

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 10001 of 2023

Petitioner :- Haridwar

Respondent :- Ram Nageena And 2 Others

Counsel for Petitioner :- Kamlesh Kumar Singh

Hon'ble Jayant Banerji, J.

1. List has been revised. No one appears to press this petition.

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

"A. Issue an order or direction, directing the learned Civil Judge (S.D.), Chandauli to decide restoration application filed in Original Suit No. 45 of 2008 (Ram Nageena Versus Haridwar and 2 others) within stipulated period as fixed by this Hon'ble Court.

B. Issue an order or direction, respondents to not disposes the petitioner from the dispute land in question."

3. It appears that Original Suit No. 45 of 2008 was filed by the plaintiff-respondent no.1 against the petitioner and defendant-respondent nos. 2 and 3. The suit was heard exparte and was decreed accordingly pursuant to a judgment dated 15.3.2022. An application for setting aside the decree under Order 9 Rule 13 CPC dated 10.8.2023 was filed by the petitioner alongwith an application under Section 5 of the Limitation Act. However, in this petition, the relief sought is to decide the restoration application.

4. This petition is misconceived, inasmuch as no "restoration application" has been filed, but an application to set aside the decree was filed under Order 9 Rule 13 CPC. Secondly, the application aforesaid cannot be directed to be decided unless and until, the application under Section 5 of the Limitation Act is decided. A perusal of the petition reveals that it has not been stated that the aforesaid application under Section 5 of the Limitation Act filed by the petitioner along with his application under Order 9 Rule 13 CPC has been decided.

5. This petition is, therefore, **dismissed**.

Order Date :- 6.12.2023

sfa/

(Jayant Banerji, J)