

Court No. - 18

Case :- MATTERS UNDER ARTICLE 227 No. - 5086 of 2023

Petitioner :- Shiv Pratap And Another

Respondent :- Meena And 5 Others

Counsel for Petitioner :- Shyam Prakash, Upendra Kumar Sagar

Hon'ble Saurabh Lavania, J.

1. Heard learned counsels for the parties.
2. In view of order proposed to be passed, notice to the private respondent(s) is dispense with.
3. Under challenge are the order dated 03.08.2023 passed by Additional District Judge Court No. 4, Barabanki and order dated 07.03.2022 passed by the Trial Court, Annexure No. 1 & 2 to the petition, respectively.
4. By the order dated 07.03.2022, the Trial Court rejected the application preferred by the petitioner under Order 7 Rule 11 C.P.C. (Ga 14). Relevant portion of the order dated 07.03.2022 reads as under:

"सुना व पत्रावली का अवलोकन किया गया। पत्रावली के अवलोकन से विदित है कि दावा वादीगण घोषणात्मक व स्थायी व्यादेश हेतु लाया गया है। वसीयतकर्ता की वादिनी सं०-1 बहू, वादी सं०-2 पोता व वादिनी सं०-3 पोती है। वादिनी के पति की मृत्यु हो गयी है। वादीगण व प्रतिवादीगण की ओर से प्रस्तुत विधि व्यवस्थाओं का अवलोकन किया। दावे में वाद कारण स्पष्ट है। जहां तक कोर्टफीस का प्रश्न है जवाबदावा आने पर ही वाद बिन्दु के माध्यम से निर्णीत किया जाना न्यायोचित है। प्रतिवादीजन ने कोर्टफीस के आधार पर दावा खारिज किये जाना के याचना की गयी है। प्रतिवादीगण द्वारा अपने प्रार्थना पत्र में यह नहीं बताया गया है कि आदेश 7 नियम 11 जा.दी. की किस विशिष्ट नियम के अंतर्गत वादी का दावा वर्जित है। अतः उपरोक्तनुसार आदेश 7 नियम 11 जा.दी. की परिधि बहुत छोटी होती है। दावे में स्पष्ट *cause of action* दिखाया गया है। पोन्नाला लक्षमियां बनाम के.पी.रेड्डी, ए.आई.आर. 2012 सु.को. 2638 में यह मत व्यक्त किया गया है कि यदि *cause of action* स्पष्ट हो तो दावे को आदेश 7 नियम 11 (b) जा.दी. खारिज नहीं किया जा सकता है। इस मामले में माननीय उच्चतम न्यायालय ने यह मत व्यक्त किया है कि प्रतिवादीगण द्वारा अपने लिखित कथन में दिये गये अभिकथन या वाद पत्र खारिज

करने के लिये दिये गये आवेदन के आधार पर नहीं खारिज किया जा सकता। न्यायालय को समूचे वादपत्र को पढ़ना चाहिये यह पता लगाने के लिये कि क्या यह वाद हेतुक प्रकट करता है या नहीं और यदि यह करता है तो वादपत्र न्यायालय द्वारा आदेश 7 नियम 11 जा.दी. के अधीन अपनी शक्तियों का प्रयोग करते हुए खारिज नहीं किया जा सकता। प्रतिवादीजन द्वारा अभी तक डब्ल्यू.एस. प्रस्तुत नहीं किया गया है। अतः दावा आदेश 7 नियम 11 जा.दी. के अधीन खारिज नहीं किया जा सकता है।

जहां तक मूल्यांकन का प्रश्न है उस संबंध में आदेश 7 नियम 11 (a) जा.दी. यह उपबन्धित करता है कि जहां अनुतोष का मूल्यांकन कम किया गया है वहां न्यायालय वादी को अवसर प्रदान करके ऐसे मूल्यांकन को ठीक करायेंगा वादी को एक निश्चित अवधि के अंतर्गत मूल्यांकन ठीक करने के लिये निर्देश देगा। न्यायालय द्वारा निश्चित की गयी अवधि को बढ़ाया भी जा सकता है। अगर वादी न्यायालय द्वारा निश्चित की गयी अवधि या बढ़ाई गई अवधि के अंतर्गत मूल्यांकन ठीक नहीं करता तो न्यायालय वादपत्र को नामंजूर कर देगा। इस स्तर पर दावे को खारिज किया जाना न्यायोचित विदित नहीं होता है, क्योंकि दीवानी बाद में वादी का हित सर्वोच्च होता है वह *Master of the Suit* होता है। तकनीकी रूप से दावा खारिज किये जाने योग्य नहीं है। अतः उपरोक्तानुसार तथ्यों व परिस्थितियों के दृष्टिगत प्रार्थना पत्र आदेश 7 नियम 11 जा० दी० स्वीकार किये जाने योग्य नहीं है।”

5. The order dated 07.03.2022 was challenged by the petitioner by means of Civil Revision No. 21/2022 (Shiv Pratap and Others Vs Meena and Others). The Revisional Court namely Additional District Judge Court No. 4, Barabanki dismissed the revision vide order dated 03.08.2023. The relevant portion of the same reads as under:

“उपरोक्त पुनरीक्षण निस्तारित करने हेतु सी०पी०सी० के आदेश 7 नियम 11 के प्रावधान सुसंगत हैं। आदेश 7 नियम 11 सी०पी०सी० के अनुसार वाद पत्र वहां पर नामंजूर किया जायेगा

(क) जहां वाद हेतुक प्रकट नहीं करता;

(ख) जहाँ दावाकृत अनुतोष का मूल्यांकन कम किया गया है और वादी मूल्यांकन को ठीक करने के लिये अपेक्षित किये जाने पर उस समय के भीतर जो न्यायालय में नियत किया है, ऐसा करने में असफल रहता है;

(ग) जहां दावाकृत अनुतोष का मूल्यांकन ठीक हैं किन्तु वाद पत्र अपर्याप्त स्टाम्प पत्र पर लिखा गया है और वादी अपेक्षित स्टाम्प पत्र के देने के लिये न्यायालय द्वारा अपेक्षित किये जाने पर उस समय के भीतर जो न्यायालय में नियत किया है, ऐसा करने में असफल रहता है;

(घ) जहां वाद पत्र के कथनों से यह प्रतीत होता है कि वाद किसी विधि द्वारा वर्जित है;

(ङ) जहां यह दो प्रतियों में दाखिल नहीं किया जाता;

(च) जहां वादी नियम 9 के उपबन्धों का अनुपालन करने में असफल रहता है।

इस तरह स्पष्ट है कि उपरोक्त दशाओं में ही वाद पत्र को आदेश 7 नियम 11 सी०पी०सी० के अधीन नामंजूर किया जा सकता है और उस स्थिति में जवाबदावा देखने की आवश्यकता नहीं है।

विचारण न्यायालय द्वारा पारित आदेश दिनांकित 07-03-2022 के परिशीलन से स्पष्ट है कि विचारण न्यायालय द्वारा आदेश 7 नियम 11 जा०दी० प्रार्थनापत्र का

निस्तारण करते हुए स्पष्ट रूप से उल्लिखित किया गया कि न्यायालय को समूचे वद पत्र को पढ़ना चाहिए और यह पता लगाने के लिये कि क्या यह वादहेतुक प्रकट करता है कि नहीं, यदि यह वादहेतुक प्रकट करता है तो वाद पत्र न्यायालय द्वारा आदेश 7 नियम 11 जा०दी० के अधीन अपनी शक्तियों का प्रयोग करते हुए खारिज नहीं किया जा सकता। मूल्यांकन के सम्बंध में न्यायालय द्वारा यह निष्कर्ष दिया गया कि जहां अनुतोष का मूल्यांकन कम किया गया है वहां न्यायालय को वादी को अवसर प्रदान करके ऐसे मूल्यांकन को ठीक करायेगा। वादी को निश्चित अवधि के अन्तर्गत मूल्यांकन ठीक करने के लिये निर्देश देगा। न्यायालय द्वारा निश्चित की गयी अवधि को बढ़ाया भी जा सकता है। अगर वादी न्यायालय द्वारा निश्चित की गयी अवधि या बढ़ाई गयी अवधि के अन्तर्गत मूल्यांकन ठीक नहीं करता तो न्यायालय वाद पत्र को नामंजूर कर देगा। मूलवाद की पत्रावली के परिशीलन से स्पष्ट है कि इसमें न्यायालय द्वारा अभी न तो मूल्यांकन सम्बंधी वादबिन्दु विरचित किया गया न ही निस्तारण किया गया है और आदेश 7 नियम 11(b)&(c) के अधीन मूल्यांकन कम होना अथवा न्यायशुल्क कम अदा होने के सम्बंध में वादी को समय दिये जाने के पश्चात् यदि उसके द्वारा मूल्यांकन को सही नहीं किया जाता या कम कोर्टफीस को पूरा नहीं किया जाता तभी वाद पत्र को नामंजूर करेगा। अर्थात् सर्वप्रथम न्यायालय को मूल्यांकन और अदा किये गये कोर्टफीस के सम्बंध में अपना निष्कर्ष देना है और तत्पश्चात् ही वाद पत्र की नामंजूरी का आदेश पारित किया जा सकता, परन्तु चूंकि प्रस्तुत मामले में वाद का मूल्यांकन एवं अदा किये गये न्यायशुल्क के सम्बंध में वादबिन्दु न तो विरचित हुए हैं न ही उनका निस्तारण हुआ है, ऐसी स्थिति में आदेश 7 नियम 11(b)&(c) जा०दी० के अधीन वादपत्र नामंजूर नहीं किया जा सकता।

जहां तक न्यायालय के क्षेत्राधिकार का सम्बंध है, स्पष्ट है कि वाद वसीयतनामा जो कि स्व० रामसागर द्वारा किया गया, को शून्य घोषित करने हेतु प्रस्तुत किया गया। वसीयतनामा जो कि मूलवाद की पत्रावली में कागज सं.9 ग है, के परिशीलन से यह स्पष्ट है कि रामसागर द्वारा अपनी कुल चल व अचल सम्पत्ति का वसीयतनामा प्रतिवादी सं. 1 व 2 के पक्ष में किया गया तथा वसीयतनामा में ही मृतक रागसागर द्वारा अपनी आराजी, काश्तकारी, बाग एवं मकान के सम्बंध में वसीयत करना कहा गया है। प्रतिवादी द्वारा अपने प्रार्थनापत्र ग-14 में जो कि आदेश 7 नियम 11 जा०दी० के अधीन दी गयी थी, दफा 6 में यह अंकित है कि नौमीलाल के पास जनपद लखनऊ में दो मकान थे। इस तरह स्पष्ट है कि उपरोक्त रामसागर उर्फ नौमीलाल के द्वारा की गयी वसीयत में चल व अचल सम्पत्ति जिसमें मकान एवं काश्तकारी भूमि दोनों शामिल हैं, के सम्बंध में निष्पादित किया गया और वाद पत्र के परिशीलन से स्पष्ट है कि वादी द्वारा बाद पत्र में वादकारण एवं वांछित अनुतोष दोनों ही स्पष्ट रूप से कथित किये गये हैं।

वाद पत्र के परिशीलन से स्पष्ट है कि वाद पत्र में वसीयत को धोखे का परिणाम होना एवं शून्य होना कहते हुए उसे शून्य घोषित करने का अनुतोष मांगा गया है। न्यायालय का क्षेत्राधिकार वादकारण एवं वाद पत्र में याचित अनुतोष के आधार पर निर्धारित होता है। वाद पत्र में अनुतोष वसीयत शून्य घोषित करने हेतु याचित किया गया है। वसीयत चल व अचल सम्पत्ति एवं अचल सम्पत्ति में मकान व कृषि भूमि दोनों शामिल हैं, के सम्बंध में निष्पादित है। ऐसे में सम्पूर्ण विवादित विषय ऐसे हैं जिन पर मात्र सिविल न्यायालय को ही क्षेत्राधिकार प्राप्त है। निःसन्देह आदेश 7 नियम 11 सी०पी०सी० के अधीन मात्र इतना ही देखा जाना है कि क्या वाद पत्र के कथनों से यह दर्शित होता है कि दावा किसी विधि द्वारा वर्जित है। इस सम्बंध में वादपत्र के परिशीलन से स्पष्ट हो चुका है कि वाद पत्र में ऐसा कोई तथ्य नहीं आया है जिससे स्पष्ट रूप से यह निष्कर्षित होता हो कि दावा किसी अधिनियम के प्राविधानों से बाधित है। क्योंकि सम्पूर्ण वाद पत्र के परिशीलन से स्पष्ट है कि सम्पूर्ण विवाद की विषय वस्तु कृषि भूमि एवं आवासीय मकान तथा चल सम्पत्ति है और वसीयत उपरोक्त सभी के सम्बंध में निष्पादित है जो सिविल न्यायालय के क्षेत्राधिकार के

अन्तर्गत है। पुनरीक्षणकर्ता की ओर से विधि व्यवस्था कमला प्रसाद एवं अन्य बनाम कृष्णकान्त पाठक एवं अन्य **2007 (2) AWC 1764 SC** प्रस्तुत की गयी है जिसमें माननीय उच्चतम न्यायालय द्वारा यह विधिक सिद्धान्त प्रतिपादित किया गया है कि जहां वादी का नाम राजस्व अभिलेखों में अंकित न हो और विक्रय के आधार पर क्रेता का नाम राजस्व अभिलेखों में अंकित हो गया हो वहां विक्रय पत्र के निरस्तीकरण का वाद राजस्व न्यायालय में पोषणीय होगा, सिविल न्यायालय में नहीं। स्पष्ट है कि उपरोक्त विधि व्यवस्था कृषि भूमि से सम्बंधित विक्रय विलेख के निरस्तीकरण के सम्बंध में है परन्तु प्रश्नगत मामले में वादी द्वारा वसीयतनामा जिसमें चल व अचल सम्पत्ति मय मकान शामिल है, को शून्य घोषित करने हेतु प्रस्तुत किया गया है। इस कारण सम्मानपूर्वक मेरा मत है कि तथ्यों की भिन्नता के कारण उपरोक्त विधि व्यवस्था प्रस्तुत मामले में लागू नहीं होती। विचारण न्यायालय की पत्रावली के परिशीलन से स्पष्ट है कि विचारण न्यायालय द्वारा अपने आदेश दिनांकित 07-03-2022 में यह सम्प्रेक्षित किया है कि वाद पत्र में वादहेतुक दर्शाया गया है, दावा अल्पमूल्यांकित होना अथवा न्यायशुल्क कम अदा होना दर्शित नहीं होता है। वाद पत्र के परिशीलन से स्पष्ट है कि यह दर्शित नहीं होता कि वाद किसी विधि के प्रावधानों से बाधित है। इस तरह स्पष्ट है कि विचारण न्यायालय द्वारा प्रश्नगत आदेश पारित करते समय वाद पत्र के कथनों एवं प्रतिवादी द्वारा प्रस्तुत प्रार्थनापत्र 14 ग के कथनों पर विचार किया गया है।

अतः उपरोक्त विवेचन के आधार पर न्यायालय इस मत की है कि विचारण न्यायालय द्वारा पारित आदेश दिनांकित 07-03-2022 विधि सिद्धान्तों के अनुरूप है। उसमें किसी प्रकार की अनियमितता, अवैधानिकता नहीं है न ही क्षेत्राधिकार सम्बंधी कोई त्रुटि है। ऐसी स्थिति में आक्षेपित आदेश दिनांकित 07-03-2022 में हस्तक्षेप किये जाने का कोई आधार एवं न्यायोचित कारण नहीं है। तदनुसार पुनरीक्षण निरस्त किये जाने योग्य है।

आदेश

सिविल निगरानी सं. 21/2022 शिव प्रताप एवं एक अन्य बनाम मीना आदि निरस्त की जाती है। विचारण न्यायालय/ सिविल जज (सी०डि०) न्यायालय सं.20, बाराबंकी द्वारा मूलवाद सं. 235/2021 मीना आदि बनाम शिवप्रताप आदि में पारित आदेश दिनांक 07-03-2022 पुष्ट किया जाता है।

इस निर्णय की प्रति के साथ विचारण न्यायालय की पत्रावली विचारण न्यायालय को वापस प्रेषित की जाये। पुनरीक्षण पत्रावली दाखिल अभिलेखागार हो।"

6. This petition has been filed under Article 227 of Constitution of India. The scope of petition under Article 227 has already been settled in various pronouncements by the Hon'ble Supreme Court.

7. In **Waryam Singh v. Amarnath, AIR 1954 SC 215**, a Constitution Bench of the Hon'ble Supreme Court, after examining the scope of Article 227 of the Constitution, observed as under:--

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee, 1951 AIR (Cal) 193 to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

8. In **Hari Vishnu Kamath v. Ahmad Ishaque**, AIR 1955 SC 233, the Hon'ble Supreme Court, in the context of the scope, power and jurisdiction exercised by the High Court, under Articles 226 & 227 of the Constitution of India, observed as under:

"20. We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under Article 227 of the Constitution, and that that superintendence is both judicial and administrative. That was held by this Court in 'Waryam Singh v. Amarnath', AIR 1954 SC 215 (K) , where it was observed that in this respect Article 227 went further than section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under section 107 of the Government of India Act, 1915. It may also be noted that while in a 'certiorari' under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of 'certiorari' and for other reliefs was maintainable under Articles 226 and 227 of the Constitution.

21. Then the question is whether there are proper grounds for the issue of 'certiorari' in the present case. There was considerable argument before us as to the character and scope of the writ of 'certiorari' and the conditions under which it could be issued. The question has been considered by this Court in 'Parry and Co. v. Commercial Employees' Association, Madras', AIR 1952 SC 179 (L):- 'Veerappa Pillai v. Raman and Raman Ltd.' AIR 1952 SC 192 (M); - 'Ebrahim Aboobaker v. Custodian General of Evacuee Property New Delhi' AIR 1952 SC 319 (N), and quite recently in AIR 1954 SC 440 (C). On these authorities, the following propositions may be taken as established: (1) 'Certiorari' will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) 'Certiorari' will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of 'certiorari' acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings or fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior Court were to re-hear the case on the evidence, and substitute its own findings in 'certiorari.' These

propositions are well settled and are not in dispute."

9. In the case of **M.L.Sethi Vs. R.P. Kapur**, reported in (1972) 2 SCC

427. The Hon'ble Supreme Court observed as under:-

"12. The word "jurisdiction" is a verbal cast of many colours. Jurisdiction originally seems to have had the meaning which Lord Baid ascribed to it in Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147, namely, the entitlement "to enter upon the enquiry in question". If there was an entitlement to enter upon an inquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction. The best known formulation of this theory is that made by Lord Denman in R. v. Bolton, (1841) 1 QB 66. He said that the question of jurisdiction is determinable at the commencement, not at the conclusion of the enquiry. In Anisminde Ltd., (1969) 2 AC 147 Lord Reid said:

"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive".

In the same case, Lord Pearce said:

"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an enquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage while engaged on a proper enquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fall to make the inquiry which the Parliament did direct. Any of these things would cause its purported decision to be a nullity."

The dicta of the majority of the House of Lords, in the above case

would show the extent to which 'lack' and 'excess' of jurisdiction have been assimilated or, in other words, the extent to which we have moved away from the traditional concept of "jurisdiction". The effect of the dicta in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. They comes perilously close to saying that there is a jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal", "imposing an unwarranted condition" or "addressing themselves to a wrong question". The majority opinion in the case leaves a Court or Tribunal with virtually no margin of legal error. Whether there is excess of jurisdiction or merely error within jurisdiction can be determined only construing the empowering statute which will give little guidance. It is really a question of how much latitude the Court is prepared to allow in the end it can only be a value judgment (See H.W.R. Wade, "Constitutional and Administrative Aspects of the Anisminic case", Law Quarterly Review, Vol. 85, 1969, P. 198). Why is it that a wrong decision on a question of limitation or res judicata was treated as a jurisdictional error and liable to be interfered with in revision? It is a bit difficult to understand how an erroneous decision on a question of limitation or res judicata would oust the jurisdiction of the Court in the primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack. The reason can only be that the error of law was considered as vital by the Court. And there is no yardstick to determine the magnitude of the error other than the opinion of the Court."

10. In the case of **Chandrasekhar Singh Vs. Siya Ram Singh**, reported in **(1979) 3 SCC 118**. The Hon'ble Supreme Court observed as under:-

"11. The only other question that remains to be considered is whether an order under Section 146(1B) can be interfered with by the High Court in the exercise of its powers under Article 227 of the Constitution. It is admitted that the powers conferred on the High Court under Art. 227 of the Constitution cannot in any way be curtailed by the provisions of the Criminal Procedure Code. Therefore, the powers of the High Court under Art. 227 of the Constitution can be invoked in spite of the restrictions placed under Section 146(1D) of the Criminal Procedure Code. But the scope of interference by the High Court under Art. 227 is restricted. This Court has repeatedly held that "the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors vide 1954 S.C.R.

565 (*Waryam Singh v. Amar Nath*). In a later decision, (*Nagendra Nath Bora v. The Commissioner of Hills Division, and Appeals, Assam*, the view was reiterated and it was held that the power of judicial interference under Article 227 of the Constitution are not greater than the power under Article 226 of the Constitution, and that under Art. 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. In a recent decision, (*Babhutmal Raichand Oswal v. Laxmibai R. Tarts* (2) this Court reiterated the view stated in the earlier decisions referred to and held that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the Court of appeal and that the High Court cannot in exercise of its jurisdiction under Art. 227 convert itself into a court of appeal."

11. In **Mohd. Yunus v. Mohd. Mustaquim, (1983) 4 SCC 566**, Hon'ble Supreme Court held that High Court has very limited scope under Article 227 of the Constitution and even errors of law cannot be corrected in exercise of power of judicial review while exercising such power. The powers can be used sparingly only when High Court comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. It further held that the High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of Tribunal etc. has resulted in grave injustice.

12. In **Rena Drego v. Lalchand Soni, (1998) 3 SCC 341**, the Hon'ble Supreme Court has categorically held that the power under Article 227 of the Constitution is of the judicial superintendence which cannot be used to up-set the conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could have ever.

13. In **Baby v. Travancore Devaswom Board, (1998) 8 SCC 310**, the Hon'ble Supreme Court has held that even if revisional jurisdiction was not available to the High Court, it still have powers under Article

227 of the Constitution of India to set aside the orders so passed by the Tribunal if the finding of fact arrived at was perverse.

14. In **Ajaib Singh v. Sirhind Co-operative Marketing cum Processing Service Society Ltd.,(1999) 6 SCC 82**, the Hon'ble Supreme Court held that High Court is not to substitute its view for the opinion of Authorities/Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

15. The Hon'ble Supreme Court in **Shalini Shyam Shetty v.Rajendra Shankar Patil, (2010) 8 SCC 329**, culled out the following principles:

"(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, "within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and

Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be

directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

16. The Hon'ble Supreme Court in **Madras Bar Association v. Union of India, (2014) 10 SCC 1**, while dealing with the constitutional validity of the National Tax Tribunal Act, 2005, held Judicial Review, under Articles 226 & 227 of the Constitution of India, to be part of the Basic Structure of the Constitution. Even earlier, in **Kartar Singh v. State of Punjab, (1994) 3 SCC 569**, the Court had observed as such.

17. In **Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423** while holding that orders of Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India, it further held that jurisdiction under Article 227 of the Constitution of India was distinct from the jurisdiction under Article 226 of the Constitution of India. To this extent, it also overruled its contrary view in **Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675**. In para 28 of the judgment in Radhey Shyam's case, Hon'ble Supreme Court observed that:

"28. We may also deal with the submission made on behalf of the respondent that the view in Surya Dev Rai stands approved by larger Benches in Shail, Mahendra Saree Emporium and Salem Advocate Bar Assn and on that ground correctness of the said view cannot be gone into by this Bench. In Shail, though reference has been made to Surya Dev Rai, the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In Mahendra Saree Emporium, reference to Surya Dev Rai is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in Salem Bar Assn. in para 40, reference to Surya Dev Rai is for the same purpose. We are, thus, unable to

accept the submission of learned counsel for the respondent."

18. The aforesaid principles stand reiterated by the Hon'ble Supreme Court in **Ram Kishan Fauji v.State of Haryana, (2017) 5 SCC 533.**

19. Learned counsel for the petitioner failed to satisfy this Court from the material available on record that what illegality has been committed by the Trial Court as also by the Revisional Court.

20. Further, this Court, considering the material available on record including the impugned orders quoted above and upon due consideration, this Court finds that the grounds taken by the petitioner for rejection of plaint in the application under Order 7 Rule 11 C.P.C. are not sufficient to attract the provisions of Order 7 Rule 11 C.P.C. and findings recorded by the trial court as also by the revisional court are not perverse. It is for following reasons:

(i) Averments made in the plaint prima facie show a cause of action to file a suit for cancellation of "Will" executed by one Ram Sagar, whereby he excluded the legal heirs of his deceased son Ram Lakhan (father of plaintiff no. 2 & 3 and husband of plaintiff no. 1) and bequeathed his all the property in favour of his other two sons namely Shivpratap (defendant no. 1) and Dharmendra (defendant no. 2).

(ii) Civil suit would be maintainable as "Will", in issue, relates to property situated in urban area as also in rural area. This fact has not been refuted.

(iii) It appears from the impugned order dated 03.08.2023 that "Will" is on record as Para No. 9Ga and this fact is also not in dispute.

(iv) Court fee paid is proper, as appear from the impugned orders and this aspect has also not been disputed. Moreover, if case falls under Sub-rule (b) and (c) of Rule 11 of Order 7, the Court before rejecting the plaint under these rules should provide an opportunity to remove the deficiency and in case the plaintiff fails to do so in the time

provided the plaint can be rejected.

21. In view of aforesaid reasons, the petition has no force and is **dismissed.**

Order Date :- 10.10.2023/Mohit Singh/-