

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

**Pet. U/s.104 48/2014  
CMA No.62/2014**

Date of Decision:12.06.2015

Anil Gupta and ors.

Vs.

Jaswant Singh and anr.

Coram:

**Hon'ble Mr. Justice Bansi Lal Bhat-Judge**

**Appearing counsel:**

For Petitioner (s)	:	Mr.Ravi Abrol, Advocate vice Mr. Abdul Hafeez, Advocate.
For respondent(s)	:	Mr.J.P.Gandhi, Advocate.

Whether approved for reporting in Law Journal/Digest? Yes/No

Whether approved for reporting in Media/Newspaper? Yes/No

1. Petitioners have invoked supervisory jurisdiction of this Court under Section 104 of Constitution of Jammu and Kashmir corresponding to Article 227 of the Constitution of India assailing order dated 29.11.2012 passed by learned Munsiff Jammu in an application for grant of ad-interim injunction filed alongside the civil suit titled "*Sham Lal Gupta and ors. Vs. Jaswant Singh and anr*" by virtue whereof the interim injunction granted vide order dated 30.03.2012 has been vacated. Petitioners have also assailed order dated 05.04.2014 passed by learned 2<sup>nd</sup> Additional District Judge Jammu in appeal titled "*Sumeet Gupta and ors. Vs. Jaswant Singh and anr*" preferred against impugned order dated 29.11.2012 passed by learned Munsiff Jammu by virtue whereof the appeal has been dismissed.
2. According to averments in the petition, one Prem Dutt Gupta – predecessor-in-interest of the petitioners, had purchased land measuring 2 kanals 15 marlas comprising of Khasra No.43, Khata No.37 Min, Khewat No.1 situated at Channi Beja, Tehsil and District Jammu vide sale deed executed on 19<sup>th</sup> April, 2000 and

registered on 16<sup>th</sup> August, 2000. Mutation No.1743 dated 05.10.2000 is said to have been attested in favour of the vendee who is said to have raised a boundary wall to protect the aforesaid land from encroachment. Prem Dutt Gupta is said to have expired and petitioners succeeded to his estate in respect whereof mutation of inheritance dated 28.07.2006 was attested in favour of petitioners. Allegedly respondents started causing interference in possession of petitioners which led to filing of civil suit for permanent injunction before learned City Judge, Jammu who, in terms of order dated 30.03.2012, directed the parties to maintain status quo. The suit was subsequently transferred to the Court of learned Munsiff Jammu. Respondents contested the suit before the Trial Court and on consideration of the rival contentions, the trial Court vacated the interim direction in terms of impugned order dated 29.11.2012. Petitioners filed Civil 1<sup>st</sup> Miscellaneous Appeal before Court of Learned 2<sup>nd</sup> Additional District Judge Jammu assailing the impugned order. However, the appeal came to be dismissed in terms of impugned order dated 05.04.2014. The impugned orders passed by the trial Court and the Appellate Court are assailed on the ground that the Courts below have virtually decided the suit leaving nothing to be adjudicated upon; that findings have been returned on factual aspects of the case even before the suit was tried on issues; that the Courts below have failed to protect the subject matter of litigation pending adjudication; that the finding in respect of attestation of Mutation No.1743 dated 05.10.2000 is erroneous; that the Courts below have placed reliance upon inquiry reports of revenue agency which had no evidentiary value and that the finding recorded in respect of sale deed dated 16<sup>th</sup> August, 2000 conferring ownership rights on the petitioners is

erroneous. It is contended that the petitioners are still holding possession of the subject matter of litigation though efforts are being made by respondents to dislodge them from the suit land. It is further averred that the approach adopted by the trial Court as also by the Ist Appellate Court is legally unsustainable and has resulted in miscarriage of justice.

3. Respondents have filed objections contesting the petition on the plea that Mutation No.1743 has been attested on the basis of statement of vendee Prem Dutt Gupta without verification of his possession by the revenue officials. It is further pleaded that the vendee Prem Dutt Gupta had filed a civil suit on 03.01.2005 being civil File No.149/Civil before learned Munsiff, Jammu seeking perpetual prohibitory injunction against respondent No.2 and two others in regard to the same subject matter. The suit was contested by respondent No.2 and other defendants therein. Prem Dutt Gupta died during pendency of the suit and his legal representatives did not choose to come forward for being arrayed as party to the suit and to prosecute the claim in the suit which came to be dismissed on 26.05.2006 as having abated. It is further pleaded that in the year 2005, late Prem Dutt Gupta had filed application before Patwari seeking Fard Intikhab of the subject matter of litigation and Patwari had reported that the present petitioner No.1- Anil Gupta had sought Fard Intikhab of the aforesaid land but he could not identify the land on spot whereafter one Madan Lal Sharma approached him on behalf of Prem Dutt Gupta and identified the land which was not found in possession of Prem Dutt Gupta but was in possession of Tej Ram S/o Chandu and Deepa Devi w/o Tej Ram. Thus no Fard was issued to Anil Gupta. Thereafter another application was filed for the same purpose and Naib Tehsildar, after conducting

demarcation reported that the land was not identifiable on spot whereas in the sale deed the land was properly demarcated and depicted which was in possession of Tej Ram. Thus, Naib Tehsildar also declined to issue Fard in respect of the said land. It is further pleaded that the petitioners had concealed all these material facts while filing the suit before the Trial Court. Respondents claim to have pleaded before the trial Court that land measuring 4 kanal 4 marlas bearing Khasra No.43 Min situated at Channi Beja was purchased by Tej Ram-respondent No.2 and his wife – Deepa Devi in equal shares from erstwhile owner vide sale deed executed/registered on 01.11.1999 in respect whereof mutation No.1695 had been attested after spot verification of possession by revenue officials. It was further pleaded that out of 4 kanal and 4 marlas of land, Deepa Devi had sold 2 kanals of land to respondent No.1 – Jaswant Singh by way of gift deed registered on 28.12.2004. It is pleaded that these sale deeds were executed on the basis of site plan/Tatima Shajra prepared and issued by the revenue agency. It is on consideration of the material placed on record by respondents that the trial Court vacated the ad-interim injunction and the 1<sup>st</sup> Appellate Court declined to interfere with the order of trial Court. It is further pleaded that this Court cannot exercise supervisory powers to disturb the concurrent findings of fact recorded by the Courts below.

4. I have heard Ld. Counsel for the parties at length and considered the matter.
5. Before proceeding further in the matter, it would be appropriate to have a look on the issue with regard to the ambit and scope of the writ petition under Section 103 of the Constitution of Jammu & Kashmir State corresponding to Article 226 of the Constitution of India and petition under Section 104 of the Constitution of

Jammu & Kashmir State corresponding to Article 227 of the Constitution of India. It is well settled that writ jurisdiction under Article 226 of the Constitution of India is extra-ordinary in nature and the same is not meant for declaring the private rights of the parties. The remedy under Article 226 is not available unless there is violation of some statutory duty on the part of a statutory authority. A writ petition is a remedy in public law which can be filed by any person but the main respondent should be the Government, governmental agencies, State or its instrumentalities / functionaries within the meaning of Article 12 of the Constitution. Private individuals cannot be equated with State or its instrumentalities / functionaries. All the respondents in the writ petition cannot be private individuals. However, private individuals acting in collusion with the State can be respondents in a writ petition. The person against whom writ can be issued must have some statutory or public duty to perform. Power under Article 226 is exercised at the instance of persons or citizens for vindication of their constitutional or statutory rights. The relief under Article 226 can be claimed *ex debito justitiae* or as a matter of right when there is infringement of fundamental rights. However, a petition filed under Article 227, *strictu sensu* is not a writ petition. The nature of exercise of power under Article 227 stands on substantially different footing. Jurisdiction under Article 227 is neither original nor appellate. Article 227 vests jurisdiction in High Court for both administrative and judicial superintendence. While in its jurisdiction under Article 226 the High Court has power to annul or quash an order or proceedings, jurisdiction under Article 227 can be exercised to substitute the impugned order by an order which the inferior tribunal should have passed. This is apart from

annulling the proceedings or quashing of the impugned order. While power under Article 226 is exercised when a party is affected, the power under Article 227 can be exercised by the High Court *suo motu* as a custodian of justice. Thus the powers conferred under Articles 226 and 227 of Constitution of India are distinct and operate in different fields. **Interference by the High Court under Article 227 is to keep the subordinate courts within the bounds of their jurisdiction. However, mere errors of fact or of law cannot be corrected by taking recourse to writ of certiorari or exercise of supervisory jurisdiction unless such error is manifest or apparent on the face of the proceedings and a gross failure of justice has occasioned thereby.** Such powers are to be exercised sparingly and in appropriate cases where the judicial conscience of the court dictates it to act to bring failure of justice to halt. Caution and circumspection is to be exercised when such jurisdiction is sought to be invoked, during the pendency of any suit / proceedings before a subordinate court and the error is capable of being corrected at the conclusion of proceedings though calling for correction. I am fortified in this view by a judgment of the Apex Court in a case titled ***Shalini Shyam Shetty and another v. Rajendra Shankar Patil***, reported in (2010) 8 SCC 329. The Hon'ble Apex Court after analyzing various decisions rendered by it, formulated the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution of India:-

***“ 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.”**

6. Admittedly, in view of the amendment to Section 115 of Code of Civil Procedure, no revision lies against the impugned order passed by the learned 2<sup>nd</sup> Additional District Judge in appeal. However, the remedy by way of revision being not available would not stand in the way



of invoking jurisdiction under Section 104 of the State Constitution, if the impugned order suffers from error on the face of record, i.e., the order is in utter disregard of the provisions of law and has occasioned gross failure of justice. The power of superintendence vested in this Court under Section 104 cannot be curtailed by any statute. Invoking of such power would be justified in a case of patent perversity in the order of the subordinate Courts. Curtailing of scope of Section 115 of Code of Civil Procedure in terms of the amending Act of 2009, in any case, however, would not result in expanding High Courts power of superintendence. In exercise of its jurisdiction under Section 104 of the State Constitution, this Court has to follow the regime of law notwithstanding the curtailment or barring of jurisdiction under Section 115 of the CPC.

7. Having regard to the considerations evolved by a catena of decisions of the Hon'ble Apex Court to regulate powers vested in High Court under Article 227 of the Constitution of India, be it seen that the controversy *inter se* the parties relates to possession of land measuring 2 kanals 15 marlas falling under Khasra No.43 situated at Channi Beja which is claimed to have been purchased by deceased Prem Dutt Gupta from Basanti Devi in terms of sale deed executed on 19.04.2000 and registered on 16.08.2000. The report of Naib Tehsildar who, in order to identify the subject matter of sale deed, examined the whole record and inspected the site, reveals that total survey No.43 Min consisted of 22 kanals 9 marlas of land out of which 10 kanals 5 ½ marlas have been sold. He found that the sale deed executed in favour of deceased Prem Dutt Gupta was not bearing correct specification of the subject of sale whereas revenue record, Fard Intikhab and sketch attached with the sale deed of respondent

No.1 gave proper description of land which was identified by him in presence of respondent No.2 and the land was found to be in possession of Tej Ram and his wife. Petitioners filed suit for permanent prohibitory injunction seeking to restrain the respondents from interfering with the suit land measuring 2 kanals 15 Marlas falling under Khasra No.43 situated at Channi Beja, of which they claimed to be in possession as legal representatives of the deceased vendee Prem Dutt Gupta. They claimed that the deceased had fenced the suit land with the boundary wall and allowed migrant labourers to reside thereon after raising temporary shelters (Jhuggis). They also banked upon the mutation of inheritance dated 28.07.2006 attested in their favour to support their assertion of being in peaceful enjoyment of the subject matter of suit. Respondents, on the other hand pleaded that the sale deed executed in favour of deceased Prem Dutt Gupta was supported by Fard Intikhab without proper description of boundaries. They further pleaded that the sale deed executed in favour of deceased Prem Dutt Gupta was latter in point of time and the report of Patwari clearly indicated that petitioner No.1 could not identify the subject matter of sale deed when the deceased had applied for issuance of Fard Intikhab in respect of the subject matter of sale deed. They also pleaded that it was subsequently found that the subject matter of sale deed was in possession of respondent - Tej Ram and his wife Deepa Devi which is clearly borne out by the report of Patwari dated 5<sup>th</sup> March, 2005. Respondents have further pleaded that respondent No.2 – Tej Ram and his wife – Deepa Devi had purchased land measuring 4 kanals 4 marlas bearing Khasra No.43 situated at Channi Beja in equal shares from vendors Sita Devi, Satya Devi, Sardar Devi- Daughters of Bua Ditta –resident of Channi Beja,

through their attorney-holder, by virtue of sale deed executed on 18.10.1999 and registered on 01.11.1999. A mutation to this effect was attested by Naib Tehsildar – Bahu under Mutation No.1695 on 03.06.2000. 2 kanals out of aforesaid 4 kanal 4 Marlas are pleaded to have been transferred by respondent No.2 and his wife in favour of respondent No.1 by virtue of gift deed executed on 27.12.2004 and registered on 28.12.2004. A mutation in respect of the gift deed is said to have been attested on 17.05.2008 in favour of respondent No.1. It is, therefore, manifestly clear that dispute between the parties related to the subject matter of the sale deed executed in favour of deceased Prem Dutt Gupta which was transferred in favour of the deceased by ex-owner Basanti Devi by virtue of sale deed executed on 13.08.2000. Admittedly this sale deed is later in point of time as compared to sale deed executed on 18.10.1999 by Sita Devi, Satya Devi and Sardar Devi – daughters of Bua Ditta in favour of respondent No.2 – Tej Ram and his wife Deepa Devi in regard to land measuring 4 kanals 4 Marlas falling under Khasra No.43 situated at Channi Beja. The position that emerges from documents relied upon by the parties and considered by the trial Court as also by the Appellate Court is that the identification of the subject matter of the *lis* before the trial Court is not properly described in the sale deed relied upon by petitioners to raise their claim for being in peaceful enjoyment of the subject matter as Legal Representatives of deceased vendee Prem Dutt Gupta. Petitioners sought an equitable relief before the trial Court. They were supposed to reveal all material facts and not suppress anything from the trial Court. The well settled considerations regulating grant of temporary injunctions enjoined upon the petitioners to establish a *prima facie* case with further requirement of

demonstrating that the balance of convenience was tilted in their favour and that refusal to grant an injunction would result in causing of an irreparable injury. The relevant tests for exercise of discretion in granting injunction have been summed up by Hon'ble Apex Court in **“Gujarat Bottling Company Limited Vs. Coca Cola Company”** reported in 1995, 5 SCC 545. The Hon'ble Court made the following observations:-

“43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion, the court applies the following tests;

- i) Whether the plaintiff has a *prima facie* case;
- ii) Whether the balance of convenience is in favour of the plaintiff; and
- iii) Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the balance of convenience lies.”

8. Courts below have been alive to these considerations while declining to grant interlocutory injunction in favour of petitioners. Mere pleading does not make a strong *prima facie* case for grant of temporary injunction. Petitioners were required to establish the existence of a

*prima facie* case by sufficient material in the form of documents and affidavits. The petitioners were also required to establish that their case of being in peaceful enjoyment of the subject matter of *lis* was free from doubt. A cursory look at the documents placed on record of trial Court brings it to fore that Naib Tehsildar Bahu, who, under orders from Tehsildar Settlement Jammu, conducted inquiry into application of deceased Prem Dutt Gupta for delivery of possession of the subject matter of sale deed measuring 2 kanals 15 marlas falling under Khasra No.43 Min situated in Channi Beja, found after demarcation that the site plan attached to the sale deed favouring deceased Prem Dutt Gupta bore no description of the boundaries of land under sale whereas the subject matter of *lis* was described as the subject of sale in the sale deed executed in favour of respondent No.2 - Tej Ram and his wife. The report is emphatic on the point that the petitioners staked claim to land forming part of the subject matter of sale deed executed in favour of respondent No.2 and his wife. He also noticed in his report that with insignificant variation, the description of subject matter of sale deed executed by owners in favour of respondent No.2 and his wife tallied with the land forming subject matter of the *lis*. His report also reveals that survey No.43 Min is a big plot of land measuring 22 kanals 9 marlas out of which 10 kanals and 5 ½ marlas have been sold. He concluded that the land forming subject matter of the sale deed executed in favour of deceased Prem Dutt Gupta may be a part of the plot of land not subjected to sale which could be identified only at the instance of vendor. This report has been prepared by a public servant in discharge of his public duty and could not have been ignored by the trial Courts while considering grant of interlocutory injunction in favour of petitioners. Courts

below have also referred to other material on record but since petitioners have failed to demonstrate the very existence of a *prima facie* case for relief in their favour, discussion in respect of such material may not be of much significance. The appeal against refusal of interlocutory injunction being of a limited scope and the findings recorded by trial Court in regard to existence of *prima facie* case not being shown to be perverse or passed in violation of the well settled judicial considerations regulating grant of interlocutory injunctions, the trial Court as also the Appellate Court cannot be said to have failed to exercise or transgressed their jurisdiction vested under law. The impugned orders are not shown to suffer from any legal infirmity in regard to exercise of jurisdiction by the Courts below. The impugned orders have not occasioned any failure of justice. Thus, no case for invoking of supervisory jurisdiction of this Court is made out.

9. There being no merit in the instant petition, the same is dismissed. Interim direction, if any, shall stand vacated.

**(Bansi Lal Bhat)**  
**Judge**

**Jammu**

12.06.2015

*Varun Bedi*