

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12240 of 2023

Petitioner :- Hari Mohan Kushwaha

Respondent :- Kashi Ram Kushwaha And 3 Others

Counsel for Petitioner :- Rishabh Agarwal

Counsel for Respondent :- Piyush Kumar Shukla,Rajesh Kumar Singh,Sumit Daga,Vikas Tiwari

Hon'ble Ashutosh Srivastava,J.

Heard Shri Rishab Agarwal, learned counsel for the petitioner. Shri Piyush Kumar Shukla, learned counsel has put in appearance on behalf of respondent No. 4 through caveat.

The present petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 25.8.2023 passed by the District & Sessions Judge, Jhansi in Civil Revision No. 25 of 2023 (Hari Mohan Kushwaha versus Kashi Ram and others) as also the order dated 17.02.2023, passed by the Civil Judge (Jr.Div.), FTC/Judicial Magistrate, Jhansi in Original Suit No. 358 of 2005. A further prayer to direct the Civil Judge (Jr.Div.), FTC/Judicial Magistrate, Jhansi to pass fresh order directing the Court Amin to prepare and file new report on the valuation of the suit property has also been prayed for.

It is the case of the petitioner that the petitioner/plaintiff has instituted a suit for partition claiming his 1/3rd share over the suit properties which has been registered as Original Suit No. 358 of 2005. The suit was valued at Rs.2,00,000/-. The defendants put in appearance and objected to the valuation of the suit by stating that the same is undervalued. The application raising the objections was allowed by the learned Civil Judge (Jr.Div.), FTC/Judicial Magistrate, Jhansi and the Court Amin was ordered to submit his report. The Amin filed his report (Paper No. 103C-2) dated 9.11.2010 under which the property was valued Rs.2,22,23,155/-. The plaintiff/petitioner filed his objections to the report submitted by the Amin stating that the suit was filed in the year 2005 but the Amin has submitted his report taking into consideration the rates applicable in 2010 and moreover the depreciation in the constructions existing over the suit property has not been taken into account.

The trial court vide its order dated 17.2.2023 allowed the Amin Report and valued the suit at Rs.2,22,23,155/- after rejecting the objections of the petitioner. The Civil Revision No. 25 of 2023 preferred assailing the said order dated 17.2.2023 has also been rejected upholding the valuation.

Learned counsel for the caveator respondent submits that the orders impugned are

just and proper and do not suffer from any infirmity. Learned counsel has further submitted that the plaintiff/petitioner was required to take steps in connection with the enhanced valuation but no steps were taken within the time allowed and resultantly the trial court has proceeded to dismiss the suit for non prosecution vide its order dated 20.9.2023.

I have heard learned counsels for the parties and perused the record.

From the perusal of the Amin Report dated 9.11.2010 which has been brought on record as Anneuxre-4 to the petition, it is borne out that the total area of the disputed site is approx 21,327 square meters (1982 meter). At the time of the institution of the suit, the land of the disputed site was assessed at Rs.2,18,02,000/- at the rate of Rs.11,000/- per square meter (circle rate) prescribed under Uttar Pradesh Property Valuation Rules. The value of the constructions under the aforesaid Valuation Rules for RCC Roof construction has been fixed at Rs.3450/- per square meter, the rate of the construction with gaater stone has been fixed at Rs.2400/- per square meter and the rate of tile construction has been fixed at Rs.1650/- square meter. The total value of the constructions has been computed as Rs.2,04,895.50, Rs.1,97,400/- and Rs.18,859.50. The valuation of the jumla construction has been fixed at Rs.4,21,155/- and total calculation has been computed at Rs.2,22,23,155/- at the time of institution of the suit.

Both the trial court as also the revisional court has recorded a finding that there does not appear any legal error in the Amin Report and that the valuation of the suit property has been rightly assessed by the Amin. The suit has accordingly been valued. This Court finds no error in the decision of the trial court as also the revisional court warranting any interference by this Court in exercise of its power under Article 227 of the Constitution of India. There is no merit in this petition. It is accordingly ***dismissed***.

It shall however be open for the plaintiff/petitioner to take recourse to law in respect of the order dated 20.9.2023 dismissing the suit for non prosecution which order is not the subject matter of the present petition.

Order Date :- 8.12.2023

Deepak/