

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 604 of 2013**

- Dr.Vijay Singh Gupta S/o Bahadur Singh Gupta Aged About 72 Years R/o Apapura, Katcheri Road, Durg, PO& PS Durg, Dist Durg, CG

---- Petitioner**Versus**

1. Ajit Singh Gupta S/o late Bahadur Singh Aged About 78 Years R/o Apapura, Kutchehri Road, Durg, PO& PS Durg, Dist Durg, CG
2. Ajay Singh Gupta S/o late Bahadur Singh Gupta Aged About 71 Years R/o House No. 179, Utai Road, Near Labour Court, Iranidera, Durg, PO& PS Durg, Dist Durg, CG
3. Skand Gupta S/o Vijay Singh Gupta Aged About 34 Years R/o Apapura, Kutcheri Road, Durg, PO& PS Durg, Dist Durg, CG
4. Milind Gupta S/o Skand Gupta Aged About 36 Years R/o Apapura, Katcheri Road, PO& PS Durg, Dist Durg, CG

---- Respondents

For Petitioner	:	Shri PR Patankar, Advocate
For Respondent No.1	:	Shri VG Tamaskar, Advocate
For Respondent No.2	:	Shri Alok Bakshi and Shri Vivek Shrivastava, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****28/06/2016**

1. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the legality and validity of the order passed by the Trial Court rejecting his application under Order 18 Rule 17 of the Code of Civil Procedure, 1908 (for short 'the CPC') read with Sections 137 & 138 of the Indian Evidence Act (For short 'the Act, 1872').

2. The petitioner is the defendant No.3 in the civil suit. The respondent No.1 Ajit Singh Gupta has preferred a suit for declaration that the judgment and decree dated 29.04.1989 in civil suit No.75-A/89 is void, illegal and without jurisdiction having been obtained by committing fraud as also for permanent injunction to restrain the decree holders from obtaining benefit and using the said judgment and decree in their favour. The present petitioner/defendant No.3 has filed his written statement and is contesting the suit. The petitioner has moved the subject application on 06.12.2012 (Annexure P-5) seeking permission to cross-examine the defendant No.4 on the ground that the defendant No.4 has accepted the plaint averments, therefore, his interest is adverse to the interest of the petitioner/defendant No.3 and, as such, he needs to be cross-examined. The plaintiff and the defendant No.4 objected to the application on submission that similar application was earlier rejected on 05.11.2012, therefore, the present similar application is not maintainable.
3. Placing reliance upon the decisions rendered in **Union of India Vs. Bakhtawar Singh and another¹**, and **M/s. Ennen Castings (P) Ltd. Vs. M.M. Sundaresh and others²** learned counsel appearing for the petitioner would argue that when the interest of

¹ AIR 1978 Punjab &Haryana 321

² AIR 2003 Karnataka 293

the present petitioner/defendant No.3 is in conflict with or adverse to the interest of another defendant, the petitioner is entitled to cross-examine the other defendant who has admitted the plaintiff's case.

4. Per contra, learned counsel appearing for respondent No.1/plaintiff would argue that the petitioner is delaying the trial of the suit, which is pending consideration for the last about 16 years. He would also submit that similar application filed by the defendant No.2 was earlier dismissed, however, the petitioner had challenged the said order before this Court in WP 227 No.273/2013, therefore, the present application and consequently the writ petition is not maintainable.
5. Having heard learned counsel for the parties and on perusal of the record, it would appear that the defendant No.4 has admitted the plaint averments, but has not made any additional averments in support of the plaint. He has been arrayed in the suit as he is one of the legal heir of late Bahadur Singh Gupta to whom the suit property earlier belonged. In the earlier civil suit No.75-A/89, the present defendant No.4 Ajay Singh Gupta was not a party nor the present plaintiff was arrayed as a party even though they are the legal heirs of late Bahadur Singh Gupta. In the earlier suit Randhir Singh Gupta, S/o Bahadur Singh Gupta remained *ex-parte* and two other defendants namely Milind Gupta and Skand

Gupta, both minor sons of the present petitioner Dr. Vijay Singh Gupta, have admitted the suit.

6. It appears that although the defendant No.4 has admitted the plaint averments, but it is for the plaintiff who is required to prove his case by standing on his own legs and not on the basis of the admission made by the defendant No.4. The petitioner has already cross-examined the plaintiff Ajit Singh Gupta.
7. For the foregoing, in the considered opinion of this Court no prejudice would be caused to the petitioner if the defendant No.4 is not allowed to be cross-examined by the petitioner. Moreover when earlier writ petition bearing WP 227 No.273/2013 was dismissed on 29.07.2013, the petitioner had already preferred the subject application on 06.12.2012 but did not bring it to the notice of this Court even though the present petitioner was arrayed as petitioner No.3 in WP 227 No.273/2013. It appears that the petitioner wants to protract the trial which is pending for last about 16 years.
8. Applying its earlier decision in **Surya Dev Rai Vs. Ram Chander Rai**³ and **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**⁴, the Supreme Court in the matter of **Sameer Suresh Gupta through PA Holder Vs. Rahul Kumar Agarwal**⁵ has held that

³ (2003) 6 SCC 675

⁴ (2010) 8 SCC 329

⁵ (2013) 9 SCC 374

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 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.

9. Considering the entire facts and circumstances of the case, it does not appear to this Court that ends of justice would be defeated if the impugned order is allowed to stand. On the contrary, it will unnecessarily protract the litigation.

10. As an upshot, the writ petition is liable to be and is hereby dismissed. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri