

Court No. - 82

Case :- MATTERS UNDER ARTICLE 227 No. - 11545 of 2023

Petitioner :- Rajendra Sahni

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shashank Shekhar Rai, Anil Kumar Chaudhary

Counsel for Respondent :- G.A.

Hon'ble Ms. Nand Prabha Shukla, J.

Heard learned counsel for the petitioner and learned A.G.A. for the State.

The instant writ petition has been filed against the impugned order dated 28.09.2021 passed by Chief Judicial Magistrate, Mau rejecting the complaint of the petitioner under Section 203 Cr.P.C. and order dated 21.10.2023 passed by learned Additional District and Sessions Judge, Court No. 1st, Mau rejecting the criminal revision preferred against the said order.

The matter in brief is that the petitioner and the respondent No. 2 were the real brothers and co-sharers of Gata No. 401 admeasuring 0.1010 hectares and Gata No. 406 admeasuring 1.3580 hectares situate at Village- Garthauli, Tehsil- Sadar, District- Mau. There was no partition of the said property between the petitioner and the respondent No. 2. The respondent No. 2 in connivance with the others executed a registered sale deed dated 08.01.2018 of his half share in favour of Smt. Uma Devi- respondent No. 3 by demarcating wrong boundary walls of petitioner's share besides the chak road.

It has been contended by learned counsel for the petitioner that the learned Magistrate had rejected his complaint in a cursory manner without applying his judicial mind and without considering the allegations made in the complaint. The revisional Court had also rejected his revision without considering the evidence available on record.

On the other hand, learned A.G.A. for the State has submitted that there is no illegality in the impugned order as it was passed after considering the evidence available on record.

From a perusal of the petition, it reveals that the petitioner moved an application under Section 156(3) Cr.P.C. on 30.10.2018 which was treated as a complaint case and the statement of the complainant and the witnesses were recorded under Section 200 and 202 Cr.P.C. and after considering the evidence the learned Magistrate dismissed the complaint under Section 203 Cr.P.C. giving reasons that a civil suit for the cancellation of the sale deed is already pending. There was no partition of the property and the matter was mainly civil in nature which has been stated by the petitioner and the witnesses in their statement under Sections 200 and 202 Cr.P.C. It was observed by the learned Magistrate that there was no sufficient grounds to summon the opposite parties as such the complaint was liable to be rejected.

Upon hearing learned counsel for the parties and upon perusal of record, we find that the disputed property has not been partitioned. The dispute is mainly civil in nature and the suit for cancellation of the sale deed is already pending. "The Hon'ble Apex Court in **G. Sagar Suri Vs. State of U.P. (2000) 2 SCC 636** observed that it is the duty and obligation of the Criminal Court to exercise a great deal of caution in issuing the process, particularly when the matters are essentially of civil nature."

In such circumstances, the order passed by the learned Magistrate as well as by the revisional Court has no illegality and requires no interference.

The petition lacks merit and is, accordingly, **dismissed**.

Order Date :- 22.11.2023

Puspendra