

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12690 of 2023

Petitioner :- Chhedalal Chaurasiya

Respondent :- Jagannath @ Jagan Lal And 2 Others

Counsel for Petitioner :- Virendra Kumar Gupta

Hon'ble Ashutosh Srivastava,J.

Heard Shri Virendra Kumar Gupta, learned counsel for the petitioner.

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

The present petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 24.8.2023 passed by the Civil Judge (Sr.Div.), Mahoba in Original Suit No. 95 of 2023 (Jagannath @ Jagan Lal versus Chhedalal Chaurasiya and others) whereby and whereunder the interim Application 6-C2 has been allowed and the petitioner who was impleaded as a defendant in the suit has been enjoined and parties to suit have been directed to maintain status quo in respect of the house properties mentioned at Sr. No. 2 and 3 of the plaint map and defendants have further been restrained from evicting the plaintiff-respondents otherwise than in accordance with law so far as the house mentioned at Sr. No. 1 of the plaint map is concerned.

Learned counsel for the petitioner submits that exparte order has been granted on interim injunction application. Learned counsel for the petitioner submits that no notice was ever issued to him and the exparte injunction has been granted by misstating the facts and the order has been obtained illegally and surreptitiously. He submits that present petition under Article 227 be allowed and the order passed on interim injunction application be set aside.

I have heard learned counsel for the petitioner and have perused the record.

The order dated 24.8.2023 is an order passed by the Court below on the interim injunction application (6-C2). In the opinion of the Court, if the order has been obtained by misstating the facts, the petitioner has a remedy for filing an application under Order 39

Rule 4 CPC seeking discharge, variance or setting aside of the said order or if aggrieved, may also prefer a Misc. Appeal. In the wake of availability of alternative remedy, the petition under Article 227 would not lay.

In such view of the matter, present petition under Article 227 of the Constitution of India is ***dismissed*** as not maintainable. However, liberty is granted to the petitioner to file appropriate application seeking recall of the order dated 24.8.2023 by moving an appropriate application under the Code of Civil Procedure or resort to any other remedy available under the law.

Order Date :- 11.12.2023

Ravi Prakash

(Ashutosh Srivastava, J.)