

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1023 of 2016**

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1. Birendra Tiwary, son of Sri Srinath Tiwary,
  2. Arun Kumar Tiwary, son of Sri Ranjit Tiwary, both resident of village & P.O. Chotaki Nanijor, P.S. Nanijor, District – Buxar, &
  3. Sudhir Kumar, son of Sri Siyaram Singh, resident of village - Pariyawan, P.O. Wajidpur, P.S. Bikram, District – Patna

.... .... Appellant/s

Versus

1. Vindhya wasini Devi, wife of late Rajeshwar Singh,
2. Smt. Indu Devi, daughter of late Rajeshwar Singh,
3. Punam Devi, daughter of late Rajeshwar Singh,
4. Kumkum Devi, daughter of late Rajeshwar Singh, all resident of village - Bihta, P.O. & P.S. Bihta, District – Patna

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Shailendra Kumar Verma, Advocate

For the Respondent/s : Mr.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**&**

**HONOURABLE DR. JUSTICE RAVI RANJAN**

**JUDGMENT AND ORDER**

**CAV**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 06-10-2016**

The present appeal is preferred against the order, dated 29.03.2016, passed in C.W.J.C. No. 9833 of 2015 (Birendra Tiwari and Others Vs. Vindhya wasini Devi and Others), filed under Article 227 of the Constitution of India. By the impugned order, dated 29.03.2016, a learned single Judge of this Court has dismissed the said application for the reason that no jurisdictional error was found in the order challenged in the said application and, therefore, no interference in supervisory jurisdiction is called for in the facts and circumstances of the case.

2. The only issue, raised in the present Letters Patent Appeal, is: *Under Article 227 of the Constitution of India, whether a writ of certiorari can be issued by a High Court to set aside a judicial order passed by a civil Court in proceedings under the Code of Civil Procedure, 1908.*

3. The background facts, leading to the question noted above, are set out hereinbelow:

(i) By order, dated 23.04.2015, passed, in Title Suit No. 208 of 2015, by the learned Sub-Judge, 1<sup>st</sup>, Danapur, Patna, the petitioners-appellant's intervention application, made under Order 1 Rule 10(2) of the Code of Civil Procedure, 1908, seeking authorization to intervene in the suit, was rejected.

(ii) The petitioners-appellants filed the application for impleading as party on the ground that they had purchased the property from defendant No.1, who is respondent No.1 herein.

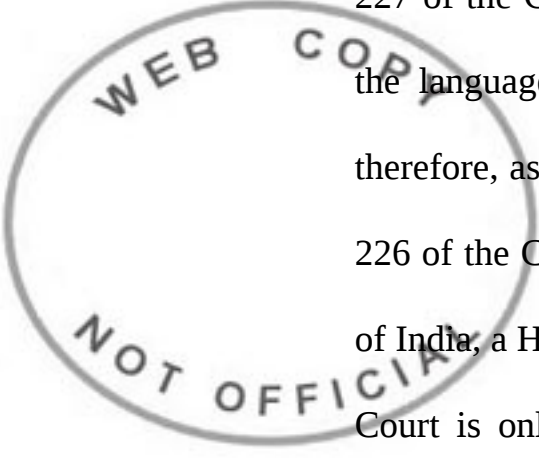
(iii) By filing a writ petition under Article 227 of the Constitution of India, the petitioners-appellants herein, as writ petitioners, had put to challenge the order, dated 23.04.2015, whereby, the application, seeking intervention in the Title Suit, was rejected. The writ petition gave rise to CWJC No.9833 of 2015. By order, dated 29.03.2016, passed by a learned single Judge, the writ petition was dismissed.

4. Aggrieved by the dismissal of the writ petition, the writ petitioners, in the present Letters Patent Appeal, have impugned the order, dated 29.03.2015, aforementioned.

5. We have heard Mr. Shailendra Kumar Verma, learned Counsel, for the petitioners- appellants.

6. It is not in dispute before us that no Letters Patent Appeal lies against an order passed by a High Court in exercise of its power of superintendence under Article 227 of the Constitution of India.

7. Learned counsel for the petitioners-appellants has submitted that the petition numbered as CWJC No. 9833 of 2015, even though is filed under and stated to be an application made under Article 227 of the Constitution of India is, in fact, a writ petition in nature of an application under Article 226 of the Constitution of India. It is, therefore, submitted that the writ petition, i.e., CWJC No. 9833 of 2015, is a petition under Article 226 of the Constitution of India. We do not agree with the submission made by the learned counsel appearing for the petitioners-appellants. The scope and ambit of the powers of a High Court under Article 226 of the Constitution of India and Article 227 of the Constitution of India is no more *res integra* and has been authoritatively dealt with by a three Judge Bench of the Supreme Court in **Radhey Shyam and Another vs. Chhabi Nath and Others**, reported in (2015) 5 SCC 423.



8. It needs to be borne in mind that powers, under Article 227 of the Constitution of India, are strictly guided by the mandate of the language used in Article 227 of the Constitution of India and, therefore, as a narrow scope than the powers enumerated under Article 226 of the Constitution of India. Under Article 227 of the Constitution of India, a High Court cannot issue a writ of *certiorari*; rather, the High Court is only duty bound to examine any order passed by a Court, within the jurisdiction of such High Court, in order to keep such subordinate Court within the ambit of law inasmuch as Article 227 of the Constitution of India empowers a High Court with the power of superintendence in order to keep the subordinate Court within the bounds of law. Under Article 227 of the Constitution of India, the order of a Court, subordinate to the High Court, can be examined only in very exceptional circumstances, where failure of justice is on the face of the record.

9. The above position of law has been succinctly laid down in **Radhey Shyam** (supra), wherein a three Judge Bench of the Supreme Court has held that judicial order of Civil Court is not amenable to writ of *certiorari* under Article 226 of the Constitution of India and an order of Civil Court cannot, therefore, be challenged by taking recourse to, and/or by invoking jurisdiction, under Article 226 of the Constitution of India. It may be pointed out that in **Radhey Shyam** (supra), the Supreme Court had doubted the correctness of the

law laid down, in ***Surya Dev Rai vs. Ram Chandra Rai***, reported in (2003) 6 SCC 675, wherein it had been held that an order of Civil Court was amenable to judicial review under Article 226 of the Constitution of India. The three Judge Bench, at paragraph 29, in ***Radhey Shyam*** (supra), has held that no judicial order of a Civil Court is amenable to writ jurisdiction under Article 226 of the Constitution of India and, thus, the contrary view taken, in this regard, in ***Surya Dev Rai*** (supra), is incorrect and, therefore, overruled.

10. From what has been discussed above, it becomes abundantly clear that an order of a Civil Court may be put to scrutiny by the High Court in exercise of its power of superintendence under Article 227 of the Constitution of India and against such an order, no writ of *certiorari* can be issued by invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution of India.

11. Learned counsel, for the petitioners-appellants, further made a submission that a judicial order passed by a Civil Court under the provisions of Code of Civil Procedure, 1908, is amenable to the extraordinary jurisdiction of a High Court under Article 226 of the Constitution of India.

12. We do not need to consider the said submission made on behalf of the petitioners-appellants for the reason that in the present case, the petition, which was dismissed by the impugned order,

dated 29.03.2016, was filed under Article 227 of the Constitution of India. The petition abovementioned was filed challenging the order of learned Sub-Judge-I, Danapur, Patna, in Title Suit No. 208 of 2005, and the petition was heard and dismissed on merits. By the impugned order, dated 29.03.2016, a learned single Judge of this Court has already dismissed the petition; no further appeal lies inasmuch as no appeal lies against an order passed in exercise of High Court's power of superintendence under Article 227 of the Constitution of India.

**13.** In the result and for the foregoing reasons, this appeal is not maintainable and is, accordingly, dismissed.

**14.** However, there shall be no order as to costs.

**(I. A. Ansari, CJ)**

**Dr. Ravi Ranjan, J: I agree.**

**(Dr. Ravi Ranjan, J)**

*J.Alam/-*

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