

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 253 of 2016**

1. Neelambar Prasad S/o Late Shri Shivnarayan Rathore, Aged About 50 Years Occupation Service, R/o Village Telikot, Tahsil Kharsiya, District Raigarh Chhattisgarh
2. Nagesh Kumar Ratore, S/o Late Shivanarayan Rathore, Aged About 39 Years Occupation Advocate, R/o Village Telikot, Tahsil Kharsiya, District Raigarh Chhattisgarh
3. Smt. Premsheela, Wd/o Shivnarayan Rathore, Aged About 68 Years Occupation House Wife R/o Village Telikot, Tahsil Kharsiya, District Raigarh Chhattisgarh
4. Parmanand, S/o Late Roopnarayan Rathore, Aged About 69 Years Occupation Document Writer, R/o Village Telikot, Tahsil Kharsiya, District Raigarh Chhattisgarh

---- Petitioner**Versus**

1. Bheesham Prasad S/o Shri Laxmi Prasad Rathore, Aged About 67 Years Occupation Agriculturist R/o Village Telikot, Tahsil Kharsiya, District Raigarh Chhattisgarh
2. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh Chhattisgarh
3. Manohar Lal Patel, S/o Late Darhrath Patel, R/o Village Botalda, Tahsil Kharsiya, District Raigarh Chhattisgarh

---- Respondent

For Petitioners	Shri R.N. Pusty, Advocate
For Respondent/State	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****31/08/2016**

1. Petitioners/plaintiffs have filed a suit for declaration of possession, permanent injunction and confirmation of possession on the pleadings that they are in possession of the suit land admeasuring 0.202 hectares since last about 50-60 years, therefore, they have perfected their title on the principle of adverse possession.
2. Petitioners' application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 ('the CPC' henceforth) has been rejected by the trial Court as well as the appellate Court by the impugned order. It has been held by both the Courts below that although petitioners' possession was recorded in the khasra papers of the year 1984-85, 1989-90 & 1990-91, but in the khasra papers of 2011-12 their possession is not recorded nor the affidavits of the adjoining land owners have been filed by the petitioners. On the contrary, in the sale deed dated 5-7-2011 executed by the defendant No.1 in favour of the defendant No.3 it is mentioned that physical possession has been handed over to the defendant No.3, therefore, it is a matter of evidence as to who is the present occupant of the suit land.

3. The order passed by the trial Court has been affirmed by the appellate Court by a reasoned order.
4. It is settled law that even if another view is possible, High Court exercising jurisdiction under Article 227 of the Constitution of India is not entitled to take a different view than what has been concurrently held by the Courts below. Moreover, in matters where the trial Court has exercised its judicial discretion by a reasoned order, which is not found to be perverse, the High Court should be slow to interfere in such matters.
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 injustice has occasioned thereby,

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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. For the foregoing, this Court does not find any merit in this petition and accordingly, the same is dismissed. However, the trial Court is directed to expedite the trial and decide the civil suit at the earliest preferably within a period of nine months from the date of submission of certified copy of this order. Sd/-

Judge
Prashant Kumar Mishra

Gowri