

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 650 of 2017**

Aghan Bai, Wd/o Gauhajan Kenwat, Aged about 65 years,
Resident of village – Devraha, Tahsil – Bilaigarh, District Baloda
Bazar – Bhatapara (C.G.)Defendant No.1

---- Petitioner**Versus**

1. Rammati, D/o Phutu @ Heeraray, Aged about 68 years, (Divorce wife), Resident of Chourha Devri, Tahsil – Bamhanidih, District Janjgir -Champa (C.G.) Plaintiff
2. Yogendra Kumar, S/o Sadhram Kenwat, aged about 24 years, (Defendant No. 2)
3. Parmeshwar Kumar, S/o Sadhram Kenwat, aged about 22 years, (Defendant No. 3)

Both are resident of village – Devraha, Tahsil – Bilaigarh, District Baloda Bazar – Bhatapara (C.G.)

4. State of Chhattisgarh, through Collector, Baloda Bazar, District Baloda Bazar – Bhatapara (C.G.)

---- Respondents

For Petitioner : Mr. Sandeep Dubey, Advocate.
For Respondent No. 4/State: Mr. Aditya Sharma, Panel Lawyer

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

- (1) Counsel for the petitioner/defendant submits the respondent No. 1/plaintiff filed a suit for declaration of title and permanent injunction, and he has also filed application for temporary injunction
- (2) The trial Court, by its order dated 07.04.2016, allowed the application for temporary injunction filed by plaintiff / respondent No.1.
- (3) The petitioner/defendant preferred appeal under Order 43 Rule

1(r) 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) Both the courts below found prima facie case, balance of convenience in plaintiff's favour and that she 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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. 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/-

