

**W.P. No. 6123 /2012**

**28.2.2013**

Shri P.M. Jain, learned counsel for the petitioners.

Shri Rahul Sethi, learned counsel for the respondents.

The petitioners before this Court have filed this present petition under Article 227 of the Constitution of India being aggrieved by the order dated 19.1.12 passed in Civil Suit No.8-A/07 by the learned 1<sup>st</sup> Civil Judge Class-I, Dhar.

The contention of the petitioners is that the respondent No.1 has filed a civil suit for declaration that a sale deed executed on 30<sup>th</sup> September, 1997 by the defendant No.3 in favour of the defendant No.1 in respect of a land bearing Survey No.492/02 admeasuring 1.547 hectares being contrary to law is not binding upon him as he is the sole owner of the property in question. A prayer for grant of permanent injunction was also made restraining the respondents from transferring the suit land to a third person. The contention of the petitioners is that a written statement was filed by the petitioners, who were defendants and it was stated that an agreement to sale took place on 21.2.94 and thereafter a registered sale deed was executed on

30<sup>th</sup> September, 1997. In the written statement, it was also stated that the names of defendants were mutated in the revenue records. The contention of the petitioners is that on 4.5.2007 an application was preferred under Order 1 Rule 10 of CPC and it was stated by the applicants therein that they have purchased the suit land bearing Survey No. 492/02 vide registered sale deed dated 2.12.97 therefore, they are necessary party to the litigation. The grievance of the petitioners is that the application was allowed by the trial Court and the trial Court has failed to understand that there is a collusion on the part of the plaintiffs and the persons, who have submitted application under Order 1 Rule 10 of CPC. It has also been stated that no opportunity of filing a reply was granted to the defendants and such an application could not have been allowed in light of the statutory provisions as contained under Order 1 Rule 10 of CPC. The petitioners have prayed for quashing of the order dated 19.1.12.

On the other hand, learned counsel appearing for the respondents has vehemently argued before this Court that the disputed land was purchased on 2.12.97 by the respondent Nos.3 and 4 through a registered sale deed and as the suit was in respect of the same property, they are necessary party and in order to avoid multiplicity of judicial proceedings, the trial

Court has passed the order dated 19.1.10. It has also been stated that the present petitioners/defendants opted not to file a reply before the trial Court to the application for impleadment and their contention is that they have not been granted the opportunity, is an after thought on their part.

Heard the learned counsel for the parties at length and perused the record. The matter is being disposed of with the consent of the parties at motion hearing stage itself.

In the present case, the petitioners before this Court are defendants in respect of the civil suit i.e. Civil Suit No.8-A/07. The respondent No.1 has filed a civil suit for declaration and for grant of permanent injunction and during the pendency of the civil suit an application was preferred under Order 1 Rule 10 of CPC. The Order 1 Rule 10 (1) (2) of CPC reads as under :-

**“10. Suit in name of wrong plaintiff. - (1)**

Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such

terms as the Court thinks just.

**(2) *Court may strike out or add parties.* -**

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settled all the questions involved in the suit, be added.”

The trial Court with due application of mind has permitted for impleadment of respondent Nos. 2 and 3 as party to the suit on the ground that they have purchased the property in question through a registered sale deed dated 2.12.97. The order sheet dated 19.1.2012 reflects that the learned counsel for the defendants opted not to file any reply to the application preferred under Order 1 Rule 10 of CPC and therefore, this Court is of the considered opinion that in order to avoid multiplicity of judicial proceedings, the order dated 19.1.10 has rightly been passed by the trial Court and it does not suffer from any patent illegality nor any jurisdictional error has been pointed before this Court warranting interference in the matter.

The the Apex Court in the case of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil** reported in 2010 (8) SCC 329 in paragraph No.49 has held as under:-

"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 restraint 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."

Keeping in view the judgment delivered by the Apex Court in the aforesaid case and keeping in view the statutory provisions



governing the field as the impugned order has been passed in order to avoid the multiplicity of judicial proceedings, no case warranting interference under Article 227 of the Constitution of India is made out in the matter. The writ petition is dismissed.

No order as to costs.

**(S.C. Sharma)**

**Judge**

**skm**