

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1909 of 2018**

Shivadhar Singh, S/o Late Bishundev Singh, R/o Mohalla- Parmar Patti,
Kinger, P.S.- Kinger, District- Arwal

... .. Petitioner/s

Versus

1. Kedar Nath Singh, S/o Late Sitaram Singh
2. Ramdas, S/o Late Ramdevan Shaw
3. Bipin Kumar, S/o Late Kedar Prasad
4. Indradev Shaw, S/o Late Ramdevan Shaw, all R/o Mohalla- Parmar Patti,
Kinger, P.S.- Kinger, District- Arwal

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Jitendra Prasad Singh, Advocate Mr. Rajeev Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 30-09-2024

Heard learned counsel for the petitioner as well as learned counsel for respondents on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India for quashing the order dated 26.06.2018 passed by the learned Sub-Judge, Arwal in Title Suit No. 10 of 2016 whereby and whereunder while considering the application dated 28.02.2018 filed by the plaintiff/petitioner for marking exhibits three documents, the learned trial court dismissed the suit of the plaintiff holding it to



be barred under law.

3. Learned counsel for the petitioner submits that the petitioner is the plaintiff before the learned trial court and has filed Title Suit No. 10 of 2016 for declaration of title of the plaintiff over schedule-1 property as well as for declaration that sale deed dated 31.08.2010 executed by defendant Bipin Kumar in favour of defendant no.1/respondent no.1 Kedar Singh with respect to Schedule-2 property is a void document. Further the plaintiff has sought relief for grant of injunction in his favour for restraining the defendants permanently from creating any trouble over Schedule-1 land. While the evidence of the plaintiff was being recorded, an application was filed on behalf of the plaintiff/petitioner on 28.02.2018 for marking exhibits three documents i.e., certified copy of C.S. Khatiyani, order dated 24.07.2015 passed by L.R.D.C., Arwal in B.L.D.R. Case No. 43/2014-15 and report vide Letter No. 3437 dated 21.12.2015 issued by Public Information Officer-cum-Additional Collector, Gaya. However, the learned trial court without considering the matter before it and on wrong appreciation of the facts of the case, dismissed the suit. Learned counsel further submits that the learned trial court proceeded on the premises that in paragraph no. 24 of the plaint, the decision of L.R.D.C., Arwal



dated 23.01.2016 passed in B.L.D.R. Case No. 43/2014-15 has been mentioned and the said case was dismissed after contest against the plaintiff and only remedy against this order was filing appeal before the Commissioner. Learned counsel further submits that the impugned order was passed on wrong interpretation of Section 10(3) of the Bihar Land Disputes Resolution Act (for short the 'B.L.D.R. Act') as the plaintiff has not filed the appeal against the said order. The plaintiff has rather filed the suit for declaration of his title and for further declaration of sale deeds executed in favour of respondent no.1 to be null and void. The said remedies cannot be granted by a court under B.L.D.R. Act. Learned counsel further submits that even in the dismissal order of B.L.D.R. Case No. 43/2014-15, the L.R.D.C., Arwal held that since the complicated matter of title was involved hence, the case was dismissed. Learned counsel further submits that the learned trial court merely took the averment made about cause of action in paragraph no. 24 whereas the cause of action is a bundle of facts and could not be ascertained from one paragraph. Rather, the plaint as a whole is to be seen for ascertaining the cause of action. Further, the learned trial court invoked the provision of Order 7 Rule 11(d) of the Code of Civil Procedure (for short 'the Code') without



any prayer being made on behalf of the defendants and without giving any opportunity to the plaintiff to plead his case. Learned counsel further submits that the impugned order is thus perverse as it has been passed against the provisions of law as well as the facts on record. Learned counsel further submits that the learned trial court was considering the documents and whether such documents could be marked exhibits or admissible documents being relevant to the subject matter of the suit but it proceeded to dismiss the suit considering it to be barred under the law on the ground that the plaintiff/petitioner has got remedy under B.L.D.R. Act. Therefore, the learned trial court has exceeded the jurisdiction by recording a finding with respect to maintainability of suit without providing any opportunity to the plaintiff to address the issue.

4. Learned counsel further submits that though the suit has been dismissed and it is an appealable order but due to its perversity, the order is amenable to the jurisdiction of this Court under Article 227 of the Constitution of India. The learned counsel referred to the decision of the Hon'ble Supreme Court in the case of *M/s. Garment Craft vs. Prakash Chand Goel*, reported in *AIR 2022 SC 422*, wherein it held in paragraph no.18 as under:-

“18. Having heard the counsel for the parties, we are



*clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappraise, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.*² has observed:-*

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or



tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.””

On the same proposition, the learned counsel further referred to paragraph nos. 21 and 22 of the decision of the Hon'ble Supreme Court in the case of ***K.P. Natarajan & Anr. Vs. Muthalammal & Ors.***, reported in ***AIR 2021 SC 3443***. Learned counsel further submits that under Article 227 of the Constitution of India, this Court is duty bound to interfere in the matter as a perverse order has been passed and such order should not be allowed to remain on record and the learned trial court should be rein in so that such types of orders are not passed in future and the courts act within their jurisdiction.

5. Learned counsel appearing on behalf of the respondents vehemently opposes the submission made on behalf of the petitioner. Learned counsel further submits that there is



no infirmity in the impugned order. The learned trial court took into consideration the plaint of the plaintiff and passed the order recording a finding that the plaintiff is aggrieved by dismissal of B.L.D.R. Case No. 43/2014-15 by L.R.D.C., Arwal and remedy against such orders lies before the court of learned Commissioner. Learned counsel further submits that Section 10(2) Act read with Section 4 of the B.L.D.R. Act prohibits filing of civil suit. The learned counsel further submits that there is no requirement of filing any application by the defendant to invoke provision of law under Order 7 Rule 11(d) of the Code by the learned trial court. Learned counsel further submits that vide the impugned order the suit has been dismissed and there is specific remedy against such dismissal as the order is an appealable order and the petitioner should avail that remedy and can not approach this Court under Article 227 of the Constitution of India and as such the present petition is not maintainable.

6. I have given my thoughtful consideration to the rival submission of the parties. From the facts brought on record it shows some disturbing trends. The learned trial court has been hearing the application filed on behalf of the plaintiff for marking certain documents exhibit but without making any



observation or recording any finding on the said fact, the learned trial court proceeded in the matter and on the basis of its reasoning as reflected from the impugned order went on to dismiss the suit itself. From the impugned order, it is also apparent that the learned trial court did not give any opportunity to the plaintiff to plead his case before it and make submission on the point of maintainability. The learned trial court formed its opinion on the basis of certain paragraph of the plaint and further proceeded to dismiss the suit holding that as the case of the plaintiff was dismissed by L.R.D.C. vide order dated 23.01.2016 in B.L.D.R. Case No. 43 of 2014-15, he has only got a remedy in appeal before the Commissioner and could not maintain a civil suit. This reasoning of the learned trial court is erroneous. The court of L.R.D.C. could not decide title and the suit has been filed for declaration of title among other reliefs. The prayer portion of the plaint shows the suit has been filed seeking the following reliefs:-

“A. Declaration of plaintiff’s title over Schedule-I property be passed in favour of plaintiff.

B. Declaration that the sale deed dated 31/08/2010 alleged to be executed by Bipin Kumar in favour of defendant no.1 Kedarnath Singh with respect to Schedule-II property is void.

C. By issue of injunction, defendants permanently be restrained from creating any sorts of trouble



with plaintiff over Schedule-I land.

D. Cost of the suit.

E. Any other relief or reliefs.”

7. If declaration of title over the suit property or for declaration against validity of certain sale deeds have been sought for in the relief of the suit, the learned trial court ought to have considered this fact. Adjudication with regard to title or declaration is not covered under Section 4 of the B.L.D.R. Act. Unless there is some legislation which bars the jurisdiction of the civil court, such absence of jurisdiction could not be read lightly and in casual manner. Moreover, if the learned trial court was bent upon proceeding with the matter under Order 7 Rule 11(d), at least it should have given an opportunity to the plaintiff and thereafter passed any orders. This violates the principles of natural justice that no one should be condemned unheard.

8. So far as maintainability of the present petition is concerned, the jurisdiction of the High Court under Article 227 is very limited. But when there is flagrant violation of fundamental principles of law and there appears an apparent error of jurisdiction, this Court is bound to interfere under Article 227 of the Constitution of India to correct the injustice and to keep the subordinate courts within the bounds of their authority and to see that the courts do the duty expected or



required of them in legal manner.

9. In the light of discussion made hereinbefore, I am of the considered view that the impugned order could not be sustained as it appears to be perverse and for this reason I am inclined to interfere with the impugned order in the civil miscellaneous jurisdiction under Article 227 of the Constitution of India and the impugned order dated 26.06.2018 passed by the learned Sub-Judge, Arwal in Title Suit No. 10 of 2016 is set aside and the suit is restored. The learned trial court is directed to hear the parties afresh on the petition filed by the plaintiff and if needed, on maintainability of the suit, and pass a speaking order after giving due opportunity of hearing to the parties.

10. Accordingly, the instant civil miscellaneous petition stands allowed.

(Arun Kumar Jha, J)

balmukund/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.10.2024
Transmission Date	NA

