

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 5515 of 2023

Petitioner :- Kamal Ahmad And 3 Others

Respondent :- Amit Kumar Singh And 3 Others

Counsel for Petitioner :- Kazim Ibrahim

Counsel for Respondent :- Vishal Srivastava

Hon'ble Rajnish Kumar,J.

1. Heard Shri Kazim Ibrahim, learned counsel for petitioners, Shri Vishal Srivastava, learned counsel for respondents and perused the record.

2. This petition has been filed for setting aside order dated 14.08.2023 passed by the court of Civil Judge (Junior Division) Shravasti in Regular Suit No. 311 of 2009 (Shamiullah and others Vs. Amit Kumar and others) and judgment and order dated 4.10.2023 passed by court of District Judge, Shravasti in Civil Revision No. 9 of 2023 (Kamal Ahmad and others Vs. Amit Kumar and others).

3. Learned counsel for petitioners submits that the petitioners have filed a suit for setting aside judgment and decree dated 11.9.2000 along with an application for interim injunction. The said application has been rejected without considering the pleas taken by the petitioners to the effect that the petitioners had not entered into alleged compromise on the basis of which the aforesaid decree was passed and on the ground that the petitioner had not challenged the decree for a period of ten years. He further submits that on being challenged the order passed by the trial court, the revisional court has dismissed the revision by means of order dated 14.8.2023 without considering the grounds taken by the petitioners as well as recorded the finding that suit of the petitioner is not maintainable under

Order 23 Rule 3-A of C.P.C., therefore, impugned orders are not sustainable and are liable to be set aside. He further submits that mere on technicality that the date of decree is 16.9.2000 and the same has not been challenged, the prayer for interim relief could not have been rejected. Therefore, the impugned orders are liable to be set aside.

4. Per contra, learned counsel for respondents submits that the petitioners had entered into a compromise in the Regular Suit No. 307 of 1999 and on the basis of compromise, the judgment and decree dated 11.09.2000 was passed. He drew attention of this Court towards Annexure No.6 of the writ petition, which is the compromise, which was entered into between the parties in Regular Suit No. 307 of 1999 and the petitioners had signed the compromise, which was verified by his counsel. He further submits that petitioners had not challenged the compromise decree dated 11.09.2000 for a period of about ten year and only when the land in dispute became valuable after coming near the Highway, the petitioners have challenged the same. The impugned orders have rightly been passed in accordance with law. The petition is liable to be dismissed. He further submits that that an application for stay of the execution proceedings in view of the pendency of Regular Suit No. 311 of 2009 was rejected by the Executing Court by means of order dated 10.7.2023, which has been challenged before this Court in MATTERS UNDER ARTICLE 227 No. - 3909 of 2023 and after arguing at some length, time has been sought for filing supplementary affidavit on 7.8.2023 and till date the same has not been filed.

5. I have considered the submissions of learned counsel for parties and perused the records.

6. The respondent no. 1 had filed Regular Suit No. 307 of 1999

for permanent injunction, in which the father of the petitioners no. 1 to 3 and the petitioner no.4 were the party. The parties had entered into a compromise dated 8.9.2000, on the basis of which a compromise decree dated 11.9.2000 was passed. The petitioners had neither filed any application in the said suit challenging the compromise nor recall of the order. He filed a suit for setting aside judgment and decree dated 11.9.2000 after about ten years. Thereafter also, it appears that the petitioners had not pressed his application for interim injunction and only after the execution was being pressed, the petitioners pressed his application. The trial court considered the application of the petitioners and rejected the same by means of order dated 14.8.2023 recording a specific finding that the compromise was entered into between the parties in the earlier suit and after it was read over before the parties, a compromise decree was passed on 11.09.2000. The trial court, relying on the order dated 10.7.2023 passed in Writ Petition No. 27889 (MS) of 2017 (Nisar Ahmad and others Vs. Amit Kumar), recorded a finding that the execution of the judgment and decree, on the basis of compromise decree is liable to execute. The revisional court also dismissed the revision by means of a reasoned and speaking order. So far as the observations regarding Order 23, Rule 3-A of C.P.C. is concerned, the same is only prima facie and it is to be considered by the trial court in accordance with law. The contention to learned counsel for petitioners that the application has been rejected merely on technicality is misconceived and not sustainable because the application has been considered and dismissed by means of a reasoned and speaking order as disclosed above.

7. In view of the above and considering the over all facts and circumstances of the case, this Court is of the view that the impugned orders have rightly been passed in accordance with

law. There is no illegality or error in the impugned orders

8. The petition is misconceived and lacks merit.

9. Dismissed. No order as to costs.

Order Date :- 30.10.2023

Virendra