

Court No. - 8

Case :- MATTERS UNDER ARTICLE 227 No. - 1034 of 2024

Petitioner :- Mathura Prasad And 4 Others

Respondent :- Dudhai @ Budhai And Another

Counsel for Petitioner :- Ved Prakash Shukla, Shubham Shukla

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the petitioners.

By means of the instant petition, the petitioner assails the order dated 07.11.2023 passed by the Additional District Judge/F.T.C., Gonda in Civil Revision No. 102 of 2022 whereby the Revisional court has dismissed the revision of the petitioners affirming the order dated 10.11.2022 passed by the Additional Civil Judge, Junior Division, Court No. 13, Gonda in Regular Suit No. 62 of 1991 whereby an application for impleadment moved at the behest of private respondent no. 2 was allowed.

The submission of learned counsel for the petitioners is that in the suit, the original defendants had expired. The petitioners have moved an application for substitution and in response thereto the husband of the private respondent no. 2 came to be substituted, however, at that time, the existence of the will said to have been executed in favour of Smt. Majhila, the private respondent no. 2 was not brought on record.

It is at a later stage that Smt. Majhila moved an application for impleadment on the basis of a will in her favour and that in respect of the disputed property, her name was recorded in the revenue records.

Considering the aforesaid, the Trial Court by means of order dated 10.11.2022 allowed the application and directed the petitioner to implead Smt. Majhila as a party to the suit. This order dated 10.11.2022 was assailed by the petitioners in revision and the Revisional Court while dismissing the revision has affirmed the order of the Trial Court without noticing that it was an application by which the proceedings were sought to be delayed and despite the husband of the private respondent no. 2 having been substituted, there was no candid disclosure regarding the will in favour of Smt. Majhila.

Having heard the learned counsel for the petitioner and from the

perusal of the material on record, the counsel for the petitioner could not dispute the fact that Smt. Majhila had sought her impleadment on the basis of a will and that in respect of the disputed property, her name had already been recorded in the revenue records.

It is considering the aforesaid and for the effective and complete adjudication that the Trial Court has exercised its discretion in impleading the private respondent no. 2 and the Revisional Court as well has found favour with the reasoning of the Trial Court.

This Court does not find that there is any error in the order of the impleadment since it is the issue of necessary parties which is required to be considered especially noticing that the suit was in respect of cancellation of a sale deed which is a substantive suit wherein the rights of the parties have to be adjudicated.

Since the private respondent no. 2 had already got her name mutated and prima facie she had an interest in the property in question on the basis of a will executed by late Sri Nanku, accordingly, this Court does not find that there is any merit in the petition which is accordingly dismissed.

It is made clear that the Court has not expressed any expression on merits of the matter and it has been considered only for testing the validity of the order of impleadment.

With the aforesaid, the petition is ***dismissed***.

Order Date :- 29.2.2024

Asheesh