

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25104 of 2013

1. Surendra Chaudhary Son Of Late Paras Chaudhary Resident Of Village-
Buksa, P.O.- Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
2. Birendra Chaudhary Son Of Late Paras Chaudhary Resident Of Village-
Buksa, P.O.- Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
3. Nagendra Chaudhary Son Of Late Paras Chaudhary Resident Of Village-
Buksa, P.O.- Raghunathpur Bazar, P.S. Sugauli, District- East Champaran

... .. Petitioner/s

Versus

1. Yogendra Chaudhary Son Of Late Baldeo Chaudhary Resident Of Village-
Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
2. Ashok Chaudhary Son Of Yogendra Chaudhary Resident Of Village- Buksa,
P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
3. Kishore Chaudhary Son Of Yogendra Chaudhary Resident Of Village-
Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
4. Sudama Chaudhary Son Of Late Jamadar Chaudhary Resident Of Village-
Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
5. Binay Thakur Son Of Shankar Thakur Resident Of Village- Parsa, P.O. And
P.S. Majhauria, District- West Champaran
6. Niraj Thakur Son Of Shankar Thakur Resident Of Village- Parsa, P.O. And
P.S. Majhauria, District- West Champaran
7. Nilam Devi Wife Of Raju Singh Daughter Of Shankar Thakur Resident Of
Village- Barmaswa, P.S. Harsidhi, District- East Champaran
8. Uma Devi Wife Of Triloki Dubey Daughter Of Jamadar Chaudhary Resident
Of Village And P.O. Phulwar, P.S. Banjaria, District- East Champaran
9. Krishnawati Devi Wife Of Late Ramadhar Shukla Resident Of Village-
Gonauli, P.S. Majhauria, District West Champaran
10. Suresh Chaudhary Son Of Jagarnath Chaudhary Resident Of Village- Buksa,
P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
11. Awadhesh Chaudhary Son Of Jagarnath Chaudhary Resident Of Village-
Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
12. Malti Devi Wife Of Harihar Singh Daughter Of Jagarnath Chaudhary
Resident Of Village- Budhnar, P.O. Mahuawa, P.S. Chiraiya, District- East
Champaran
13. Pramila Devi Wife Of Surendra Singh, Daughter Of Jagarnath Chaudhary
Resident Of Village And P.O. Parsanagar, P.S. Majhauria, District- West
Champaran
14. Ranjan Chaudhary Son Of Late Mukti Chaudhary Resident Of Village-
Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran



15. Sandeep Chaudhary Son Of Late Mukti Chaudhary Resident Of Village- Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
16. Pradeep Chaudhary Son Of Late Mukti Chaudhary Resident Of Village- Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
17. Pammi Kumari Daughter Of Mukti Chaudhary Resident Of Village- Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
18. Kanhaiya Chaudhary Son Of Late Prasad Chaudhary Resident Of Village- Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
19. Keshav Chaudhary Son Of Kanhaiya Chaudhary Resident Of Village- Buksa, P.O. Raghunathpur Bazar P.S. Sugauli, District- East Champaran
20. Samina Khan Son Of Hakim Khan Resident Of Village- Baks Narayan Tola, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
21. Ravindra Shukla Son Of Jagdish Shukla Resident Of Village- Baks Narayan Tola, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
22. Brahmdeo Singh Son Of Sevak Singh Resident Of Village- Baks, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
23. Badri Mian Son Of Isha Mian Resident Of Village- Baks, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
24. Fazal Dewan Son Of Naimuddin Dewan Resident Of Village- Baks, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
25. Jainul Haque Dewan Son Of Naimuddin Dewan Resident Of Village- Baks, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
26. Brahmdeo Baitha Son Of Jagan Baitha Resident Of Village- Baks, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
27. Mahir Miya Son Of Isha Miya Resident Of Village- Hata Baks, P.S. Sugauli, District- East Champaran
28. Singasan Mahto Son Of Late Ramnath Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
29. Ramdhari Pandit Son Of Late Yadu Pandit R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
30. Shivraj Mahto Son Of Badu Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
31. Jamadar Mahto Son Of Badu Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
32. Bishwanath Mahto Son Of Late Chandraman Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
33. Shivdayal Mahto Son Of Late Sudhan Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
34. Bishwanath Mahto Son Of Late Chandraman Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
35. Shivdayal Mahto Son Of Late Sudhan Mahto R/O Of Lakshmipur, P.O.



- Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
36. Jangbahadur Mahto Son Of Late Sudhan Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 37. Bagad Pandit Son Of Devdhari Pandit R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 38. Sikandar Mahto Son Of Langtu Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 39. Langtu Mahto Son Of Bira Mahto R/O Of Lakshmipur, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 40. Ful Khan Son Of Isandar Khan Null
 41. Mir Gesu Alam Son Of Aftab Alam Resident Of Nakardei, P.O. Nakardei, Monsidha, P.S. Sugauli, District- East Champaran
 42. Sagir Mian Son Of Hamid Mian Resident Of Khodha, P.O. Wakardei Mansigha, P.S. Sugauli, District- East Champaran
 43. Mainuddin Mian Son Of Rahman Mian Resident Of Khodha, P.O. Wakardei Mansigha, P.S. Sugauli, District- East Champaran
 44. Vishwanath Yadav Son Of Raj Govind Yadav Resident Of Village- Unao, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 45. Durga Yadav Son Of Sukhal Yadav Resident Of Village- Unao, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 46. Shambhu Yadav Son Of Bishwanath Yadav Resident Of Village- Unao, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 47. Kailash Yadav Son Of Hari Yadav Resident Of Village- Unao, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 48. Babulal Yadav Son Of Late Bhola Yadav Resident Of Village- Unao, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 49. Subhash Shukla Son Of Kashi Shukla Resident Of Village- Baksa, P.S. Sugauli, P.O.- Raghunathpur, District- East Champaran
 50. Imamul Mian Son Of Mangru Mian Resident Of Village- Baksa, P.S. Sugauli, P.O.- Raghunathpur, District- East Champaran
 51. Maksud Mian Son Of Pemar Mian Resident Of Village- Baksa, P.S. Sugauli, P.O.- Raghunathpur, District- East Champaran
 52. Mahendra Rai Son Of Dwarika Rai Resident Of Lediya, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 53. Manhak Sah Son Of Late Prasad Sah Resident Of Lediya, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 54. Mahendra Sah Son Of Gyani Sah Resident Of Lediya, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran
 55. Shiv Shankar Son Of Raghunath Sah Resident Of Lediya, P.O. Raghunathpur Bazar, P.S. Sugauli, District- East Champaran



56. Rajiv Ranjan Singh Son Of Bhanu Pratap Singh Resident Of Village-
Mahdewa, P.O. Noneyadih, P.S. Raxaul, District- East Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Dubey
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 08-05-2024

1. The present writ petition has been filed seeking the
following relief(s) :-

*“1. That this application is being filed for
issuance of writ in the nature of certiorari for
quashing order dated 1.10.2013 passed by
Sub Judge, 4th Motihari in Partition Suit
No.109 of 2008 by which he has allowed the
petition dated 16.9.2013 as filed by
Defendant No.4, 6 and 7 which was filed for
enforcement of injunction order dated
21.11.2009 any order/orders as your
Lordship may deem fit and proper.”*

2. The learned counsel for the parties have pointed
out, at the outset, that earlier writ petitions were being filed
against the interlocutory orders (such orders which have not
finally decided the suits or proceedings in favour of the parties
and the suits or such proceedings have not stood disposed off),
in view of the law laid down by the learned Division Bench of



this Court in a judgment *dated 13.05.2010*, passed in *C.R. no. 1067 of 2009 (Durga Devi v. Vijay Kumar Poddar & Ors.)*, however, subsequently, the Hon'ble Apex Court, by a judgment rendered in the case of *Radhey Shyam and Another v. Chhabhi Nath and Others*, reported in *(2015) 5 SCC 423*, has held that judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India and the jurisdiction under Article 227 of the Constitution of India is distinct from the jurisdiction under Article 226 of the Constitution of India. It would be relevant to reproduce paragraphs no. 18 and 25 to 30 of the said judgment rendered in the case of *Radhey Shyam and Another (supra)* hereinbelow :-

18. While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32.

25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the



King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to the judicial courts, as rightly observed in the referring order [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] in paras 26 and 27 quoted above.



26. The Bench in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565] , Ouseph Mathai v. M. Abdul Khadir [(2002) 1 SCC 319] , Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] and Sameer Suresh Gupta v. Rahul Kumar Agarwal [(2013) 9 SCC 374 : (2013) 4 SCC (Civ) 345] . In Shalini Shyam Shetty [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] this Court observed: (SCC p. 352, paras 64-67)



“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on



an erroneous appreciation of the ratio in Surya Dev [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time-honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice



within their jurisdiction will adhere to them strictly.”

(emphasis supplied)

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

28. We may also deal with the submission made on behalf of the respondent that the view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] stands approved by larger Benches in Shail [Shail v. Manoj Kumar, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401] , Mahendra Saree Emporium (2) [Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy, (2005) 1 SCC 481] and Salem Advocate Bar Assn. (2) [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344] and on that ground correctness of the said view cannot be gone into by this Bench. In Shail [Shail v. Manoj Kumar, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401], though reference has been made to Surya Dev Rai [Surya Dev Rai v. Ram



Chander Rai, (2003) 6 SCC 675] , the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In Mahendra Saree Emporium (2) [Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy, (2005) 1 SCC 481] , reference to Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in Salem Advocate Bar Assn. (2) [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344] in para 40, reference to Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent.

29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai [Surya



Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled.

30. The matters may now be listed before the appropriate Bench for further orders.”

3. It is further submitted that in view of the law laid down by the Hon’ble Apex Court in the case of ***Radhey Shyam and Another (supra)***, ***The Rules of The High Court at Patna*** have also been amended and vide ***Rule 6 of Chapter III A***, it has been stipulated as follows :-

“(6) Petitions under Article-227 of the Constitution of India in respect of any order or any proceeding before any Civil Court, would be filed in Civil Miscellaneous Jurisdiction and would be numbered as Civil Miscellaneous no. (C. Misc. No.).”

4. The learned counsel for the petitioners submits that considering the aforesaid aspect of the matter, two weeks’ time be granted for converting the present writ petition into a Civil Miscellaneous Petition. Time so sought, is granted.

5. The registry is directed to extend its cooperation to the learned counsel for the petitioners in order to ensure that the present writ petition is converted into Civil Miscellaneous Petition at the earliest, whereafter, the registry shall list the



present case on priority basis, before the concerned Bench, *in seisin* of the subject matter of the present case, in view of the fact that the present case is pending since 11 years.

(Mohit Kumar Shah, J)

sonal/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.05.2024
Transmission Date	NA

