

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11789 of 2023

Petitioner :- Smt. Kashiroon Nisha And 2 Others

Respondent :- Smt. Sangeeta Gupta And Another

Counsel for Petitioner :- Adya Prasad Tewari

Hon'ble Ashutosh Srivastava,J.

1. Heard Sri A.P. Tiwari, learned counsel for the petitioners.
2. Considering the nature of the order that is proposed to be passed the notice upon the respondent nos. 1 and 2 is being dispensed with.
3. The present petition under Article 227 of the Constitution of India has been instituted seeking a direction to the Civil Judge (Junior Division) (7), Gorakhpur to decide 7-C application dated 18.03.2021 moved by the petitioner under Order 39 Rule 1 & 2 C.P.C. in Original Suit No. 617 of 2021 (Smt. Kasirunnisha and others vs. Smt. Sangeeta Gupta and others) within a time framed fixed by this court and till disposal of the injunction application parties may be directed to maintain status quo.
4. Sri A.P. Tiwari, learned counsel for the petitioners submits that the petitioners are plaintiffs in a suit being Suit No. 617 of 2021 which has been instituted for relief of cancellation of alleged sale deeds dated 21.10.2011, 16.11.2011 as well as for relief of permanent injunction prohibiting the defendants from interfering in the peaceful possession and occupation over the plot in question being the subject matter of Original Suit No. 617 of 2021. Learned counsel for the petitioner further submits along with plaint of the suit in question an application under Order 39 Rule 1 & 2 dated

18.03.2021 registered as Paper No. 7-C supported by an affidavit Paper No. 8-C has been filed on which the trial court while registering the suit directed notices to be issued vide order dated 18.03.2021. He submits that the plaintiffs have taken steps to serve the defendants and thereafter several dates have been fixed to frame issue but the defendants have not put in appearance. The plaintiffs have also filed an application for effecting substituting service upon the defendants which application is also stated to be pending consideration. Learned counsel has argued that the sale deeds are per se illegal, inasmuch as the suit property being joint no sale deed of specific area with specific boundaries could have been executed by the defendants and there is constant threat of dispossession looming over the plaintiffs. In such circumstances, he submits that a direction be issued to the trial court to decide the 6-C application and the interest of the plaintiff petitioners be safeguard meanwhile.

5. Having considered the submission advanced by learned counsel for the petitioner and having perused the records, this court is of the opinion that though several dates have been fixed in the suit pursuant to the issuance of the notice on the interim injunction application and moving of the application for effecting substituted service but no satisfaction about the service of notice upon the defendants has been recorded by the trial court.

6. Considering the urgency that has been pressed by the learned counsel for the petitioners, this court is of the opinion that the petition can be disposed of by requiring the Civil Judge (Junior Division) Court No. 7, Gorakhpur seized with the 7-C application dated 18.03.2021 moved by the petitioner in the Original Suit No. 617 of 2021 to pass appropriate orders on the said application

within a period of two months from the date of service of certified copy of this order.

7. The Civil Judge (Junior Division) Court No. 7, Gorakhpur before passing the appropriate orders on the pending 7-C application shall pass appropriate orders on the pending application seeking substituted service and record its satisfaction as regards service upon the defendants and proceed to decide the interim injunction application within time framed fixed by this Court.

8. All endeavour shall be made by the Civil Judge (Junior Division) Court No. 7, Gorakhpur through pass orders on the interim injunction application within two months provided by this Court. Till decision on the interim injunction or for a period of two months from today whichever is earlier the parties are directed to maintain status quo in respect of nature and position of the suit property.

9. In view of the aforesaid, the writ petition is **disposed of**.

Order Date :- 22.11.2023

Manoj