
(2015) 08 AHC CK 0041
In the Allahabad High Court
Case No : Writ Petition No. 3594 (M/S) of 2015

Suresh Chandra Mishra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 7 ADJ 521

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : S.R. Tiwari, Learned Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Dr. Devendra Kumar Arora, J—Heard Mr. S.R. Tiwari, learned Counsel for the petitioner, learned Standing Counsel and carefully perused the record.

2. Through the present writ petition under Article 227 of the Constitution of India, the petitioner has sought for following reliefs:--

"(I) A writ, order or direction in the nature of certiorari thereby quashing/set-aside the impugned order dated 21.5.2015, passed by opposite party No. 1 in Regular Suit No. 337/2015 : Ram Shankar v. Suresh Chandra Mishra and others, as contained in Annexure No. 1 to the writ petition.

(II) A writ, order or direction in the nature of Mandamus commanding/directing the Opposite Parties not to disturb and interfere with the peaceful possession of the Petitioner over the land/house in question bearing Khata No. 8, Gata No. 6, Khasra No. 6, situated at Village Niyawa, Pargana-Haveli Avadh, Tehsil Sadar, District Faizabad.

(III) A writ, order or direction in the nature of Certiorari thereby quashing/set-aside the proceeding of Regular Suit No. 337/2015, Ram Shankar v. Suresh Chandra Mishra and others pending before the Civil Judge Senior Division

Faizabad as contained in Annexure No. 1 & 17 to this writ petition, in the interest of justice.

(IV) Any other order or direction which this Hon"ble Court may deem fit just and proper may also kindly be passed in favour of the petitioner.

(V) Allow the writ petition with cost in favour of the petitioner."

3. Bereft of unnecessary details, in short, the facts of the case are that after a long drawn first round of litigation in respect of land situate in Pargana Haveli Avadh, Tehsil and District Faizabad, which started in the year 1965 by the predecessor of the parties and spread into multiple litigation in different forums, now the second round of litigation has been initiated by the opposite party No. 3- Ram Shanker by filing a suit bearing No. 337 of 2015, before the Civil Judge, Senior Division, Faizabad, inter-alia claiming for a decree to declare the previous decrees issued by the same court to be null and void, to declare all the sale deeds executed prior to 50 years back to be null and void, to issue a decree for demolition of the house of the petitioner.

4. It is said that though opposite party No. 3 has lost all the regular proceedings before civil court, appellate court, revenue court in regular side as well as in miscellaneous jurisdiction on earlier three occasions, therefore, proceeding of regular suit No. 337 of 2015 is neither maintainable nor admissible and is liable to be rejected at its initial stage. However, ignoring the aforesaid facts, the suit has been entertained by the trial Court and an ex parte order for issuing the commission vide its order dated 21.5.2015 have been passed without service of notice to the petitioner. In compliance of the order dated 21.5.2015, opposite party No. 3 along with Court Amin, Advocates and unsocial elements are trying to forcefully enter into premises of the petitioner and has served a notice on 17.6.2015.

5. Elaborating his submission, learned counsel for the petitioner has submitted that the impugned order so far as it relates to issuing the commission and summoning the commission report for 2.7.2015 in Regular Suit No. 337 of 2015 has been passed in the second round of litigation initiated at the instance of the opposite party No. 3 on the same set of facts and grounds, on which two suits have been dismissed in the first round of litigation; the appeals against them have also been dismissed; and the matter have also been adjudicated finally upto the High Court, therefore, impugned proceedings are not only barred by the principle of res-judicata and estoppel between the parties but are vitiated being per- se illegal, without jurisdiction and are liable to be rejected at the thresh hold.

6. Learned Standing Counsel has raised a preliminary objection regarding maintainability of the present writ petition under Article 227 of the Constitution of India inter-alia on the ground that the petitioner has failed to establish jurisdictional errors or perversity in the impugned order so as to enable this Court to exercise the jurisdiction under the aforesaid Article. According to the learned Standing Counsel the High Court exercises power under Article 227 of

the Constitution not to correct all 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. Therefore, it is incumbent upon the petitioner to bring the case within the parameters of Article 227, which the petitioner has failed to establish.

7. I have heard learned counsel for the petitioner and learned Standing Counsel and gone through the records.

8. The question which arises for consideration and decision is whether the High Court can exercise its jurisdiction under Article 227 of the Constitution of India for quashing the entire proceedings of Regular Suit No. 337 of 2015 when an equally efficacious statutory/alternate remedy is available to the petitioner under the Code of Civil Procedure for redressal of his grievances against the order impugned in the present writ petition.

9. Article 227 of the Constitution of India, which is relevant for this purpose, reads as under:---

"Article 227 Every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may--

(a) call for returns from such Courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or Tribunal constituted by or under any law relating to Armed Forces."

10. Thus, from the perusal of the aforesaid Article it transpires that under Article 227 of the Constitution of India, the scope of judicial review is not to correct all 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. 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. However, it 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.

11. The Apex Court for the first time while examining the scope of Article 227 in the case of D.N. Banerji Vs. P.R. Mukherjee and Others, AIR 1953 SC 58 : (1953) 4 SCR 302 observed as follows:

"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."

12. Again a Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in Waryam Singh and Another Vs. Amarnath and Another, AIR 1954 SC 215 : (1954) 1 SCR 565 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, AIR 1951 Cal 193 , 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".

13. In Mohd. Yunus Vs. Mohd. Mustaqim and Others, AIR 1984 SC 38 : (1983) 2 SCALE 1013 : (1983) 4 SCC 566 : (1984) 1 SCR 211 : (1984) 16 UJ 132 , the Apex Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law 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.

14. 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, AIR 1963 SC 1895 : (1963) 2 SCR 570 Supp ; Rukumanand Bairoliya Vs. The State of Bihar, AIR 1971 SC 746 : (1971) 3 SCC 167 : (1971) 3 UJ 143 ; Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, AIR 1980 SC 1896 : (1980) 1 LLJ 137 : (1980) 2 SCC 593 : (1980) 2 SCR 146 ; Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, (1995) 7 JT 400 : (1995) 5 SCALE 481 : (1995) 6 SCC 576 ; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, AIR 1997

SC 3892 : (1997) 7 JT 618 : (1997) 5 SCALE 633 : (1997) 7 SCC 300 : (1997) 3 SCR 636 Supp : (1997) AIRSCW 3819 : (1997) 8 Supreme 52 ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, AIR 1998 SC 128 : (1998) CriLJ 1 : (1997) 8 JT 705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp ; and Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others, AIR 1999 SC 162 : (1998) 7 JT 596 : (1999) 121 PLR 753 : (1998) 6 SCALE 115 : (1999) 1 SCC 47 : (1998) 2 SCR 643 Supp : (1999) 1 UJ 504 : (1998) AIRSCW 3521 : (1998) 8 Supreme 412).

15. 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., (1998) 3 AD 74 : AIR 1998 SC 1990 : (1998) 2 JT 369 : (1998) 2 SCALE 256 : (1998) 3 SCC 341 : (1998) 2 SCR 197 : (1998) AIRSCW 1840 : (1998) 2 Supreme 376 ; Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, AIR 1999 SC 2266 : (1999) 1 SCC 70 : (1999) AIRSCW 2309 ; Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, AIR 1999 SC 602 : (1998) 8 JT 581 : (1998) 6 SCALE 580 : (1999) 2 SCC 171 : (1999) 1 UJ 310 : (1999) AIRSCW 270 : (1998) 9 Supreme 412 ; and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another, AIR 1999 SC 413 : (1999) 81 FLR 932 : (1998) 8 JT 552 : (1999) 1 LLJ 416 : (1998) 6 SCALE 519 : (1999) 2 SCC 143 : (1999) SCC(L&S) 492 : (1998) 3 SCR 488 Supp : (1999) AIRSCW 80 : (1998) 9 Supreme 415).

16. It may be clarified that power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. While exercising powers under the said Article, the Court is not empowered to 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, AIR 1999 SC 1980 : (1999) CriLJ 2894 : (1999) 3 Crimes 60 : (1999) 2 CTC 503 : (1999) 3 JT 631 : (1999) 3 SCALE 620 : (1999) 4 SCC 521 : (1999) 3 SCR 513 : (1999) 2 UJ 1056 : (1999) AIRSCW 1670 : (1999) 5 Supreme 366).

17. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, AIR 1999 SC 1351 : (1999) 82 FLR 137 : (1999) 3 JT 38 : (1999) 1 LLJ 1260 : (1999) 2 SCALE 508 : (1999) 6 SCC 82 : (1999) SCC(L&S) 1054 : (1999) 2 SCR 505 : (1999) AIRSCW 1051 : (1999) 4 Supreme 51 , the 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 Articles 226/227 of the Constitution.

18. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., AIR 2000 SC 931 : (2000) 2 JT 558 : (2000) 2 SCALE 186 : (2000) 3 SCC 190 : (2000) 1 UJ 746 : (2000) AIRSCW 690 : (2000) 2 Supreme 49 , the Court said 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.

19. In *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, AIR 2000 SC 1508 : (2000) 2 CTC 506 : (2000) 85 FLR 672 : (2000) 4 JT 503 : (2000) 1 LLJ 1618 : (2000) 3 SCALE 255 : (2000) 4 SCC 245 : (2000) SCC(L&S) 471 : (2000) 2 SCR 1212 : (2000) AIRSCW 1475 : (2000) 3 Supreme 344 , the Court observed that it is impermissible for the Writ Court to reappraise 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 can not interfere.

20. In *Union of India and Others Vs. Rajendra Prabha and Another*, AIR 2001 SC 1672 : (2001) 75 ECC 3 : (2001) 129 ELT 286 : (2001) 4 JT 97 : (2001) 2 SCALE 608 : (2001) 4 SCC 472 : (2001) AIRSCW 1407 : (2001) 2 Supreme 545 , the Court observed that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, neither it can re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

21. Similar view has been reiterated in *State of Maharashtra Vs. Milind and Others*, (2000) 3 JT 213 Supp : (2000) 7 SCALE 628 : (2001) SCC(L&S) 117 : (2001) 1 UJ 271 : (2000) AIRSCW 4303 : (2000) 8 Supreme 429 ; *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 ; and *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

22. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, AIR 2003 SC 3044 : (2003) 4 CTC 48 : (2003) 6 SCALE 133 : (2003) 6 SCC 675 : (2003) 2 SCR 290 Supp : (2003) WritLR 722 : (2003) AIRSCW 3872 : (2003) 6 Supreme 390 , 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 in to 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.

23. In *Jasbir Singh Vs. State of Punjab*, (2006) 9 JT 35 : (2006) 10 SCALE 224 : (2006) 8 SCC 294 : (2007) 1 SCC(L&S) 401 : (2006) 7 SCR 174 Supp , 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."

24. The aforesaid principle has been reiterated recently by the Apex Court in *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, (2011) 1 CTC 854 : (2010) 7 JT 529 : (2011) 1 RCR(Rent) 1 : (2010) 7 SCALE 428 : (2010) 8 SCC 329 : (2010) 8 SCR 836 : (2010) AIRSCW 6387 , wherein the Apex Court propounded 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*, AIR 2011 SC 1353 : (2011) 3 CTC 665 : (2011) 14 JT 255 : (2011) 2 RCR(Civil) 381 : (2011) 3 SCALE 42 : (2011) 12 SCC 600 : (2011) 4 SCR 417 : (2011) AIRSCW 1737 and *Bandaru Satyanarayana Vs. Imandi Anasuya and Others*, (2011) 6 SCALE 489 .

25. In *Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others*, (2010) 1 CTC 466 : (2010) 1 JT 508 : (2010) 1 SCALE 267 : (2010) 2 SCC 432 : (2010) 1 SCR 899 : (2010) 2 UJ 496 : (2009) AIRSCW 269 , Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

26. Later on in the case i.e. *T.G N. Kumar Vs. State of Kerala and Others*, AIR 2011 SC 708 : (2010) 1 BC 612 : (2011) 1 Crimes 339 : (2011) 1 CTC 627 : (2011) 3 JT 280 : (2011) 1 RCR(Criminal) 507 : (2011) 1 SCALE 472 : (2011) 2 SCC 772 : (2011) 1 SCR 436 : (2011) 1 UJ 344 : (2011) AIRSCW 5678 : (2011) AIRSCW 635 : (2011) 1 Supreme 559 , the Apex Court observed 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.

27. In *The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar*, (2011) 12 JT 27 : (2011) 2 SCALE 142 : (2011) 12 SCR 1189 : (2012) 1 SLJ 203 , Apex Court referring to its earlier decision in *Union of India and Others Vs. R.K. Sharma*, AIR 2001 SC 3053 : (2001) 91 FLR 1006 : (2001) 9 JT 76 : (2001) LabIC 4007 : (2001) 7 SCALE 70 : (2001) 9 SCC 592 : (2001) 4 SCT 828 : (2002) 1 SLJ 323 : (2001) AIRSCW 4136 : (2001) 7 Supreme 497 observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

28. Again the exercise of powers under Article 227 by the High Court was gingerly scrutinized by the Apex Court in the case of *Jacky Vs. Tiny @ Antony and Others*, AIR 2014 SC 1615 : (2014) AIRSCW 2235 : (2014) 4 SCALE 597 : (2014) 6 SCC 508 has held as under:--

"We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It cannot be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

29. It would not be out of place to refer here that recently, while deciding a Reference with regard to the correctness of the law laid down by the Apex Court in *Surya Dev Rai v. Ram Chander Rai and others* that an order of civil court was amenable to writ jurisdiction under Article 226 of the Constitution in *Radhey Shyam and Others Vs. Chhabi Nath and Others*(2015) 3 AD 73 : (2015) 2 RCR(Civil) 606 : (2015) 3 SCALE 88 : (2015) 5 SCC 423 : (2015) 3 SCJ 552 : (2015) 1 UPLBEC 646 , the three Judges Bench held that against judicial orders passed by Civil Court, writ petition under Article 226 would not lie. It has also held that Article 227 is distinct from Article 226 and within the limitation and

permissibility of Article 227, the judicial orders passed by Civil Court can be assailed before the High Court.

30. Thus from the aforesaid pronouncements, it can be summed that the High Court can interfere under Article 227 in the following cases:

"(a) Erroneous assumption or excess of jurisdiction.

(b) Refusal to exercise jurisdiction.

(c) Error of law apparent on the face of the record, but not in concurrent finding of the fact as distinguished from a mere mistake of law or error of law relating to jurisdiction.

(d) Violation of the principles of natural justice.

(e) Arbitrary or capricious exercise of authority, or discretion.

(f) Arriving at a finding which is perverse or based on no material.

(g) A patent of flagrant error in procedure.

(h) Order resulting in manifest injustice.

(i) Error both on facts and in law or even otherwise."

31. The case in hand is to be examined in the light of the principles enumerated herein-above. Here, the petitioner is aggrieved by the order of the trial court whereby commission has been issued and the Court Amin was directed to submit its report after giving notice to the petitioner but the petitioner instead of approaching the trial Court by filing any objection as provided under the Code of Civil Procedure has filed the present writ petition under Article 227 of the Constitution of India. Apart from above, the petitioner has sought quashing of entire proceeding of suit i.e. Regular Suit No. 337 of 2015 pending in the Court of Civil Judge (Senior Division), Faizabad filed by the opposite party No. 3-Ram Shankar.

32. Needless to mention here that even if it is assumed as per version of the petitioner that Regular Suit No. 337 of 2015 has been filed by Ram Shanker (opposite party No. 3) by concocting several facts and the Trial Court has erred in passing the impugned order whereby without affording opportunity of hearing, a commission was instituted and the Court Amin was directed to submit its report, in that circumstances also, the petitioner has got a remedy to approach the court concerned and filed an application for recall of such order as provided under the Code of Civil Procedure instead of directly rushing to this Court under Article 227 of the Constitution of India.

33. There is no doubt to the fact that the Code of Civil Procedure is a complete Code which lays down the complete mechanism for an aggrieved person. It may be added that while passing the impugned order, the trial Court has put an embargo upon the Court Amin not to give any conclusion with regard to

possession over the property. As the petitioner has failed to establish perversity or jurisdictional errors apparent on the face of the record, the impugned order dated 21.5.2015 passed by the trial Court cannot be said to be faulty. Further, petitioner has also failed to establish as to how the entire proceedings of the suit are per se perverse or suffers from jurisdictional error.

34. For the reasons aforesaid, no relief as sought for by the petitioner can be granted in exercise of power under Article 227 of the Constitution and the writ petition being misconceived is hereby dismissed. However, liberty is granted to the petitioner to approach the trial Court through proper application/objection, as advised to him. It is clarified that this Court has not touched merits of the impugned order dated 21.5.2015, and in the event petitioner approaches the Court concerned as provided under the Code of Civil Procedure, I hope and trust that the Court concerned will apply its own independent mind while disposing of the application/objection after hearing the parties concerned, expeditiously.