

(2013) 01 AHC CK 0470**Allahabad High Court****Case No:** Writ A. No. 76979 of 2005

Sahazavin

APPELLANT

Vs

Addl. District Judge

RESPONDENT

Date of Decision: Jan. 7, 2013**Citation:** (2013) 98 ALR 115**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Judgement**

Sudhir Agarwal, J.

Heard Sri Prashant Mishra, learned Counsel for the petitioner and Sri Sanjeev Singh, learned Counsel for respondents No. 3/1 and 3/2.

Petitioner's S.C.C. Suit No. 99 of 1987 filed against Bachha Lal, respondent No. 3 (now deceased and substituted by legal heirs i.e., respondents No. 3/1 and 3/2) on the ground that she is landlady and owner of property in dispute and respondent No. 3 has committed default in payment of rent was dismissed by Trial Court vide judgment dated 7.1.2000 holding that firstly, petitioner has failed to prove herself as owner of the property in dispute and relationship of "landlord" and "tenant" between her and respondent No. 3 could not be proved and secondly, since there is no relationship of "landlord" and "tenant", question of default in payment of rent also does not arise.

The aforesaid judgment of Trial Court has been confirmed in revision vide judgment dated 20.9.2005 by the Court of Additional District Judge, Court No. 8, Allahabad by dismissing petitioner's Civil Revision No. 183 of 2000.

2. Learned Counsel for the petitioner submitted that pursuant to an oral gift, petitioner became owner of property in dispute but the Trial Court has found that petitioner could not prove factum of oral gift of the property in dispute in her favour

and this findings of fact having not been found erroneous by Revisional Court, this Court while considering a case under Article 226/227 could not interfere particularly when this findings have not been shown perverse or contrary to record. The scope of judicial review in the matter arising out of the proceedings and judgments of the Courts below is very limited. The writ petitions under Article 226/227 in such matters have not to be taken up like a regular appeal.

3. Both the Courts below have recorded concurrent findings of fact and unless these findings are shown perverse or contrary to record resulting in grave injustice to petitioner, in writ jurisdiction under Article 226/227, this Court exercising restricted and narrow jurisdiction would not be justified in interfering with the same.

4. Under Article 227 of the Constitution, in supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the Court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

5. This power involves a duty on the High Court to keep the inferior Courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

6. In D.N. Banerji Vs. P.R. Mukherjee and Others, the Court said:

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere.

7. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in Waryam Singh and Another Vs. Amarnath and Another, and made following observations at p. 571:

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

8. In Mohd. Yunus Vs. Mohd. Mustaqim and Others, the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of Jaw cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot

assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

9. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: [Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, Rukumanand Bairoliya Vs. The State of Bihar, Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others,](#)

10. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: [Mrs. Rena Drego Vs. Lalchand Soni, Etc., Chandra Bhushan \(Deceased\) by Lrs. Vs. Beni Prasad and Others, Smt. Savitrabai Bausaheb Kevate and Others Vs. Raichand Dhanraj Lunja, and M/s. Savita Chemicals \(Pvt.\) Ltd. Vs. Dyes and Chemical Workers Union and Another,](#)

11. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: [Union of India and Others Vs. Himmat Singh Chahar,](#)

12. In [Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another,](#) the Hon'ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Article 226/227 of the Constitution.

13. In [Mohan Amba Prasad Aqnihotri and Others Vs. Bhaskar Balwant Aher \(D Through I.Rs.,](#) the Hon'ble Supreme Court held that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

14. In [Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another,](#) the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence

not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court cannot interfere.

15. In Union of India and Others Vs. Rajendra Prabha and Another, the Hon'ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

16. Similar view has been reiterated in State of Maharashtra Vs. Milind and Others, M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., and Ouseph Mathai and Others Vs. M. Abdul Khadir,

17. In Surya Dev Rai Vs. Ram Chander Rai and Others, it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step into exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

18. In Jasbir Singh Vs. State of Punjab, the Court said:

...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority. The power of superintendence exercised over the subordinate Courts and Tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate Courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior Courts in the discharge of their judicial functions.

19. In Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, the Court said that power of interference under Article 227 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. The above authority has been cited and followed in Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another, and Bandaru Satyanarayana Vs. Imandi Anasuya and Others,

20. In Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others, Apex Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

21. In T.G N. Kumar Vs. State of Kerala and Others, the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority.

22. In Commandant, 22nd Battalion, The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar, Apex Court referring to its earlier decision in Union of India and Others Vs. R.K. Sharma, observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227.

23. The learned Counsel for the petitioner could not show any perversity or manifest error in the impugned judgments justifying interference of this Court. I, therefore, do not find any reason to interfere with the impugned judgments. Writ petition lacks merit. Dismissed.

Interim order, if any, stands vacated.