

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 3023 of 2023

Petitioner :- Ram Das

Respondent :- State Of U.P. Thru. D.M., Amethi And Others

Counsel for Petitioner :- Brijesh Kumar Yadav

Counsel for Respondent :- G.A., Satyendra Kumar Tiwari

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the petitioner, learned AGA for respondent nos. 1 and 2-State Authorities, as well as Shri Satyendra Kumar Tiwari, learned counsel for respondent no. 3, and perused the record.

2. The instant petition, under Article 226 of the Constitution of India, seeks the following prayers:-

i. Issue an order or direction in the nature of certiorari for quashing/setting-aside the impugned order dated 28-02-2023 passed by the learned Sessions Judge, Sultanpur in Criminal Revision No.47/2023 'Rangraj Verma Vs. State of U.P. and others' and to remand the matter for a fresh decision.

ii. Issue any other.....

iii. Allow the petition....."

3. Learned counsel for the petitioner submits that by filing the instant petition the order passed by the Sessions Judge in Criminal Revision No.47 of 2023 has been challenged, which was preferred by the respondent no. 3 whereby the revisional court has not only quashed the order dated 27.01.2023 passed by the trial court but has also given a finding with regard to ownership of the disputed land. Elaborating further, it is submitted that the finding of the revisional court with regard to ownership of a particular land is outside the purview of revisional jurisdiction as the duty of the revisional court was to analyze the judgment of the trial court only in order to find out that whether there is any illegality, impropriety or to say jurisdictional error in the impugned judgment and order and, it was not permissible for the revisional court to substitute a finding of fact with its own finding and, thus, material illegality has been committed by the revisional court by substituting the finding of fact arrived at by the trial court with its own finding. It is also submitted that it was the prerogative of the trial court to have given any finding so far as the

rights of the parties are concerned and the revisional court should not have adverted in this jurisdiction. It is vehemently submitted that the order of the revisional court, so far as recording of finding with regard to ownership of the land in favour of the respondent no. 3 is concerned, the same be set-aside/quashed.

4. Learned counsel for the respondent no. 3 vehemently opposes the submissions advanced by the learned counsel for the petitioner and has drawn attention of this court towards the judgment of the trial court and submits that there is no illegality so far as the judgment of the revisional court is concerned whereby the order of the trial court has been set-aside as the trial court had not discussed any evidence at all in its order and even the objections which had been filed by the respondent no. 3 vis-a-vis the report of Lekhpal had not been dealt with by the trial court and in utter ignorance of the evidence available on record, the judgment had been passed by the trial court only by considering the local inspection report which had been made by the Presiding Officer of the trial court, while the said inspection report may not be deemed conclusive as the trial court should have given an opportunity to the parties to file any objection with regard to the report of the local inspection, if prepared by him. It is also vehemently submitted that the petitioner had purchased the land in the year 2009 situated in Gata No.654 while a big abadi number is situated in Gata No.653 wherein the house of the respondent no.3 is situated and the impugned land is part & parcel of his '*Sahan*' and has never been used as a public way and, thus, the revisional court has rightly recorded that the same is owned and possessed by the respondent no. 3 and, hence, there is no illegality so far as the observations of the revisional court pertaining to ownership of the land owned by the respondent no. 3 is concerned and no interference in the impugned revisional order is required.

5. Learned AGA has also supported the impugned judgment passed by the trial court.

6. Having heard learned counsel for the parties and having perused the record, it is reflected that a dispute had arisen between the parties with regard to encroachment on a public way and the petitioner- Ram Das appears to have moved an application in this regard. After obtaining the report from the concerned police station, a conditional order was passed by the S.D.M. concerned and thereafter, after providing an opportunity to lead evidence to the parties and after inspecting the disputed property, the trial court had passed order dated 27.01.2023 whereby the respondent no. 3 was directed to remove the encroachment within 15 days of passing of the order. A perusal of this order would reveal that though the parties have tendered oral as well as documentary evidence before the trial court, the trial court has chosen not to discuss any evidence in its order and has passed order only on the basis of the report of local inspection. Interestingly, even it

has not been discussed in the order as to whether any report has been prepared by the Presiding Judge with regard to local inspection? Thus, in the considered opinion of this court any order, devoid of discussion pertaining to the evidence produced by the parties and without any reason, is null & void and may not stand on its leg and, therefore, there appears no confusion that so far as the order of the revisional court pertaining to quashing of the order of the trial court dated 27.01.2023 is concerned, there is no illegality or to say any irregularity therein and to that extent the order of the revisional order is liable to be confirmed. Ordered accordingly.

7. Coming to the second leg of submission advanced before this court by the learned counsel for the parties pertaining to the order of the revisional court entering into an area of appreciation of evidence in order to record a finding with regard to the right of the parties, in the considered opinion of this court, the revisional court should stay away from such a discussion. The duty of the revisional court is to assess the judgment/order of the trial court on the anvil as to whether any jurisdictional error, illegality or to say any impropriety has been committed by the trial court. The revisional court on finding these illegalities would have to remand the matter back to the trial court for deciding it afresh. Thus, the discussion pertaining to the ownership of property, which has been done by the revisional court, should have been done by the trial court itself as there were various documentary as well as oral evidences available on record on the basis of which it may safely be determined as to whether the way, which is being claimed by the petitioner, is a public way or the 'Sahan' of respondent no. 3.

8. Thus, without commenting anything upon merits/demerits as well as nature and evidentiary value of the evidence which has been produced by the parties before the trial court, the instant petition is ***disposed of finally*** in terms that in pursuance of the order of the revisional court dated 28.02.2023 the respondent no. 2 shall proceed to dispose of the case pending before it without being guided in any way by the observations made by the revisional court.

9. However, this would not mean that the trial court will ignore the settled principles of appreciation of evidence in appreciating the oral and documentary evidence produced before it by the parties. The trial court is reminded that the discussion of evidence and its appreciation, in order to arrive at a conclusion, is life and sole of a judicial order and, without it, the same is a dead wood/corpus. It is expected from the trial court that it would pass an order after appreciating the evidence and would record a finding after discussing all the evidences produced by the parties before it.

10. The trial court shall also make all-out efforts/endeavours to finally dispose of the case pending before it, as expeditiously as possible,

without granting soft adjournment(s) to either parties.

Order Date :- 15.5.2024 MVS/-