

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 739 of 2015**

1. Laxminarayan (Now died), through the legal heirs :-

1(a) Smt. Chandrani, aged about 58 years, wife of Late Laxminarayan,

(b) Shri Kishan, aged about 34 years, son of late Laxminarayan

(c) Harinarayan, aged about 32 years, son of late Laxminarayan

(d) Raj Kumari, aged about 39 years, D/o. Late Laxminarayan

(e) Devabai, aged about 35 years, D/o. Late Laxminarayan,

(f) Chhotelal, aged about 28 years, son of late Laxminarayan

(g) Chhotelal, aged about 28 years, son of late Laxminarayan,

2. Smt. Janak Dulari, wife of Baijnath Kashyap, D/o late Pameshardeen, aged about 52 years,

3. Smt. Ramdulari, widow of late Shri Ramswarup Kashyap, D/o. Late Parmeshwardeen, aged about 48 years

All are R/o. Nariyal Kothi, Madhuban Road, Bilaspur (C.G.)

.... Plaintiffs

---- Petitioners

Versus

1. Brijkumar Kachhi, son of Parmeshwardeen, R/o. Kumharpara, Juna, Bilaspur (C.G.)

2. State of Madhya Pradesh (now Chhattisgarh), Through : Collector, Raipur (C.G.)

3. Harishankar, aged about 30 years, son of Brijkumar Kachhi,

4. Shivshankar, aged about 25 years, son of Brijkumar Kachhi,

5. Manishankar, aged about 30 years (at the time of filing of original suit, the age of Manishankar was mentioned as 14 years),

All R/o. Kumharpara, Juna Bilaspur, District Bilaspur (C.G.)

6. Smt. Dhapu Bai, aged about 50 years, wife of Purushottam Khediya, R/o. Harikunj, Vikas Nagar, 27 Kholi, Bilaspur, District Bilaspur (C.G.)
.... Defendants

---- Respondents

For Petitioners : Mr. C.K. Kesharwani, Advocate
For Respondents No.1,3,4 & 5 : Mr. B.P. Gupta, Advocate.
For Respondent No. 2 : Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/11/2016

Heard.

(1) The petitioners/plaintiffs filed a suit for declaration of title & permanent injunction on 5.5.2000. The said suit was dismissed after recording evidence of the parties on 28.06.2016.

(2) Plaintiffs preferred first appeal thereagainst. The First appellate, by its judgment & decree dated 4.8.2007 allowed the appeal and remitted back the matter to the trial Court for framing additional issues and decide the same afresh. Thereafter, the trial Court framed issues on 20.07.2009 after hearing both the parties and then closed the opportunity of hearing to the petitioner on 20.02.2014 and the case is fixed for evidence and thereafter, the petitioner filed application for leave to amend the plaint and also sought relief of partition.

(3) The trial Court has exercised its judicial discretion to reject the application for amendment finding that there is delay of 15 years in filing the application for amendment.

(4) 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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.

(5) Having heard learned counsel for the parties and having perused the impugned order, this Court does not find any such illegality or perversity committed by the Court below which would warrant exercise of jurisdiction under Article 227 of the Constitution of India.

(6) Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-