

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 194 of 2016**

1. Rajkumar S/o Sadhu Ram Lodhi, Aged About 48 Years Caste Lodhi, Agriculturist And R/o Village Mudpar Kala, Tahsil Berla, District Bemetara (Chhattisgarh)....(Defendant No. 2.)
2. Bharatdwaj S/o Sadhu Ram Lodhi, Aged About 58 Years Caste Lodhi, Agriculturist And R/o Village Mudpar Kala, Tahsil Berla, District Bemetara (Chhattisgarh). (Defendant No. 3.)
3. Balram, S/o Sadhu Ram Lodhi, Aged About 38 Years Caste Lodhi, Agriculturist And R/o Village Mudpar Kala, Tahsil Berla, District Bemetara (Chhattisgarh)...(Defendant No. 4.).

---- Petitioners**Versus**

1. Parvati Bai W/o Late Sadhu Ram Lodhi, Aged About 83 Years Occupation Housewife, R/o Village Mudpar Kala, Tahsil Berla, District Bemetara (Chhattisgarh).....(Plaintiff No. 1.).
2. Khem Kumari @ Baby W/o Ramesh Lodhi, Aged About 40 Years R/o Village Kanpa, Tahsil Thankhamhariya, District Bemetara (Chhattisgarh).....(Plaintiff No. 2.).
3. State Of Chhattisgarh, Through The Collector, Bemetara, District Bemetara (Chhattisgarh)...(Defendant No. 5.).
4. Ram Khilawan S/o Sadhu Ram Lodhi, Aged About 52 Years Occupation Agriculturist, R/o Village Mudpar Kala, Tahsil Berla, District Bemetara (Chhattisgarh).....(Defendant No. 1.).

---- Respondents

For Petitioners:
For State:

Mr. Yogesh Chandra, Advocate
Mr. Suresh Khakharia, Dy. Advocate
General

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18.03.2016**

1. By way of present Writ Petition the Petitioners have challenged rejection order dated 28.11.2015 passed by the Second Civil Judge Class I, Bemetara in civil suit No. 6A/2014 whereby the

application filed by the Petitioners under Section 7(1)(a) of the Family Court Act, 1984 (herein after as 'the Act') has been rejected.

2. Learned Counsel for the Petitioners submits that the present Petitioners had moved an application under Section 7(1)(a) of the Act but the same was rejected holding that it was not maintainable.
3. On perusal of the order of the Court there is a categorical finding that provisions under Section 7(1)(a) of the Act would not be applicable in the given facts and circumstances of the present case on account of the fact that there is no matrimonial dispute, but in the instant case it was dispute between the mother and her children. This Court does not find any illegality or perversity in the impugned order.
4. Even otherwise the perusal of the record would show that so far as the case for grant of maintenance is concerned the same is an entirely different cause of action and which is being dealt under the provisions of the Family Court Act, whereas the civil suit in which the application by the Petitioner under Section 7(1)(a) of the Act has been filed is a entirely different cause of action. The instant civil suit was for declaration of title and seeking partition as well as for grant of possession on the property which would otherwise fall upon the plaintiff by virtue of they being legal heirs of the original owner of the property. The said civil suit has to be decided under entirely different provision

of law. Nature of evidence required in the said case is also entirely different and the provision of law governing the suit for declaration of title, partition and possession are also entirely different as compared from the dispute for grant of maintenance which was under consideration before the Family Court.

5. The power under Article 227 of the Constitution of India wherein the High Court exercises power of superintendent over the subordinate Court, has to be sparingly exercised to keep the Courts within the bounds of their authorities. It can be exercised only in the exceptional cases where there appears to be a manifest miscarriage of justice or has to be exercised to correct the mistake of fact and of law. The powers under Article 227 can not be given as a cloak of an appeal in disguise. It can be exercised only to correct an error of law which is apparent on the face of the order or decision or an order passed in absence of or in excess of jurisdiction.
6. In the instant case the Petitioners have failed to show any illegality, irregularity or failure of justice. Further, it also does not reveal that the Court below in passing impugned order has exercised a power which was not otherwise conferred upon it nor is it in excess of jurisdiction.
7. Accordingly, this Court is not inclined to interfere with the impugned order invoking the supervisory jurisdictional power conferred upon the High Court under Article 227 of the Constitution of India.

8. For the aforesaid reasons the present Writ Petition stands rejected.

Sd/-
(P. Sam Koshy)
JUDGE

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