

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 364 of 2016**

1. Jamuna Prasad Gupta S/o Late Ram Das Gupta, Aged About 72 Years .
2. Suresh Kumar Gupta, S/o Jamuna Prasad Gupta, Aged About 40 Years .
3. Rajendra Kumar Gupta, S/o Jamuna Prasad Gupta, Aged About 45 Years .

All are R/o Kashyap Colony, Gali No.1, Karbala Road, Bilaspur, Tahsil And District Bilaspur, (Chhattisgarh)

4. Smt. Shanti Devi Gupta, W/o Shri Ganesh Prasad Gupta, Aged About 50 Years R/o Sarafa, Jhanda Bazar, Katni, District Katni (Madhya Pradesh)
5. Smt. Suman Gupta, W/o Shri Dasrath Gupta, Aged About 35 Years R/o Azad Chowk, Dhanpuri (Budar), District Shahdol (Madhya Pradesh)

---- **Petitioners****Versus**

1. Municipal Corporation Bilaspur Through Its Commissioner, Municipal Corporation, Bilaspur, (Chhattisgarh)
2. Smt. Rajkumari Gupta, Wd/o Late Sanat Kumar Gupta, Aged About 65 Years
3. Krishna Kumar Gupta, S/o Late Sanat Kumar Gupta, Aged About 35 Years

Both are R/o Kila Ward, Juna Bilaspur, Bilaspur, (Chhattisgarh)

---- **Respondents**

For Petitioners	:	Shri Malay Shrivastava, Advocate
For Respondent No.1	:	Shri Arvind Shrivastava, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****20/06/2016**

1. This is plaintiff's petition under Article 227 of the Constitution of India, questioning the legality and validity of the order passed by the trial Court rejecting his application under Order 26 Rule 9 CPC for issuance of

commission for local inspection.

2. Plaintiff's suit for declaration and permanent injunction is based on a sale deed of the land wherein his vendor has mentioned that 25 feet road is available on the adjoining land. It is the case of the plaintiff that by mistake the word 5 feet has been typed as 25 feet in the sale deed and taking benefit of the said mistake, the corporation is proceeding ahead to construct 25 feet road on the spot.
3. If only 5 feet road is available on the spot as claimed by the plaintiff, he can prove it by examining the witnesses and by submitting photographs of the spot and other documentary evidence. The trial Court has rightly observed that provisions contained under Order 26 Rule 9 CPC cannot be invoked for collecting evidence for a party to the suit.
4. In the considered opinion of this Court, the trial Court has not committed any such irregularity or illegality, which needs to be corrected under Article 227 of the Constitution of India.
5. 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 the matter of **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 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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.

6. Having heard learned counsel for the parties and having perused the impugned order, this Court does not find any such illegality or perversity committed by the Court below which would warrant exercise of jurisdiction under Article 227 of the Constitution of India.
7. Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Ashu