Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9689 of 2023

Petitioner :- Laxmichand
Respondent :- Smt. Savitri Devi And 2 Others
Counsel for Petitioner :- Nipun Singh,Sumit Suri
Counsel for Respondent :- Vinayak Mithal,Gaurav Dhama

Hon'ble Jayant Banerji,J.

1. Heard Shri Nipun Singh, learned counsel for the petitioner and Shri Vinayak Mithal, learned counsel appearing for the defendant-respondents.

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

"i. Set aside the impugned order dated 08.09.2023 passed by the learned Additional District Judge, Court No. 7, District Meerut in Misc. Appeal No. 242/2017 (Smt. Savitri Devi and others Vs. Laxmichand) (Annexure No. 1 to the petition);

ii. Direct the parties to maintain status quo over the property in dispute during the pendency of the Original Suit No. 517/2007 (Laxmichand Vs. Savitri and others) in terms of temporary injunction order dated 25.11.2017;"

3. It appears that the petitioner filed a suit seeking declaration of voidance of a will deed dated 18.4.2006. It appears that the aforesaid suit was filed in the year 2007 but in the year 2017, an application 61C was filed by the petitioner seeking temporary injunction. By an order dated 25.11.2017, the trial court in Original Suit No. 517 of 2007 directed the parties to maintain status quo. The order dated 25.11.2017 was challenged by the defendants in Misc. Appeal No. 242 of 2017 filed in the court of the District Judge, Meerut. By the impugned order dated 8.9.2023, the Additional District Judge, Court No. 7, Meerut has allowed the appeal and set aside the order dated 25.11.2017 passed by the trial court.

4. The contention of the learned counsel for the petitioner is that as noticed by the trial court, on record was an Amin report filed in Original Suit No. 183 of 2016. It is stated by him that copy of another sale deed bearing the same date of 18.4.2006 was also on record which was not considered by the appellate court while setting aside the order of the temporary injunction granted by the trial court. It is stated that since the year 2017, the temporary injunction was operating and after a period of

five years, the injunction ought not to have been vacated by the appellate court.

5. Sri Vinayak Mittal, learned counsel for the respondent has opposed the petition and has contended that the suit was filed for declaration simplicitor without any other relief and therefore, given the provisions of Section 34 of the Specific Relief Act, the injunction cannot be granted and as such, under provisions of U.P. Amendment in Order 39 Rule 2 CPC, temporary injunction too could not have been granted.

6. A perusal of the plaint that has been filed as Annexure No. 2 to this petition reflects that it seeks declaration of voidance of sale deed dated 18.4.2006, the details of registration of which are reflected in the relief clause of the plaint. Evident it is that after a period of nearly 10 years, the application for temporary injunction 61C was filed on which the order of status quo was passed by the trial court on 25.11.2017. Annexure No. 8 is the memorandum of Misc. Appeal No. 242 of 2017, which was apparently filed in December, 2017 itself. Accordingly, it cannot be said that the interim order was vacated after a period of five years due to any fault on part of the defendants. The appellate court in its order in paragraph 21 and 22 has observed as follows:

"21- विद्वान अवर न्यायालय द्वारा पारित आक्षेपित आदेश दिनांकित 25.11.2007 के माध्यम से पक्षकारों को विवादित सम्पत्ति पर यथास्थिति बनाये रखे जाने का आदेश पारित किया गया है। बादपत्र में विपक्षी/वादी द्वारा विवादित भूमि की पहचान के सम्बन्ध में कोई विवरण प्रस्तुत नहीं किया गया है क्योंकि उनके द्वारा अनुतोष के रूप में दस्तावेज बैनामा दिनांकित 18.04.2006 को शून्य घोषित किये जाने के अनुतोष की याचना की गयी थी। विपक्षी /वादी ने वादपत्र में सम्पूर्ण दस्तावेज बैनामा को शून्य घोषित किये जाने की मांग नहीं की है वरन उसे एक सीमा तक बिना अधिकार , अकृत एवं शून्य घोषित किये जाने की याचना की गयी है। विपक्षी /वादी द्वारा उपरोक्त मूलवाद में अस्थायी निषेधाज्ञा के अनुतोष हेतु जो प्रार्थना पत्र 61 ग प्रस्तुत किया गया है उसमें उनके द्वारा वादपत्र में वर्णित विक्रयपत्र में वर्णित सम्पत्ति पर अस्थायी निषेधाज्ञा के अनुतोष की याचना की है। इस प्रकार वादपत्र में वर्णित अनुतोष तथा प्रार्थना पत्र 61 ग के माध्यम से याचित अनुतोष आपस में विरोधाभाषी है।

22- मूलवाद सं० 517/2007 में जो वादपत्रके माध्यम से वाद संस्थित किया गया है उसके माध्यम से वादी द्वारा दस्तावेज बैनामा को शून्य घोषित किये जाने के अनुतोष की याचना की गयी है। बादपत्र के माध्यम से निषेधाज्ञा या भूमि के विभाजन के किसी अनुतोष की याचना विपक्षी /वादी द्वारा न्यायालय में नहीं की गयी है। यदि इस स्तर पर बैनामा मन्सूखी के वाद में अस्थायी निषेधाज्ञा का अनुतोष विपक्षी/वादी को प्रदान किया जाता है तो यह धारा 34 विनिर्दिष्ट अनुतोष अधिनियम 1963 का उल्लघंन होगा। धारा 34 विनिर्दिष्ट अनुतोष अधिनियम का परंतुक यह उपबन्धित करता है कि - "परंतु कोई भी न्यायालय वहाँ ऐसी घोषणा नहीं करेगी जहाँ कि वादी हक की घोषणा मात्र के अतिरिक्त कोई अनुतोष मांगने के योग्य होते हुए भी वैसा करने में लोप करे।" चूंकि वादपत्र के माध्यम से निषेधाज्ञा के अनुतोष की कोई मांग विपक्षी /वादी द्वारा नहीं की गयी है अर्थात् निषेधाज्ञा के अनुतोष की मांग के सम्बन्ध में विपक्षी / वादी द्वारा लोप कारित किया गया है। उपरोक्त समस्त विवेचना एवं विश्लेषण से यह स्पष्ट है कि

यदि अस्थायी निषेधज्ञाा का प्रार्थना पत्र 61 ग निरस्त किया जाता है तो इससे विपक्षी/वादी को किसी प्रकार की कोई क्षति कारित होना संभाव्य नहीं है।"

7. In view of the aforesaid observations of the appellate court, it cannot be said that the order impugned dated 8.9.2023 suffers from any material error or irregularity that may warrant interference in this petition. The submissions being made by the learned counsel for the petitioner can be well addressed at the appropriate stage. Such facts, which require evidence to be led, cannot be relied upon for grant of temporary injunction.

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

9. At this stage, the learned counsel for the petitioner states that a direction be issued to the trial court to expedite the trial. Since, the ordersheet of the trial court has not been enclosed, therefore, it is difficult to ascertain as to which stage the trial is at present. However, it is open for the petitioner to move an application before the trial court for expediting consideration of the suit, which application, if filed, would be considered by the trial court expeditiously.

Order Date :- 22.11.2023
A. V. Singh

(Jayant Banerji, J.)

Digitally signed by :-
AJAY VIKRAM SINGH
High Court of Judicature at Allahabad