

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12381 of 2023

Petitioner :- Suresh Chand Dubey And 3 Others

Respondent :- Akhilesh Kumar Singh

Counsel for Petitioner :- Nikhil Shukla, Jitendra Rpasad Kushwaha

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri J.P. Kushwaha, learned counsel for the petitioners.
2. Considering the nature of the order proposed to be passed notice upon the sole respondent is hereby dispensed with.
3. Present petition, under Article 227 of the Constitution of India, has been filed seeking direction to the Civil Judge (Junior Division), Mirzapur, to consider and decide the Civil Suit for cancellation of sale-deed, being Civil Suit No. 930 of 2021 (Suresh Chand Dubey Vs. Achilesh Singh) within the stipulated time frame fixed by this Court.
4. However, during the course of arguments, learned Counsel for the petitioners has confined his prayer for expeditious disposal of interim injunction application (paper no.6-C) filed in the aforesaid Suit, which is stated to be pending since 2.11.2021.
5. Learned Counsel for the petitioners has invited the attention of this Court to the order-sheet of the proceedings, which have been brought on record as Annexure-2 to the petition. He submits that court concerned vide order dated 2.11.2021 has issued notice to the defendant-respondent on the application (paper no.6-C) inviting objections on the said application. Despite the petitioners having taken steps to serve, the defendant has not put in appearance and the matter is pending consideration for disposal of application (paper no.6-C) and for filing of written statement.
6. Learned Counsel for the petitioners submits that defendant is deliberately not putting in appearance in the proceedings and is interfering in the possession over the suit property of the plaintiffs-petitioners.

7. In such circumstances, a direction for expeditious disposal of application (paper no.6-C) has been sought.

8. I have heard learned Counsel for the petitioners and have perused the record.

9. The instant Suit has been instituted for cancellation of a registered sale-deed. On the strength of the said sale-deed, the defendant has been asserting his rights over the Suit property and there is constraint threats for dispossession looming over the head of the plaintiffs-petitioners. The order-sheet reveals that various dates have been fixed for consideration of application (paper no.6-C) but the same is being delayed on account of non-appearance of the defendant.

10. In the opinion of the Court, the court below seized with the interim injunction application can proceed to consider the said application even in absence of the defendant.

11. Considering the totality of the circumstances, this Court is of the opinion that the petition can be disposed of by directing the expeditious disposal of the interim injunction application moved by the petitioners which is stated to be pending since 2.11.2021.

12. Accordingly, this petition is disposed off by requiring the Civil Judge (Junior Division), Mirzapur, seized with the interim injunction application (paper no.6-C) to consider and pass appropriate order thereon expeditiously preferably within a period of 2 months from the date of production of certified copy of order of this Court considering the urgency of the matter, strictly in accordance with law.

Order Date :- 5.12.2023

Irshad