

(2015) 10 CAL CK 0002

In the Calcutta High Court

Case No : RVW 3506 of 2006 and CO 4576 of 2006

Nripanka Shekhar Das and Others

APPELLANT

Vs

Mitali Guha and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 47 Rule 1, 151
Constitution of India, 1950 — Article 215, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 144
Income Tax Act, 1961 — Section 35

Citation : (2015) 4 CALLT 143

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : S.P. Roychowdhury, Hiranmay Bhattacharyya and Chandra Nath Sarkar, for the Appellant; Mayukh Maitra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arijit Banerjee, J—The facts of the review application and the civil revisional application are identical and/or substantially similar and, hence, the two applications have been taken up together for hearing and disposal.

2. Nripanka Sekhar Das as plaintiff filed Title Suit No. 86 of 2005 before the Ld. Civil Judge, (Senior Division) at Baruipur, District 24 Parganas (S) against one Smt. Illa Dey for damages and injunction. Upon the demise of the said Smt. Illa Dey, her legal heirs being Smt. Mitali Guha, and Sri Gobinda Prasad Dey were substituted in her place and stead. Motaleb Sheikh being the petitioner in the revisional application claims to have purchased a substantial portion of the suit property from the said Smt. Illa Dey, since deceased. Accordingly he got himself impleaded as a party defendant in the suit pending before the Ld. Trial Court.

3. It appears that the plaintiff who is the petitioner in the review application filed an application under Order 39 Rules 1 and 2 read with Section 151 of the CPC

before the Ld. Trial Court praying for an order of temporary injunction restraining the original defendant from changing the nature and character of the "Gha" schedule property and also from transferring and/or alienating the same to or in favour of any other party. The said application was filed on 4th October, 2005. The plaintiff's prayer for ad interim injunction was not allowed and the Ld. Trial Judge fixed the matter for hearing on 28th October, 2005.

4. It is the plaintiff's case that taking advantage of the closure of Civil Courts on account Puja vacation the original defendant was trying to transfer, alienate and/or encumber the "Gha" schedule property. Accordingly, the plaintiff filed an application under Section 144 of the Criminal Procedure Code before the Ld. Executive Magistrate, Baruipur, who by an order dated 10th October, 2005 directed maintenance of status quo regarding the nature, character and possession of the schedule property.

5. The plaintiff filed a civil revisional application before this court which was registered as AST No. 1373 of 2005 challenging the refusal of the Ld. Trial Judge to pass an ad interim order of injunction. By an interim order dated 14th October, 2005 passed on such revisional application, this court directed the original defendant not to alienate the "Gha" schedule property till two weeks after the Puja vacation. The plaintiff contends that the said order was duly communicated to the original defendant as well as her Ld. Advocate.

6. By a registered sale deed dated 17th October, 2005, the original defendant sold and transferred the "Gha" schedule property in favour of the defendant No. 2 who is the petitioner in the civil revisional application. Thereafter, the plaintiff filed an application under Order 39 Rules 1 and 2 of the CPC read with Section 151 thereof, inter alia, praying for an order of injunction restraining the defendant No. 2 from taking forcible possession of the "Gha" schedule property. On the said application the Ld. Trial Judge passed an order directing the defendant No. 2 to maintain status quo with regard to the nature and character and possession of the suit property.

7. The plaintiff filed another application under Section 151 of the CPC, inter alia, praying for an order of appointment of Special Officer for holding the keys to the suit property. The defendant No. 2 filed an application under Section 151 of the CPC, inter alia, praying for an order directing the plaintiff to open the padlock that the plaintiff had put on the entrance to the suit property.

8. By an order dated 24th April, 2006, the Ld. Trial Judge allowed the application of the defendant No. 2 and rejected the plaintiff's application.

9. Being aggrieved, the plaintiff challenged the order dated 24th April, 2006 passed by the Ld. Trial Judge by filing an application under Article 227 of the Constitution of India in this court being CO No. 1621 of 2006.

10. The said revisional application was disposed of by Pranab Kr. Deb, J. by a judgment and order dated 26th July, 2006 whereby the Ld. Trial Judge was

directed to hear the application of the defendant No. 2 under Section 151 of the CPC afresh for the purpose of ascertaining as to how the access of the defendant No. 2 to the "Gha" schedule property could be secured. The Ld. Judge further held that the Ld. Trial Court had rightly rejected the plaintiff's prayer for appointment of Special Officer and the said issue need not be considered afresh by the Ld. Trial Judge. In coming to this conclusion, the Ld. Judge observed that the plaintiff had no right and interest over the "Gha" schedule property and as such he could not be allowed to stand in the way of the defendant No. 2 gaining access to the "Gha" schedule property. The Ld. Judge further observed as follows:--

"The purchase of Gha scheduled property was made by opposite party No. 2 during the subsistence of order of injunction. The order of restrain, as indicated in the record, was issued against the erstwhile owner. The transferee having no knowledge about the existence of injunction cannot be penalized for acquisition of the property. Whether the sale in favour of the opposite party No. 2 is valid or not can only be decided at the appropriate stage. A transfer during pendency of a suit is not void altogether. If it is a transferee pendente lite, he will be bound by the result of the litigation. Right now, there cannot be any reason for denying him access to his newly acquired property."

11. It is for review of this order that the plaintiff has filed RVW 3506 of 2006.

12. Upon remand, the Ld. Trial Judge considered the matter afresh and by an order dated 13th November, 2006 rejected the application of the defendant No. 2 under Section 151 of the CPC for unlocking the padlock on the entrance to the "Gha" schedule property. It is this order that is the subject-matter of challenge in CO No. 4576 of 2006 filed by the defendant No. 2.

Re: RVW No. 3506 of 2006

13. Appearing on behalf of the review petitioner being the plaintiff in the suit, Mr. S.P. Roychowdhury, Ld. Sr. Adv. contended that having observed that whether the sale in favour of the defendant No. 2 is valid or not can only be decided at the appropriate stage, the Ld. Judge ought not to have held that a transfer during pendency of a suit is not void altogether. He submitted that the Ld. Judge failed to appreciate that a transfer in violation of an order of injunction is void. He further submitted that this court should not have directed the Ld. Trial Judge to consider as to how the defendant No. 2 can be put in possession of the suit property until the question of validity or otherwise of the transfer of the "Gha" schedule property in favour of the defendant No. 2 was decided. Mr. Roychowdhury submitted that the aforesaid observations amount to error apparent on the face of the order dated 26th July, 2006 which requires to be rectified by way of review. In this connection, Mr. Roychowdhury relied on the following decisions:

"(i) M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd., AIR 1958 SC 875 : (1958) 34 ITR 143 : (1959) 1 SCR 703 . In that case,

the Hon''ble Supreme Court observed in the context of Section 35 of the Income Tax Act that if a mistake of fact apparent from the record of an assessment order can be rectified under Section 35, there is no reason why a mistake of law which is glaring and obvious cannot be similarly rectified.

(ii) M.M. Thomas Vs. State of Kerala and Another, AIR 2000 SC 540 : (2000) 1 JT 26 : (2000) 1 SCALE 14 : (2000) 1 SCC 666 : (2000) 1 SCR 33 : (2000) AIRSCW 73 : (2000) 1 Supreme 1 . In that case, the Supreme Court observed at paragraph 14 of the judgment that the High Court as a court of record, as envisaged in Article 215 of the Constitution of India, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it, the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary.

(iii) Surjit and others Vs. Harbans Singh and others etc. etc., AIR 1996 SC 135 : AIR 1995 SC 135 : (1995) 6 JT 415 : (1995) 5 SCALE 212 : (1995) 6 SCC 50 : (1995) 3 SCR 354 Supp . In that case, the Hon''ble Supreme Court found that alienation/assignment of the property in question was made in defiance of a restraint order. It observed that if the court let it go as such, it would defeat the ends of justice and the prevalent public policy. When the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the court orders otherwise. The court, in these circumstances has the duty, as also right to treat the alienation/assignment as having not taken place at all for its purposes.

(iv) Krishna Kumar Khemka Vs. Grindlays Bank P.L.C. and others, AIR 1991 SC 899 : (1990) 3 JT 58 : (1990) 3 SCC 669 : (1990) 2 SCR 961 : (1990) 2 UJ 128 . In that case, the Hon''ble Supreme Court held that a lease created in respect of a property in violation of an order of injunction conferred no right on the party in whose favour such lis is purported to be created.

(v) Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, (1996) 4 AD 370 : AIR 1996 SC 2005 : (1997) 89 CompCas 362 : (1996) 2 CTC 557 : (1996) 4 JT 679 : (1996) 4 SCALE 202 : (1996) 4 SCC 622 : (1996) 2 SCR 295 Supp . In that case, the Hon''ble Supreme Court observed that where an act is done in violation of an order of stay or injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrong doing. The Hon''ble Supreme Court also observed that the inherent power of the court is not only available in such a case, but it is bound to exercise it to undo the wrong in the interest of justice. The Hon''ble Supreme Court referred a Division Bench decision of the Calcutta High Court in the case of Sujit Pal Vs. Prabir Kumar Sun and Others, AIR 1986 Cal 220 : 90 CWN 342 where a defendant had forcibly dispossessed the plaintiff in violation of the order of injunction and had taken possession of the property. The court directed the

restoration of possession to the plaintiff with the aid of police. The court observed that no technicalities can prevent the court from doing justice in exercise of its inherent powers.

(vi) *Bijali Naskar Vs. Amalendu Saha*, 104 CWN 830 . In that case, this court held that according to the law as it stands today a transferee by virtue of a so-called transfer in violation of order of injunction acquires no title and such transfer is to be treated as void and non-existent."

14. Appearing for the defendant No. 2, Mr. Mitra Ld. Counsel submitted that no ground under Order 47 Rule 1 of the CPC has been made out for reviewing the order dated 26th July, 2006. He submitted that even if an order is passed on the basis of wrong appreciation of law, the same is not a ground for review. An order erroneous in law is not necessarily reviewable. Mr. Mitra relied on the following decisions:--

"(a) *Spark Dealers Private Limited Vs. Official Liquidator*(2015) 2 CHN 241 . In that case, a Division Bench of this court held that a power to review is a restricted power. Such power authorises the court or the tribunal, which passed the judgment sought to be reviewed, to look over through the judgment not in order to correct it or improve it because some material, which ought to have been considered, had escaped its consideration or failed to be placed before it for any other reason. The court cannot under cover of review arrogate to itself the power to decide the case all over again. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise with a clear distinction between an erroneous decision and an error apparent on the face of the record. A party is not entitled to seek a review of the court's judgment merely for the purpose of re-hearing and for a fresh decision of the case. Departure from the normal principle that the court's judgment is final would be justified only when compelling or substantial circumstances make it necessary to do so.

(b) *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, AIR 1958 SC 398 : (1958) 1 SCR 1240 . In that case, the Hon'ble Apex Court observed that ordinarily, a mistake of law in a judgment or an order of a court, would not be a ground for review. It is a mistake or an error of fact apparent on the face of the record which may attract the power of review as contemplated by Order 1 Rule 47 of the CPC.

(c) *Phani Bhusan Dey Vs. Sudhamoyee Roy and Another*, 91 CWN 1078 . In that case, a Division Bench of this court was considering whether a sale deed under which the defendant No. 2 was claiming title to the suit property and which was executed by the defendant No. 1 in violation of an order of injunction restraining the defendant No. 1 from effecting any such alienation, was void. It was held that the defendant No. 1 had concealed the order of injunction and had managed to transfer the property to the defendant No. 1 and, therefore, no mala fide or blemish could be attributed to the defendant No. 2. Further relying on Mulla's Code of Civil Procedure (13th Ed. - Vol. II - Page 1513) and a Division Bench

decision of this court in the case of Bepin Krishna Sur and Others Vs. Gautam Kumar Sur and Others, 85 CWN 393 , this court held that whether or not one can appreciate the propriety of or the reason behind the rule, the ordinary rule is that alienation made even in contravention of an order of injunction is not void and the existence of a prohibitory injunction does not invalidate an alienation in the breach of such order.

(d) Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, AIR 1964 SC 1372 : (1964) 5 SCR 174 . In that case, in the context of Order 47 Rule 1 of the CPC, the Hon"ble Apex Court at paragraph 11 of the judgment observed, inter alia, as follows:--

"11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out....."

15. Mr. Mitra submitted that there were two views before the Ld. Judge who passed the order under review as regards whether or not a sale of property in violation of an order of injunction is void. The Ld. Judge followed the view taken by a Division Bench of this court. In any event, an error of law is not to be corrected by way of review. He prayed for dismissal of the review petition.

16. I have considered the rival contentions of the parties.

17. Order 47 Rule 1 of the CPC contemplates review of a judgment or order in three occasions. Firstly, if new and important matters or evidence are discovered which after the exercise of due diligence was not within the knowledge of the party seeking review or could not be produced by him at the time when the judgment was passed or order made. Secondly, if there is some mistake or error apparent on the face of the record. Thirdly, for any other sufficient reason.

18. In the present case, the review petitioner relies on the second of the aforesaid three conditions. According to me, there is no error apparent on the face of the record. This Court observed that whether or not the sale in favour of

the defendant No. 2 is valid can only be decided at the appropriate stage and that a transfer during pendency of a suit is not void altogether. This Court also observed that the transferee having no knowledge about the existence of injunction cannot be penalized for acquisition of the property. I find no error apparent on the face of the record. While considering a review application the court does not sit in appeal over the judgment under review. The error apparent on the face of the record contemplated by Order 47 Rule 1 which may justify review is, according to me, an error of fact. An error of law is not a ground for review as contemplated by Order 47 Rule 1. An error of law can be corrected only by approaching a higher forum.

19. I am in agreement with the submissions made by Mr. Mitra, Ld. Counsel for the defendant No. 2. Even assuming that the judgment under review suffers from error of law, review is not the remedy. A review application cannot be pressed into service for a fresh hearing of a case.

20. For the reasons aforesaid, I am of the opinion that no ground has been made out for review of the judgment and order dated 26th July, 2006. The review application, accordingly, fails and is dismissed without, however, any order as to costs.

Re: CO 4576 of 2006

21. Appearing in support of the revisional application Mr. Mitra, Ld. Counsel submitted that the remand to the trial court by this court's order dated 26th July, 2006 was a restricted remand in the sense that the issues decided by this court in its judgment and order dated 26th July, 2006 could not be reconsidered or gone into by the trial court on remand.

22. This court by its judgment and order dated 26th July 2006 disposed of the revisional application being CO No. 1621 of 2006 with a direction upon the trial court to hear the application under Section 151 of the Code of Civil Procedure afresh for the purpose of ascertaining as to how access of the defendant No. 2 to the "Gha" schedule property could be secured. Mr. Mitra submitted that the trial court on remand could not go into the issue of the description of the "Gha" schedule property. However, the trial court did so erroneously and this is a material irregularity committed by the trial court causing grave injustice to the defendant No. 2/petitioner. He submitted that the description of the "Gha" schedule property was there in the plaint. The description of the schedule property in the plaint and the supplementary affidavit filed by the defendant No. 2 are substantially same. In any event, the Id. Trial Court should have gone by the description of the property in the schedule to the plaint and should not have rejected the application of the defendant No. 2 for gaining access to the "Gha" schedule property on the ground that there was discrepancy in the description of the "Gha" schedule property in the schedule to the plaint and in the supplementary affidavit.

23. Mr. Mitra relied on a decision of this court in the case of Surindar Kaur (Rai)

and Others Vs. Jyoti Ranjan Banerjee and Another, (2001) 3 CALLT 66 : (2001) 3 CHN 444 wherein it was observed that if an appellate court remands a matter back to the trial court limiting the scope of a suit, the trial court is bound to follow the directions contained in the order of remand and cannot extent the scope of remand. The said proposition of law is based on the need to give finality to judicial decisions. The principles of res judicata applies also between two stages in the same litigation to the extent that a court, whether a trial court or a higher court, having at an earlier stage decided a matter in one way, will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding. He also relied on a decision of the Hon'ble Supreme Court in the case of Surjit Singh Vs. Gurwant Kaur, (2014) AIRSCW 5034 : (2014) 9 SCALE 768 in support of his submission that the principle of res judicata is based on the need to give finality to judicial decisions. Once a res is judicata, it shall not be adjudged again. The Apex Court also observed that the principle of res judicata applies also as between two stages in the same action.

24. Mr. Mitra contended that the Ld. Trial Judge exercised jurisdiction not vested in him by law in going beyond the terms of the order for rehearing passed by this court and in reopening questions already decided by this court. He submitted that in view of the specific observation of this court in the order dated 26th July, 2006 passed in CO No. 1621 of 2006 that there cannot be any reason for denying the defendant No. 2 access to his new acquired property, the Ld. Trial Judge acted in the exercise of his jurisdiction illegally and with material irregularity in refusing such access on the basis of an irrelevant consideration.

25. Mr. Roychowdhury, Ld. Sr. Counsel appearing on behalf of the plaintiff submitted that there was nothing wrong with the order under revision. This court had directed the Ld. Trial Court to reconsider the application of the defendant No. 2 which the Ld. Trial Court did. For the reasons recorded in the order under revision, the Ld. Trial Court held that it is not possible to dismantle the padlock on the entrance to the "Gha" schedule property and putting the defendant No. 2 in possession thereof. There is no patent illegality on the face of the order nor can it be said that the order is without jurisdiction. Even if it is assumed that the order is erroneous in law, the revisional jurisdiction of this court under Article 227 of the Constitution cannot be invoked for correcting any and every error of law in an order passed by a court or a tribunal inferior to this court. He submitted that the description of the "Gha" schedule property in the plaint and the description thereof in the supplementary affidavit filed by the defendant No. 2 before the Trial Court were discrepant and as such there was uncertainty about true description of the "Gha" schedule property. In spite of having been given an opportunity to correct the description of the "Gha" schedule property by amending the application under 151 of the CPC, the defendant No. 2 failed to do so and instead filed a supplementary affidavit with a description of "Gha" schedule property which is at variance with the description thereof in the schedule to the plaint. Hence, the trial court was justified in dismissing the application of the defendant No. 2 for putting him into possession of the "Gha"

schedule property by dismantling the padlock.

26. I have considered the rival contentions of the parties.

27. This court in its order dated 26th July, 2006 had observed that at this stage there was no reason for denying the defendant No. 2 access to his newly acquired property. With such observation this court remanded the matter back to the Ld. Trial Court for considering the application of the defendant No. 2 afresh and to ascertain as to how access of the defendant No. 2 to the "Gha" schedule property could be secured. On remand, the Ld. Trial Court considered the application afresh. The Ld. Trial Court did not go into the issue of whether or not the defendant No. 2 was entitled to get possession of the "Gha" schedule property. Thus, I do not find merit in Mr. Mitra's submission to the effect that the Ld. Trial Judge travelled beyond the scope of the remand. The dismissal of the application of the defendant No. 2 by the Ld. Trial Judge was not on the ground that the defendant No. 2 was not entitled to get possession of the "Gha" schedule property. The rejection of the application was on the ground of logistic difficulty that the Ld. Trial Court was faced with in view of the discrepancy in the description of the "Gha" schedule property in the plaint, in the application filed by the defendant No. 2 and in the supplementary affidavit filed by the defendant No. 2. There appears to have been total uncertainty as to what, in fact, constitutes the "Gha" schedule property and the defendant No. 2 could not clarify such uncertainty or confusion as regards the description of the "Gha" schedule property to the satisfaction of the Ld. Trial Judge. Under the circumstances the rejection by the Ld. Trial Judge of the application of the defendant No. 2 cannot be faulted.

28. While deciding this application I also have to bear in mind the guidelines laid down by the Hon'ble Apex Court for exercising power under Article 227 of the Constitution of India. In the case of Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, AIR 1977 SC 1222 : (1977) 2 SCC 437 : (1977) 9 UJ 167 , the Hon'ble Supreme Court observed that it is only when an order of a tribunal is violative of the fundamental basic principles of justice and fair play or where patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice that a court can justifiably intervene under Article 227 of the Constitution.

29. In the case of Achutananda Baidya Vs. Prafulla Kumar Gayen and others, AIR 1997 SC 2077 : (1997) 2 CTC 333 : (1997) 5 JT 75 : (1997) 3 SCALE 475 : (1997) 5 SCC 76 : (1997) 3 SCR 709 : (1997) AIRSCW 1904 : (1997) 3 Supreme 673 , the Hon'ble Supreme Court observed that the power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, inferior to High Court, have done what they were required to do. The High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption of or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a

patent error in procedure arriving at a finding which is perverse or passed on no material or results in manifest injustice.

30. In the case of Khimji Vidhu Vs. Premier High School, AIR 2000 SC 3495 : (1999) 9 SCC 264 : (2000) AIRSCW 2333 , the Hon''ble Supreme Court observed that findings of facts could not have been interfered with by the High Court in exercise of its jurisdiction under Article 227 of the Constitution. Such jurisdiction must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact which falls in the domain of an appellate court only.

31. In the case of M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., (2001) 7 AD 690 : AIR 2001 SC 3295 : (2001) 7 JT 657 : (2001) 6 SCALE 275 : (2001) 8 SCC 97 : (2001) AIRSCW 3544 : (2001) 7 Supreme 53 , the Hon''ble Apex Court observed that the exercise of power under Article 227 involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where, if High Court does not interfere a grave injustice will remain uncorrected. The High Court while acting under Article 227 cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error which is not apparent on the face of the record.

32. In the case of Ouseph Mathai and Others Vs. M. Abdul Khadir, AIR 2002 SC 110 : (2001) 9 JT 517 : (2001) 8 SCALE 110 : (2002) 1 SCC 319 : (2001) AIRSCW 4672 : (2001) 8 Supreme 262 , the Hon''ble Supreme Court observed that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution of India are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt, Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which the High Court exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. The power under this Article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law. Merely wrong decisions may not be a ground for the exercise of jurisdiction under Article 227 unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to a party.

33. From a meaningful reading of the pronouncements of the Hon''ble Apex Court it is clear that the supervisory power of the High Court under Article 227 of the Constitution is to be exercised sparingly and in limited cases. This is a self-

imposed restriction. The power is to be exercised to ensure that the lower courts and the tribunals do not transgress their jurisdiction. The power is not to be exercised to correct errors of law in the decision of the lower court or tribunal. A petition under Article 227 of the Constitution would not lie for correcting a mere error in the decision under challenge, far less an error of law. A mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 227 of the Constitution of India. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal.

34. In the instant case, the order under challenge does not suffer from any jurisdictional error or from vice of violation of principles of natural justice or fundamental principles of law. This court in exercising power under Article 227 will not sit in appeal over the order of the Ld. Trial Court. There is no glaring infirmity on the face of the record as would justify interference with the order of the Ld. Trial Judge in an application under Article 227.

35. For the reasons aforesaid this application fails and is dismissed, without, however, any order as to costs.

36. Both RVW No. 3506 of 2006 and CO No. 4576 of 2006 are disposed of accordingly.

Later: After the judgment is pronounced, the Ld. Counsel for the defendant No. 2/ added defendant prays for direction that the suit pending before the Ld. Trial Court be disposed of expeditiously.

Accordingly, the Ld. Trial Judge is requested to dispose of the suit at an early date and in any event within a period of 8 months from the date of communication of this order.