

Writ Petition No.422/2017

Indore, dt. 30/11/2017

None for the either side.

The petitioner before this Court has filed present petition being aggrieved by order dated 05/12/2016 passed by the trial Court by which the trial Court has partly allowed the application preferred under Order XIV Rule 5 of the Code of Civil Procedure, 1908.

The facts of the case reveal that the petitioner who is plaintiff before the trial Court has filed a civil suit for declaration, partition and for grant of permanent injunction and thereafter, an application was preferred by the petitioner under Order XIV Rule 5 of the Code of Civil Procedure, 1908. The same has been decided on 05/12/2016.

The petitioner's contention is that certain issues were necessary and the trial Court has not framed necessary issues. His contention in the writ petition is that the partition of the property took place 25 years back and no issue has been framed in this behalf.

This Court has carefully gone through the issues framed by the trial Court. They are seven in number. Issue No.2 reads as under:-

"Whether, the partition of the property between plaintiff and defendant No.2 has earlier taken place or not?"

Meaning thereby, the issue is very much in existence. In the considered opinion of this Court, the issues framed by the trial Court have rightly been framed and the *lis between the* parties can certainly be decided on the basis of issues framed by the trial Court.

This Court is of the opinion that the trial Court has not committed any perversity nor the order passed by the trial Court is without jurisdiction and therefore, the question of interference

by this Court does not arise.

The apex court in the case of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil** reported in **2010 (8) SCC 329** in paragraph 49 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."

In light of the aforesaid judgment as no patent illegality has been committed by the trial court and the order passed by the trial court does not suffer from any jurisdictional error, this court does not find any reason to interfere with the order dated 05/12/2016.

No order as to costs. Certified copy as per rules.

(S. C. SHARMA)
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