

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 678 of 2016

1. Rajesh Kumar S/o Shri Bhagwan Das Varlyani, Aged About 53 Years
2. Smt. Bhawna W/o Rajesh Kumar Varlyani, aged about 50 Years R/o C/o Rajesh Kumar Varlyani S/o Bhagan Das Varlyani R/o Bricks Stone Supplier near Nirankari Furniture, Pandri, Raipur Chhattisgarh. At Present Address : LIG 16 Sector, 1, Devendra Nagar, P.S. Devendra Nagar, Distirct Raipur Chhattisgarh

---- Petitioners/defendants

Versus

1. Balveinder Singh @ Gaggi S/o Shri Sukhdev Singh Saini, aged about 51 Years R/o Shriram Nivas, New Shanti Nagar, Raipur, Chhattisgarh
2. Deepak S/o Late Ajit Lal Khatwani, aged about 37 Years R/o Samta Colony, Raipur, Distirct Raipur Chhattisgarh

---- Respondents/plaintiffs

For Petitioners : Shri CR Sahu, ADvocate

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

15/11/2016

In this petition filed under Article 227 of the Constitution of India the petitioners/defendants have assailed the order dated 20.09.2016 (Annexure P-1) passed by Additional District Judge, Raipur in Civil Suit No. 78-B/14 rejecting their application filed under Order VII Rule 11 CPC.

2. Facts of the case in brief are that respondents/plaintiffs filed a suit for specific performance of the contract praying that the defendants may be directed to execute the sale deed in their favour and in case of failure on their part in such execution, let the same be done by the Court itslef and

then possession of the land in question be also given to them.

3. Defendants filed an application under Order VII Rule 11 CPC for dismissal of the suit mainly on the ground that plaintiff No.2 is not a party to the contract and in fact it is he who is financing the litigation to plaintiff No.1 with a view to get his 50% share in the property under litigation and thus the contract comes within the category of Champerty which is not permissible under the law.

4. After making a detailed discussion of the facts including the legal meaning of "Champerty" the Court below has come to the conclusion that there is no Champerty insofar as the contract dated 23.08.2011 is concerned.

5. Counsel for the petitioners/defendants submits that the trial Court has failed to comprehend the actual nature of the suit filed by the plaintiffs as also the gist of the agreement.

6. Heard counsel for the petitioners and perused the documents on record.

7. This Court finds no illegality or perversity in the order impugned as the trial Court after elaborately discussing the meaning of Champerty has arrived at a particular conclusion. Even otherwise, it is only after the evidence the facts could be unveiled and the trial Court would be in a position to make a right assessment of the situation including the gist of agreement and status of plaintiff No.2.

7. All that apart, in the matters of ***Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675***, ***Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329*** and ***Sameer Suresh Gupta through PA Holder v.***

Rahul Kumar Agarwal (2013) 9 SCC 374 it has been consistently held by the Apex Court that supervisory 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) grave injustice or gross failure of justice has occasioned thereby.

It is further held by the Apex Court that issuance of writ of certiorari in exercise of supervisory jurisdiction should be resorted to 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. Thus considering the aforesaid factual and legal position, there appears to be no illegality or perversity in the order impugned passed by the Court below warranting interference by this Court in exercise of the jurisdiction under Article 227 of the Constitution of India.

9. The petition is thus without any substance and accordingly the same is liable to be dismissed. It is dismissed as such. Let the Court below make an endeavour to conclude the trial expeditiously preferably within a period of six months from the date of receipt of this order.

Sd/-

(Pritinker Diwaker)
Judge