

(2015) 11 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1195/2015

Mukut Raj Laxmi and Others

APPELLANT

Vs

Jitendra Singh and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 1, Order 8 Rule 9, 115, 151
Constitution of India, 1950 — Article 226, 227
Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 23

Citation : (2015) 11 RAJ CK 0024

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : S.C. Maloo, for the Appellant; O.P. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Imploring annulment of impugned order dated 15.01.2015 (Annex.5) passed by learned District Judge, Jaisalmer (for short "the learned court below"), the petitioners-defendants have laid this writ petition under Article 226 & 227 of Constitution of India.

2. By the order impugned, the learned court below has accepted the application of the respondents-plaintiffs under Order VIII Rule 9 read with Section 151 CPC in a suit for possession, mesne profits and perpetual injunction.

3. Succinctly stated facts of the case are that first and second respondents-plaintiffs jointly filed a suit for possession, mesne profits and perpetual injunction against the petitioners-defendants and proforma defendant-respondent No. 3. It is, inter alia, averred in the plaint that late Maharawal Jawahir Singh was blessed with two sons namely late Maharawal Girdhari Singh, who is father of second petitioner and father-in-law of first petitioner and proforma respondent is second son of Maharawal Jawahir Singh. As such, the suit projected a dispute between close relatives. Late Maharawal Jawahir Singh was owner of a property at

Jaisalmer which is a multi-storied building utilized as place of residence, hotel business & museum known as "Mandir Palace". The complete description of the property is also mentioned in the plaint with site plan. It is further averred that part of this property which is shown with red marks in the annexed site plan is in occupation of the petitioners-defendants as licensee and presently their occupation on said part of the property is unauthorised. The details about the property initially in occupation of petitioners as licensee and then as unauthorised occupants is also mentioned in the plaint with complete details.

4. During the era of Princely State of Jaisalmer, "Mariyada" was a legal way of transferring the property in the form of documentation. In his life time, Maharawal Jawahir Singh executed a Mariyada Instrument and after his death, late Maharawal Girdhari Singh also executed an alike document which was countersigned by Diwan of the Princely State, Shri M.R. Sapat to transfer Mandir Palace to proforma respondent Hukam Singh. It is stated in the plaint that before issuance of Mariyada document, it was published by a notification in the Gazette of Jaisalmer on 17.01.1929 and its contents were read out in Ijlas Darbar. Besides the aforesaid property of Mandir Palace, some other properties were also given by an Instrument of Mariyada to Shri Hukam Singh by late Maharawal Jawahir Singh with counter-signature of Diwan Shri L.R. Sikand on 28.02.1941. In this view of the mater, the proforma respondent acquired the ownership of Mandir Palace as well as other properties. Subsequently, proforma respondent Hukam Singh executed a gift deed of part of Mandir Palace in favour of his mother Rajdadi Smt. Kalyan Kumari on 07.03.1949 and as such she became owner of that part of Mandir Palace. That apart, proforma respondent also gifted the parts of property of Mandir Palace to his wife Smt. Girdhar Kumari and his sister-in-law (Bhabhi) Smt. Hawa Kumari on the same date i.e. 07.03.1949 and thereby both of them acquired ownership of the part of Mandir Palace in terms of gift deeds. In totality, the property of Mandir Palace was divided into four parts and first three parts were gifted to Smt. Kalyan Kumari, Smt. Girdhar Kumar and Smt. Hawa Kumari and fourth part was retained by proforma respondent as its owner.

5. After partition of the nation when State of Jaisalmer was merged in India, the respective parts of Mandir Palace became transferred properties of all the four incumbents including the proforma respondent. When Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (for short "the Act of 1952") came into force, the respective parts of Mandir Palace were declared as properties of all the four incumbents including the proforma respondent by Jagir Commissioner after due enquiry under Section 23 of the Act of 1952. Later on, Rajdadi Smt. Kalyan Kumari who is grand mother of first respondent bequeathed the portion of Mandir Palace owned by her to first respondent by executing Will dated 11.07.1986 and thereupon after her death, the first respondent acquired the ownership of that part of Mandir Palace with effect from 24.01.1987. Similarly, Smt. Hawa Kumari also executed a registered Will dated 23.11.1973 of her part of Mandir Palace in favour of second respondent. By efflux of time, when Smt. Hawa Kumari expired

on 18.12.1991, the second respondent acquired ownership of the property owned by Smt. Hawa Kumari. While executing her testamentary instrument, Smt. Hawa Kumari has very candidly admitted that she was gifted this property by her brother-in-law (Devar) Hukam Singh - proforma respondent. Later on Smt. Girdhar Kumari also bequeathed her part of Mandir Palace by a testamentary instrument dated 14.04.2008 in favour of her son and first respondent. After death of Smt. Girdhar Kumari on 01.08.2011, on the strength of Will, the first respondent became owner of that part of Mandir Palace. Therefore, in substance, the respondents-plaintiffs have pleaded in the plaint that both of them became owner of 3/4th part of Mandir Palace.

6. In the interregnum, one more development took place inasmuch as fourth and remaining part of the property which was owned by proforma respondent is also given to the first respondent by an oral partition dated 30.03.1986.

7. Thus, in totality, the respondents-plaintiffs have claimed ownership on the entire property which is known as Mandir Palace. In the plaint, it is also pleaded that proforma respondent Hukam Singh had cordial relations with his elder brother Maharawal Girdhari Singh and his sons as well as first petitioner who is daughter-in-law of Maharawal Girdhari Singh and, therefore, he has permitted both the petitioners to occupy part of property of Mandir Palace for their place of residence and dwelling. In order to show cordial relation between Maharawal Girdhari Singh and proforma respondent, Maharawal Raghunath Singh, who is husband of first petitioner, executed a Will dated 01.01.1981 in favour of his brother late Prathvi Raj Singh wherein proforma respondent was also declared as joint executor. The entire pleadings in the plaint projected a clear version of the respondents-plaintiffs that petitioners-defendants were allowed to occupy part of Mandir Palace as licensee and this permissive possession of both the petitioners on the said part of Mandir Palace has not created any right, title or interest in their favour. For showing their title, respondents-plaintiffs have also highlighted that State Government, Municipal Corporation and other Government Departments have also acknowledged their status as owner of Mandir Palace. It is further averred that respondents-plaintiffs are regularly paying the requisite taxes including house tax and land & building tax and water and electricity connection for Mandir Palace are also in their names. It is also submitted that respondents-plaintiffs and the proforma respondent are the joint owners and running hotel business in this property since 1994 and agreements have also been entered with ITC, Welcome Heritage Group of Hotels etc. Requisite construction raised in Mandir Palace property by proforma respondent after obtaining due permission from the Municipal Council, Jaisalmer is also averred in the plaint.

8. In order to show cause of action, it is pleaded in the plaint that for the last one and half year, petitioners are involved in some of the objectionable activities and they have adopted a defiant attitude vis-?-vis respondents-plaintiffs. Castigating the petitioners-defendants for their inimical behaviour, respondents-

plaintiffs have pleaded that a sense of discord have developed between rival parties and by efflux of time, it has become intolerable for the respondents-plaintiffs to allow the petitioners-defendants as licensee on the said property. Respondent-plaintiff No. 1 has also submitted in the plaint that when requisite proceedings were initiated by him for entering his name as owner of the part of the property which was transferred to him by his mother, a notice inviting objection was published in the newspaper. Pursuant to that notice, petitioner No. 2 (defendant) submitted his objections through Private Secretary and that has necessitated filing of suit. It is in that background, the respondents-plaintiffs have craved for the aforementioned reliefs.

9. After service of summons, on behalf of the petitioners, a detailed written statement is filed denying all the allegations contained in the plaint. In their exhaustive written statement, petitioners have made an attempt to resist the claim of the respondents-plaintiffs on various grounds. Disputing their possession in the property as licensee, the petitioners have also incorporated many additional pleas in the written statement including the claim of ownership on the anvil of doctrine of adverse possession. The petitioners have also pleaded that being in occupation of the property, they have invested a huge amount for its improvement and the entire story about Mariyada document and all other subsequent transfers, may it be by gift deeds or testamentary instruments, are of no avail and consequence as the requisite document Mariyada is not on record. In totality, the petitioners have pleaded some of the facts highlighting pedigree of royal family and their right to retain the possession to repudiate the claim of the respondents-plaintiffs.

10. The submission of written statement by the petitioners prompted the respondents-plaintiffs to lay an application under Order VIII Rule 9 read with Section 151 CPC for craving leave of the Court to file subsequent pleadings. Alongwith application, the proposed rejoinder is also submitted by the respondents-plaintiffs. In the application, respondents-plaintiffs have highlighted some of the paragraphs of the written statement and the additional pleas and urged that petitioners have pleaded certain new facts which are required to be controverted by subsequent pleadings. In the proposed rejoinder, averments of new facts in written statement are pointed out by the respondents-plaintiffs with clarity and precision. That apart, inconsistencies in the additional pleas of the petitioners-defendants are also mentioned to show necessity of subsequent pleadings for clarifying the position. In totality, the respondents-plaintiffs have made sincere endeavour to make out a case for seeking leave of the court to file subsequent pleadings within four corners of Order VIII Rule 9 CPC.

11. The application aforesaid of the respondents-plaintiffs is contested by the petitioners and reply to the same is submitted. In the reply, a specific objection is raised that permission for filing rejoinder is sought belatedly and, therefore, the same is liable to be declined. One more objection is incorporated in the reply that rejoinder is quite lengthy in comparison to the plaint inasmuch as plaint runs

into 22 pages whereas rejoinder is of 41 pages. An objection is also raised that respondents-plaintiffs have not been able to point out which are new facts pleaded by the petitioners-defendants in their written statement. With all these facts, the petitioners craved for rejection of application under Order VIII rule 9 CPC.

12. The learned court below after hearing the rival parties, by the order impugned has allowed the application of the respondents-plaintiffs and taken the subsequent pleadings on record. In the impugned order, learned court below has observed that under the provisions of CPC, no time limit is prescribed for filing subsequent pleadings/rejoinder unlike Order VIII Rule 1 CPC which prescribes a time limit for filing of written statement. The learned court below has also observed that there is no deliberate delay on the part of respondents-plaintiffs in filing the application under Order VIII Rule 9 CPC inasmuch as the said application is presented before framing of issues. The learned court below has also examined the powers under Order VIII Rule 9 CPC for granting permission to file subsequent pleadings and observed that rejoinder cannot be disallowed solely on jejune plea of the defendant that it is quite lengthy for the reason that there is no proforma prescribed under CPC for plaint/written statement/rejoinder. Moreover, it is also observed by learned court below that right of a party to submit its pleadings in any form cannot be circumscribed by putting a ceiling limit or confining pleadings within number of pages. Regarding the requisite plea of the petitioners about the new facts averred in the rejoinder by the respondents-plaintiffs, learned court below made whole-hearted endeavour to examine the facts in entirety in conjunction with principles governing the province of grant of leave in this behalf and thereafter opined that there is no semblance of proof that any new fact is pleaded in the rejoinder by the respondents-plaintiffs. Therefore, while relying on the legal precedents cited at Bar, learned court below accepted the prayer of the respondents-plaintiffs and allowed the rejoinder to be taken on record.

13. Assailing the impugned order, learned counsel for the petitioners Mr. S.C. Maloo submits that a plaintiff cannot be allowed to set up a new case in subsequent pleadings and this vital aspect has not been properly addressed by learned court below. Learned counsel would contend that a very lengthy rejoinder which was filed belatedly ought to have been disallowed by the learned court below and by not doing so, the learned court below has committed a serious jurisdictional error which requires interference. Learned counsel submits that right of the plaintiff to file subsequent pleadings other than by way of defence to set off or counter claim, is circumscribed under Order VIII Rule 9 CPC and it cannot be presented except by leave of the court was a very vital issue which is completely overlooked by learned court below and, therefore, the impugned order is vulnerable. Learned counsel further submits that the respondents-plaintiffs have suppressed certain material facts in the plaint despite having knowledge and have made attempt to wriggle out from that suppression by way of rejoinder which is not permissible. Lastly, learned counsel would

contend that some of the pleas sought to be raised in the rejoinder clearly tantamount to changing the stand by the plaintiffs already asserted in the plaint about ownership of the property and, therefore, such a inconsistent pleading cannot form part of subsequent pleadings. In support of his contentions, learned counsel has placed reliance on following legal precedents:--

- "(1) State of Rajasthan and Another Vs. Mohammed Ikbāl and Others,
- (2) Gurjant Singh Vs. Krishan Chander and Others,
- (3) Smt. Rani Mehta v. Chandra Lal Mehta & Ors., 2010 (2) CDR 787 (Raj.)"

14. In Mohammed Ikbāl (supra), learned Single Judge of this Court has examined the relative scope of Order VIII Rule 9 CPC and Order VI Rule 17 CPC and found that both are contextually different. The Court has opined that inconsistent pleas which are at variance with the plea originally taken in the suit cannot be permitted to be introduced. The Court finally held that the principles deducible on the subject are as follows:--

"a) The plaintiff cannot be allowed to introduce new pleas by way of filing rejoinder, so as to alter the basis of his plaint.

b) In rejoinder, the plaintiff can be permitted to explain the additional facts which have been incorporated in the written statement.

c) The plaintiff cannot be allowed to come forward with an entirely new case in his rejoinder.

d) The plaintiff cannot be permitted to raise inconsistent pleas so as to alter his original cause of action.

e) Application under Order 8 Rule 9 CPC cannot be treated as one under Order 6 Rule 17 CPC as both are contextually different."

15. In Gurjant Singh (supra) while considering the ambit and scope of Order VIII Rule 9 CPC, learned Single Judge of this Court held,-

"13. Thus, in the sum and substance, the plaintiff cannot be permitted to raise a new plea under the garb of filing rejoinder-affidavit, or take a plea inconsistent to the pleas taken by him in the petition, nor the rejoinder can be filed as a matter of right, even the Court can grant leave only after applying its mind on the pleas taken in the plaint and the written statement."

16. In Smt. Rani Mehta (supra), almost the same principles are reiterated by learned Single Judge of this Court.

17. Per contra, learned counsel for the respondents-plaintiffs Mr. O.P. Mehta submits that as a matter of fact, the plaintiffs have made endeavour to file rejoinder to some of the new facts averred in the written statement by the petitioners-defendants and, therefore, learned court below has rightly exercised its discretion in allowing the application under Order VIII Rule 9 CPC which

warrants no interference. Mr. Mehta would contend that the argument of learned counsel for the petitioners that respondents-plaintiffs have set up a new case in the rejoinder appears to be quite alluring but of no substance inasmuch as in their reply to the application under Order 8 Rule 9 CPC, no such plea is traceable. Defending the impugned order, learned counsel Mr. Mehta has strenuously urged that petitioners have filed a lengthy written statement incorporating many new facts and additional pleas which necessitated filing of subsequent pleadings and the learned court below after examining the matter threadbare has allowed the application of the respondents-plaintiffs by a reasoned order which calls for no interference in exercise of supervisory jurisdiction of this Court. Lastly, learned counsel submits that jurisdiction under Article 227 of the Constitution of India is not akin to appellate jurisdiction and a discretionary order passed by learned court below is not liable to be upset by exercising judicial review under supervisory jurisdiction unless it is shown that the order has resulted in grave miscarriage of justice or it is a case of dereliction of duty or flagrant violation of law by the learned court below. In support of his arguments, Mr. Mehta has placed reliance on following legal precedents:--

"(1) Radhey Shyam and Others Vs. Chhabi Nath and Others

(2) Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil,

(3) Sunil and Vasanth Architects and Consulting Engineers and Another Vs. Tata Ceramics Ltd.,

18. Learned counsel for the proforma respondent Mr. G.R. Singhvi while adopting the arguments of Mr. Mehta has urged that impugned order warrants no interference.

19. Heard learned counsel for the parties, perused the impugned order and other materials available on record.

20. The crucial question which has cropped up for judicial scrutiny in the instant petition lies in a narrow compass. The concern of the court is to see as to whether the learned court below has exercised its discretion judiciously within the four corners of Order VIII Rule 9 CPC. The parties to the litigation are in close relations and the bone of contention is the suit property for which the respondents-plaintiffs have filed a suit for possession, mesne profits and perpetual injunction. The entire edifice of the suit is that the petitioners-defendants are licensee on part of the property known as "Mandir Palace" where they were allowed to have their residence as a licensee. In the plaint, the respondents-plaintiffs have incorporated some of the relevant facts showing prima facie their title over the property in dispute and so also to depict status of petitioners-defendants as licensee. In order to show cause of action, it is specifically pleaded in the plaint that when the first respondent-plaintiff made endeavour to get his name registered as owner for part of "Mandir Palace" on the strength of testamentary instrument executed in his favour, the second petitioner-defendant submitted objection against general notification published in

the newspaper through his Private Secretary. That apart, in the plaint, certain overt acts are also attributed to the petitioners-defendants in causing obstructions and hindrances in peaceful enjoyment of ownership and possession of suit property by the respondents. While refuting the averments of the plaint, the petitioners-defendants have submitted a detailed written statement pleading some of the facts which in their opinion were of significance vis-?-vis lis involved in the matter. That apart, additional pleas are also incorporated in the written statement wherein they have seriously disputed their status as licensee in the property in question. Thus, the ownership of the respondents-plaintiffs is also seriously disputed by the petitioners. Besides the plea of limitation, the petitioners have also invoked doctrine of adverse possession to stake their claim as owners of the property. The maintainability of the suit is also incorporated as an additional plea by the petitioners in the written statement.

21. It is in that background, the respondents-plaintiffs made endeavour to file subsequent pleadings by asserting that petitioners-defendants have averred some of the new facts in the written statement and have also taken additional pleas which require replication by the plaintiffs. In the draft rejoinder, all these pleas which as per the respondents-plaintiffs are new pleas are sought to be controverted by the respondents-plaintiffs precisely with the assertion that these pleadings are necessary for adjudication of the lis involved in the matter.

22. The learned court below upon consideration of the rival submissions and the ambit and scope of Order VIII Rule 9 CPC allowed the application of the respondents-plaintiffs under Order VIII Rule 9 CPC. A threadbare examination of the impugned order clearly and unequivocally reveals that learned court below has made sincere endeavour to examine the proposed rejoinder in the light of the averments made in the written statement submitted by the petitioners. While taking note of the pleadings in the written statement and the proposed rejoinder, learned court below has found that in the rejoinder, the respondents-plaintiffs have not set out a new case but, on the contrary, have made an attempt to controvert some of the new facts pleaded in the written statement and to clarify the factual position. It is with this finding, the learned court below has exercised its discretion favouring the cause of the respondents-plaintiffs.

23. There remains no quarrel that Order VIII Rule 9 CPC under the caption "Subsequent pleadings" envisage a condition precedent for filing rejoinder i.e. obtaining leave of the court other than by way of defence to set off or counter claim. The complete text of Order VIII Rule 9 CPC reads as under:--

"9. Subsequent pleadings.--No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit: but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

24. A bare reading of the aforesaid provision makes it amply clear that a very wide discretion is conferred on the court in granting leave to a plaintiff for filing subsequent pleadings. Well it is true that in the guise of subsequent pleadings, a plaintiff cannot be allowed to set up a new case or incorporate certain inconsistent pleadings but then, plaintiff's right to file replication to meet with some of the new facts averred in the written statement is clearly permissible under Order VIII Rule 9 CPC.

25. The ratio decidendi of the legal precedents on which learned counsel for the petitioner has placed heavy reliance cannot be disputed but then the principles enunciated therein are required to be applied in the backdrop of facts and circumstances of an individual case and there cannot be any straight-jacket formula. While considering the prayer of the plaintiff to file rejoinder, the nature of suit, the reliefs craved for and the pleas sought to be raised in the written statement are of great significance. If in the written statement, defendant has incorporated certain additional pleas including the plea of adverse possession, maintainability of the suit and limitation, such pleas in strict sense may not be a defence in the nature of set off or counter claim but are certainly in the nature of new facts, which if not controverted, can prejudice the cause of the plaintiff. It is in that background, the court is required to adopt a realistic and pragmatic approach rather than pedantic and idealistic approach while considering application under Order VIII Rule 9 CPC. A thorough evaluation of the impugned order on the touchstone of legal principles governing the province of subsequent pleadings makes it abundantly clear that learned court below has taken note of all the aspects while exercising its discretion. From the order impugned, it is clearly discernible that learned court below has scrutinized the requisite averments of the proposed rejoinder in the backdrop of written statement and thereafter has recorded its definite finding that pleas sought to be raised in the rejoinder are neither in nature of setting up a new case nor it contains inconsistent pleadings. Therefore, in the considered opinion of this Court, the discretion exercised by learned court below is judicious and it is rather difficult to concur with the submissions of learned counsel for the petitioners that it has transgressed its jurisdiction in passing the impugned order.

26. The contentions of the petitioners concerning belated presentation of application by the respondents-plaintiffs for craving leave of the court to file rejoinder and the fact that proposed rejoinder is quite lengthy are per se superfluous. As a matter of fact, learned court below has observed that application with proposed rejoinder is filed by the respondents-plaintiffs before framing of issues and, therefore, it cannot be said that endeavour was made by the respondents-plaintiffs belatedly. It is also noteworthy that under CPC, no time limit is prescribed for filing rejoinder and, therefore, this plea is wholly untenable. The fact that rejoinder is lengthy is also a plea which cannot be countenanced as per the provisions of CPC. The provisions of CPC nowhere envisage the length and breadth of the plaint/written statement or the rejoinder. As such, there cannot be any restriction on the number of pages of the rejoinder.

Moreover, the respondents-plaintiffs have filed rejoinder to meet the pleadings incorporated in the written statement which too is quite lengthy. Therefore, this argument of learned counsel for the petitioners merits outright rejection.

27. It goes without saying that petitioners have assailed the impugned order by invoking supervisory jurisdiction of this Court which is not akin to an appellate jurisdiction or extraordinary jurisdiction under Article 226 of the Constitution. In certain cases where there is infringement of fundamental right, relief under Article 226 of the Constitution of India can be claimed *ex debito justitiae* or as a matter of right. But High Court exercises its jurisdiction under Article 227 entirely at its discretion and no person can claim it as a matter of right. The Supreme Court in *Shalini Shyam Shetty* (supra) examined the scope of judicial review under Article 227 of the Constitution after considering its various earlier judgments and laid down following principles:--

"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 the 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, at 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 the 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 their 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* and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh*, 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) The 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 *L. Chandra Kumar v. Union of India* 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."

28. The Court has also issued a word of caution that petitions under Article 227 are not to be entertained in a routine manner in relation to purely property disputes and alike matters. The Court further deprecated the practice of frequent interference under Article 227 for stalling proceedings in pending civil and criminal cases. The Court held,-

"64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by Hon"ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227 , the Hon"ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly."

29. In a Larger Bench decision, Supreme Court in case of *Radhey Shyam* (supra) has overruled the earlier verdict of two-judges Bench in case of *Surya Dev Rai Vs. Ram Chander Rai and Others*, and made a distinction between jurisdiction under Article 226 and Article 227 of Constitution of India while relying on some

of its earlier decisions and in *Shalini Shyam Shetty (supra)* reiterating the same principles with emphasis. The Court held,-

"23. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226 . We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226 ."

"25. Accordingly, we answer the question referred as follows:

"(i) Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution;

(ii) Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226 . Contrary view in *Surya Dev Rai* is overruled."

30. In totality, if the impugned order is tested on the touchstone of settled legal position by Supreme Court and scope of judicial review, unhesitatingly, in my view, exercise of supervisory jurisdiction has to be within well recognized constraints. Being a correctional jurisdiction, it is required to be exercised wherein it is found that orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. Even on thorough evaluation of impugned order, I am unable to find any such infirmity in the impugned order warranting interference in exercise of supervisory jurisdiction of this Court.

31. The upshot of above discussion is that I find no merit in this writ petition and the same is, therefore, dismissed.