

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.718 of 2016

ANIL KUMAR SHRIVASTAVA, SON OF LATE CHITRANJAN SAHAY
VERMA, RESIDENT OF MOHALLA HARI SABHA CHOWK, P.S. –
MITHANPURA, DISTRICT MUZAFFARPUR

.... PETITIONER

VERSUS

1. SHAURYA SUNIL, S/O SUNIL KUMAR, RESIDENT OF MOHALLA
HARI SABHA CHOWK, P.S. MITHANPURA, DISTRICT
MUZAFFARPUR
2. SUNIL KUMAR, SON OF LATE CHITRANJAN SAHAY VERMA,
RESIDENT OF MOHALLA HARI SABHA CHOWK, P.S. –
MITHANPURA, DISTRICT MUZAFFARPUR
3. ANITA SAHAY, DAUGHTER OF LATE CHITRANJAN SAHAY
VERMA, W/O SRI RAMAN KUMAR, VIP COLONY, DISTRICT
RAIPUR, CHHATISGARH
4. SABITA SAHAY, D/O LATE CHITRANJAN SAHAY VERMA, W/O
LATE MOHANJI VERMA, 75, SHAKTINAGAR, SHAKET VIHAR,
ANISHABAD, P.S. PHULWARI, DISTRICT PATNA
5. SUNITA SAHAY, D/O LATE CHITRANJAN SAHAY VERMA, W/O
ASHOK KUMAR LAL, C/O THAKUR, ADARSH COLONY, P.O.
SHASTRINAGAR, P.S. SHASTRI NAGAR, DISTRICT PATNA

.... RESPONDENTS

Appearance :

For the Petitioner/s : Mr. Upendra Prasad II, Advocate
Mr. Muneshwar Prasad, Advocate

For the Respondent/s :

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 20-01-2016

Whether a Division Bench of a High Court can
exercise its power of superintendence, under Article 227 of the
Constitution of India, against an order made, in a suit, by a
Single Bench? This is the moot question, which this application,

under Article 227 of the Constitution of India, has raised.

2. The factual background and stages, leading to the making of the present application, under Article 227 of the Constitution of India, may, now, be noticed as follows:

(i) In the Testamentary Suit No. 03 of 2010 instituted by the respondents herein, as plaintiffs, the present petitioner, who was defendant in the suit, filed an application contending that the said *Testamentary Suit* is not maintainable inasmuch as the property, covered by the said suit, is not *stridhan* of Nirmala Sahay, the testatrix, and she had, therefore, no title or right to execute a Will in respect of the suit property.

(ii) By order, dated 29.10.2015, a learned single Judge of this Court has held the said application as not maintainable on the ground that the only fact, which is required to be determined in the *testamentary suit*, is whether the testatrix had executed the Will in sound state of body and mind without any undue influence and the question as to whether the testatrix had right and title to the property, covered by the Will, is a question, which can be looked into, and decided, in a separate proceeding. On the basis of the reasons so assigned, the learned single Judge of this Court has, as indicated above, dismissed the said application filed by the present petitioner as defendant in the suit.

3. Aggrieved by the order, dated 29.10.2015, this application, under Article 227 of the Constitution of India, has been preferred by the present petitioner.

4. The question, therefore, which confronts us, is: Whether the order, dated 29.10.2015, aforementioned, passed by a learned single Judge of this Court, can be interfered with by a Division Bench of this Court in exercise of power under Article 227 of the Constitution of India?

5. The historical ancestry of Article 227 of the Constitution of India can be traced to Section 107 of the Government of India Act, 1915, which reads as follows:

"107. Powers of High Courts with respect to subordinate courts.— *Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—*

(a) call for returns;

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks

and officers of courts: Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor-General-in-Council, and in other cases of the local government.

6. From a minute reading of the provisions embodied in Section 107 of the Government of India Act, 1915, what becomes transparent is that the High Court was given the power of *superintendence* over all the Courts subject to its appellate jurisdiction.

7. While considering Section 107 of the Government of India Act, 1915, it needs to be borne in mind that prior to coming into force of the Government of India Act, Section 15 of the Indian High Courts Act, 1861, conferred, upon each of the Chartered High Courts only, the power of *superintendence* over all courts subject to its appellate jurisdiction. The High Courts, other than the Chartered High Court, did not enjoy the power of *superintendence* over all THE Courts subject to its appellate jurisdiction.

8. As the High Courts, other than the three Chartered High Courts, did not have the power of *superintendence* over all the Courts subject to its respective appellate jurisdiction, Section 107 of the Government of India

Act, 1915, conferred on every High Court similar power of *superintendence*, which had been conferred on the Chartered High Courts by Section 15 of the Indian High Courts Act, 1861.

9. We may, however, hasten to point out that Government of India Act, 1915, underwent an amendment by the Government of India (Amendment) Act, 1916, and, then, by the Government of India Act, 1919, which, eventually, came to be replaced by the Government of India Act, 1935, and Section 224 of the Government of India Act, 1935, vested limited power of *superintendence* on the subordinate Courts by the High Court.

10. It is of immense importance to note that it was Section 224 of the Government of India Act, 1935, which incorporated, in substance, the provisions of Section 107 of the Government of India Act, 1915. Section 224 of the Government of India Act, 1935, being relevant, is reproduced below:

"224. (1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say. –

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which

books, entries and accounts shall be kept by the officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff attorneys, and all clerks and officers of courts :

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

11. From a careful reading of Section 224 of the Government of India Act, 1935, *vis-a-vis* Section 107 of the Government of India Act, 1915, what can be safely gathered is that the High Court's power of *superintendence*, subject to the appellate jurisdiction of the High Court, was continued under the Government of India Act, 1935. By sub-Section (2) of Section 224 of the Government of India Act, 1935, the High Court's power of *superintendence* was restricted inasmuch as this power of *superintendence* did not exceed to the extent of questioning any judgment of any inferior Court, which was not otherwise subject to appeal or revision. This restriction — imposed on the High Court that it cannot have power of

superintendence on the judgment of any inferior Court, which is not otherwise subject to appeal or revision of the High Court — has been done away with, while making Article 227 of the Constitution of India.

12. In substance, the power of *superintendence*, introduced by the Government of India Act, 1915, was continued till the Government of India Act, 1935, remained in force and it was thereafter that Article 227 of the Constitution of India confers on the High Court the power of *superintendence* over all the Courts and Tribunals subject to the territorial jurisdiction of the High Court. This constitutional aspect would become clearer as we proceed further.

13. Under Section 113 of the Government of India Act, 1915, the Crown, by Letters Patent, could establish a High Court of Judicature in any territory in British India and it was pursuant to the power conferred by Section 113 of the Government of India Act, 1915, that the Crown established High Court of Judicature, at Patna, by Letters Patent, on February 9, 1916.

14. We may, at this stage, pause and take note of what Article 227 of the Constitution of India conveys. For this purpose, Article 227 is reproduced below :

**"227. Power of
superintendence over all courts by the
High Court**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction;

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts;

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces"

15. A careful reading of Article 227 of the



Constitution of India clearly shows that Article 227 vests, in the High Courts, the power of *superintendence*. However, while Section 107 of the Government of India Act vested, in the High Courts, the power of *superintendence* over all the “Courts” subject to its appellate jurisdiction, Article 227 of the Constitution of India has vested, in the High Courts, the power of *superintendence* not only over the ‘Courts’, which are subject to its territorial jurisdiction, but also over all the ‘Tribunals’ in relation to which the High Court exercises territorial jurisdiction.

16. A single Bench of High Court does not fall within the expressions ‘courts’ and ‘tribunals’ throughout the territories interrelation to which a High Court exercises its jurisdiction’. This apart, Clause (2) of Article 227 of the Constitution of India empowers a High Court to (a) call for returns from such courts; (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

17. Obviously, all the powers, which are given to the High Court under sub-Clauses (a), (b) and (c) of Clause 2 of Article 227, are in respect of courts and tribunals, which are subordinate to the territorial jurisdiction of a High Court. A

single Judge or a single Bench of a High Court is not a court subordinate to the Division Bench of the High Court and, therefore, the power of *superintendence*, which is vested in a High Court by Article 227, is not exercisable against order or decision of its own single Bench.

18. Logically extended, it would mean that as against the order passed in a suit, such as the present one, by a single Judge of this Court, no application/petition under Article 227 of the Constitution of India is maintainable.

19. We are, therefore, clearly of the view that the present petition, made under Article 227 of the Constitution of India, is wholly misconceived and cannot be admitted.

20. In the result and for the reasons discussed above, this petition stands dismissed.

21. There shall be no order as to costs.

(I. A. Ansari, ACJ.)

Chakradhari Sharan Singh, J.: I agree.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/AFR

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