

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 632 of 2017**

Basubandhu Diwan S/o Shri Jeevandhar Diwan, Aged About 46 Years
 Occupation Government Teacher, R/o Ganjpara, Bemetara,
 Chhattisgarh. Def No. 1

---- Petitioner**Versus**

1. Dr. Naresh Tiwari S/o Late Ramsanehi Tiwari, Aged About 57 Years
 Occupation Agriculturist, Village Balsamund, R/o Near Old Bus Stand,
 Bemetara, District Bemetara Chhattisgarh Plaintiff
2. Suresh Tiwari, S/o Late Ramsanehi Tiwari, Aged About 55 Years
 Occupation Agriculturist, Village Balsamund, R/o Mohbhatha Road,
 Bemetara, Police Station Tahsil And District Bemetara (C.G.)
3. Dr. Avinash Tiwari, S/o Shri Suresh Tiwari, Aged About 32 Years
 Occupation Homeopathic Doctor, R/o Mohbhatha Road, Bemetara,
 Police Station, Tahsil And District Bemetara Defendant.
4. State Of Chhattisgarh, Through The District Collector, Bemetara (C.G.)
 Defendant

---- Respondents

For Petitioner : Shri Malay Kumar Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/10/2017**

- (1) The petitioner/defendant No. 1 filed an application for temporary injunction before the trial Court.
- (2) The trial Court, having found, that defendant No. 1 failed to prove *prima facie* case, balance of convenience in his favour and that he will suffer irreparable loss and injury if injunction is not granted, dismissed the application.
- (3) The defendant No. 1 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 petitioner 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 defendant No.1/petitioner failed to prove *prima facie* case, balance of convenience in his favour and he 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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 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.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-