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HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 655 of 2016

- Chandrapal Guruwani S/o Late Mohanlal, Aged About 47 Years
R/o Tirthani Gali, Sarkanda, Distt. Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. Smt. Saraswati Bai Guruwani W/o Late Mohanlal Guruwani, Aged About 75 Years
2. Suresh Guruwani S/o Late Mohanlal Guruwani, Aged About 54 Years

Both R/o Tirthani Gali, Sarkanda, Distt. Bilaspur (Chhattisgarh)

3. Ashok Kumar Mishra S/o Kaushal Kishore Mishra, Aged About 61 Years R/o Ward No. 12, Mahamaipara, Bada Bazar, Mungeli, Distt. Mungeli (Chhattisgarh)
4. Smt. Sudha Mishra, W/o Bansilal Mishra, Aged About 54 Years
5. Yogesh Kumar Mishra S/o Bansilal Mishra, Aged About 35 Years

Respondent No. 4 & 5 are R/o Elahabadi Hotel, Opp. Petrol Pump Chatidih, Bilaspur, District Bilaspur (Chhattisgarh)

6. Smt. Harshlata Vaishnav W/o Govinddas, Aged About 39 Years
7. Govinddas Vaishnav S/o Ganesh Das, Aged About 50 Years

Respondent No. 6&7 are R/o Arvind Nagar, Bandhwapara, Sarkanda, District Bilaspur (Chhattisgarh)

8. State Of Chhattisgarh, Through Collector, Bilaspur (Chhattisgarh)

---- Respondent

And

WP227 No. 656 Of 2016

- Chandrapal Guruwani S/o Late Mohanlal, Aged About 47 Years
R/o Tirthani Gali, Sarkanda, Distt. Bilaspur, (Chhattisgarh)

---- Petitioner

Vs

1. Smt. Saraswati Bai Guruwani W/o Late Mohanlal Guruwani, Aged About 75 Years
2. Suresh Guruwani S/o Late Mohanlal Guruwani, Aged About 54 Years

Both R/o Tirthani Gali, Sarkanda, Distt. Bilaspur (Chhattisgarh)
3. Ashok Kumar Mishra S/o Kaushal Kishore Mishra, Aged About 61 Years R/o Ward No. 12, Mahamaipara, Bada Bazar, Mungeli, Distt. Mungeli (Chhattisgarh)
4. Smt. Sudha Mishra, W/o Bansilal Mishra, Aged About 54 Years
5. Yogesh Kumar Mishra S/o Bansilal Mishra, Aged About 35 Years

Respondent No. 4 & 5 are R/o Elahabadi Hotel, Opp. Petrol Pump Chatidih, Bilaspur, District Bilaspur (Chhattisgarh)
6. Smt. Harshlata Vaishnav W/o Govinddas, Aged About 39 Years
7. Govinddas Vaishnav S/o Ganesh Das, Aged About 50 Years

Respondent No. 6&7 are R/o Arvind Nagar, Bandhwapara, Sarkanda, District Bilaspur (Chhattisgarh)
8. State Of Chhattisgarh, Through Collector, Bilaspur (Chhattisgarh)

---- Respondent

And

WP227 No. 658 Of 2016

- Chandrapal Guruwani S/o Late Mohanlal, Aged About 47 Years
R/o Trithani Gali, Sarkanda, Distt. Bilaspur (Chhattisgarh)

---- Petitioner

Vs

1. Smt. Saraswati Bai Guruwani W/o Late Mohanlal Guruwani, Aged About 75 Years
2. Suresh Guruwani S/o Late Mohanlal Guruwani, Aged About 54 Years

Both R/o Tirthani Gali, Sarkanda, Distt. Bilaspur (Chhattisgarh)
3. Ashok Kumar Mishra S/o Kaushal Kishore Mishra, Aged About 61

Years R/o Ward No. 12, Mahamaipara, Bada Bazar, Mungeli,
Distt. Mungeli (Chhattisgarh)

4. Smt. Sudha Mishra, W/o Bansilal Mishra, Aged About 54 Years
5. Yogesh Kumar Mishra S/o Bansilal Mishra, Aged About 35 Years

Respondent No. 4 & 5 are R/o Elahabadi Hotel, Opp. Petrol
Pump Chatidih, Bilaspur, District Bilaspur (Chhattisgarh)

6. Smt. Harshlata Vaishnav W/o Govinddas, Aged About 39 Years
7. Govinddas Vaishnav S/o Ganesh Das, Aged About 50 Years

Respondent No. 6&7 are R/o Arvind Nagar, Bandhwapara,
Sarkanda, District Bilaspur (Chhattisgarh)

8. State Of Chhattisgarh, Through Collector, Bilaspur
(Chhattisgarh)

---- Respondent

For Petitioners	Mr. Awadh Tripathi, Advocate
For Respective Respondents	Mr. Majid Ali, Panel Lawyer, Mr. Ratnesh Kumar Agarwal and Mr. P.P. Sahu, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

5/1/2017

1. Heard.
2. All the three writ petitions under Article 227 of the Constitution of India have arisen out of the common appellate order passed by the Appellate Court, setting aside the temporary injunction granted in favour of the petitioner by the trial Court.
3. Shorn of unnecessary details, the brief facts, necessary for disposal of these writ petitions, are that the subject property

was purchased by respondent/defendant No.1 -Saraswati Bai on 15.06.1970 from one Raghunandan.

4. According to the petitioner/plaintiff, in the year 2011, the plot was diverted and thereafter, plotting was made, wherein, plot Nos.2 to 7 have fallen in his share. Asserting that the petitioner's father Mohanlal had also contributed in purchase of the property, the plaintiff has claimed declaratory relief that he is the owner in possession of the subject plots. The prayer has also been made in the suit for declaring the sale-deeds dated 08.09.2015, 19.10.2015 and 21.10.2015 executed by defendants 1 & 2 in favour of defendants 3 to 7, as null and void and not binding on the plaintiff. Decree for declaration has also been sought to the effect that defendants 1 & 2 were not entitled to create mortgage in favour of Municipal Council, Bilaspur for plot Nos.1, 10, 11, 12, 13 and 21 as also for issuance of permanent injunction restraining the defendants from interfering with the plaintiff's title or possession on the subject plots.
5. The defendants have pleaded that the property was purchased in the name of Saraswati Bai (defendant No.1), therefore, it belonged to her and the plaintiff has fraudulently concocted or manufactured the *Ikrarnama* dated 06.07.2011 and affidavits dated 5.7.2011 and 10.11.2015 respectively. According to them, the property belonged to defendant No.1, therefore, she being the sole owner, is entitled to alienate the same in accordance with law.
6. Admittedly, plot Nos.5, 6 & 7 have already been sold in favour of

defendants 3 to 7 before filing of the suit. The petitioner never raised any objection before the Sub Registrar at the time of registration of sale-deeds despite being aware of the earlier agreement, if it was validly executed.

7. Be that as it may, the appellate Court has exercised judicial discretion in its appellate power to vacate the order, which has been assailed in these petitions.
8. Applying its earlier decision in **Surya Dev Rai Vs. Ram Chander Rai**¹ and **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**², the Supreme Court in the matter of **Sameer Suresh Gupta through PA Holder Vs. 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

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

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

9. In the case at hand, the view taken by the appellate Court is a possible view. Even otherwise, if any alienation had taken place during pendency of the suit, it would always remain subject to decision of the suit considering the Doctrine of *lis pendens* under Section 52 of the Transfer of Property Act. The plaintiff can always pray that any alienation made by any of the defendants during pendency of the suit shall not bind him and the trial Court can also pass orders to this effect at the time of disposal of the suit.
10. When the appellate Court has taken one possible view in the matter, it is not for the High Court sitting under Article 227 of the Constitution of India to unsettle the order as if it is hearing an appeal against exercise of judicial discretion by the First Appellate Court.
11. Had it been a case of manifest injustice or grave perversity, this Court would have interfered, but such is not the case here, therefore, no case for interference is made out in these petitions. They fail and are hereby dismissed subject, however, to the observations made in the preceding paragraphs.

12. Before parting with the case, considering the nature of *lis*, it is directed that the trial Court shall make all possible endeavour to decide the suit at the earliest, preferably within a period of 06 months from the date of submission of certified copy of this order before the trial Court, subject, however, to cooperation by the parties.

Sd/-

Judge

(Prashant Kumar Mishra)

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