

(2016) 12 AHC CK 0114

In the Allahabad High Court

Case No : Matters Under Article 227 No. 9556 of 2016

Mahendra Prasad

APPELLANT

Vs

Ezaj Mahmood

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order I Rule 10

Citation : (2017) 1 ARC 58

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Ashok Kumar Singh, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.— Heard learned counsel for the petitioners.

2. The plaintiff respondents first set filed suit for decree of permanent injunction in respect of open land of araji no. 877 against the defendant respondents first set i.e. 8 to 12. In the said suit petitioners applied for being impleaded as party.

3. The application was allowed by the court of first instance vide order dated 26.7.2016 but the said order has been set aside in revision vide judgment and order dated 9.11.2016.

4. Aggrieved by the aforesaid revisional order petitioners have preferred this petition contending that the rights of the petitioners would be affected, if any decree in respect of the land in dispute is passed, in as much as, a house of the petitioners exists on the same.

5. The suit is simply for a decree restraining the defendants of the suit not to interfere with the use and possession of the suit property and from raising constructions over it.

6. In the said suit no rights or title over the property are to be adjudicated and no decree for demolition of the house of the petitioners, if any, would be passed.

The petitioners are not claiming rights on the said land or on the constructions existing over it from the defendants to the suit. The revisional court has rightly held that in case any decree is passed in the aforesaid suit no rights of the petitioners would be affected or if they are sought to be dispossessed, the remedy would lie in filing objections under Order 21, Rule 97 98 CPC which are to be adjudicated like an independent suit.

7. In view of the above, the petitioners are not the necessary or proper party to suit.

8. Accordingly, I do not consider that any injustice has been caused by the appellate court which may warrant interference by me in exercise of powers under Article 227 of the Constitution of India.

9. The petition lacks merit and is dismissed.