

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11892 of 2023

Petitioner :- Shamshul Haq Ansari

Respondent :- Murtuza And 6 Others

Counsel for Petitioner :- M J Akhtar

Hon'ble Ashutosh Srivastava,J.

Heard Sri M.J. Akhtar, learned Counsel for the petitioner.

Considering the nature of order that is proposed to be passed, notices upon the respondent nos. 1 to 7 are being dispensed with.

The present petition, under Article 227 of the Constitution of India, has been filed for the relief to direct the Civil Judge (Junior Division), Kasia, Kushinagar, to decide Misc. Case No.135 of 2013 (Abdul Hamid and others Vs. Murtuza and others) filed under Order 9 Rule 13 of C.P.C. arising out of Original Suit No.1382 of 1998 (Murtuza and others Vs. Abdul Hamid and others) within the time frame fixed by this Court.

Learned Counsel for the petitioner submits that Suit No.1382 of 1998 was instituted for cancellation of a sale-deed dated 1.6.1973 executed by the plaintiffs-respondents. In the present proceedings in favour of the defendants, learned Civil Judge (Junior Division), Kasia, Kushinagar, by an ex-parte order decreed the Suit and cancelled the sale-deed dated 1.6.1973 vide judgment and order dated 28.5.1999. An application under Order 9 Rule 13 seeking relief to set aside the ex-parte judgment and order dated 28.5.1999 was filed by Abdul Hamid, late father of the petitioner herein. After the death of Abdul Hamid, the present petitioner has been substituted in the proceedings.

Learned Counsel for the petitioner submits that a misc. case being misc. case no.135 of 2013 has been registered on the application under Order 9 Rule 13 of C.P.C., which is stated to be pending since 2013. He submits that the purpose of filing the present petition would stand served if appropriate direction is issued to the learned Civil Judge (Junior Division), Kasia, Kushinagar, to decide the misc. case no.135 of 2013 within the time prescribed by this Court. In order to buttress the said submission, learned Counsel for the petitioner has invited the attention of this Court to various orders passed by the court concerned, which has been annexed along with the order-sheet of the proceedings filed as Annexure-2 to the writ petition, which demonstrates that the case has been pending for hearing.

Having heard learned Counsel for the petitioner and having perused the record particularly to various orders passed by the court concerned, being misc. case no.135 of 2013, I find that the proceedings have been pending for hearing and various date have been fixed for the said purpose.

Considering the above, I am of the opinion that this is a fit case in which directions can be issued to expedite the proceedings of misc. case and bring

the proceedings to its logical end.

Accordingly, this petition is disposed of by requiring the Civil Judge (Junior Division), Kasia, Kushinagar, that misc. case no.135 of 2013 (Abdul Hamid and others Vs. Murtuza and others) pending since 17.12.2013 be decided expeditiously preferably within 3 months from the date of service of a certified copy of the order of this Court in accordance with law without granting any unnecessary adjournment to either of the parties.

Order Date :- 23.11.2023

Irshad