

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12594 of 2023

Petitioner :- Rajendra Kumar

Respondent :- Surendra Kumar And 5 Others

Counsel for Petitioner :- Chetan Chatterjee

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Chetan Chatterjee, learned counsel for the petitioner.
2. Considering the nature of the order that is proposed to be passed, notice upon the respondent nos. 1 and 2 is being dispensed with.
3. The present petition under Article 227 of the Constitution of India has been filed for a direction to the Civil Judge (Senior Division), Saharnpur to decide the temporary injunction application paper no. 6-C stated to be pending filed in O.S. No. 392 of 2017 (Rajendra Kumar vs. Surendra Kumar and others) stated to be pending since 14.07.2017 within a time frame fixed by this Court.
4. Learned counsel for the petitioner submits that the petitioner is the plaintiff in Suit No. 392 of 2017 seeking the decree of permanent injunction, alongwith the prayer to aforesaid suit an application for temporary injunction registered as paper no. 6-C has been filed, on which the learned Civil Judge being of the opinion that ex-parte injunction could not be granted and issued notice vide order dated 17.07.2017 requiring the presence of the defendant. Thereafter pursuant to the notice issued, the defendant have appeared and filed their objection to the interim injunction application. Thereafter various dates have been fixed for consideration of the temporary injunction applicant but despite passage of almost more than six years the temporary injunction application has yet not been disposed of nor any order granting or refusing to grant temporary injunction application has been passed.
5. Learned counsel for the petitioner submits that the pendency of the temporary injunction application is causing great hardship to the plaintiff-petitioner and there is constant threat looming over his head for dispossession from the suit property. In such circumstances, it has been prayed that direction be issued for

expeditious consideration /disposal of the temporary injunction application.

6. I have heard Shri Chetan Chatterjee, learned counsel for the petitioner and have perused the record.

7. From the order-sheet of the proceedings brought on record as Annexure no. 5 to the petition, I find that the Civil Judge (Senior Division) Saharanpur vide order dated 17.07.2017 had issued notices to the defendant, of the view that the plaintiff and the defendant are real brother and the suit property is joint property, requiring their presence before considering the 6-C application.

8. The defendant immediately has put in appearance and filed his objection. However, 6-C application has not been considered.

9. Considering the fact that the temporary injunction application has been pending since last six years and considering the submission of the learned counsel for the petitioner that there is constant threat of dispossession of the petitioner, this Court is of the opinion that ends of justice shall stand served if appropriate directions are issued to the Court seized with the proceedings for expediting the disposal of the 6-C application.

10. Accordingly, the petition is disposed off by requiring the Civil Judge (Senior Division) Saharanpur seized with the application under temporary injunction paper no. 6-C filed in O.S. No. 392 of 2017 to proceed with and pass appropriate order thereon within two months from the date of service of certified copy of this Order, without granting any unnecessary adjournment to either of the parties.

Order Date :- 8.12.2023

Bhanu