

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11961 of 2023

Petitioner :- Gyan Maya Mishra And 2 Others

Respondent :- Chandra Prakash Mishra And Another

Counsel for Petitioner :- Nagendra Kumar Tripathi, Avinash Kumar Tripathi

Hon'ble Ashutosh Srivastava, J.

Heard Shri Nagendra Kumar Tripathi , learned counsel for the petitioners.

Considering the nature of the order that is proposed to be passed, the service of notice upon respondents is being dispensed with.

The present petition under Article 227 of the Constitution of India has been filed for expeditious disposal of Original Suit No. 560 of 2020 (Gyan Maya Mishra and others versus Chandra Prakash Mishra and others) within a time frame fixed by this Court.

Learned counsel for the petitioners submits that the petitioner No.1 is a widow and the petitioner No. 2 and 3 are her daughters. The suit in question has been filed for setting aside a Will deed dated 31.12.2019, which is stated to be executed by the mother-in-law. Smt. Shakuntala Devi under which the petitioners have been excluded from the share in the property in dispute. The petitioners along with the relief of cancellation of will deed has also sought permanent injunction restraining the defendants dispossessing them from the house in which they are residing on the strength of the will deed.

Learned counsel for the petitioners further submits that the defendants have put in appearance and filed their written statement and purpose of filing the present petition would stand served, if appropriate directions are issued to the Civil Judge (Jr.Div.), FTC Ist, Sant Kabir Nagar to conclude and decide the Original Suit No. 560 of 2020 within a time frame fixed by this Court.

I have heard learned counsel for the petitioner and have perused the record.

From the perusal of the order-sheet which has been filed as

Annexure-3 to the petition, it is borne out that along with the plaint of the suit, the petitioners have also preferred an application seeking temporary injunction, which was numbered as application No. (6C-2) on 1.10.2020. The Court had issued notices on the said application being of the view that the exparte injunction could not be granted. However, despite the appearance of defendants in the suit proceedings, the interim injunction application has yet not been considered. The Court further finds that the written statement has already been filed and the suit is pending for framing of the issues since 9.3.2021.

This Court is of the opinion that at this stage, proceedings of the entire suit may not be expedited. However, the Court concerned can be directed to dispose of the interim injunction application (6C-2) and also to frame the issues.

Accordingly, the petition is ***disposed of*** by requiring the Civil Judge (Jr.Div.), FTC Ist, Sant Kabir Nagar seized with the proceedings of Original Suit No. 560 of 2020 (Gyan Maya Mishra and others versus Chandra Prakash Mishra and others) to proceed and decide the interim injunction application (6C-2) as also frame the issues so that the proceedings of the suit can be progressed further. All endeavour shall be made by Civil Judge (Jr.Div.), FTC Ist, Sant Kabir Nagar to decide the application (6C-2) as well as frame the issues within a period of three months from the date of service of certified copy of the order of this Court.

Order Date :- 4.12.2023

Ravi Prakash

(Ashutosh Srivastava, J.)