

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.467 of 2016**

Prakash Rathore, S/o late Shankar Lal Rathore, aged about 55 years, R/o Ward No.4, Ahiwara, Police Station Ahiwara, Nandini, Tahsil and District Durg (CG)

--- Petitioner

Versus

Chief Municipal Officer, Municipal Council, Ahiwara, District Durg (CG)

---- Respondent

 For Petitioner : Mr.P.P.Sahu, Advocate
 For Respondent : Mr.P.R.Patankar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****08/11/2016**

1. The petitioner is plaintiff before the trial Court. He filed a suit for declaration of title and permanent injunction. He also filed an application under Order 39 Rule 1 & 2 of the CPC.
2. The trial Court by its order dated 15.10.2015 rejected the application finding no prima-facie case and other two ingredients in favour of the plaintiff.
2. Order rejecting the application for temporary injunction was assailed by the plaintiff before the Appellate Court under Order 43 Rule 1 of the CPC.
3. By the order impugned, the Appellate Court has dismissed the appeal finding no merit and further finding no ground to interfere with the order passed by the trial Court.

4. Being aggrieved and dissatisfied with the said order, the petitioner/plaintiff has filed the present writ petition under Article 227 of the Constitution of India.

5. Learned counsel appearing for the petitioner would submit that concurrent finding recorded by two Courts below rejecting the application for temporary injunction and order of the Appellate Court affirming the order of the trial Court is perverse and contrary to the record.

6. On the other hand, learned counsel appearing for the respondent would submit that concurrent finding recorded by two Courts rejecting the application for temporary injunction is based on evidence and no interference is warranted under Article 227 of the Constitution of India.

7. The trial Court has clearly recorded a finding that the plaintiff has failed to make out a prima-facie case in his favour, the balance of convenience in his favour and will not suffer irreparable loss and injury if temporary injunction is not granted in his favour and refused to grant temporary injunction, which the Appellate Court has affirmed in appeal under Order 43 Rule 1(r) of the CPC.

8. 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**

¹ (2003) 6 SCC 675

² (2010) 8 SCC 329

through PA Holder v. Rahul 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.

9. 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

³ (2013) 9 SCC 374

Constitution of India.

10. Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K Agrawal)
Judge

B/-