

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 750 of 2014

1. Sukhaiya Prasad, S/o Late Bhaiyalal Kumhar, Age 67 years, Occupation - Potter, R/o Indira Nagar, Kumharpara, Raigarh, P.S. Kotwali, Raigarh, Distt. Raigarh, C.G. Through Power Attorney Holder Parasram Kumhar, S/O Sukhaiya Kumhar, Age 43 years, Occupation-Potter, R/O Indira Nagar, Kumharpara, Raigarh, P.S. Kotwali, Raigarh Distt. Raigarh (C.G.)

---- Petitioner

Versus

1. Dinesh Kumar Agrawal, S/O Late Mahavir Agrawal, Aged 51 Years, Occupation Business, R/O In Front Of Main Hospital Raigarh, Distt. Raigarh (C.G.)
2. Hanuman Prasad Agrawal, S/O Late Gopiram Agrawal, Aged 57 Years, Occupation-Business, R/O Sawariya Building, Ramniwash Tilkies Chowk Raigarh, Distt. Raigarh (C.G.)
3. Rajendra Kumar Agrawal, S/O Late Nagarmal Agrawal Aged 57 Years Occupation-Business, R/O Ramniwash Talkies Road, Raigarh, Distt. Raigarh C.G.
4. State Of Chhattisgarh Through Collector, Raigarh, Distt. Raigarh.

---- Respondents

For Petitioner	Shri Amit Sharma, Advocate
For Respondents No.1 to 3	Shri Roop Naik, Advocate
For Respondent/State	Shri Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10/03/2015

Heard learned counsel for the parties.

1. Petitioner/defendant No.1 is aggrieved by the order passed by the trial Court, whereby his application under Order 32 Rule 4 and Rule 15 of the Code of Civil Procedure, 1908 (for short 'the CPC') for allowing him to appear in the suit through his next friend has been rejected.
2. Plaintiffs/respondent Nos.1 to 3 preferred a suit for specific performance of the contract. In the said suit, the defendant No.1 has preferred an application on the ground that he is suffering from schizophrenia and epilepsy and is not mentally fit, therefore, he should be allowed to participate in the suit through his next friend i.e. his son namely, Parasram Kumhar.
3. While refusing such prayer, the trial Court has observed that the petitioner/defendant No.1 has executed a sale deed in the year 2011 and has also examined himself on oath before the Nazul Officer, Raigarh, therefore, *prima facie*, it appears that he is not of unsound mind.
4. Learned counsel for the petitioner would submit that under Order 32 (4) (a) of the CPC the trial Court was obliged to conduct an enquiry into the mental condition of the petitioner, however, before rejecting his application no such enquiry has been made, therefore, the impugned order deserves to be set aside.
5. In the considered opinion of this Court, when materials are available on record to indicate that the petitioner has been appearing before different authorities and has made statement on oath, *prima facie* there is a doubt

about his averment regarding his claim that he is not mentally sound. Even the medical certificate filed by him as Annexure-P-4 only refers to schizophrenia and epilepsy, however, it does not say that the petitioner is of unsound mind.

6. In the field of medical science, a person suffering from schizophrenia or epilepsy suffers attack of such disease at a particular time and it is not necessary that such person suffers from the said mental illness at all point of time. A schizophrenic person is never called a person of unsound mind. It depends on the degree of the disease. The medical certificate does not inspire confidence to hold that the petitioner is of unsound mind. In the power of attorney, executed by the petitioner, in favour of his son namely, Parasram, also he has referred to his illness, but has not stated that he is mentally unfit. It is also to be seen that in a suit for specific performance of contract, if the defendant who is the prospective vendor, raises a plea of being of unsound mind, the same would affect the outcome of the suit also. Therefore, the prayer under Order 32 (4) (a) of CPC, in such nature of suit, should not be granted in a routine manner.
7. Applying its earlier decisions in the matters of **Surya Dev Rai v. Ram Chander Rai**¹ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**², the Supreme Court in **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**³ has held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a

1(2003) 6 SCC 675

2(2010) 8 SCC 329

3(2013) 9 SCC 374

jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

8. Having considered the limited scope of interference under Article 227 of the Constitution of India; and for the reason that the trial Court has not committed any such illegality or irregularity warranting interference of this Court, the writ petition is liable to be and is hereby dismissed.
9. There shall be no order as to costs.

Gowri

J u d g e