

8 12.05.2022

gd/ssd

MAT/430/2022
IA NO: CAN/1/2022
SHRI MANIK SAHA
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Shiba Prasad Mukherjee,
Mr. Manas Kumar Saha,
Mr. Abhishek Banerjee
..for the Appellant.

Ms. Somashree Dey
..for the Respondent nos.6 and 7.

This appeal at the instance of the writ petitioner is directed against the order of the learned Single Judge dated 11.02.2022 whereby WPA 16760 of 2021 has been disposed of taking note of the fact that the appellant has the remedy before the Civil Court.

Though the writ petition has not been placed on record but after going through the pleadings before this Court, we find that the respondent nos.6 and 7 are son and daughter-in-law of the appellant who had married against the wishes of the appellant and are residing in the same premises.

The submission of learned counsel for the appellant is that the respondent nos.6 and 7 do not treat the appellant properly and are harassing, and that they have no right to live in the premises and a complaint was made in this regard by the appellant but no action has been taken.

This fact has been denied by the learned counsel for the respondent nos.6 and 7 by submitting that the appellant is in the habit of filing the cases against all the family members and the writ petition has been filed only for the reason that the respondent nos.6 and 7 had married against the wishes of the appellant.

Having heard the learned counsel for the parties and perusal of the record it is noticed that the writ petition has been filed seeking substantial relief against the private respondents, therefore, the writ itself cannot be maintainable for such a family dispute. The issue which has been raised before this Court involves disputed question of fact which cannot be decided in exercise of the writ jurisdiction under Article 226 of the Constitution of India. This position has been clarified by the Hon'ble Supreme Court in the matter of *Mohan Pandey and Another v. Usha Rani Rajgaria (Smt) and Others* reported in (1992) 4 SCC 61 –

“6. It has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. And in such a case, the Court will issue appropriate direction to the authority concerned. If the real grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law including the Criminal Procedure Code. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which

remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly. We, therefore, hold that the High Court was in error in issuing the impugned direction against the appellants by their judgment under appeal. The appeal is accordingly allowed, the impugned judgment is set aside and the writ petition of the respondents filed in the High Court is dismissed. There will be no order as to costs.”

Having regard to the aforesaid, we are of the opinion that the learned Single Judge has not committed any error in reaching the conclusion that the appellant has a remedy before the Civil Court.

We make it clear that if the appellant approaches the Civil Court or any other competent Forum, then any observation made by the learned Single Judge in the order under appeal will not come in the way.

If the police authorities are not taking any step on the complaint of the appellant, then he has a remedy under the Cr.P.C. for redressal of his grievance.

Hence, we find no reason to interfere with the order of learned Single Judge. The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Krishna Rao, J.)

