

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 120 of 2016**

1. Ahilya Bai W/o Late Tekan Singh, Aged About 65 Years R/o Village Ramgopal Tiwari Ward, Mungeli, Tahsil, Post Office, Police Station And District (Civil & Revenue) Mungeli (Chhattisgarh).
2. Deepak Singh, S/o Late Tekan Singh, Aged About 47 Years R/o Village Tahsil And District Mungeli (Chhattisgarh), Presently R/o Pandariya, Tahsil, Post Office, Police Station And District (Civil & Revenue) Kabirdham (Chhattisgarh).

---- Petitioner**Versus**

1. Lata Pathak D/o Late Ramswaroop Pathak, Aged About 56 Years R/o Village Karhi Colony, Mungeli, Tahsil, Post Office, Police Station And District (Civil & Revenue) Mungeli (Chhattisgarh).
2. State Of Chhattisgarh, Through Collector, Mungeli, Tahsil, Post Office And District (Civil & Revenue) Mungeli (Chhattisgarh).

---- Respondent

For Petitioners	Shri R.N. Jha, Advocate
For Respondent No.1	Shri Sanjay S. Agrawal, Advocate
For Respondent/State	Shri S. Majid Ali, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****27/07/2016**

1. Challenge in this petition under Article 227 of the Constitution of India is to the order passed by the trial Court on 10-12-2015 allowing the plaintiff's prayer for grant of temporary injunction and the appellate order passed on 27-1-2016 whereby the order of the trial Court has been affirmed.
2. On the basis of material available on record in form of mutation of plaintiff's name in the revenue record, diversion of the land for non-agricultural purpose, digging of bore well and electricity connection in her name, the demarcation report, etc. the trial Court concluded that there is strong, *prima facie*, case in favour of the plaintiff, therefore, if the defendants are not restrained from interfering with her possession she shall suffer irreparable loss.
3. The order has been affirmed by the appellate Court. As against the concurrent findings, it is argued by the learned counsel appearing for the petitioners that the trial Court has wrongly observed in para 11 of the order that the petitioners have admitted plaintiff's possession over the land. He would, thus, submit that there is perversity in the approach of the trial Court and the said aspect has been ignored by the appellate Court.

4. In the considered opinion of this Court, even if the observation made in para 11 is not borne out from the pleadings available in the record, there are other material which have been referred by the trial Court in its elaborated order and it is not a case where the temporary injunction has been granted only on the basis of observation in para 11 of the trial Court's order.
5. Applying its earlier decision in **Surya Dev Rai v. Ram Chander Rai**¹ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**², the Supreme Court in **Sameer Suresh Gupta through PA Holder v. 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 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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. In view of the limited jurisdiction available to this Court under Article 227 of the Constitution of India as held by the Supreme Court in the aforesaid matters, this Court is not entitled to interfere with the concurrent findings recorded by the Courts below.
7. At this stage, Shri Jha, learned counsel appearing for the petitioners, would argue that out of 13 decimal of suit land on which the plaintiff is claiming the ownership, the plaintiff has already sold 6 decimal of land to other parties, therefore, the plaintiff is not in possession of entire 13 decimal of land.

8. It appears this fact or ground was not agitated before Courts below. Even otherwise, if ultimately, it is found that the plaintiff has raised construction on some other land over and above the land belonging to the plaintiff, the trial Court would be at liberty to pass appropriate orders while deciding the suit.

9. With the aforesaid observations and directions, the writ petition stands disposed of.

Sd/-

Judge

Prashant Kumar Mishra

Gowri