

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15005 of 2015

Deo Bachan Singh Son of late Sukhari Singh Resident of Village- Akhtiyarpur, Police Station- Kargahar, Out Post- Sidi, District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. Raj Bansh Singh Son of Late Jangi Singh
2. Rajendra Singh Son of late Jangi Singh Both Resident of Village- Akhtiyarpur, Police Station- Kargahar, Out Post- Sidi, District- Rohtas at Sasaram.
- 3.1. Chinta Devi Wife of Sri Munshi Singh Resident of Village- Khadeya, Post Office- Bishodihari, Police Station- Kargahar, District- Rohtas.
4. Abhay Kumar Singh Son of late Dewajit Singh
5. Ajit Kumar Son of Dewajit Singh Respondent No. 3 to 5 are resident of Village- Saraiya, Post Office- Khurmabad, Police Station- Chenari, District- Rohtas at Sasaram.
6. Chinta Devi Wife of Sri Munshi Singh Resident of Village- Khudeyan, Post Office- Bishdihari, Police Station- Kargahar, District- Rohtas at Sasaram.
7. Ram Bachan Singh Son of late Sukhari Singh null
8. Sheo Bachan Singh Son of late Sukhari Singh null
9. Sheo Shankar Singh@ Shankar Singh Son of late Sukhari Singh
10. Sudarshan Singh Son of late Sukhari Singh
11. Rajesh Singh@ Rajesh Kumar Singh Son of late Ram Ekbal Singh
12. Prabhat Kumar@ Prabhat Singh Son of Sri Deo Bachan Singh
13. Suman Singh@ Suman Kumar Singh Son of Ram Bachan Singh
14. Rama Nand Singh Son of late Triloki Singh
15. Prakash Singh Son of Sri Deo Shankar Singh
16. Subhash Singh Son of Ram Ekbal Singh
17. Ram Pratap Singh Son of late Srikawal Singh
18. Dinesh Kumar Singh Son of late Srikawal Singh
19. Anil Kumar Singh Son of Sri Ram Bachan Singh null
20. Narendra Kumar Singh Son of Sri Ram Bachan Singh
21. Ajay Kumar Singh son of Sri Ram Bachan Singh
22. Vijay Kumar Singh son of Sri Ram Bachan Singh
23. Sunil Kumar Singh son of Sri Ram Bachan Singh
24. Santosh Kumar Singh@Bhola Singh Son of Sri Sheo Bachan Singh
25. Raj Kumar Singh Son of Sri Sheo Bachan Singh
26. Pradeep Singh Son of Sri Deo Bachan Singh
27. Sudama Singh Son of late Triloki Singh



28. Kameshwar Singh Son of late Triloki singh
29. Rajeshwar Singh Son of late Triloki Singh
30. Saurabh Kumar Son of Sri Sudarshan Singh
31. Shailesh Kumar Son of Sri Sudarshan Singh
32. Suraj Singh Son of late Chaudhary Singh
33. Deo Nath Singh Son of late Chaudhary Singh
34. Vinod Singh Son of late Baij Nath Singh
35. Birendra Kumar Singh Son of Sri Suraj Singh
37. Harendra Singh son of Sri Suraj Singh
38. Ram Ashish Singh Son of late Badan Singh
39. Dharmdeo Singh Son of late Ramadhar Singh
40. Kamaldeo Singh Son of late Ramadhar Singh
41. Chandra Bansh Singh Son of late Nathuni Singh
42. Damodar Singh Son of late Nathuni Singh
43. Ganga Deyal Singh Son of late Kachahari Singh
44. Ram Deyal Singh Son of late Kachahari Singh
45. Birbal Singh son of Sri Ganga Deyal Singh
46. Raj Bansh Singh Son of Sri Ganga Deyal Singh
47. Bharath Singh Son of Sri Ganga Deyal Singh
48. Vijay Singh Son of Sri Ganga Deyal Singh
49. Kailash Singh Son of late Bishwanath Singh
50. Kamta Singh Son of late Sheo Pujan Singh
51. Udhav Singh Son of late Sheo Pujan Singh
52. Shikandar Singh Son of late Sheo Pujan Singh
53. Sonu Singh Son of late Sheo Pujan Singh Respondents no. 7 to 53 are defendants Opposite Parties, Resident of Village and Post- Akhtiyarpur, Police Station- Kargahar, District- Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ramchandra Singh,
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 05-09-2024

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



“1. That this civil writ application is against the order dated 28.5.2015 (Annex-3), passed by the learned Sub Judge-6th, Sasaram, Rohtas in connection with Title Suit No. 464 of 2003, whereby and whereunder, the Ammendment Petition dated 16. 2.. 2015 filed by the defendant - petitioner has been rejected.”

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. Chhabi 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 IIIA**, 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 petitioner submits that considering the aforesaid aspect of the matter, four 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 petitioner 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 9 years.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.09.2024
Transmission Date	NA

