

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227) No. 1093 of 2015**

1. Ratnamala Parage D/o Dayaram Ramteke aged about 58 years
2. Shakuntala Meshram D/o Late Dayaram Ramteke, aged about 53 years

Petitioner No.1 and 2 are represented through the power of attorney holder Santosh Pagare S/o Late Fagu Ji Pagare aged about 65 years, R/o 126/A, In front of Ekta Park Maitri Vihaar Supela Thana Bhilai, Tahsil & District Durg (CG)

3. Anita D/o Late Dayaram Ramteke aged about 49 years

All petitioners are R/o House No.161 Street No.26 Shanti Kohka Bhilai Thana Bhilai Tahsil and District Durg (CG)

---- Petitioners**Versus**

1. Devdas S/o Late Dayaram Ramteke Aged About 55 Years R/o House No. 14/1287, Street No. 26 Shanti Kohka Bhilai Police Station Bhilai Tahsil And District Durg (Chhattisgarh)
2. Avinash S/o Dayaram Ramteke (Dead As Unmarried Issueless person hence Deleted and Following are substituted as LRs) :

2 (a) Kumari Jyoti Ramteke Aged about 23 Years D/o Devdas

2.(b) Ku. Preeti Ramteke Aged about 22 Years D/o Devdas Ramteke

2.(c) Abhishek Ramteke Aged about 14 Years S/o Devdas Minor Through Mother Smt. Manjula Ramteke W/o Devdas,

Res. No.2.a to 2.c are R/o House No. 14/1287, Street No. 26 Shanti Kohka Bhilai Police Station Bhilai Tahsil & District Durg (Chhattisgarh)

3. Dayaram Ramteke S/o Antuji Ramteke (Dead LRs were Already On Record Defendants No. 2 To 4 Hence Substituted Through Legal Representatives Who Are Petitioners Herein)

---- Respondents

For Petitioners	:	Mr.N.K.Malviya, Advocate
For Respondents	:	Mr.Pankaj Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/11/2016

1. By the impugned order, the trial Court has allowed the application under Order 6 Rule 7 of the CPC and directed for substitution of legal representatives of plaintiff No.2 namely Ku. Jyoti Ramteke, Ku. Preeti Ramteke and Abhishek Ramteke.

2. Against which, this writ petition under Article 227 of the Constitution of India has been filed.

3. Learned counsel for the petitioners would submit that legal representatives of plaintiff No.2 have been substituted on the basis of will without making any enquiry.

4. By the impugned order, the trial Court has only directed that legal representatives of plaintiff No.2 be brought on record.

5. The trial Court has not committed any illegality or irregularity in granting the substitution of legal representatives of plaintiff No.2 on the basis of will (if any). The trial Court has not adjudicated the legality and validity of will. It is open to challenge by the parties during the course of trial.

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 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 jurisdiction. When a

¹ (2003) 6 SCC 675

² (2010) 8 SCC 329

³ (2013) 9 SCC 374

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 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/-