

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12031 of 2023

Petitioner :- Smt Shafeekan And Another

Respondent :- Smt Gulista Parveen

Counsel for Petitioner :- Zia Naz Zaidi, Mohammad Haadi Zaidi

Counsel for Respondent :- Madhava Nand Shukla, Anuj Kumar Sharma, Syed Wajid Ali

Hon'ble Ashutosh Srivastava, J.

Heard Shri Zia Naz Zaidi, learned counsel for the petitioners and Shri Anuj Kumar Sharma, learned counsel, who has put in appearance on behalf of the plaintiff/ respondent.

The present petition, under Article 227 of the Constitution of India, has been filed for setting aside the order dated 16.10.2023, passed by the Additional District and Sessions Judge / Special Judge (POCSO), Court No. 1, Muzaffarnagar, in Misc. Civil Appeal No. 26 of 2019 (Smt. Gulista Parveen vs. Smt. Shafeekan and another), whereby and whereunder the Misc. Appeal preferred against the order dated 26.07.2019, rejecting the Interim Injunction Application, Paper No. 6-C, filed by the plaintiff/respondent, in Original Suit No. 103 of 2019, instituted for the relief of Specific Performance of an agreement dated 06.02.2018 had been rejected, the Appeal has been allowed and effect and operation of the Gift Deed dated 04.08.2022, has been stayed and the petitioners have been restrained not to create third party rights, in respect of the subject matter of the agreement to sale dated 06.02.2018.

Learned counsel for the petitioners has vehemently argued that the Suit in question has been filed for the relief of specific performance of the agreement in question. The trial Court after considering all aspects of the matter rejected the 6-C Application of the plaintiff/respondent by observing that no prima facie case was made out in favour of the plaintiff nor the balance of convenience lays in favour of the plaintiff/respondent and had also observed that the plaintiff/respondent would not suffer irreparable injury in the event the suit property is transferred, inasmuch as the transfer would be subject to the principle of *lis pendence*. The Appeal, filed by the plaintiff/respondent has been allowed and the injunction prayed for has been granted. It has been submitted at the Bar that during the pendency of the Appeal a Gift Deed dated

04.08.2022 is stated to have been executed by the plaintiff in favour of her son. The Appellate Court on the appreciation of fact has found that the Gift Deed has been executed with the purpose of frustrating the suit.

In the opinion of the Court, the finding recorded by the Appellate Court while allowing the Appeal and restraining the plaintiff from creating third party rights is just and proper and requires no interference by this court, in exercise of power under Article 227 of the Constitution of India.

In view of the above, there is no merit in the petition and the same is accordingly, ***dismissed***.

Order Date :- 7.12.2023

Deepak/