

Court No. - 52

Case :- WRIT - C No. - 40838 of 2023

Petitioner :- Sukhpal Singh

Respondent :- State Of U.P. And 32 Others

Counsel for Petitioner :- Rituvendra Singh Nagvanshi, Sr. Advocate

Counsel for Respondent :- CSC

Hon'ble Saurabh Srivastava, J.

1. Heard Shri R.C. Singh, learned Senior Advocated assisted by Shri Rituvendra Singh Nagvanshi, learned counsel for the petitioner and Shri Tarun Gaur, learned standing counsel appearing for respondent nos. 1 and 2, on agreement of both the learned counsel appearing for the parties, the matter is being disposed of at the admission stage itself and as such process of notice to respondent nos. 3 to 33 are hereby dispensed with.

2. The case of the petitioner is that initially partition suit has been preferred by respondent nos. 3 and others wherein the petitioner and some more persons have been arrayed as respondents and same was decided with final decree dated 22.6.2019.

3. Being aggrieved with the final decree dated 22.6.2019 a restoration application dated 14.2.2019 filed by Kamal and others for seeking recall of the decree dated 22.6.2019 and the same was rejected vide order dated 22.3.2021 with a categorical finding that plaintiff has been cavalier in prosecuting the matter and that delay in filing the restoration application was not sufficient explained.

4. Against the preliminary and final decree two separate appeals filed by Kamal Kumar and others vs. Sukhpal and others alongwith application under Section 5 of Limitation Act and the same was admitted by way of condoning the delay vide order dated 27.8.2021. Separate stay application preferred in the admitted appeal by the respondents on 6.10.2022, wherein for final hearing the date was filed on 30.8.2023.

5. When the appeal was again fixed for 19.10.2023, adjournment has been sought on medical ground, the same was adjourned and fixed for 9.11.2023 but the effect and operation of the order dated 22.6.2019 had been kept in abeyance by the respondent no.2 which rises cause of action in favour of the petitioner of filing the instant writ petition, wherein the precise prayer has been made for quashing the order dated 19.10.2023. While assailing the order dated 19.10.2023, learned Senior Advocate raised his arguments that once the adjournment has been granted and the matter was posted for 9.11.2023, there was no necessity for passing the interim order dated 19.10.2023 through which the operation of the final decree dated 22.6.2019 had been kept in abeyance.

6. On precise query made before learned Senior Counsel regarding filing of any such vacation application before the respondent no.2, it is fairly accepted that no stay vacation application has been preferred by the petitioner for vacating the order dated 19.10.2023.

7. Without interfering in the merit of the matter, petitioner is at liberty to prefer stay vacation of the interim order dated 19.10.2023 passed by respondent no.2, if the same is preferred, respondent no.2 is hereby directed to decide the same within eight weeks from the date of production of certified copy of this order.

8. Writ petition stands **disposed of** accordingly.

Order Date :- 28.11.2023

Rakesh