

Court No. - 17

Case :- WRIT - C No. - 1005322 of 2006

Petitioner :- Rama Shanker

Respondent :- District Judge Bahraich And Another

Counsel for Petitioner :- S.R.Shukla,Gaurav Shukla

Counsel for Respondent :- C.S.C.,Bhanu Pratap Kushwaha,Mohammad Salman,Ziauddin Khan

Hon'ble Alok Mathur,J.

1. Heard Sri S.R. Shukla, learned counsel for the petitioner as well as Sri Mohammad Salman, learned counsel appearing for respondent no. 2.

2. By means of present writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order passed by District Judge, Bahraich in Misc. Civil Appeal No. 69 of 2002, against the judgment and order of Civil Judge, Bahraich, has been rejected.

3. It has been submitted by learned counsel for the petitioner that a registered agreement was entered into between Manzoor Hasan and his step mother namely Smt. Naseeba. Smt. Naseeba had filed a suit for specific performance against her son namely Manzoor Hasan being Suit No. 204 of 1988. As the respondent did not appear, the case proceeded ex-parte and was decreed by means of ex-parte decree dated 28.07.1989. Manzoor Hasan, defendant in the said suit moved an application under Order 9 Rule 13 was also rejected.

4. It has been next submitted that learned counsel for the petitioner that it is the petitioner who has purchased the said property from Manzoor Hasan and consequently he is necessary party in the said proceedings. The petitioner has moved an application for setting aside the ex-parte order, same was rejected, against which the petitioner as well as Manzoor Hasan for jointly filed an appeal before the District Judge, Bahraich who by means of order dated 18.10.2006, dismissed the appeal, against which present writ petition has been filed.

5. The District Judge, Bahraich while rejecting the said appeal has considered that Manzoor Hasan did not appear in the said suit proceedings and same proceeded ex-parte. It was stated that substituted service was also effected and publication was made in the news paper. He has also considered the fact that Manzoor Hasan and the plaintiff are mother and son and reside in the same house and consequently, Manzoor Hasan was in the knowledge of the proceedings and deliberately did not receive the notices and did not appeared in the suit proceedings. Manzoor Hasan in fact was responsible for dragging the case. It has also been recorded that he has refused to notice on many occasions and only thereafter substituted service was effected.

6. The Court below has also considered that the sale deed was executed in favour of the petitioner on the very next day on which the suit was instituted and considering that it was not a coincidence and was done deliberately to avoid agreement entered into between Naseeba and

Manzoor Hasan. In the aforesaid circumstances, the Court had dismissed the appeal with costs.

7. Learned counsel appearing for the respondent has submitted that firstly a writ petition under Article 226 of the Constitution of India would not be maintainable assailing a judicial order and even otherwise submits that even on the merits of the case no case for interference is made out.

8. Heard learned counsel for the parties and perused the record.

9. It is noticed that question as to whether writ petition under Article 226 of the Constitution of India would be maintainable against judicial order and no longer res-integra and Hon'ble Supreme Court in the case of **Radhey Shyam and Another Vs. Chhabi Nath & Others, 2015 (5) SCC 423**, has laid down that writ petition against judicial order would not be maintainable.

10. On perusal of record, this Court is of the considered view that the District Judge has fully dealt with all the aspects and has recorded cogent finding that Manzoor Hasan was responsible for dragging the case deliberately as he refused to receive notice and consequently, substituted service was effected by publication. Bonafide of petitioner has also been considered and it has been stated that sale deed was executed in favour of petitioner on the very next day of the filing of the suit with intention only to evade the decree passed in the said suit.

11. In the aforesaid circumstances, this Court is of the considered view that writ petition is not maintainable under Article 226 of the Constitution of India and even on merits no case for interference is made out. Accordingly, writ petition is **dismissed**.

Order Date :- 10.10.2023

A. Verma

(Alok Mathur, J.)