

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 9701 of 2023

Petitioner :- Smt.Hemlata Devi

Respondent :- Smt.Maheshwari Devi

Counsel for Petitioner :- Kamlesh Kumar Tiwari, Yogesh Kumar Tiwari

Counsel for Respondent :- Paritosh Sukla

Hon'ble Jayant Banerji, J.

1. In view of the Process Server's report that is on record, notice on the respondent is sufficient.

2. Heard Shri K.K. Tiwari, learned counsel for the petitioner and Shri Paritosh Shukla, learned counsel for the respondents.

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

"i. to set aside the order dated 19.05.2022 passed by Civil Judge (S.D.) Aligarh in O.S. 346 of 2021 (Hemlata Vs. Maheshwari Devi) as well as order dated 26.07.2023 passed by District Judge, Aligarh in Misc. Civil Appeal No. 01 of 2023 (Smt. Hemlata Vs. Smt. Maheshwari Devi).

ii. to direct the respondent/defendant neither make any obstacle for raising the construction upon the property in dispute, nor create any hindrance, during the pendency of the present petition."

4. The contention of the learned counsel for the petitioner is that the petitioner-plaintiff filed the aforesaid suit seeking a relief of permanent injunction restraining the sole defendant from interfering in the peaceful possession of the plaintiff and from interfering in the construction work being undertaken by the plaintiff. It is stated that the boundaries of the plot of the petitioner were defined and there was no dispute that the defendants have purchased different plot situated over the same arazi number and the injunction sought would not adversely affect the defendant at all.

5. A perusal of the impugned order dated 19.5.2022 passed by the Civil Judge (Senior Division), Aligarh reflects that the Khatauni of the agricultural plot in dispute was considered wherein it was reflected that the plot no. 295Ka has an area of 0.675 hectares and plot no. 295Kha has an area of 0.3850 hectares and names of

several co-tenure holders are recorded therein. It was noted that small plots of land from the aforesaid plots were sold to the parties and it has nowhere been stated that the co-tenure holders have partitioned the suit property and no documents with regard to the partition has been filed. It was also noted that with regard to the suit property, an FIR has also been lodged by another co-tenure holder against other co-tenure holders and a charge-sheet has also been filed. It was therefore held that without partition among the co-tenure holders, a specific property has been sold. Accordingly, the injunction was refused and the application was rejected.

6. In the impugned order dated 26.7.2023, the District Judge, Aligarh while rejecting the appeal filed by the plaintiff-petitioner against the order dated 19.5.2022, has referred to the aspect of non-partition of the agricultural plot nos. 295Ka and 295Kha as well as the pending criminal proceedings and accordingly found that no prima facie case, balance of convenience and the aspect of irreparable injury existed in favour of the plaintiff-appellant that would merit grant of temporary injunction. The appeal was, accordingly, dismissed.

7. Though, the learned counsel for the petitioner has strongly argued the matter and has stated that the suit property of the petitioner is different from the plot purchased by the defendant-respondent, however, as evinced from perusal of the orders impugned, several co-tenure holders are reflected in the Khatauni and without proper partition, no injunction can be granted against the co-tenure holders.

8. I do not find any merit in this petition that would warrant interference. It is, accordingly, **dismissed**.

Order Date :- 17.11.2023

A. V. Singh

(Jayant Banerji, J.)