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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1296 of 2026

SUMIT KUMAR
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Smt. Madhu D/o Prahlad Rai Aged About 50 Years W/o Sushil Agarwal, R/o Lohsara, Bijuri, Tahsil Kotma, District Anuppur, M.P.

... Petitioner(s)

versus

1 - Sharda Devi Agarwal W/o Late Shri Prahlad Rai Agarwal Aged About 73 Years R/o High School Road Pendra, District Gaurela-Pendra-Marwahi, C.G.

2 - Shrawan Agarwal S/o Late Shri Prahlad Rai Agarwal Aged About 52 Years R/o High School Road Pendra, District Gaurela-Pendra-Marwahi, C.G.

3 - Rajesh Agarwal S/o Late Shri Prahlad Rai Agarwal Aged About 44 Years R/o High School Road Pendra, District Gaurela-Pendra-Marwahi, C.G.

4 - Rakesh Agarwal S/o Late Shri Prahlad Rai Agarwal Aged About 40 Years R/o High School Road Pendra, District Gaurela-Pendra-Marwahi, C.G.

5 - Sangeeta D/o Late Shri Prahlad Rai Agarwal Aged About 48 Years W/o Shri Ashok Agarwal, R/o Gharaula Mohalla, Shahdol, District Shahdol, M.P.

6 - Pinki D/o Late Shri Prahlad Rai Agarwal Aged About 46 Years W/o Shri Ajay Agarwal, R/o V.I.P. Colony Raipur, District Raipur, C.G.

7 - Branch Manager Punjab National Bank, Branch Pendra, R/o Pendra, District Gaurela-Pendra-Marwahi, C.G

8 - Branch Manager Punjab National Bank, Zonal Office Raipur, C.G, R/o District Raipur, C.G

9 - State Of Chhattisgarh Through The Collector District Gaurela-Pendra-Marwahi, C.G.

... Respondent(s)

For Petitioner(s)	:	Mr. Aman Sharma, Advocate
For Respondent No.9	:	Mr. Rajkumar Sahu, P.L. for the State

(Hon'ble Shri Justice Ravindra Kumar Agrawal, J.)

Order on Board

26/10/2026

1. The default(s) pointed out by the Registry is waived.

2. Heard.

3. Present is a writ petition under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 14.08.2026 passed by learned Second District Judge, Pendraroad, District – Gaurela-Pendra-Marwahi in Miscellaneous Civil Appeal No. 08/2026, whereby the miscellaneous appeal filed by the petitioner has been dismissed and the order dated 17.12.2025 passed by learned Second Civil Judge, Senior Division, Pendraroad, District - Gaurela-Pendra-Marwahi in Civil Suit No. 46-A/2025 has been affirmed.

4. Learned counsel for the petitioner would submit that the petitioner is the plaintiff before the learned trial Court, where she is prosecuting a suit against the defendants for declaration of title and permanent injunction over the suit property bearing Khasra No. 2354/11, area 0.081 hectare, situated at Village - Pendra, Tehsil - Pendra, District – Gaurela-Pendra-Marwahi. The claim of the plaintiff is that the suit property was originally hold by grandfather of the plaintiff, namely Kanhaiya Lal. After his death, the suit property was inherited by his son, Prahlad Rai, who is the father of the plaintiff. During his lifetime, her father had mortgaged the suit property with the defendant No.7/ bank. However, the borrowed amount could not be repaid and the bank started proceeding for recovery of the loan amount. In the meantime,

the father of the plaintiff has died. Since the plaintiff is also one of the legal heir of late Prahlad Rai, her name should also been mutated in the revenue records of the subject suit property alongwith the other defendants but the defendant No.1 get her name mutated alone in the revenue record and submitted a fabricated search report with the defendant No.7/bank. On 18.07.2025, when she came to Pendra from her matrimonial house at Bijuri, Madhya Pradesh, she came to know about the recovery proceeding initiated by the bank and auction proceeding of the suit property. Then she claimed her right over the suit property and filed the civil suit.

5. He would further submit that alongwith the suit, an application under Order 39 Rule 1 and 2 of CPC has also been filed restraining the respondent bank from auction proceedings. The learned trial Court, after hearing the parties, rejected the application filed by the plaintiff, holding that the plaintiff has failed to prove prima facie case, balance of convenience and irreparable loss as the subject suit property is already mortgaged with the defendant No.7/bank and against non-payment of the amount of loan, the bank started proceeding for recovery of loan. He would also submit that the learned Appellate Court has also mechanically dismissed the appeal filed by the appellant, holding that since the property was the mortgaged property and from the revenue record, it reflected that it was recorded in the name of defendant No.1, therefore, the finding recorded by the learned trial Court that no prima facie case, balance of convenience and irreparable loss is in favour of the plaintiff, dismissed the appeal. It is also submitted that the plaintiff is the legal heir of late Prahlad Rai and after his death, she is having

equal right and title over the suit property alongwith other defendants and the suit property cannot be auctioned in recovery proceeding initiated by the bank as the valuable right of the property is being affected. Therefore, the application filed by the plaintiff for restraining the defendant No.7/bank from auction proceeding should be allowed and the respondents may be restrained from alienating the suit property till pendency of the suit.

6. I have heard learned counsel for the petitioner and perused the document annexed with the petition.

7. From perusal of the pleadings made in the plaint filed by the plaintiff, it reveals that the plaintiff has claimed her right over the suit property by pleading that she being one of the legal heir of late Prahlad Rai is also entitled to inherit the property alongwith other defendants. However, the bank cannot auctioned the subject property for recovery of loan. Though the suit property is mortgaged by her father, late Prahlad Rai, however, the right and title of the plaintiff should also been protected before proceeding for auction of the suit property.

8. The petitioner could not dispute that the suit property is not the mortgaged property and pursuant to the mortgage of the suit property, the bank started recovery proceeding by auction of the suit property. The property was mortgaged by late Prahlad Rai and at that time, the plaintiff has not raised any objection and has not claimed her right. It is only when the property was put to auction in recovery proceeding of the loan amount by the bank, she raised objection and filed the suit. It is undisputed facts of the case that the property was mortgaged by late Prahlad Rai with the defendant No.7/bank and when the amount of

loan was not repaid, the bank started recovery proceeding by an auction, in which the learned trial Court has rightly considered that there is no prima facie case in favour of the plaintiff nor any balance of convenience or irreparable injury to her.

9. The aforesaid findings of the learned trial Court have been affirmed by the learned Appellate Court, which held that the bank had rightly initiated proceedings for the recovery of the outstanding loan amount by putting the property to auction. This Court finds no illegality or infirmity in the concurrent findings recorded by the Courts below. The Hon'ble Supreme Court in the case of ***"Shalini Shyam Shetty and another v. Rajendra Shankar Patil" 2010 (8) SCC 329*** held that:

> "40. Same principles have been followed by this Court in the case of Mani Nariman Daruwala @ Bharucha (deceased) through Lrs. & others vs. Phiroz N. Bhatena and others etc. reported in (1991) 3 SCC 141, wherein it has been held that in exercise of its jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior Court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the Court or tribunal has come to. This Court made it clear that except to this `limited extent' the High Court has no jurisdiction to interfere with the findings of fact (see para 18, page 149-150). In coming to the above finding, this Court relied on its previous decision rendered in the case of Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram reported in (1986) 4 SCC 447. The decision in Chandavarkar (supra) is based on the principle of the Constitution Bench judgments in Waryam Singh (supra) and Nagendra Nath (supra) discussed above.

41. To the same effect is the judgment rendered in the case of Laxmikant Revchand Bhojwani and another vs. Pratapsingh Mohansingh Pardeshi reported in (1995) 6 SCC 576. In paragraph 9, page 579 of the report, this Court clearly reminded the High Court that under Article 227 that it cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principle of law and justice.

42. Same views have been taken by this Court in respect of the ambit of High Court's power under Article 227 in the case of Sarpanch, Lonand Grampanchayat vs. Ramgiri Gosavi and another, reported in AIR 1968 SC 222, (see para 5 page 222-234 of the report) and the decision of this Court in Jijabai Vithalrao Gajre vs. Pathankhan and others reported in (1970) 2 SCC 717. The Constitution Bench ratio in Waryam Singh (supra) about the scope of Article 227 was again followed in Ahmedabad Manufacturing & Calico Ptg. Co. Ltd. vs. Ram Tahel Ramnand and others reported in (1972) 1 SCC 898.

43. In a rather recent decision of the Supreme Court in case of Surya Dev Rai vs. Ram Chander Rai and others, reported in (2003) 6 SCC 675, a two judge Bench of this Court discussed the principles of interference by High Court under Article 227. Of course in Surya Dev Rai (supra) this Court held that a writ of Certiorari is maintainable against the order of a civil Court, subordinate to the High Court (para 19, page 668 of the report). The correctness of that ratio was doubted by another Division Bench of this Court in Radhey Shyam and another vs. Chhabi Nath and others [(2009) 5 SCC 616] and a request to the Hon'ble Chief Justice for a reference to a larger Bench is pending. But in so far as the formulation of the principles on the scope of

interference by the High Court under Article 227 is concerned, there is no divergence of views.

44. In paragraph 38, sub-paragraph (4) at page 695 of the report, the following principles have been laid down in Surya Dev Rai (supra) and they are set out:

> "38 (4) 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."

45. Sub-paras (5), (7) and (8) of para 38 are also on the same lines and extracted below:

> "38.(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is 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.
>
> (6) xxx xxx
>
> (7) 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. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is

substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, `within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of 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 High Court.

(n) 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 the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

10. Upon perusal of the material available on record and the findings recorded by the learned trial Court as well as the appellate Court, this Court finds no illegality or perversity warranting interference in the

exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. The petitioner has instituted the civil suit seeking declaration of title and permanent injunction on the ground that the suit property is ancestral property and that she has acquired a share therein upon the death of her father. However, at the stage of consideration of the application under Order 39 Rules 1 and 2 of the CPC, the petitioner was required to establish, at least prima facie, the existence of a legally enforceable right in the suit property warranting protection by way of temporary injunction. The material placed on record, particularly the Khasra Panchshala, indicates that the suit property was mutated in the name of respondent No. 1, Sharda Devi Agrawal, on 28.06.2023. The petitioner has not placed any prima facie documentary material establishing the nature of the property as ancestral property or demonstrating her subsisting share therein. The question of title and the respective rights of the parties would, of course, be determined on the basis of evidence led during the trial; however, at the interlocutory stage, the petitioner has failed to demonstrate a prima facie right requiring protection by an order of temporary injunction.

11. So far as the balance of convenience and irreparable injury are concerned, the petitioner herself has pleaded that her father had mortgaged the suit property in favour of respondent No. 7. Thus, the existence of the mortgage and the liability secured thereby are not in dispute at this stage. The apprehension of its proposed sale does not, by itself, furnish sufficient ground to restrain the secured creditor from pursuing remedies available to it in accordance with law. The petitioner

has also failed to establish her possession over the suit property or to place material demonstrating that refusal of temporary injunction would necessarily result in an irreparable injury that could not be adequately addressed in the pending suit. The learned appellate Court has considered the grounds urged by the petitioner and affirmed the order of the learned trial Court by recording reasons for its conclusion that the essential requirements for grant of temporary injunction have not been satisfied. This Court finds that the conclusions so arrived at are based on the material available on record and cannot be said to be perverse or contrary to law.

12. Having considered the facts and circumstances of the case, the impugned orders passed by the learned trial Court and the learned Appellate Court and the principles governing the exercise of supervisory jurisdiction under Article 227 of the Constitution of India, as laid down by the Hon'ble Supreme Court in the aforesaid judgment, this Court finds no perversity, patent illegality or jurisdictional error warranting interference with the impugned orders in the exercise of its supervisory jurisdiction.

13. Accordingly, the writ petition fails and is hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sumit