

Court No. - 8

Case :- WRIT - C No. - 1001778 of 2013

Petitioner :- Ayodhya Singh

Respondent :- Additional District Judge Ist Gonda And Others

Counsel for Petitioner :- Amar Singh

Counsel for Respondent :- Rajeiu Kumar Tripathi,M.S..Haque

Hon'ble Pankaj Bhatia,J.

1. A request is made for adjournment on behalf of the defendants. As the matter is very old, the said request is not entertained, the matter is decided on the basis of pleadings on record.

2. Heard learned counsel for the petitioner and perused the material available on record.

3. Present petition has been filed challenging the order dated 19.9.2012, whereby in exercise of revisional power, the order dated 19.9.2011 challenged in the revision was set-aside and the matter was remanded for fresh decision in the light of observations made in the impugned order. The facts in brief are that the petitioner had filed an injunction suit against four defendants. During the pendency of the suit, the defendant no.2 died for which no substitution application was filed. It was prayed that the entire suit would stand abated as the allegation against all the defendants were common. The said application was rejected by the Civil Court vide order dated 19.9.2011 against which a revision was preferred. The revisional Court while passing the revision recorded that the defendant no.2 has died against whom, no substitution application was filed and entire suit would stand abated. The revisional Court on the basis of two judgments referred, remanded the matter for fresh adjudication as to whether the entire suit could stand abated or the suit could abate only against the defendant no.2.

4. Contention of learned counsel for the petitioner is that in terms of mandate of order 22 Rule 4 (3) C.P.C., it is clear that the suit could abate only against the deceased defendant and not against other defendants who are surviving. He places reliance on the judgments passed by the hon'ble Supreme Court in cases of **Shahazada Bi & Others Vs. Halimabi AIR 2004 SCC 3942** and **N. Khosla Vs. Rajlakshmi (Dead) & Others 2007 (25) LCD 829**.

5. In view of the said, on the face of it, the revisional order

cannot sustain as the same is also contrary to the mandate of order 22 rule 4 (3) of the C.P.C. and the same is set aside. The suit which is pending being suit no.300 of 1998 shall be decided in accordance with law.

6. Therefore, the order dated 19.09.2012 is hereby ***quashed*** and the petition is ***disposed of*** in terms of the said order.

Order Date :- 23.11.2023

-Amit K-