Court No. - 51

Case: MATTERS UNDER ARTICLE 227 No. - 8256 of 2024

Petitioner :- Manish Gupta

Respondent :- Indra Kumar And Another

Counsel for Petitioner: - Apoorva Bhatt, Arpit Agarwal

Hon'ble Neeraj Tiwari, J.

1. Heard learned counsel for the petitioner.

- 2. Learned counsel for the petitioner prays for and is permitted to carry out necessary amendment in the petition during the course of the day.
- 3. Learned counsel for the petitioner submitted that earlier, SCC Case No. 26 of 1972 was filed by the respondent No. 1-plaintiff, which was allowed vide judgment and decree dated 01.08.1980, upon which, respondent-plaintiff filed execution proceeding, which was registered as Execution Case No. 5 of 1992. He next submitted that in between, several events took place and ultimately, petitioner-defendant filed objection under Order XXI, Rule 97 CPC, which was registered as Misc. Case No. 239 of 2022. He next submitted that judgment and decree dated 01.08.1980 was passed in respect of plot no. 918/1, whereas, shops of petitioner are situated at plot no. 919/1. He firmly submitted that two shops were allotted to petitioner and his father by Pilibhit Cooperative Housing Society vide orders dated 08.05.2003 & 08.10.2004 and later on both the shops were merged together after obtaining permission from the competent authority. He next submitted that as per the revenue records, i.e. Khatauni, land of the Cooperative Housing Society is not situated at plot no. 918/1, but on plot no. 919/1. He next submitted that during the pendency of Misc. Case No. 5 of 1992, petitioner-defendant has filed application dated 12.10.2022 for appointment of Commission, which was rejected vide first impugned order dated 15.02.2023 only on the ground that along with the application under Order XXI, Rule 97 CPC, petitioner-defendant has not annexed any document. Against order dated 15.02.20223, petitioner filed Civil Revision No. 24 of 2023, which was also rejected on the very same ground vide order dated 29.05.2024. He further pointed out that he has filed both the required documents i.e. Municipal Tax Register and Khatauni along with application under Order XXI, Rule 97 CPC. He next submitted that once the required documents have been annexed along with the application

under Order XXI, Rule 97 CPC filed by the petitioner in the list of documents, it is required on the part of the court to first see the same before passing the impugned order, therefore, impugned order are bad and liable to be set aside.

- 4. Matter requires consideration.
- 5. Issue notice to respondents, returnable within six weeks. Steps be taken within a week.
- 6. List this case on 27.09.2024.
- 7. Until further order of this Court, effect and operations of impugned orders dated 15.02.2023 & 29.05.2024 as well as further proceeding of Execution Case No. 5 of 1992 shall remain stayed.

Order Date :- 13.8.2024

ADY