

Court No. - 1

Case :- SPECIAL APPEAL No. - 510 of 2023

Appellant :- Kunwar Raj Singh

Respondent :- Someshwar Sirohi

Counsel for Appellant :- Akshat Kumar

Counsel for Respondent :- Rakesh Kumar Srivastava

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

This is an intra-court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 challenging the judgement/order rendered in Writ-C No.7130 of 2023. Learned counsel for the appellant has submitted that the writ court on the one hand has found no merit in the writ petition for being entertained due to the disputed factual questions involved therein but on the contrary, protection has been granted by way of an interim order to the respondent-petitioner until disposal of an interim relief application which he may file alongwith the suit for declaration before the competent revenue court. The protection granted by the writ court has thus been argued to in serious breach of the apex court judgement rendered in the case of *State of Orissa vs. Madan Gopal Rungta* reported in **1951 SCC 1024**

We have carefully gone through the order impugned here in this intra-court appeal and we are convinced to the extent that the order passed by the writ court does not delve into any fundamental right of the respondent-petitioner of which an eminent protection was called for.

We are equally conscious of the fact that the rights of rival parties involved in the matter flow from an unregistered will and a registered gift deed which cannot be construed to be more than statutory rights in the immovable property.

In the normal course, once a fundamental right is not delved into by the writ court for grant of an interim protection, no such relief can be granted by the writ court while dismissing a writ petition. The situation before us however is different in the light of paragraph-16 of the impugned order which for ready reference is extracted below:-

“In view of consent of learned counsels for the parties as also to protect, the property in issue, it is provided that the property in issue shall neither be transferred nor alienated nor over the same, the charge shall be created till the disposal of the application for interim relief preferred by the petitioner.”

The aforesaid paragraph in our considered opinion does not alter the current position or status of the property which however has been protected for the interregnum period so as to avoid future complications which even otherwise would be governed by the principle of lis pendence, once the civil proceedings begin.

Having regard to the arguments put forth, we would have taken a view in the light of apex court judgment cited before us but paragraph-16 of the impugned order comes in our way.

Any party resiling from consent must bring about his/her objection before the court concerned. It

is the court concerned which thereafter may look at the cause and pass appropriate orders.

Thus without commenting any further on paragraph-16 of the impugned order assailed before us, we leave it open to the appellant to make an application before the court concerned for anything stated or understood contrary to what has been recorded in paragraph-16 of the impugned order.

Learned counsel for the appellant has also submitted that even notice was not issued to him at the time when the order impugned was passed.

We may also note that even the appellant in the present appeal has not impleaded all the affected parties before the writ court as respondents. This is yet an additional reason why this Court would not entertain the controversy on any surrounding doubt about paragraph-16 of the order impugned as extracted above. It is open for the appellant to avail the mechanism of review or recall as the case may be before the court concerned.

The appeal is accordingly disposed of.

Order Date :- 3.11.2023

Shahnaz