

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 666 of 2016**

Sagun Yadav, son of late Punau Yadav, aged about 52 years, R/o. Village Haransinghi, Tahsil Gunderdehi, District Balod (C.G.) Plaintiff

---- Petitioner**Versus**

1. Mukund Thakur, son of late Laganu Thakur, aged about 50 years,
2. Ramkhilawan, son of Banwali Nishad, aged about 50 years,
3. Arjun, son of Ramdayal, aged about 45 years,
4. Ramdayal Nishad, son of Gayaram,
5. Narotta Thakur, son of Kartik Ram, aged about 55 years,
6. Fagwa Satnami, son of Budharu, aged about 53 years,

All are R/o. Haransinghi, Tahsil Gunderdehi, District Balod (C.G.)

7. State of Chhattisgarh, Through : Collector, Balod, District Balod (C.G.) (As per Annexures P-2 & P-3) Defendants

---- Respondents

For Petitioner : Mr. Shikhar Sharma, Advocate.
For Respondent No. 7/State: Mr. S. Majid Ali, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/04/2017**

Heard.

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

injunction.

(2) The trial Court, having found, that plaintiffs failed to prove prima facie case and 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 petitioners/plaintiffs preferred appeal under Order 43 Rule 1 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 plaintiff failed to prove prima facie case and 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 material available 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**

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

Holder v. Rahul Kumar Agarwal³ 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 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.

Sd/-

(Sanjay K. Agrawal)
Judge

