

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11776 of 2023

Petitioner :- Ranjana Alias Rinki And Another

Respondent :- Ashok Kumar And 7 Others

Counsel for Petitioner :- Rajendra Prasad Tripathi

Hon'ble Ashutosh Srivastava,J.

Heard Shri Rajendra Prasad Tripathi, learned counsel for the petitioners.

The petitioners are plaintiff in a suit for partition and injunction, being Suit No. 637 of 2019, instituted on 16.05.2019. The injunction application filed in the said partition suit was not being decided and in such circumstances the petitioners approached this Court by means of a petition under Article 227 of the Constitution of India, being petition No. 1749 of 2020. The said petition was disposed of by order dated 04.03.2020, wherein, the learned trial Court was directed to decide the application for temporary injunction, registered as application no. 6-C filed under Order 39 Rule 1 CPC within a period of two months from the date of production of certified copy of the order.

Learned counsel for the petitioners submits that despite the direction of this Court the temporary injunction application was not decided and the suit has been proceeding at its regular pace. During the pendency of the temporary injunction application the defendants in the suit, who have been arrayed as respondent in the present petition, have begun to raise constructions over the land, which is subject matter of the partition suit. He further submits that if the respondents are permitted to raise the constructions it would certainly prejudice the rights of the petitioners.

From the perusal of the relief, as claimed, in the temporary injunction application, it is apparent that the petitioners-plaintiffs, had sought an injunction to restrain the defendants from changing the nature of the suit property and also restraining them from raising any constructions thereon.

In the opinion of the Court once the direction has already been issued, for deciding the temporary injunction application, it would not be appropriate to issue fresh directions. However, if the

petitioners are aggrieved by the acts of the defendants, respondents herein, raising constructions it would be appropriate for the petitioners to apprise the trial Court about the said situation by moving appropriate application, seeking injunction, which shall be considered by the trial Court in accordance with law.

Accordingly, this petition is ***disposed of*** by requiring the petitioners to move an appropriate application, apprising the trial Court of the activities undertaken by the defendants i.e. constructions etc within a week. In the eventuality such an application being moved, before the trial Court, it is expected that the trial Court shall consider the same and pass appropriate orders thereon by inviting objections by fixing a date. It is expected that the trial Court shall pass appropriate orders within a period of one month from today taking note of the fact that a similar direction had been issued to it under the order dated 04.03.2020, passed in petition under Article 227 of the Constitution of India, bearing No. 1749 of 2020, which direction was not complied with.

Order Date :- 22.11.2023

Deepak/