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**IN THE HIGH COURT OF CHHATTISGARH AT
BILASPUR**

Writ Petition NO. 3264/2003

**PETITIONERS
APPELLANTS**

- :1. Madan Kishore Sinha, aged 62
Years, S/o. Shri Rajkishore Sinha
Occupation service
2. Ashok Kumar Sinha, aged 55 years
S/o. Rajkishore Sinha,
Occupation service
Both R/o. Kedarpur, Ward No.13
Ambikapur, Distt. Sarguja (C.G.)

P. R. No. 3118/03
Presented by Shri S.P. Sahu
dated 08.10.03

VERSUS

RESPONDENTS

- :1. Shri Rajkishore Prasad Sinha
Aged 92 years, S/o. Late Jagdamb
Sahay, Occupation agriculture
R/o. Kedarpur, Ward No.13,
Ambikapur, Distt. Sarguja (C.G.)
2. State of Chhattisgarh
Through the Collector
Ambikapur, Distt. Sarguja (C.G.)
3. Madhusudan Sinha, aged 59 years
S/o. Rajkishore Sinha, Occupation
Service, R/o. Kedarpur, Ward
No.13, Ambikapur, District
Sarguja (C.G.)



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29-10-03
CLERK TO A.G. BILASPUR

**WRIT PETITION U/A 227 OF THE
CONSTITUTION OF INDIA**

1. **PARTICULARS OF THE PETITIONERS**
As set-out in the cause title above.
2. **PARTICULARS OF THE RESPONDENTS**
As set-out in the cause title above.

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.3264 OF 2003

PETITIONERS:

Madan Kishore Sinha and
another.

RESPONDENTS:

Versus

Shri Rajkishore Prasad Sinha and
two others.

POST FOR ORDER ON 24th November, 2003

Sd/-
L.C.BHADOO
Judge

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.3264 OF 2003

PETITIONERS:

Madan Kishore Sinha and
another.

Versus

RESPONDENTS:

Shri Rajkishore Prasad
Sinha and two others.

Present: -

Shri S.P. Sahu, Advocate:

For the petitioners.

Before: Hon'ble Shri L.C. Bhadoo, J

ORDER

(Passed on 24/11 November, 2003)

1. The petitioners have preferred this writ petition under Article 227 of the Constitution of India challenging the judgment and decree dated 31st January 2003 passed by the District Judge, Sarguja in Civil Appeal No. 4-A/2002 and order dated 21-7-2003 passed in review application No. 6/2003 and the judgment and decree dated 15-4-2002 passed by the learned Civil Judge, Class-I, Ambikapur, District Sarguja in Civil Suit No. 6-A/2002.
2. Brief facts leading to filing of this writ petition are that the petitioners filed a civil suit for declaration and permanent injunction in the Court of Civil Judge, 1st Class, Ambikapur against respondent No.1 with the averments that the petitioners are the sons of respondent No.1 and respondent No.1 acquired certain personal properties and he partitioned that properties on 1-1-70 and out of which the properties mentioned in Schedule-A was given to the petitioner No.1 and

the properties mentioned in Schedule-B was given to the petitioner No.2 and for remaining part of the properties right of partition was reserved. It was further mentioned that out of the properties of Schedule-A which was given to the petitioner No.1, 4 decimal land was sold by respondent No.1 to his third son namely, Madhusudhan and on 15-1-86 on the request of Madhusudhan the third son of respondent No.1, respondent No.1 prepared a partition deed which was amended on 9-3-89, but since settlement could not arrive between respondent No.1 and the third son, therefore, respondent No.1 changed his decision and cancelled that deed.

3. On 26th January 2001 after relying on the partition dated 1-1-70 a memorandum was written and two months back the petitioners came to know that respondent No.1 was planning to sale the properties which were given to the petitioners in partition. Upon this they enquired from respondent No.1 but he did not reply satisfactorily. However, even after the partition dated 1-1-70 all the properties were still in the name of respondent No.1 and the petitioners' name was not entered in the revenue records. Respondent No.1 himself appeared before the court and filed almost a consent written statement in which admitted the plaint but he said that it is incorrect to say that respondent No.1 wants to sale the properties of Schedule-A and B. After considering the plaint and the written statement learned Civil Judge reached the conclusion that there was no cause of action for the plaintiff to file the suit and the suit being a collusive in nature dismissed the suit, against which the petitioners herein filed an appeal before the District Judge, Ambikapur and the learned District Judge, Ambikapur also affirmed the judgment and decree passed by the Civil Judge. Learned District Judge also reached the conclusion that there was no cause of action for the plaintiff and moreover, the suit was collusive in nature and the third ground was taken that immovable property cannot be transferred without registration

of the same as envisaged in Sections 17 and 49 of the Indian Registration Act. A review petition was also filed by the petitioners against that judgment and decree and the same came to be rejected by the above order.

4. I have heard the learned counsel for the petitioners.
5. Learned counsel for the petitioners submitted that the ground taken by both the Courts for dismissal of the suit are not in accordance with law. On the contrary learned Lower Court and District Judge ought to have passed the decree in favour of the petitioners looking to the averments in the plaint and which were admitted by respondent No.1.
6. Under Article 227 of the Constitution of India the supervisory jurisdiction of the High Court is to the extent as has been held by the Hon'ble Apex Court in the matter of *State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and Ors.* reported in JT 2003 (4) SC 605 that

"The law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. It is settle law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal's within the bounds of their authority and not to correct mere errors."

In the case of *Surya Dev Rai v. Ram Chander Rai and others* reported in 2003 AIR SCW 3872, the Hon'ble Apex Court has held that:

"Under Article 227 of the Constitution of India, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate revisional or corrective jurisdiction. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior Court or Tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction may substitute such a decision of its own in place of the impugned decision, as the inferior Court or Tribunal should have made. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has 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."

7. In view of the above law laid down by the Hon'ble Apex Court, if we look into the present case both the courts reached the conclusion that the suit is collusive between the sons and father in order to save the stamps registration fees. Since everything was admitted by respondent No.1, therefore, there was no cause of action for the plaintiffs to file the suit.
8. In view of the circumstances, I do not find any illegality or infirmity in the judgment and decree impugned, neither the subordinate courts have assumed the jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction available is being exercised in a manner not permitted by law or by the impugned judgment and decree a failure of justice or grave injustice has resulted to the petitioners. Both the courts have not acted in flagrant disregard of law or rules or procedure. They have not acted in

violation of the principles of natural justice or there is no manifest error apparent on the face of the proceedings. This Court in writ jurisdiction cannot act as an appellate Court. Therefore, I do not find any reason to interfere with the concurrent findings and judgments of both the courts.

9. Moreover, the petitioners are entitled to file second appeal against the judgment and decree passed by the District Judge in first appeal. As per the provisions of Section 100 of the C.P.C. 'second appeal lies before the High Court against the judgment and decree where the decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.' Therefore, the alternative remedy was also available with the petitioners but they have not availed it.
10. In the result, writ petition is without force and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C. BHADOO
Judge

Barve*