

**Court No. - 70**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 7714 of 2021

**Petitioner :-** Ratna Devi

**Respondent :-** Triyug Narayan Mishra And 2 Others

**Counsel for Petitioner :-** Ashok Kumar Maurya, Ashok Kumar

**Hon'ble J.J. Munir, J.**

**Order on the Petition**

It is submitted that in a suit for cancellation of a registered Will instituted by the plaintiff-respondent against the defendant-petitioner, besides permanent injunction seeking to restrain the defendant-petitioner and the defendant-respondent from interfering with the plaintiff-respondent's possession over the house, detailed at the foot of the plaint, a temporary injunction application was made, that came to be rejected by the Trial Court.

In appeal, the Appellate Court has reversed the order and granted an injunction in the widest possible terms restraining defendant nos.1 and 2 to the suit from taking any action *qua* the suit property till decision of the suit. It is argued that on the basis of the said order, the defendant-respondent, who has been granted all the property, subject matter of the registered Will executed by her mother-in-law, is in peril of being removed from her hands. It is further argued that in a suit for cancellation of a registered Will, though it may be the burden of the defendant-petitioner to prove the Will that she propounds, the plaintiff-respondent is not entitled to an injunction, that virtually erodes her entire rights to be in possession of the suit property, of which she is the owner by virtue of being the legatee under the impugned Will. It is further argued that the Appellate Court has not recorded any finding about a clear *prima facie* case and has written more of case law than to appraise facts and evidence on record for the purpose of returning relevant findings on the three ingredients involved in a temporary injunction matter.

This Court has noticed that there are remarks by the Appellate Court that the temporary injunction order has been granted contrary to principles, but how a case *prima facie* is made out, has not been indicated. The petitioner's name is recorded in the *Khatauni* and there is a registered Will in her favour relating to the disputed property. This Court also notices that in the operative portion of the order passed in Appeal, the Additional District Judge has

mentioned provisions of law, under which he has made that order. Mentioning of the provisions of law in the operative portion of the order is not something expected *prima facie* of a trained Judge, who is not a lay Court.

Apart from other things, the learned Additional District Judge will indicate by what practice has he mentioned various provisions of law in the operative portion of the order, which ought to carry just the final directions made in the Appeal; neither reasons nor law.

A prima facie case is made out.

Admit.

Issue notice.

Notice is made returnable on 17.02.2022.

Steps be taken both ways, within a week.

Let the Additional District Judge/ Fast Track Court-II, Ballia, who passed the order impugned, submit his report on or before 17.02.2022.

List this petition for orders on **17.02.2022** along with a report regarding service and the postal track attached.

### **Order on the Stay Application**

Issue notice.

Until further orders, both parties shall maintain status quo regarding nature, possession and character of the suit property and none of them shall transfer or encumber the same.

Let a copy of this order be communicated to the Additional District Judge/ Fast Track Court-II, Ballia through the learned District Judge, Ballia by the Registrar (Compliance) within the next **24 hours**.

**Order Date :-** 17.1.2022

Anoop

(J.J. Munir, J.)