

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 661 of 2016**

Sushil Kumar, aged 44 years, S/o Chhabiram Sahoo, R/o village
Gaitara, Block-Sandi (Mudpar), Tahsil – Palari, District – Baloda
Bazar – Bhatapara (C.G.) Plaintiff

---- Petitioner

Versus

1. Chhabiram, aged about 75 years, S/o Mohan Sahoo
2. Dakeswar Prasad, age 40 years, S/o Chhabiram Sahoo
3. Devprasad, aged 23 years, S/o Dakeswar Sahoo
4. Lekharam, aged 21 years, S/o Dakeswar Sahoo, All R/o Mudpar
(Sandi), Tahsil – Palari, District Baloda-Bazar- Bhatapara (C.G.)
5. State of C.G. Through: Collector, Balodabazar, Distt. Baloda
Bazar, Bhatapara Defendants

---- Respondents

For Petitioner : Mr. Shree Kumar Agrawal, Senior
Advocate with Shri Anand Kumar
Gupta, Advocate.

For Respondents No. 1 to 4: Mr. Pushpendra Kumar Patel,
Advocate.

For Respondent No. 5 : Mr. Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/07/2017**

(1) Petitioner/plaintiff's application for directing D.N.A. Test of respondent No. 1 (petitioner's father) has been rejected by the impugned order, against which instant writ petition under Article 227 of the Constitution of India has been filed questioning the same.

(2) Learned counsel appearing for the petitioner would submit that the trial Court has committed jurisdictional error in rejecting the application filed for D.N.A Test of respondent No. 1 and, therefore, the impugned

order is liable to be set aside.

(3) Per contra, learned counsel for the respondents No. 1 to 4 support the impugned order.

(4) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(5) The petitioner/plaintiff has filed suit for declaration of title, separate possession and partition and application for interim injunction was also filed by the petitioner/plaintiff along with the suit, in which, the defendant No. 1 has filed his written statement stating *inter alia* that he is not son of petitioner/plaintiff. Upon filing of written statement, the plaintiff/petitioner has moved an application for directing D.N.A. Test of the respondent No.1.

(6) The trial Court has clearly recorded a finding that plaintiff has to prove his own case and the present suit is not the suit for declaration of status or paternity of defendant No.1 and, therefore, direction of DNA test of respondent No.1 cannot be allowed to be permitted.

(7) In the matter of **Dipanwita Roy Vs. Ronobroto Roy**¹, their Lordships of the Supreme Court have held that D.N.A. test has to be directed only in exceptional cases. I do not find any exceptional ground for directing D.N.A. Test.

(8) Applying its earlier decision in **Surya Dev Rai v. Ram Chander Rai**² and **Shalini Shyam Shetty v. Rajendra Shankar Patil**³, the Supreme Court in **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**⁴ has held that supervisory jurisdiction under

1 AIR 2015 SC 418

2 (2003) 6 SCC 675

3 (2010) 8 SCC 329

4 (2013) 9 SCC 374

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 least a gross failure of justice or grave injustice should occasion.

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

Sd/-

(Sanja K. Agrawal)
Judge

D/-