

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.62 of 2017**

Santosh Pali S/o Hagruram Pali, aged about 50 years, R/o village
Ranjitpur, PS & Tahsil Sahaspur Lohara, District Kabeerdham (CG)

---Petitioner

Versus

1. Ganpat Kurmi S/o Kanglu Kurmi, aged about 60 years, R/o village
Dohandihi, PS & Tahsil Sahaspur Lohara, Dist. Kabeerdham (CG)
2. State of Chhattisgarh, through the Collector, Kabeerdham (CG)

---Respondents

For Petitioner	:	Mr.Malay Shrivastava, Advocate
For Respondent No.2	:	Mr. P.K.Bhaduri, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

23/1/2017

1. Respondent No.1/plaintiff filed a suit for permanent injunction against the petitioner/defendant No.1 in which an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure has also been filed.
2. The trial Court finding that the plaintiff has a prima-facie case in his favour, balance of convenience also lies in his favour and that he would suffer irreparable injury in case the injunction is not granted allowed the application for temporary injunction. Against which, the petitioner/defendant No.1 preferred Misc. Civil Appeal before the Additional Sessions Judge (FTC), Kabirdham. The Additional Sessions Judge has dismissed the appeal and affirmed the order passed by the trial Court. Being dissatisfied with said order, this writ petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant No.1.

3. Learned counsel appearing for the petitioner/defendant No.1 would submit that concurrent finding recorded by the Courts below is unsustainable and contrary to the record.

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

5. After hearing learned counsel appearing for the petitioner, I do not find any jurisdictional error in the impugned orders passed by the

1 (2003) 6 SCC 675

2 (2010) 8 SCC 329

3 (2013) 9 SCC 374

Courts below. The trial Court has rightly found a prima-facie case in favour of respondent No.1/plaintiff and proceeded to grant temporary injunction in his favour, which was affirmed by the Appellate Court.

6. Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed. However, it is made clear that any observation made by the trial Court or by the Appellate Court while deciding the application for temporary injunction shall not come in the way of the petitioner/defendant No.1. The trial Court shall decide the suit strictly in accordance with law expeditiously.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-