

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6091 of 2023

Petitioner :- Chhavirani

Respondent :- Dinesh Kumar Yadav And Another

Counsel for Petitioner :- Madan Gopal Tripathi, Santosh Kumar Dwivedi

Hon'ble Rajnish Kumar, J.

Heard Sri Madan Gopal Tripathi learned counsel for the petitioner.

This petition has been filed challenging the order dated 03.08.2023 passed by the District Judge, Shravasti in Misc. Appeal no.16 of 2022 (Dinesh Kumar Yadav and another vs Chhavirani).

Learned counsel for the petitioner submits that the appeal was filed by respondent nos.1 and 2 against the order dated 24.11.2021, by means of which, interim injunction was granted in favour of the petitioner but without considering the same by means of the impugned order, the appellate court has directed to implead Gram Sabha as necessary party whereas it could not have been done by the appellate Court while remanding the case to the trial court.

The appeal has been filed by the respondents against the order dated 24.11.2021, by means of which, an interim injunction has been granted in favour of the petitioner. It appears that while hearing the appeal, the appellate court found that Gata no.144, in regard to which, the dispute has been raised, the petitioner is claiming her possession, which is recorded as *Navin Parti* and the ownership of the *Navin Parti* is with the Gram Sabha, therefore, the Gram Sabha is necessary party and directed to implead the Gram Sabha as respondent in the appeal and fixed the appeal for hearing on 23.08.2023. However, this Court failed to comprehend, as to when the appeal was fixed for hearing on 23.08.2023, why the file of the trial court was remitted back.

The appellate court has the same powers and duties as are conferred and imposed by the CPC on courts of original jurisdiction in respect of suit instituted therein under Section 107 of the Civil Procedure Code, 1908 and under Order 1 Rule 10 of CPC, the Court can direct to implead necessary party.

In view of the above, this Court is of the view that there is no illegality or error in the order impugned, except that the paper book of the trial court has been remitted, if it is so.

In view of the above, the present petition is misconceived, lacks merit and **dismissed**.

(Rajnish Kumar,J.)

Order Date :- 5.12.2023

Harshita