

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11816 of 2023

Petitioner :- Bindu

Respondent :- Ram Pyare And 3 Others

Counsel for Petitioner :- Hausihla Prasad Mishra

Hon'ble Ashutosh Srivastava,J.

Heard Shri H.P. Mishra, learned counsel for the petitioner.

The instant petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 21.10.2023 passed by the Additional District Judge, Court No. 4, Gorakhpur, in Misc. Appeal No. 02 of 2023, whereby rejecting the Appeal and upholding the order dated 22.11.2022 passed by the Additional Civil Judge (Senior Division) Second ACJM, Gorakhpur, rejecting the interim injunction Application (7-C) filed in Original Suit No. 74 of 2022.

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

It is the case of the petitioner that he along with plaintiff/ respondents 3 and 4 herein has instituted a suit being suit no. 74 of 2022 (Bindu and others vs. Ram Pyare and another) seeking the specific performance of an Agreement to Sell dated 09.06.2017 executed by the defendant/ respondents 1 and 2 in respect of 2/3rd area of Arazi No. 251, area 0.311 hectare, situate in Mauja Ramnagar Karjahan, Tappa Patra, Pargana Haveli, Tehsil Chauri Chaura, District-Gorakhpur, for a sum of Rs. 5 lacs out of which a sum of Rs. 1.99 lacs was paid as down payment and balance Rs. 3.01 Lacs was to be paid at the time of execution of the Sale Deed within three years from the date of execution of the Agreement to Sale. When the defendants/ respondents refused to execute the Sale Deed despite notice, the petitioner instituted the Suit aforesaid on 01.02.2022. Along with the plaint of the suit, an application for interim injunction (Paper No.7-C) was filed with the prayer that the defendant/respondents may be restrained not to create any third party rights in respect of the land subject matter of the Agreement to Sell dated 09.06.2017 during the pendency of the Suit. The Trial Court vide its order dated 22.11.2022 rejected the interim injunction Application (7-C) being of the view that since the plaintiffs were not in possession of the suit property consequent to the execution of the Agreement to Sell, no case for grant of

injunction was made out. The Misc. Appeal No. 02 of 2023, filed assailing the said order dated 22.11.2022 has met with the same fate and the order of the Trial Court rejecting the interim injunction Application (7-C) has been upheld.

Learned counsel for the petitioner Shri H.P. Mishra has vehemently submitted that both the Courts Below have failed to consider the case of the plaintiff in the correct perspective and the injunction prayed for was liable to be granted. He submits that the parties to the suit ought to have been directed to maintain status quo and no third party rights in respect of the Suit property was liable to be created to avoid multiplicity of the proceedings. It is thus prayed that the orders dated 21.10.2023 and 22.11.2022 be set aside and the defendant/ respondents be directed not to execute any Sale Deed in faovur of any other person till disposal of the Suit and parties be directed to maintain status quo.

I have heard learned counsel for the petitioner and have perused the record. I find that the petitioner/ plaintiff has been non suited on the ground that he is not in possession over the subject matter of the Suit. An Agreement to Sell simplicitor without delivery of possession does not confer any right upon the person in whose favour the agreement has been executed. The right would accrue only when the Sale Deed is executed pursuant to the Decree passed in the Suit for specific performance. If an alienation of the subject matter of the Agreement is done during the pendency of the Suit proceedings the same would be hit by the principle of Lis Pendens enshrined under Section 52 of the Transfer of Property Act. The Sale Deed would abide by the outcome of the suit proceedings. In such view of the matter the Court is not impressed with the submissions of learned counsel for the petitioner that grant of status quo to be maintained and no third party right be created in respect of the suit property will prevent multiplicity of the proceedings.

In the opinion of the Court no injunction can be granted against the true owner of the property.

In view of the above, the Court finds no infirmity in the orders impugned. No good grounds exist for setting aside the orders dated 21.10.2023 and 22.11.2022. The petition has no merit and deserved to be dismissed and is **dismissed**.

Order Date :- 30.11.2023

Deepak/