

Neutral Citation No. - 2023:AHC:213075

Court No. - 51

Case :- WRIT - C No. - 33982 of 2023

Petitioner :- Umesh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ram Sajiwan Mishra,Tarun Kumar Shukla

Counsel for Respondent :- C.S.C.,Bhupendra Kumar Tripathi

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Ram Sajiwan Mishra, learned counsel for the petitioner, Mr. Govind Kumar Saxena, learned Additional Chief Standing Counsel for the State-respondents and Mr.Bhupendra Kumar Tripathi, learned counsel for gram sabha.

2.The instant writ petition has been filed challenging the preliminary decree, final decree as well as the order rejecting the restoration application filed by the petitioner.

3. Learned counsel for the petitioner submitted that suit has been wrongly entertained by the Sub Divisional Officer under Section 176 of U.P.Z.A.&L.R. Act. He further placed report dated 23.05.2015 in order to demonstrate that suit was not maintainable before revenue court, as such entire proceeding of partition suit is vitiated. He further submitted that impugned orders are wholly without jurisdiction as such the same are liable to be set aside.

4. Mr. Govind Kumar Saxena, learned Additional Chief Standing Counsel for the State-respondents and Mr. Bhupendra Kumar Tripathi, learned counsel for gaon sabha submitted that remedy of appeal before Commissioner against the impugned judgment/ order is available as such the writ petition be dismissed on the ground of alternative remedy.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

6. There is no dispute about the fact that suit for partition has also been decreed under the impugned judgment and restoration application filed by petitioner has been rejected.

7. In order to appreciate the controversy, the perusal of Schedule II under U.P.Z.A. & L.R. Act, 1950 will be relevant, which is as under:-

SCHEDULE II

[Sections 331]

SI. No.	Section	Description of proceedings	Court of original jurisdiction	Court of	
				First Appeal	Second Appeal
16	176	[Suit for division of a holding of a Bhumidhar]	Assistant Collector, First Class	Commissioner	Board

8. Since petitioner has alternative remedy against the impugned judgment as such writ petition under Article 226 of the Constitution of India cannot be entertained.

9. Considering the entire facts and circumstances of the case, **the writ petition is dismissed on the ground of alternative remedy.**

Order Date :- 6.11.2023
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