

Court No. - 90

Case :- APPLICATION U/S 482 No. - 20291 of 2023

Applicant :- Jaipal Singh And 2 Others

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Suman Jaiswal

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. At the outset learned counsel for the applicants prays for and is permitted to make necessary correction in the prayer clause of the instant application during the course of the day.

2. Heard learned counsel for the applicants as well as learned A.G.A. for the State and perused the record on board.

3. The applicants have invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. assailing the order dated 03.01.2023 passed by the Additional District & Sessions Judge, Court No. 10, Aligarh in Criminal Revision No. 68 of 2022 affirming the order dated 14.03.2022 passed by the Sub Divisional Officer, Gabhana, Aligarh, under Section 146(1) Cr.P.C. Attaching the property in question.

4. Facts culled out from the averments made in the application are that Rakesh and others-second party (opposite party nos. 2 to 5 complainants) have moved an application under Section 145 Cr.P.C. on the basis of apprehension of breach of peace over Khata No. 15 Plot No. 14 area 2.939 hectare with an allegation that they are owner of the land in question, however, second party (present applicants) are illegally interfering in their possession. The S.H.O., Gabhana has submitted its report dated 01.02.2022 with an averment that Rakesh and others (first party) are share holders to the extent of 1/5 share, however, the second party (present applicants) are claiming their right and title over the property in question and dispute arose between the parties, therefore, there is apprehension of breach of peace on spot. During pendency of the proceeding, Tehsildar, Gabhana has also submitted its report dated 21.02.2022 showing the civil dispute between the parties in different courts. Considering the police report dated 01.02.2022 and the Tehsildar report, learned Sub Divisional Officer has passed the order impugned dated 14.03.2022 attaching the property in question and directed to the S.H.O Gobhana to handover the property in favour of some independent receiver. The revisional

court, on revision being filed on behalf of the present applicants (second party), has dismissed the revision.

5. It is submitted by the learned counsel for the applicants that the trial court as well as revisional court have passed the order in perfunctory manner without applying their judicial mind and without considering the fact that the present applicants are in possession over the property in question on the basis of the registered sale deed dated 24.05.2000 executed by Vinod Kumar (predecessor in the interest of opposite party nos. 2 to 5) in pursuance of the decree dated 14.05.2000 passed by the trial court in a suit for specific performance of contract. In pursuance of the sale deed dated 24.05.2000, name of the present applicants was ordered to be mutated in revenue record vide order dated 19.10.2001 passed by the Tehsildar. Subsequently, while the order was assailed by the opposite parties, the Tehsildar has affirmed the previous order dated 19.10.2001 by subsequent order dated 05.04.2022 (Annexure No. 6). Opposite party nos 2 to 5 have filed an appeal against the order dated 05.04.2022 passed by the Tehsildar, which is still pending consideration and no interim order has been granted in favour of the private opposite parties. Therefore, mutation order dated 19.10.2001 was affirmed and final in favour of the present applicants, who are still in the possession over the property in question to the extent of their share in pursuance of the sale deed dated 24.05.2000.

6. It is further submitted that when the opposite parties could not succeed in the revenue court, they deliberately moved an application under Section 145 Cr.P.C. to dispossess the applicants from the property in question. It is further submitted that the provisions as enunciated under Section 146 Cr.P.C. are not meant to dispossess any party who is already in the possession. No circumstance has been pointed out by the courts below to be one of emergency for the purposes of attaching the property in question.

7. The matter requires consideration.

8. Opposite party no. 1 is already represented through learned A.G.A.

9. Let notices be issued to opposite party nos. 2 to 5 fixing 26.09.2023 as the date. In the meantime, parties shall exchange their respective affidavits.

10. Till the next date of listing, effect and operation of the order dated 14.03.2022 passed by Sub Divisional Magistrate, Gabhana

and order dated 03.01.2023 passed by the Additional District & Sessions Judge, Court No. 10, Aligarh shall remain stayed.

Order Date :- 9.8.2023

Pkb/