

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 517 of 2016**

1. Rishi Kumar S/o Mohanlal Kesharwani Aged About 47 Years R/o Rishi Jewellers, Sarsiwa, Tah Bilaigarh, P.S. Sarsiwa, District Baloda Bazar Bhatapara Chhattisgarh
2. Dharmendra Kumar S/o Mohanlal Kesharwani Aged About 35 Years R/o Rishi Jewellers, Saraswa, Tah Bilaigarh, P.S. Saraswa, District Baloda Bazar Bhatapara Chhattisgarh

---- Petitioners**Versus**

1. Gulabchand S/o Late Kanhaiya Lal Aged About 55 Years R/o Village Bargarh, Hari Om Fancy Stores M.L. Chauk, Hospital Road, Bargarh, Tah. & District Bargarh Odisha
2. Kishanchand S/o Late Kanhaiya Lal , Aged About 52 Years R/o Village Bargarh, Hari Om Fancy Stores M.L. Chauk, Hospital Road, Bargarh, Tah & District Bargarh Odisha,
3. Mohan Agrawal S/o Late Kanhaiya Lal Agrawal, Aged About 50 Years R/o Sarsiwa, Tah Bilaigarh, P.S. Sarsiwa, District Baloda Bazar Bhatapara Chhattisgarh
4. Prem Chand, S/o Late Kanhaiya Lal Agrawal Aged About 47 Years R/o Sarsiwa, Tah Bilaigarh, P.S. Sarsiwa, District Baloda Bazar Bhatapara Chhattisgarh
5. State Of Chhattisgarh Through Collector, Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh

---- Respondent

For Petitioners	:	Shri MK Sinha, Advocate
For Respondents-State	:	Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****30/08/2016**

1. Petitioners/defendants are aggrieved by the order passed by the appellate Court whereby the trial Court's order granting temporary injunction in favour of the plaintiffs has been affirmed.
2. The plaintiffs have filed a suit for declaration of title and for further

declaration that the subject sale deed is null and void as also for possession and permanent injunction on the averment that the land belongs to the common ancestor late Kanahiya Lal who died on 03-05-1993, however, thereafter defendant No.2 has sold a part of the joint family property in favour of the other defendants.

3. The plaintiffs also prayed for temporary injunction under Order 39 Rule 1 & 2 CPC on the same set of averments.
4. According to the petitioners/defendants they are bona fide purchaser from one of the member of joint family, therefore, they are entitled to possession and enjoy the property.
5. Both the courts below have found that the plaintiffs have strong prima facie case in their favour because a specific portion of the joint family property cannot be sold in favour of a stranger without there being any partition amongst the members of joint family. The trial Court as well as the appellate Court therefore allowed the temporary injunction in favour of the plaintiffs restraining the petitioners from raising any construction over the suit land.
6. In the considered opinion of this Court, there being concurrent finding in respect of prima facie case and balance of convenience, if the petitioners are in possession, the form in which the temporary injunction has been issued does not suffer from any illegality or material irregularity.
7. 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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.

8. Having considered the submissions and on perusal of the documents, this Court does not find any such ground which would enable this Court to interfere with the impugned orders in exercise of powers under Article 227 of the Constitution of India.
9. For the foregoing, the writ petition is dismissed, however, the trial Court is directed to expedite the trial.

Sd/-

Judge
Prashant Kumar Mishra

Ashu