HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CR No. 53/2020
CM Nos. 6237/2020,
4385/2020, 4387/2020

(Through video conferencing)

Reserved on : 10.12.2020
Pronounced on 16.12.2020

Madan Gopal .....Petitioner(s)

Through :- Mr. B.S. Manhas, Advocate with
Mr. Amarvir Manhas, Advocate.

V/s

Mulkh Raj and others .....Respondent(s)

Through :- Mr. Anil Khajuria, Advocate for
respondent No. 1

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. The petition in hand has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 06.08.2020 passed by learned Additional District Judge, Udhampur in a civil miscellaneous appeal filed by the plaintiff/petitioner herein against the order dated 15.01.2020 passed by learned Sub-Judge (CJM) Udhampur, whereby temporary injunction application filed by the plaintiff/petitioner herein has been dismissed.

2. The brief facts of the case is that the plaintiff/petitioner herein instituted a suit for perpetual injunction before the trial Court on the ground that he and the defendant Nos. 3 to 6/respondents herein are having joint possession, being the co-sharers of the land measuring 8 marlas (Gair Mumkin Rasta) comprising under Khasra No. 376 situated at Village Manpa, Udhampur, which has been exclusively

used by the plaintiff/petitioner herein to approach his house, whereas the first defendant is causing interference in the suit pathway which leads to his house from Khasra Nos. 376 to 380.

3. The defendant No. 1 has filed objections and denied the claim of the plaintiff/petitioner herein on the ground that the suit pathway shown as Gair Mumkin Rasta is the only approach road to his proprietary land falling under Khasra No. 361 and his residential house built thereon since his forefathers' time for the last more than 65 years.

4. The learned trial Court vide order dated 15.01.2020 has declined for grant of temporary injunction and the defendant No. 1/respondent herein has been allowed to use the said suit pathway. The plaintiff/petitioner herein filed a civil miscellaneous appeal against the order dated 15.01.2020 passed by the trial Court. The learned appellate Court vide order dated 06.08.2020 dismissed the appeal, declined to interfere into the order passed by the trial Court observing that the trial Court has exercised its discretion in accordance with the settled principles of law. Aggrieved of the dismissal of the appeal by the Appellate Court vide order dated 06.08.2020, the petitioner has filed the present petition.

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5. In the present case, the Appellate Court while dismissing the appeal has observed on the basis of the record that excluding the suit pathway from user, the contesting defendant has to go through the lands of different persons to reach to his house which is inconvenient to him. It is not case of the parties that it is a motorable or cart passage which may cause inconvenience to the plaintiff. The Appellate Court also observed that it is simply used as a pathway for

the contesting defendant and it was not the case of the plaintiff/petitioner herein that the acts of the defendant/respondent while passing through the disputed pathway in any manner would cause annoyance and nuisance to the plaintiff. It was further observed in the order impugned by the Appellate Court that it was not the case of the plaintiff that the act of the defendant would diminish the value or utility of the suit pathway or may deprive him of the right of user over the pathway.

6. I have heard learned counsel for parties at length and considered the matter.

7. Mr Manhas, learned counsel, appearing for petitioner, while averring factual background of the case, has strenuously stated that in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, impugned order need to be set-aside inasmuch as impugned order has been passed by Appellate Court in sheer abuse of process of court and law.

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8. Taking into account the case set up and submissions made by learned counsel for parties, it may not be incongruous to say that judicial pronouncements concerning object and scope of power of the High Courts under Article 227 of the Constitution of India leaves little scope to interfere with the orders of subordinate courts as a matter of routine. This power cannot be taken as right of another appeal to aggrieved party nor this power can be invoked to point out an error of law or fact in the order or decision of a subordinate court. This power cannot be used to make out that the decision of subordinate court could have been or must have been other than what it was.

Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping subordinate courts within the bounds of their jurisdiction. When subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or 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. Be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the requirements that 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 that a grave injustice or gross failure of justice has occasioned thereby, are satisfied.

9. It is trite law that power of superintendence, so conferred on the High Court, is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved or may even be exercised *suo motu*. The paramount consideration behind vesting such wide power of superintendence in High Court is paving path of justice and removing any obstacles therein. Power under Article 227 is wider than the one conferred on the High Court by Article 226 of the Constitution of India, in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else parameters invoking exercise of power are almost similar.

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10. The power under Article 227 is one of judicial superintendence that cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no court could ever have reached them. Way back in 1954, a Constitution Bench of the Supreme Court, in ***Waryam Singh v. Amarnath, AIR 1954 SC 215***, has pointed out that the power of superintendence conferred by Article 227 should be exercised "most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. The Supreme Court in ***Dr. R. Venkatchalam and others etc. v. Dy. Transport Commissioner and others etc., AIR 1977 SC 842***, has said that the Courts must avoid the danger of *a priori* determination of the meaning of a provision based on their own pre-conceived notions of the ideological structure or the scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under disguise of interpretation. While interpreting a provision the Court only interprets law and cannot legislate it. If a provision of law is misused and subjected to abuse of process of law, it is for legislature to amend, modify or repeal it, if deemed necessary.

11. Article 227 can be invoked by the High Court *suo motu* as a custodian of justice. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised

just for grant of relief in individual cases but should be directed for promotion of public confidence in administration in larger public interest whereas Article 226 is meant for protection of individual grievances. Therefore, "*the power under Article 227 may be unfettered but*", as held by the Supreme Court in the case of ***Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329,*** "*its exercise is subject to high degree of judicial discipline.*" The object of superintendence under Article 227, both administrative and judicial, is to maintain the efficiency, smooth and orderly functioning of the entire machinery of the justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of the justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. The Supreme Court in ***Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar Hydrabad and another v. Ajit Prasad Tarway Manager (Purchase & Store) Hindustan Aeronautics Ltd. Balanagar Hydrabad, AIR 1973 SC 76;*** and ***Kokkanda B. Poondacha & Ors. v. K. D. Ganapathi & another, AIR 2011 SC 1353***,after recapitulating what has been observed in ***Shalini Shyam Shetty's*** case (supra) qua Article 227, held that "*learned Single Judge of the High Court totally ignored the principles and parameters laid down*" by the Supreme Court "*for exercise of power under Articles 226 and 227 of the Constitution qua an interlocutory order passed by the Subordinate Court and set aside the order of the*

trial Court without assigning any tangible reason." Jurisdiction under Article 227 must be sparingly exercised and may be exercised to correct the errors of the jurisdiction and the like, but not to upset the findings of the fact, which falls in the domain of an appellate court only. Same is true qua the present case. The petition on hand has been filed notwithstanding the fact that petitioner has availed of appropriate remedy by way of filing an appeal before the learned Additional District Judge, Udhampur, against impugned order dated 23.10.2020. In such circumstances petition on hand is liable to be dismissed. My above views have a support from the dicta given by the Supreme Court in ***Nibaran v. Mahendra AIR 1963 SC 1895; D.N.Banerjee v. Mukherjee AIR 1953; SC 58; Nizzar Rawther v. Varghese Mathew AIR 1992 Ker 312;*** and ***Khimji Vidhu v. Premier High School AIR 2000 SC 3495***.

12. The power under Article 227 is broader than that conferred on the High Court by Article 226. For example, through its power to issue certiorari under Article 226, a High Court can annul the decision of a tribunal while under Article 227 it can do that and do something—it can issue further directions in the matter. But under Article 227, the High Court does not sit as a Court of appeal inasmuch as it is also not permissible to a High Court on a petition filed under Article 227 to review or reweigh the evidence upon which the inferior Court or tribunal purports to have passed the order or to correct errors of law in the decision. The power of superintendent conferred by Article 227 is supervisory and not appellate jurisdiction.

13. The settled proposition of law laid down by the Supreme Court in ***The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad*** (supra) ***Mohd. Yunus*** (supra) and ***Kokkanda B. Poondacha*** (supra) is that if any order is passed by subordinate court under its vested discretionary jurisdiction, then the same could not be interfered with by the High Court either under revisional jurisdiction under Section 115 of CPC or under supervisory jurisdiction vested under Article 227 of the Constitution of India. If an order is amenable to challenge before appellate authority, writ petition under Article 227 of the Constitution is not a proper remedy without first availing an alternative remedy of filing an appeal and getting the same decided by the appellate court on its merit in accordance with law. In other words, the High Court should decline to entertain a writ petition under Article 227 once alternative remedy of appeal is available.

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14. The Supreme Court in ***Skyline Education Institute (Pvt.) Ltd. v. S.L. Vaswani and ors 2010(2) SCC 142*** has held that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.

15. In the present case the petitioner is aggrieved of the order dated 06.08.2020 passed by the learned Additional District Judge, Udhampur whereby the appeal of the petitioner was dismissed by upholding the order passed by the trial Court. Since the concurrent findings have been given by two courts, i.e., trial Court and the Appellate court, therefore, this Court cannot interfere in this matter. It is not the case of the petitioner that the trial Court as well as the Appellate Court has acted without or in excess of jurisdiction, nor that the trial Court has violated any provision of law admissible. Even otherwise this Court may not exercise the powers of Appellate Court while exercising revisional or supervisory jurisdiction particularly against a discretionary order passed by the trial Court and affirmed by the Appellate court. Therefore, in absence of any perversity in the order this Court cannot interfere.

16. In the backdrop of foregoing discussion and settled position of law discussed herein above, the petition on hand *sans* any merit and as a corollary thereof, the same is **dismissed** in *limine* with connected CM(s).

17. Copy of this judgment be sent down.

(TASHI RABSTAN)
JUDGE

JAMMU
16.12.2020
Pawan Angotra

Whether the order is speaking? : Yes/No
Whether the order is reportable? : Yes/No

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PAWAN ANGOTRA
2020.12.17 14:33
I attest to the accuracy and
integrity of this document