

(2010) 02 AHC CK 0206
In the Allahabad High Court
Case No : Miscellaneous (S) No. 1151 of 2010

Chaudhary Mujibul Hasan

APPELLANT

Vs

District Judge, Bahraich and others

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 02 AHC CK 0206

Hon'ble Judges : Suresh Chandra Chaurasia, J

Final Decision : Dismissed

Judgement

S.C. Chaurasia, J.—Short counter affidavit filed on behalf of the opposite parties nos.2 & 3 is taken on record.

2. Heard Sri Ganesh Gupta, learned counsel for the petitioner, Sri Rajeev Kumar Tripathi, learned counsel for the opposite parties nos.2 & 3, learned Standing Counsel and perused the record.

3. This writ petition under Article 227 of the Constitution of India has been filed with the prayer that a writ, order or direction in the nature of Mandamus may be issued commanding the opposite party no.1 to dispose of the interim relief application dated 18.02.2010 restraining the opposite parties nos.2 to 4 from making any construction over the land in dispute during the pendency of the revision and the opposite parties nos.2 to 4 may be directed not to change the nature of the land in Suit, during the pendency of the writ petition.

4. The learned counsel for the petitioner has submitted that the Civil Revision No. 2 of 2010 Chaudhary Mujibul Hasan Vs. Udai Pratap Singh has been preferred against the order of dismissal of the suit, but during the pendency of the said Revision, the opposite parties are raising constructions over the land in dispute. His submission is that the application for issue of adinterim injunction has been moved in the revisional Court on 18.02.2010, but it has not been disposed of as yet. His submission is that the petitioner would suffer irreparable loss, if the

opposite parties are not restrained from raising constructions over the land in Suit.

5. The learned counsel for the opposite parties nos.2 & 3 has submitted that the petitioner has filed a Suit for declaration and possession on 18.01.1980. On the pleadings of the parties, a preliminary issue was framed on 14.11.1980 with regard to the valuation of Suit and payment of court fee. The said preliminary issue was decided vide order dated 24.08.1981 and the plaintiff was directed to amend the valuation clause and pay the court fee accordingly. The revision preferred against the said order in the High Court was dismissed vide order dated 30.11.1988. Thereafter, the plaintiff did not comply with the order of the Court and hence, the Suit was dismissed vide order dated 29.08.1991. The application for restoration of the Suit was moved on behalf of the plaintiff on 24.12.2005, which was allowed on 10.07.2009 and the Suit was restored to its original number. Thereafter, sufficient time was granted to the plaintiff for complying with the order of the Court and for payment of court fee, but, he did not comply with the order of the Court, without any sufficient ground and consequently, the Suit was again dismissed vide order dated 14.10.2009. The plaintiff has preferred the said revision against the dismissal order dated 14.10.2009. His submission is that the plaintiff himself is misusing the process of the Court and he does not deserve any relief from this Court.

6. The learned counsel for the opposite parties nos.2 & 3 has also raised a preliminary objection against the maintainability of the writ petition on the ground that the writ petition for issuance of Mandamus is not maintainable through power of attorney holder of the plaintiff. In support of his contention, he has placed reliance on the decision of the Division Bench of this Court reported in [2010 (28) LCD 1] Smt. Gurmeet Kaur Kwatra Vs. Vice Chairman, Varana Development Authority, Varanasi and others.

7. The Division Bench of this Court has held in the case of Smt. Gurmeet Kaur Kwatra (supra), that under no circumstances the writ petition of a power of attorney holder for the purpose of seeking individual relief of an aggrieved person either in the form of writ of certiorari or mandamus or prohibition, can be allowed. It is not disputed by the petitioner that the present writ petition for Mandamus has been filed through the power of attorney holder of the plaintiff. In view of the decision of the Division Bench of this Court, the present writ petition is not maintainable and is liable to be dismissed on this very ground that it has been filed through the power of attorney holder of the plaintiff.

8. In view of the facts narrated above, it is clear that the litigation is going on since the year 1980 and the petitioner/plaintiff is misusing the process of the Court. Due to delaying tactics adopted by the plaintiff/petitioner, no progress has been made in the said Suit for the last about 30 years. The petitioner has not come with clean hands before the Court, hence, he is not entitled to get any relief.

9. In view of the aforesaid discussions, I am of the view that this writ petition is neither maintainable, nor has any merit. Consequently, the writ petition is dismissed with cost assessed at Rs. 10,000/ payable to the opposite parties nos.2 & 3 within two months from today. If the cost is not paid within the said period, the same shall be recovered in accordance with law.