

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 10076 of 2023

Petitioner :- Smt. Sudha Devi

Respondent :- Santosh And Another

Counsel for Petitioner :- Sudhir Mehrotra, Suyash Mehrotra

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner.

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

"(i) Set aside the Impugned Judgment and order dated 19.08.2023 passed by the learned Appellate Court in Civil Appeal No.26 of 2023 (Smt. Sudha Devi. Vs. Santosh Kumar and another) as well as the judgment and order dated 26.07.2023 passed by the Gram Nyayalaya Jakhania, District Ghazipur in O.S. No. 621 of 2020 (Smt. Sudha Devi. Vs. Santosh and another) rejecting 6C application filed by the plaintiff petitioner.

(ii) Issue an appropriate order / direction protecting the interest of the plaintiff-petitioner, restraining the defendants respondents not to encroach upon the land used as a passage / way to lead to road.

(iii) Issue any other suitable writ order or direction in the nature as this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. It appears that the plaintiff filed a suit bearing Original Suit No. 621 of 2020, seeking relief of permanent injunction with regard to the suit property. The contention of learned counsel for the petitioner is that the property in dispute is land which belongs to category 6(2) and is classified as 'dih basgit' in the revenue records, and the defendants have admitted in their written statement that the plaintiff is an old resident of the area. It is stated that the courts have erroneously rejected the application for temporary injunction, and therefore, this petition has been filed.

4. A perusal of the order of the Gram Nyayalaya dated 26.7.2023 reflects that there is no entry existing in the revenue records in favor of the plaintiff and there is a contradiction between the plaint map and the report of the commissioner. A finding was also recorded that the actual facts have been concealed by the plaintiff. Accordingly, it was held that the plaintiff has failed to prove his case and the application for a temporary injunction was dismissed.

5. An appeal was filed by the petitioner before the District Judge, Ghazipur bearing Miscellaneous Civil Appeal No. 26 of 2023. The appellate court has observed that it is not reflected from the Khatauni that the suit property is 'Sahan' of the plaintiff. It was observed that plot No. 368 is recorded as 'dih basgit' in the Khasra, and the land and classification of the land is shown in the Khasara as Abadi road. It has been observed that in case the suit property is an Abadi road, then it is not the personal property of the plaintiff, but it would be a public road, and therefore, the Gaon Sabha would be a necessary party, but the Gaon Sabha has not been made a party to the suit. It was also found that it was not clear that in case the land of the plaintiff is stated to be connected with a road, then why should the plaintiff leave a road on all sides of her plots, as no construction has been shown by the plaintiff over the suit property. Further, in the commissioner's report in the disputed property, which is a 'Sahan', other than 'bans khooti' (bamboo pegs for tying cattle), no constructions are reflected, and nowhere is any handpipe, fodder cutting machines or trees reflected, that is to say, admittedly, the suit property is vacant. The court found that the plaintiff had not come with clean hands before the court. The appeal was accordingly, dismissed.

6. No material has been demonstrated to contradict the findings of the courts while rejecting the application for temporary injunction or the appeal. Accordingly, no interference is warranted, and this petition is **dismissed**.

Order Date :- 17.11.2023

K.K.Tiwari

(Jayant Banerji, J.)