

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.296 of 2016

Umend Singh, aged about 60 years, S/o Shri Goverdhan Singh,
R/o Ward No.2, Nayapara, Nagar Panchayat Pandatarayee, Tahsil
Pandariya, Civil and Revenue District Kabeerdham (C.G.)

(Plaintiff)
---- Petitioner

Versus

1. Nagar Panchayat Pandatarayee, through the Chief Municipal Officer, Nagar Palika Pandatarayee, Tahsil Pandariya, Civil and Revenue District Kabeerdham (C.G.)
2. State of Chhattisgarh, through the District Collector, Kabeerdham (C.G.)

(Defendants)
---- Respondents

For Petitioner:	Mr. Malay Kumar Bhaduri, Advocate.
For Respondent No.1:	Mr. Bhupendra Singh, Advocate.
For Respondent No.2:	Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/11/2016

1. The trial Court by its impugned order rejected the objection of the petitioner in the report submitted by the Commissioner.
2. I have heard learned counsel for the parties and perused the documents filed along with the writ petition with utmost circumspection.
3. After submission of report by the Commissioner pursuant to granting of application under Order 26 Rule 9 of the CPC, the Commissioner was examined before the Court and he was fully cross-examined by the plaintiff and thereafter, the trial Court has

reached to the conclusion that the objection raised in the Commissioner's report has no force. The trial Court has examined the Commissioner and the plaintiff has cross-examined him effectively as it appears from the order of the trial Court. The trial Court has properly considered the objection and has found no force in the same which is neither perverse nor contrary to record.

4. The order of the Orissa High Court in the matter of **Badan Prasad Jaswal v. Bira Khamari and another**¹, relied upon by Mr. Malay Kumar Bhaduri, learned counsel appearing for the petitioner, is not applicable to the facts of the present case.
5. Applying its earlier decision in the matters of **Surya Dev Rai v. Ram Chander Rai**² and **Shalini Shyam Shetty v. Rajendra Shankar Patil**³, the Supreme Court in the matter of **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**⁴ has held that supervisory jurisdiction under Article 227 of the Constitution of India 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

1 AIR 1990 Orissa 32

2 (2003) 6 SCC 675

3 (2010) 8 SCC 329

4 (2013) 9 SCC 374

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. In view of the above, the writ petition deserves to be dismissed and is accordingly dismissed. However, the trial Court is directed to expedite the trial and conclude it expeditiously preferably within a period of six months from the date of receipt of a copy of this order. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge