

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12308 of 2023

Petitioner :- Vikash Kumar And 3 Others

Respondent :- Waseem

Counsel for Petitioner :- Arun Kumar Srivastava

Counsel for Respondent :- Muktesh Kumar Singh

Hon'ble Ashutosh Srivastava,J.

Heard Shri Arun Kumar Srivastava, learned counsel for the petitioners. Shri Muktesh Kumar Singh, learned counsel has appeared on behalf of the Caveator respondent.

The instant petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 27.10.2023 passed by the learned District Judge, Jaunpur, in Misc. Civil Appeal No. 36 of 2023 whereby and where under the Misc. Appeal under Order 43 Rule 1 (r) assailing the order dated 27.01.2023 whereby allowing the interim injunction application (6-C) of the plaintiffs/petitioners and directing status quo to be maintained by the parties till disposal of the Suit has been allowed and the order dated 27.01.2023 has been set aside.

The *lis* between the parties is with regard to part of Arazi No. 16. It is the case of the petitioners that Vijay Kumar, the father of petitioners No. 1 to 3 (now deceased) and Ajay Kumar petitioner no. 4 are the owners in possession over Arazi No. 16 area 0.007 hectares and Arazi No. 17 measuring 0.002 Hectares. The said land was purchased vide Sale Deed dated 23.03.1988 from one Nanga S/o Abdul Rahim, R/o Firosepur, Pargana Haveli, District-Jaunpur. After purchase of the said land the names were recorded in the revenue record and a big room was got constructed over Arazi No. 16. The Defendant/ respondent purchased land adjacent to Arazi No. 16 and fraudulently got executed a registered Sale Deed dated 03.02.2009 of some part of Arazi No. 16 and tried to encroach over other part of the said Arazi.

A Suit being Suit No. 1507 of 2015 was instituted for cancellation of the Sale Deed dated 03.02.2009 and for permanent injunction. An application seeking temporary injunction (6-C) was also filed. The Defendant/ respondent appeared in the proceedings and filed objections (29-C). The Trial Court while considering the Interim Injunction Application (6-C) and its objection (29-C) found that the respective stand of the parties raised a triable issues which

were to be decided after inviting evidence. Relying upon the law laid down by the Apex Court in ***Maharawal Khawaja Trust, Faridkot Vs. Baldev Das, Civil Appeal No. 6792 of 2004 decided on 15.10.2004*** wherein the Apex Court has laid down that in order to preserve the Suit property and order of status quo is required to be passed, the Trial Court proceeded to direct parties to maintain status quo till disposal of the suit.

The order dated 27.01.2023 was assailed by the defendant/respondent in Misc. Appeal under Order 43 Rule 1 (4)r. The Appellate Court has allowed the Appeal and set aside the order dated 27.01.2023 directing the parties to maintain status quo.

Learned counsel for the petitioner has argued that the status quo order passed by the Trial Court was just and proper and no interference was required by the Appellate Court. The Appellate Court while setting aside the order of the Trial Court has not recorded any finding of partition of the suit property even though specific plea was raised that the Sale Deed dated 03.02.2009 which forms the basis of the case of the defendant/respondent was a forged and fictitious document as no co-sharer can execute Sale Deed of specific portion without first getting it partitioned.

Per contra, learned counsel for the Caveator/respondent has submitted that the trial Court had passed a general order of status quo without discussing the respective cases of the parties while the Appellate Court has discussed the respective case and thereafter passed the order setting aside the status quo order. The order passed by the Appellate Court allowing the Appeal is just and proper and calls for no interference by this Court in exercise of powers under Article 227 of the Constitution of India.

I have heard learned counsel for the parties and have perused the record. From the perusal of the order of the Trial Court it is borne out that the Trial Court took note of the fact that an area of 86.44 square meter has been sold by Vijay Kumar father of petitioner nos. 1 to 3 in favour of the defendant/ respondent. However it has been further observed that no partition amongst the brother Vijay Kumar and Ajay Kumar had taken place and prima facie triable issues had been raised by the plaintiff/ petitioners.

The Appellate Court however has noticed that the suit for cancellation of the Sale Deed has been filed by both Vijay Kumar and Ajay Kumar. There is no plea taken in the Suit that Vijay Kumar is uneducated. The plaintiff have admitted execution of the Sale Deed in favour of the defendants. The Sale document contains

the photograph of the Seller and purchaser and every page of the document has been signed. The Sale Deed also contains a map depicting the portion sold. The Consideration amount has been paid by cheques. The execution of the Sale Deed has been witnessed by two attesting witnesses. The name of the respondent is recorded over the plot No. 16 in the Revenue records as Co-sharer. The Appellate Court has placed reliance upon the decision of the Apex Court in **Anand Prasad Agarwal vs. Trakeshwar Prasad** and others reported in **2001 ACJ 1334 (SC)** for the proposition that the Sale Deed is to be treated as valid till it is set aside by a Competent Court. The Appellate Court has also taken note of the fact no injunction could be granted against Co-sharers as has been held in **Mehanga Singh and others vs. Balbir Singh**, reported in **2003 ADJ 2253 (SC)**. The Appellate Court has found that the defendant/ respondents to be in possession over the disputed land and his name also finds place in the relevant revenue records as Co-Sharer. The Appellate Court has held that the Trial Court erred in passing a status quo order without recording the finding that the plaintiff/ petitioners did not have a *prima facie* case and the defendant/ respondent could not be deprived of the beneficial enjoyment of the land purchased by him and as such the balance of convenience did not lay in favour of the plaintiff/ petitioners. The Appellate Court also concluded that continuance of the Status quo order would result in irreparable loss to the defendant/ respondent in relation to the plaintiff/petitioners. It accordingly proceeded to allow the Appeal.

In the opinion of the Court the reasoning given by the learned Appellate Court for setting aside the order of the Trial Court directing the parties to maintain Status quo does not suffer from any infirmity warranting the interference of this Court under Article 227 of the Constitution of India. The petitioner is devoid of substance and is accordingly **dismissed**.

No order as to costs.

Order Date :- 4.12.2023

Deepak/