

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 338 of 2016

- Akhlesh Agrawal S/o Damodar Agrawal, Aged About 55 Years
Occupation Businessman, R/o Ludeg, Tehsil Pattalgaon, Thana
Pattalgaon, Civil And Revenue District Jashpur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Collector Jashpur, Civil And
Revenue District Jashpur (Chhattisgarh)
2. D.R. Dahire, Tahsildar, Pattalgaon, Civil And Revenue District
Jashpur (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Punit Ruparel, Advocate
For Respondent /State	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

13/6/2016

1. Heard
2. This is plaintiff's petition under Article 227 of the Constitution of India assailing the appellate order passed by the First Additional District Judge, Kunkuri, District Jashpur, rejecting his appeal under Order 43 Rule 1 (r) of the CPC, which in turn was preferred against the order passed by the trial Court on 28.11.2015, rejecting his application for grant of temporary injunction under Order 39 Rule 1 & 2 of CPC.

3. It appears the respondent/State has initiated proceedings against the petitioner for removal of encroachment. It is stated by learned counsel for the petitioner/plaintiff that the petitioner has filed a civil suit for declaration of title and permanent injunction against the respondents. In the said suit, an application for grant of temporary injunction has been moved on the ground that the suit land is in fact land belonging to the petitioner's ownership and he has not encroached on any part of the government land.
4. The trial Court rejected the application for grant of temporary injunction on 28.11.2015 and thereafter, the Appellate Court has also dismissed the appeal. Thus, both the Courts below have concurrently found that the petitioner/plaintiff has not been able to establish the three principles governing grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss.
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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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.

6. Having heard learned counsel for the petitioner and having perused the impugned order, this Court does not find any such illegality or perversity committed by the Courts 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)

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