

Court No. - 17

Case :- CIVIL REVISION No. - 15 of 2022

Revisionist :- Smt. Pratima Gupta

Opposite Party :- Girija Shambhu Dayal Tiwari And Ors.

Counsel for Revisionist :- Pritish Kumar, Shantanu Gupta

Counsel for Opposite Party :- Shobhit Mohan
Shukla, Mohammad Aslam Khan, Mohd. Aslam Khan

Hon'ble Alok Mathur, J.

1. Heard Sri Pritish Kumar, learned counsel for revisionist as well as Sri Mohd. Arif Khan, learned Senior Counsel assisted by Sri Mohd. Aslam Khan, learned counsel for respondent.

2. Present revision has been preferred against the order dated 01.01.2022 passed by Additional Civil Judge (Sr. Div.), Lucknow thereby rejecting the application under Order VII Rule 11 CPC on the ground that on the previous occasion a similar application was moved by Lucknow Development Authority and which had also been disposed of by means of order dated 27.02.2018 holding that the said issue requires determination of fact and law and the same would be decided after the evidence is received.

3. The trial court while passing the impugned order dated 01.01.2022 has held that once a similar application at the behest of the co-respondent has already been rejected then the previous order would bar the entertainment of subsequent application and principle of res-judicata will be applicable in the said application with full force and hence has rejected the said application. While rejecting the said application he has framed an issue with regard to the fact that "as to whether the suit can be maintainable in light of the provisions contained in the Land Acquisition Act".

4. Learned counsel for petitioner while assailing the said order has submitted that on the previous occasion there was no decision rendered by the trial court while considering the application under Order VII Rule 11 CPC filed by the Lucknow Development Authority. The trial court had merely adjourned the decision in the same matter stating that the matter requires further evidence and cannot be adjudicated at the very outset.

5. The dispute in the present controversy pertains to Plot No. 468/1, comprising of Khasra No. 468 of Village Salehnagar,

Lucknow. The said land was acquired by the State Government under the Kanpur Nagar Prashar Yojna by means of a Notification dated 27.06.1985 and 05.07.1985 under Section 4 & 6 of the Land Acquisition Act, 1894. It has further been stated that with regard to the said land an award has already been passed by the Land Acquisition Officer, Lucknow and compensation has already been disbursed and the proceedings have concluded. It was stated that once the land is vested in the State Government, it cannot be subject matter of the suit and accordingly the said suit would be barred under the provisions of Section 41(H) of the Specific Reliefs Act and the civil Court would not have any jurisdiction to adjudicate upon such a controversy.

6. Learned Senior Counsel appearing on behalf of respondent has opposed the said revision and has submitted that as per settled law, an application under Order VII Rule 11 CPC can be decided only on the basis of material and documents available on the plaint and no other document would be liable to be considered and accordingly submits that there is no infirmity in the previous order of the trial court dated 27.02.2018 as well as impugned order dated 01.01.2022.

7. I have heard learned counsel for parties and perused the record.

8. It is noticed that there is an allegation by the respondents that the subject matter of the said suit is the land situated at Plot No. 468/1, comprising of Khasra No. 468 of Village Salehnagar, Lucknow which was subjected to land acquisition for the Kanpur Nagar Prashar Yojna, Notification under Section 4 & 6 of the Land Acquisition Act was issued on 27.06.1985 and 05.07.1985.

9. The dispute pertains to as to whether the particular plot of land was subjected to land acquisition. The plaintiff has stated that the said land was excluded from the acquisition proceedings while the respondents have produced sufficient material to indicate that the said land was included in the said land acquisition proceedings. The trial court has noticed the said controversy and has also framed an issue in this regard while rejecting the application of the petitioner. The court has also given anxious consideration to the issue and was of the considered view that the issue framed by the trial court with regard to the acquisition of the disputed property is centric to the entire controversy at hand. Both the parties agree that once this issue is decided then the suit can be decided subsequently expeditiously.

10. At this stage, this Court has gone through the contents of Order XIV Rule 2 Sub-Rule 2 where it is provided that the trial court has sufficient powers to decide any issue of law as a preliminary issue which pertains to jurisdiction of court. The order XIV Rule 2 quoted hereinbelow:-

“2. Court to pronounce judgment on all issues.

(1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in-force.

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

11. A bare perusal of the aforesaid provision, it is clear that when the court is of the opinion that the case or any part thereof is disposed of on an issue of law, it may try that issue first if that issue relates to the jurisdiction of the court. There is no dispute that the issue pertaining to the jurisdiction of the court considering the fact that the disputed property was subjected to land acquisition proceedings and if it was subjected to land acquisition proceedings, the suit would not lie and hence it is the issue of jurisdiction which can be disposed of as a preliminary issue. Accordingly, without entering into the merits of the controversy and with the consent of the parties, the ends of justice would be met in case suitable directions are issued to the trial court to decide the issue framed by it in its order dated 01.01.2022 pertaining to the jurisdiction of the court and try the same as a preliminary issue.

12. In light of the above, the revision is disposed of with the aforesaid direction to decide the issue i.e. "क्या वादी का वाद लैंड एक्वीजीशन एक्ट से बाधित है? within a period of three months from the date a certified court of this order is produced before it, if there is no other legal impediment and the parties

cooperate in disposal of the said application.

13. In case the trial court is of the view that the application under Order VII Rule 11 CPC deserves to be rejected then it proceed and decide the suit expeditiously, say, within a period of one year thereafter, if there is no other legal impediment.

14. Both the parties have undertaken to cooperate in the proceedings before the trial court and shall not take any unnecessary adjournment. In case the matter cannot be decided within the time prescribed by this Court then the court will record its reason for the same.

(Alok Mathur, J.)

Order Date :- 30.11.2023

Ravi/