

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 4414 of 2023

Petitioner :- Sarfuddin

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow And Others

Counsel for Petitioner :- Rudra Pratap Pal

Counsel for Respondent :- G.A.

Hon'ble Rajnish Kumar,J.

Hon'ble Umesh Chandra Sharma,J.

Heard learned counsel for the petitioner and learned A.G.A. for the State.

This petition has been filed for direction to opposite parties No.3 and 4, Circle Officer & Station House Officer, Police Station- Hujurpur, District- Bahraich respectively to investigate the matter and take necessary legal action against opposite party No.5. Further prayer has been made for a direction to the opposite party No.4 to inform the opposite party No.5 about the petitioner's application C-10, filed in the Court of Civil Judge, Senior Division, Bahraich on 24.05.2023.

Submission of the learned counsel for the petitioner is that the respondent No.5, who is the real brother of the petitioner is trying to make construction on the portion of the petitioner without any partition between the petitioner and the respondent No.5. The petitioner has filed a civil suit for partition and permanent injunction in which the notices have been issued on 26.05.2023, but the respondent No.5 is adamant to make the construction. Therefore, the petitioner moved an application before the Sub-Divisional Magistrate, Kaiserganj, Bahraich, who has directed S.H.O., Hujurpur to inquire the matter in accordance with law and maintain peace on the spot, however, nothing has been done. Therefore, the petitioner is constrained to approach this Court.

On the other hand, learned A.G.A. submits that since there is a civil dispute between the petitioner and respondent No.5 and the petitioner has already filed a civil suit which is pending before the Civil Judge, Senior Division, Bahraich, therefore in case, there is any urgency, the petitioner may move appropriate application in the civil suit for disposal of his application for interim injunction during the summer vacation. Even otherwise,

on the application of the petitioner, a direction has already been issued by the Sub-Divisional Magistrate, Bahraich to inquire the matter and maintain peace on the spot and nothing has been disclosed by the petitioner as to what happened thereafter.

Having considered the submission of the learned counsel for the parties, we have perused the records.

Perusal of record indicates that the petitioner has filed a civil suit bearing R.S. NO. 94 of 2023 before the Civil Judge, Senior Division, Bahraich in which the notices have been issued on 26.05.2023 and 05.07.2023 has been fixed for objection and disposal of application 6C under Order 39 Rule 1 and 2 read with Section 151 C.P.C. Thereafter, the petitioner moved an application before the Sub-Divisional Magistrate, Kaiserganj, Bahraich on the apprehension that the respondent No.5, who is the real brother of the petitioner is adamant to make construction on half portion of the petitioner without any partition between the petitioner and respondent No.5. Considering the same, the Sub-Divisional Magistrate has issued a direction on 30.05.2023 to the S.H.O. Hujurpur for making inquiry of the matter and maintaining peace on the spot. The petitioner has not disclosed as to what happened thereafter. Therefore, merely on apprehension and particularly during pendency of the civil suit filed by the petitioner and the dispute of civil nature, this petition is not maintainable. However, if the petitioner has any grievance, he may pursue the civil suit by moving appropriate application in accordance with law.

Dismissed accordingly.

Order Date :- 6.6.2023
Gurpreet Singh