned in Schedule A is concerned, it is the property of the joint family, and as far as the property of Schedule B is concerned, it is the property for which the loan was taken for constructing the house. It was noted from the evidence on record that in the register Paper No. 14C, in Folio No. 367B, the name of the defendant was recorded. As far as the property at Schedule A is concerned, the plaintiff herself had stated that it belongs to her father-in-law. Under the circumstances, the court held that against the actual owner, no injunction can be granted and found that there was no prima facie case. Accordingly, the application was rejected. The appellate court referred to a catena of judgments cited by the counsel for the parties and by the impugned order of 15.2.2023, dismissed the appeal affirming the findings recorded by the trial court.

7. The sole contention of the learned counsel for the petitioner is that this is a mercy petition and he has conceded that though the injunction cannot be granted against the true owner, however, the right of shelter exists in favor of the plaintiff-petitioners, who would be deprived of the same in case the injunction is not granted.

8. A perusal of the record of this petition, however, reflects that it conceals more than what it reveals. In the present petition, despite the fact that Bank of Baroda has been made a party to the suit, the Bank of Baroda has not been made a party. A written statement was purportedly filed by the Bank of Baroda, but the same has not been enclosed. The property that was secured for purpose of advancement of loan by the L.I.C. Housing Finance Limited has apparently been sold as is indicated in paragraph no. 10 of the petition. The suit itself is of the year 2013.

9. Under the circumstances, no interference is called for in this petition, which is accordingly **dismissed**.

10. In case the petitioners move an application before the trial court for expeditious consideration of the suit, the same shall be considered by the trial court.

11. Registrar (Compliance) is directed to communicate this order to the court concerned within a period of fifteen days from today.

Order Date :- 14.12.2023/A. V. Singh

(Jayant Banerji, J.)