

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 543 of 2016**

1. Smt. Shobha Devi Badvaik, aged about 65 years, W/o Madhukar Rao Badvaik
2. Mukesh Rao Badvaik, aged about 44 years, S/o Madhukar Rao Badvaik
3. Rajesh Rao Badvaik, aged about 41 years, S/o Madhukar Rao badvaik.
4. Suresh Rao Badvaik (wrongly mention as Surel), aged about 38 years, S/o Madhukar Rao Badvaik
5. Ku. Lehiya Badvaik, aged about 35 years, D/o Madhukar Rao Badvaik

All residents of infront of Naya Bus Stand, Dongargarh, Tahsil Dongargarh, Distt. Rajnandgaon (C.G.)...Defendants

---- Petitioners**Versus**

Sudhakar Rao Badvaik, S/o Late Shri Vithal Rao Badvaik, By Occupation Retired Employee, R/o Bhagatsingh, Ward No.17 Dongargarh, Tahsil Dongargarh, Distt. Rajnandgaon through Power of Attorney Holder Rishi Kumar Badvaik, S/o Sudhakar Rao Badvaik, R/o Bhagatsingh Ward No.17, Dongargarh, Tahsil Dongargarh, Distt. Rajnandgaon (C.G.)

....Plaintiff

---- Respondent

For Petitioners : Mr. Parag Kotecha, Advocate.
For Respondent : Mr. Punit Ruparel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02/11/2016**

Heard.

(1) The trial Court heard the Civil Suit on merits and reserved for order/judgment, while preparing the judgment trial Court found that one issue already framed deserves to be modified, and considered it necessary to get the suit land demarcated by appointment of Commissioner; against which this writ petition has been filed by the defendants.

(2) Mr. Parag Kotecha, learned counsel appearing for the petitioners/defendants would submit that trial Court has committed an error of jurisdiction in directing demarcation of the suit land after hearing the parties on merits.

(3) On the other hand, Mr. Punit Ruparel, learned counsel appearing for the plaintiff would support the impugned order.

(4) I have heard learned counsel appearing for the parties and perused the record.

(5) The trial Court after hearing the parties on merits and while preparing the judgment deem it expedient and necessary to get the suit land demarcated by appointment of commissioner in order to decide the controversy finally between the parties, which is purely discretionary in nature, in which I do not find any jurisdictional error to be corrected in jurisdiction under Article 227 of the Constitution of India.

(6) 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**

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

Kumar Agarwal³ 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, 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.

(7) Accordingly, the writ petition is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-