

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.708 of 2015**

1. Larence Kumar Luther Through Legal Representatives :
- 1(i) Sanjay Luther Male Age - 52 S/o Late Shri Larence Kumar Luther, R/o Om Zone Shubham Vihar, Bilaspur, Civil And Revenue District Bilaspur (Chhattisgarh)
- 1(ii) Ajay Luther Male Age - 50 S/o Late Shri Larence Kumar Luther, R/o Sharan Nagar, Takhatpur, Tahsil Takhatpur, Civil & Revenue District Bilaspur (Chhattisgarh)

---- Petitioners**Versus**

1. Ajit Kumar Nath S/o Late Shri Yusuf Nath, Aged About 74 Years Occupation Retired Principal, Mission Boys School Bilaspur, (Power Of Attorney Holder, United Christian Missionary Society Indiana United State Of America), R/o Near Mission Boys Hostel Jarhabhata, Bilaspur, Tahsil Bilaspur, Civil & Revenue District- Bilaspur, (Chhattisgarh) Civil & Revenue District Bilaspur, Chhattisgarh.
2. United Christian Missionary Society Indiana, United State Of America, Through Ajit Kumar Nath, S/o Late Shri Yusuf Nath, Aged About 74 Years, Occupation Retired Principal, Mission Boys School Bilaspur (Power Of Attorney Holder, United Christian Missionary Society Indiana, United State Of America) R/o Near Mission Boys Hostel Jarhabhata, Bilaspur, Tahsil Bilaspur, Civil & Revenue District Bilaspur Chhattisgarh (Plaintiffs)
3. State Of Chhattisgarh, Through The Chief Secretary, Mahanadi Bhawan Raipur, Civil & Revenue District Raipur Chhattisgarh (Defendant No. 1)
4. Najul Adhikari, Collectorate Bilaspur Civil & Revenue District Bilaspur Chhattisgarh (Defendant No. 2)

--- Respondents

For Petitioners	:	Shri Parasmani Shriwas, Advocate
For Respondents/State	:	Shri Pravesh Sharma, Advocate and Shri Ashish Surana, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/12/2016

(1) Heard.

(2) By the impugned order dated 03.08.2015, the trial Court has allowed the application filed by the respondents No.1 & 2/plaintiffs herein under Order 39 Rule 7 read with Order 26 Rule 9 and read with Section 151 of CPC against which, this writ petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant No.3.

(3) Learned counsel appearing for the petitioner/defendant No.3 submits that the appointment of Commissioner, the trial Court has committed jurisdictional error in allowing the application under Order 39 Rule 7 read with Order 26 Rule 9 and read with Section 151 of CPC.

(4) After hearing learned counsel for the parties, I am satisfied that the trial Court has exercised jurisdiction properly by allowing the application filed by the respondents No.1 & 2/plaintiffs.

(5) Applying its earlier 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 Agrawal**³ has held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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 : (1) 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) 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.

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

Sd/-

(Sanjay K. Agrawal)
Judge

L/-