

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 2827 of 2023

Petitioner :- Smt. Hemlata Tripathi And 4 Others

Respondent :- Addl. District Judge, Court No. 5, Lko. And Another

Counsel for Petitioner :- Ashok Kumar Singh,R.K.S. Chauhan

Counsel for Respondent :- Pratap Singh Mehra,Desh Deepak Singh

Hon'ble Rajnish Kumar,J.

1. Heard Sri R.K.S. Chauhan learned counsel for the petitioners and Sri P.S Mehra learned counsel for the respondent no.2. The respondent no.1 is the court concerned.

2. This petition has been filed challenging the order dated 20.03.2023 passed in Regular Civil Appeal no.107 of 2017 (Smt Hemlata Tripathi vs Smt Vishun Kumari), by means of which the application for additional issue filed by the petitioners under Order 14 Rule 1 and 5 read with Section 151 C.P.C has been dismissed.

3. Learned counsel for the petitioners submits that it was the duty of the trial court to frame issue as claimed by the petitioners in regard to the execution of the sale deed but the trial court had failed to frame the same, therefore, the petitioners had moved an application before the appellate court which has wrongly and illegally been rejected without considering the ground raised by the petitioners, therefore, the impugned order is liable to be set aside and the petition allowed.

4. Per contra, learned counsel for the respondent no.2 submits that the issues were framed in the suit in the year, 2010 and the suit was decided on 23.08.2017 and during this period neither any application was moved by the petitioners for framing of any additional issue nor challenged the said order. He further submits that the petitioners had all the opportunity to adduce the evidence in regard to the issues. He further submits that in fact the issues as claimed is matter of evidence and was covered in issue no.1.

5. He further submits that the application for additional issues was moved only after the appeal was heard finally, only to delay the proceedings, whereas a ground was already taken in

appeal in this regard. The appellate court, after considering application of the petitioners has rightly dismissed the same in accordance with law and now the issue of additional issues, in appeal stands decided. The petition is misconceived and lacks merit and liable to be dismissed. There is no illegality or error in the impugned order.

6. Having considered the submissions of learned counsel for the parties, I have perused the records.

7. The respondent no.2 had filed suit for cancellation of the sale deed executed by herself and permanent injunction on the ground that it has fraudulently been got executed by the predecessor-in-interest of the petitioners. Six issues were framed on the basis of the pleadings of the parties by means of the order dated 18.02.2010. It was further recorded in the impugned order on the basis of the lower court record that it was also recorded that neither any other issue is made out nor both the parties prays for framing of any other issue. Thereafter, the trial court proceeded and opportunity of evidence was afforded to the parties. The trial remain pending for about seven years thereafter, but admittedly neither any application for additional issues was made nor the order framing issues was challenged. The suit was decided by judgment and decree dated 23.08.2017. The petitioners challenged the said judgment in Regular Civil Appeal no.107 of 2017.

8. During pendency of appeal an application for additional issue was moved after about four years of the filing of the Regular Civil Appeal, whereas the appellants had taken ground in this regard in appeal as submitted by learned counsel for the respondent no.2, which is not disputed by learned counsel for the petitioners. However, the issue of additional issues has been decided by the appellate court on the application moved by the petitioners.

9. The appellate court, after considering the application of the petitioners has recorded a finding that while disposing of the issue no.1, the issue of execution of the sale deed has been considered on the basis of pleadings and the evidence and accordingly, the findings have been recorded that it can not be said that the trial court has not considered in regard to the ground mentioned in paragraph-7 of the application. Even otherwise, the additional issues sought to be made are matter of evidence and there was ample time and opportunity to adduce evidence in regard to the execution of the sale deed and payment of the sale consideration in regard to issue no.1. Therefore, the application appears to had been filed only to delay the disposal of appeal. This Court does not find any

illegality or error in the order passed by the appellate court.

10. At this stage, learned counsel for the respondent no.2 submits that the respondent no.2 is an old lady of 76 years and petitioners are only lingering on the proceedings and neither arguing in the appeal nor assisting the Court in disposal of the appeal on one or the other ground, even by leveling false allegations against the Court and committing contempt. He produced an order dated 19.08.2023, in which the statement of the learned counsel for the petitioners is recorded. According to which, it is apparent that the petitioners are delaying the disposal of the appeal, even going to the extent of threatening the Court for not deciding the appeal, which is not expected from the party or his counsel.

11. In view of the above and considering the overall facts and circumstances of the case the petition is misconceived and lacks merit. The petition is **dismissed**. No order as to costs.

12. At this stage, learned counsel for the respondent no.2 submits that in old appeal a direction may be issued for disposal of the appeal within some short stipulated period, to which there is no objection by learned counsel for the petitioners.

13. In view of the above, it is provided that the Regular Civil Appeal no.107 of 2017 shall be disposed of by the concerned court expeditiously say within a period of two months from the date of production of certified copy of this order in accordance with law without granting any unnecessary adjournment to either of the parties.

14. The aforesaid directions of deciding appeal shall be complied, without being influenced by dismissal of this petition.

(Rajnish Kumar,J.)

Order Date :- 30.10.2023

Harshita