

Court No. - 51

Case :- WRIT - C No. - 37551 of 2023

Petitioner :- Smt. Angoori Devi

Respondent :- State Of U.P. And 30 Others

Counsel for Petitioner :- Dev Kant Trigunait

Counsel for Respondent :- C.S.C.,Pradeep Chauhan

Hon'ble Chandra Kumar Rai,J.

1. Heard Sri Dev Kant Trigunait, learned counsel for the petitioner, Sri Abhishek Shukla, learned Addl. C.S.C. for the state-respondents and Sri Pradeep Chauhan, learned counsel for respondent no.26-nagar panchayat.

2. The instant writ petition has been filed for the following reliefs:-

"A. Issue a writ, order or direction in the nature of mandamus, directing the respondent no.2 (Additional Commissioner (Administration) 3rd Meerut, Division Meerut) to decide the interim application in appeal no.1215 of 2022 (Smt. Angoori Devi vs. Nempal Singh and Others) and the interim relief application in appeal no.1216 of 2022 (Smt. Angoori Devi vs. Nempal Singh and Others), pending before him as expeditiously as may be prescribed by this Hon'ble court.

B. Issue a writ, order or direction in the nature of mandamus directing the respondents to maintain the status quo on the property in question till the disposal of appeal or interim relief application."

3. Counsel for the petitioner states that preliminary decree, final decree, etc. passed in the partition suit under Section 176 of the U.P. Z.A. & L.R. Act are illegal as no proper opportunity was afforded to the petitioner to contest the proceeding. He further submitted that an application under Order 9 Rule 13 of the C.P.C. was dismissed on the ground of limitation. He also submitted that the private respondents have initiated the execution proceeding which is still pending. He also submitted that petitioner has filed appeals under Section 331(3) of the U.P. Z.A. & L.R. Act which has been entertained vide order dated 18.10.2022 and notice has been issued to the opposite parties. He also submitted that appropriate direction be issued for the expeditious disposal of the pending appeals and till the disposal of the appeals, an interim protection be granted to the petitioner, otherwise, petitioner will suffer irreparable injury.

4. On the other hand, learned counsel for the Nagar Panchayat and the learned Addl. C.S.C. for the state-respondents submitted that suit for partition has been decreed in accordance with law, after following the provisions provided under the U.P. Z.A. & L.R. Rules. They further

submitted that petitioner has filed written statement, as such, it cannot be said that no opportunity was afforded to the petitioner during partition suit. They also submitted that no interference is required in the matter in view of the finding of fact recorded by the court while rejecting the application under Order 9 Rule 13 of the C.P.C. filed by the petitioner.

5. In reply, counsel for the petitioner submitted that fraud was committed in filing the vakalatnama of the petitioner as well as at the different stage of the proceeding, as such, decree for partition passed by the court, cannot be affirmed and the petitioner is entitled for interim protection during pendency of the appeal under Section 331(3) of the U.P. Z.A. & L.R. Act.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that partition suit in respect to plot in dispute has been decreed, by the court of S.D.O. There is also no dispute about the fact that execution proceeding at the instance of private respondent is pending before the court concerned and the appeals under Section 331(3) of the U.P. Z.A. & L.R. Act filed by the petitioner is pending before the Commissioner being Appeal Nos.1215 & 1216, both of 2022.

8. Since the appeals filed by the petitioner is pending before respondent no.2/Addl. Commissioner 3rd, Meerut Division, Meerut and the record has been summoned, as such, it will be appropriate that the pending appeals be decided in accordance with law expeditiously.

9. In view of the facts and circumstances of the case, without expressing any opinion on the merits of the case, this petition is disposed of with the direction to respondent no.2 to decide the aforesaid appeals to its logical conclusion, as expeditiously as possible, preferably within a period of 3 months, from the date of production of a certified copy of this order before the authority concerned, after affording proper opportunity of hearing to the parties concerned, in accordance with law.

Order Date :- 8.11.2023

C.Prakash