

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 5995 of 2023

Petitioner :- Rajendra Prasad Alias Rajendra Prasad Misra

Respondent :- Addl. Civil Judge (Junior Division), Court No. 5 Bahraich
And Another

Counsel for Petitioner :- Hom Narayan Awasthi

Hon'ble Rajnish Kumar,J.

1. Shri Hom Narayan Awasthi, learned counsel for the petitioner submits that the file of Mutation Case No. 473/2021 (Computerized No.T202108150100473); Sampurna Nand Versus Late Ram Pal and others under Section 34/35 of U.P.Revenue Code 2006 has wrongly and illegally been returned to the court of Tehsildar, Bahraich by means of the impugned order dated 17.10.2023, because the same would be required for disposal of suit at the time of final hearing for perusing the Will annexed with the said file.

2. Having considered the submissions of learned counsel for the petitioner, I have perused the records.

3. It appears that on an application moved by the petitioner that the aforesaid file is required for evidence, the same was summoned. Thereafter the petitioner has filed his evidence, therefore on an application moved by the defendant that now the same is not required and on account of summoning of the file, the case could not be disposed of by the Tehsildar, Bahraich. After affording opportunity of objection to the petitioner and hearing the parties the application for returning the file has been allowed. The trial court has recorded in its order that the Will is not the basis of the Suit of the petitioner, whereas the defendant is seeking himself to be the owner of the land in dispute on the basis of the Will in question, therefore to prove the same onus is on the defendant. The petitioner has

already submitted his evidence as P.W.1 and the copy of the Will dated 22.07.1995 has also been filed on record as Paper No.Ga-114, on account of which there is no justification to withhold the file of the court of the Tehsildar, Bharaich at this stage due to which the disposal of suit by the Tehsildar, Bahriach is also being delayed. It has also been recorded that if the court would deem it appropriate that the file of the court of Tehsildar, Bahraich is required under law for disposal of the Suit, the same can be summoned again.

4. This court does not find any illegality or error in the order impugned, which may call for any interference by this court. The petition is misconceived and lacks merit.

5. It is, Accordingly, **dismissed**.

(Rajnish Kumar,J.)

Order Date :- 7.12.2023

Banswar