

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12905 of 2023

Petitioner :- Baijnath And Another

Respondent :- Ram Nath And 3 Others

Counsel for Petitioner :- Awadhesh Kumar Yadav, Abhishek Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Ashutosh Srivastava, J.

Heard Shri Awadhesh Kumar Yadav, learned counsel for the petitioners.

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

The present petition under Article 227 of the Constitution of India has been filed for a direction to the Civil Judge (Sr.Div.), Sant Kabir Nagar to decide the 6C-2 application filed by the petitioner under Order 39 Rule 1 & 2 read with Section 151 CPC in Suit No. 71 of 2022 (Baijnath and another versus Ramnath and others) within the time frame fixed by this Court.

Learned counsel for the petitioners submits that the suit filed by the plaintiffs-petitioners is for cancellation of sale deed and for permanent injunction restraining the defendants not to interfere in the peaceful possession of the plaintiffs over the suit land. Along with the plaint of the aforesaid suit, an application under Order 39 Rule 1 & 2 read with Section 151 CPC (Paper No. 6C-2) has been filed. On which, trial court vide order dated 12.5.2022 being of the view that the plaintiffs were not entitled for the exparte injunction, issued notices requiring the presence of the defendants to answer the interim injunction application. Pursuant to the notices issued, the defendant No. 3 has put in appearance. However, the other defendants have not appeared and the case is being fixed for awaiting services upon the other defendants and for consideration of the 6C-2 application.

Learned counsel for the petitioners submits that there is constant threat for dispossession of the plaintiffs from the suit land and in such circumstances, a direction for expeditious disposal of the application 6C-2 is being sought.

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

From the order sheet of the proceedings, which have been brought on record, it is borne out that defendant No. 3, who is the District Inspector of Schools, Sant Kabir Nagar, has already appeared. So far as the defendant No. 4 is concerned, he is represented by the State Counsel. Notice upon defendant No. 1 and 2 would be deemed to be sufficient. Inasmuch as the summons issued to them have been refused. The said fact stand recorded by the trial court under order dated 7.9.2022.

The Court finds that once the defendants have put in appearance and service upon them is held to be sufficient, the Court ought to have proceed to pass orders on the interim injunction application.

Considering the totality of the circumstances, the Court is of the opinion that ends of justice would stand subserved if directions are issued for expeditious disposal of the 6C-2 application, which is stated to be pending since 12.5.2022.

Accordingly, the petition under Article 227 is ***disposed of*** by requiring the Civil Judge (Sr.Div.), Sant Kabir Nagar seized with the 6C-2 application, filed in Suit No. 71 of 2022 (Baijnath and another versus Ramnath and others), to consider and pass appropriate orders on the same, expeditiously, preferably, ***on the next date fixed or within a period of three weeks from the next date fixed.***

Order Date :- 16.12.2023
Ravi Prakash

(Ashutosh Srivastava, J.)