

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6087 of 2023

Petitioner :- Udit Narayan

Respondent :- Smt. Mohana @ Ram Dulari And 3 Others

Counsel for Petitioner :- Vivek Kumar Tripathi, Anoop Kumar, Sudhir Kumar Misra

Hon'ble Rajnish Kumar, J.

Heard Sri Sudhir Kumar Mishra, learned counsel for the petitioner.

This petition has been filed challenging the order dated 01.12.2021 passed by the F.T.C.(Senior Division), Raebareilly in O.S. No.458 of 2009(Udit Narayan versus Smt. Mohana & Others) on application for interim injunction under Order 39 Rule 1 & 2 read with Section 151 C.P.C and order dated 08.02.2023 passed by Additional District Judge 2nd Raebareilly in Misc. Civil Appeal No.22 of 2021(Udit Narayan versus Smt. Mohana & Others) under Order 42 Rule 1(r) read with Section 104 C.P.C.

Learned counsel for the petitioner submits that the respondent no.1, who is the contesting respondent has admitted the land in dispute as bhumidhari land of the petitioner. Even then, the trial court as well as the appellate court failed to grant interim injunction in favour of the petitioner moved alongwith Regular Suit bearing No.458 of 2009 filed for permanent injunction. He further submits that the trial court has erroneously considered the land in dispute as abadi whereas the same is bhumidhari land of the petitioner.

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

As borne out from the pleadings, the petitioner has filed a suit for permanent injunction in regard to land No.5187, area 2.685 hectare admitting in the plaint that the respondent no.1 has constructed a room on the land in dispute and erected chappar, bathroom and tap etc. in front of the said room. The written statement has been filed by the respondent no.1 claiming that predecessor-in-interest of the petitioner had permitted her to use the land in dispute about 30-35 years back. Accordingly, she has constructed the room and using the land in front thereof. The commission report has also come to the effect that the room is situated on the land in dispute and there is khuta, charhi, hauda etc. in front of the said room. The petitioner has nowhere denied

the permission granted to the respondent no.1 by the predecessor-in-interest of the petitioner. Even no ground has been taken in this regard in the appeal filed by the petitioner before the appellate court, which is reflected from the memo of appeal filed alongwith this petition as Annexure No.7.

Considering the aforesaid, the trial court found that the prima facie case is not in favour of the petitioner. Accordingly the balance of inconvenience and the petitioner may not suffer irreparable loss, if the interim injunction is not granted and rejected the application for interim injunction by means of the order dated 01.12.2021. The appellate court also, considering the aforesaid facts and recording a finding that there is admission by the petitioner in regard to the room of the respondent no.1 on the land in dispute, therefore, the other things which are in front of the room must be used by the person who is having the room on the land in dispute, dismissed the appeal.

In view of above, this Court does not find any illegality or error in the findings recorded by the trial court as well as the appellate court, which may call for any interference by this court.

Dismissed accordingly.

Order Date :- 4.12.2023
Akanksha