

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 10656 of 2023

Petitioner :- Hari Singh (Since Deceased) And 3 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ram Pal Singh

Counsel for Respondent :- C.S.C.

Hon'ble Prakash Padia,J.

1. The petitioners have preferred the present petition with the following prayer:-

"(i) quash the impugned order dated 03.10.2023 arising out of Ijra Case No.06/2020 (Jaswant vs. Hari Singh) relates to Original Suit No.463/2007 as well as impugned order dated 07.08.2023 passed by in Ijra Case No.06/2020 (Jaswant vs. Hari Singh) both order passed by Civil Judge (Senior Division), Kasganj.

(ii) it is further prayed that please to stay the further proceedings of Ijra Case No.06/2020 (Jaswant VS. Hari Singh) against the petitioners, otherwise the petitioners will suffer irreparable loss and injury."

2. It reveals from perusal of the record that execution proceeding were initiated by the plaintiff-respondent against the defendants-petitioners pursuant to the decree passed by the Trial Court dated 07.04.2010. Though the appeal was filed against the aforesaid judgement and decree, the same was also dismissed by the First Appellate Court vide order dated 16.12.2021 on the ground of limitation. Aggrieved with the aforesaid orders, the defendants-petitioners have preferred a Second Appeal No.243 of 2022 in which following order was passed on 30.03.2022:-

"Heard Sri Kamleshwar Singh, learned counsel for appellants.

Issue notice to plaintiff-respondent. Steps be taken within one week by registered post.

Summon the lower court record on the expenses of appellants.

List after receipt of lower court record."

3. It is argued by learned counsel for the petitioners that though the aforesaid second appeal is pending before this Court but the Execution Court wholly illegally initiated the proceedings against the petitioners in Execution Case No.06 of 2010.

Learned counsel for the petitioners placed reliance upon the order dated 07.08.2023 passe by the Civil Judge (Senior Division) Kasganj by which the direction was given to the petitioner to place a copy of the order passed in their favour.

4. Heard learned counsel for the petitioners and perused the record.

5. From perusal of the record, it is clear that against the orders passed by the trial Court as well as the First Appellate Court, the Second Appeal is still pending before this Court.

6. In this view of the matter, this Court is of the opinion that the relief could only be granted to the petitioners in the aforesaid appeal only.

7. Accordingly, the present petition is dismissed.

8. The petitioners is free to move appropriate application in the aforesaid Second Appeal for grant of interim relief, if so advice.

Order Date :- 30.11.2023

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