

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 53 of 2016

1. Smt. Vijaylaxmi Kesarwani W/o Shri Chedi Lal Kesarwani (Corporator), Aged About 56 Years R/o Pahadi Chouck, Gudhiyari, Civ: & Rev: Dist: Raipur (Chhattisgarh)

---- Petitioner

Versus

1. Sandeep Jain S/o Late Shri Sampat Raj Jain, Aged About 41 Years
2. Suresh Jain S/o Late Shri Sampat Raj Jain, Aged About 43 Years
3. Subodh Jain S/o Late Shri Sampat Raj Jain, Aged About 36 Years
4. Smt. Chandanbala W/o Late Jeevanlal Jain, Aged About 55 Years
Resp.No.1 to 4 R/o Gudhiyari Padav, Tah : Gudhiyari Civ: & Rev: Dist: Raipur (Chhattisgarh)
5. Smt. Sushila Devi, W/o Shri Abhay Parakh, Aged About 66 Years R/o Shivanand Nagar, Gudhiyari Civ: & Rev: Dist: Raipur (Chhattisgarh).
6. Smt. Madhu Devi Surana, W/o Shri Vardhaman Surana, Aged About 58 Years R/o Halvai Line, Sadar Bazar, Civ: & Rev: Dist: Raipur (Chhattisgarh).
7. Smt. Varsha Jain, W/o Shri Prakash Jain, Aged About 39 Years R/o Pasharv Apartments, Choubey Colony, Civ: & Rev: Dist: Raipur (Chhattisgarh).
8. Smt. Lata Jain, W/o Shri Bharat Jain, Aged About 46 Years R/o Hanuman Nagar, Civ: & Rev: Dist: Bannglore (K.A).
9. Ajit Raka, S/o Mahavir Raka, Aged About 36 Years
10. Akash Raka, S/o Mahavir Raka, Aged About 29 Years
11. Smt. Sapna Jain, W/o Amit Jain, & D/o Mahavir Raka, Aged About 34 Years
R/9, R/10 & R/11 R/o Jai Nagar, Civ: & Rev: Dist: Banglore (K.A).

Resp. No.2 to 11 through Their Power Of Attorney Holder
Respondent No. 1/ Sandeep Jain, S/o Late Shri Sampat Raj Jain,
Aged 41 Years, R/o Gudhiyari Padav, Tah: Gudhiyari Civ: & Rev:
Dist: Raipur (Chhattisgarh).

12. State Of Chhattisgarh Collector, Dist: Raipur (Chhattisgarh).

---- Respondent

For Petitioner	Shri J.K. Gupta, Advocate
For Respondents No.1 to 11	Shri V.R. Tiwari, Advocate
For Respondent/State	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/08/2016

1. Petitioner/defendant No.1 is aggrieved by the order passed by the trial Court rejecting his application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 ('the CPC' henceforth) for issuance of commission for local investigation to demarcate the suit land.
2. The plaintiffs have preferred the suit for declaration of title, recovery of possession of 5000 sq.ft. of suit land from the defendant No.1 and for issuance of permanent injunction.
3. When the suit was fixed for recording evidence of plaintiffs' witnesses, the subject application was moved for issuance of commission on the ground that the commission report obtained by the plaintiffs has been submitted by the Revenue Officer without giving opportunity of hearing to the petitioner.

4. The trial Court has passed a detailed order running into six pages and has dealt with each and every aspect of the matter. It is observed by the trial Court that before proceeding to demarcate the land the concerned Tahsildar has issued notice by publication in the newspapers as also by issuing individual notices and at the time of demarcation the adjoining land owners including the petitioner's vendor namely; Vijay, Ashok & Navratan were present and had raised objection which was dealt with and rejected by the Tahsildar and thereafter, order has been passed on 24-11-2010.
5. If the petitioner is aggrieved by the demarcation he may prefer objection to the demarcation, but the process of the Court cannot be utilised for collecting evidence for one or other party to the suit. It also requires to bear in mind that ordinarily power to issue commission for demarcation is invoked when there is dispute about the boundaries or identity of the land and not to ascertain as to whether one of the party to the suit has encroached any portion.
6. Applying its earlier decision in **Surya Dev Rai Vs. Ram Chander Rai**¹ and **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**², the Supreme Court in **Sameer Suresh Gupta through PA Holder Vs. 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 jurisdiction which it does not have

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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.

7. Considering the detailed order passed by the trial Court, it does not appear that the order impugned suffers from any material irregularity or illegality in exercise of jurisdiction, therefore, in view of the law laid down by the Supreme Court in the above-stated decisions, the present petition filed under Article 227 of the Constitution of India, being devoid of merit, is liable to be and is hereby dismissed. No order as to costs.

Sd/-

Judge
Prashant Kumar Mishra

