

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 438 of 2017

1. Dr. A.V. Maheshwar, S/o Late Shri Chhaganlal Maheshwar, aged about 53 years, R/o 101, Shanti Niketan Apartment, Malviya Nagar, Durg, Tahsil and Distt. Durg (C.G.)
2. Narendra Sirbhate, S/o Shri Onkereshwar Sirbhate, Aged about 41 years, R/o Shanti Niketan, Malviya Nagar, Durg, Tehsil and District Durg (C.G.)

---- Petitioners

Versus

1. Smt. Meena Chandak, W/o Shri Yogesh Chandak, R/o A-3, Mahesh Nagar, Pulgaon, Durg, Tehsil and Distt. Durg (C.G.)
2. Smt. Smita Sarda, W/o Shri Rajkumar Sarda, R/o Priyadarshani Parisar, Plot No. 16/4. Bhilai, Tehsil and Distt. Durg (C.G.)

---- Respondents

For Petitioners : Shri Vivek Kumar Tripathi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/07/2017

(1) In a suit filed by the petitioners/plaintiffs, the petitioners also filed application for temporary injunction.

(2) The trial Court, having found, that plaintiffs failed to prove *prima facie* case, balance of convenience in their favour and that they will suffer irreparable loss and injury if injunction is not granted, dismissed the application.

(3) The petitioner/plaintiffs preferred appeal under Order 43 Rule 1 of the Code of Civil Procedure there-against. The Appellate Court has also affirmed the finding so recorded by trial Court and dismissed the appeal, against which, the instant writ petition has been filed under Article 227 of the Constitution of India.

(4) Counsel for the petitioners submits that the concurrent finding recorded by both the courts below are contrary to the record and based on no evidence and, therefore, the order impugned be set aside.

(5) The concurrent findings recorded by both the courts below that plaintiffs failed to prove *prima facie* case, balance of convenience in their favour and that they will suffer irreparable loss and injury if injunction is not granted is a finding of fact based on record and it is not contrary to the record and, therefore, I do not find any illegality in the order impugned warranting interference by this Court in this petition.

(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 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act least 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. However, the trial Court is directed to decide the suit expeditiously preferably within a period of six months from the date of receipt of copy of this order.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-