**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.5819 of 2016**

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1. Ram Chandra Gupta son of Late Chunnilal Gupta

2. Ansuiya Gupta @ Anu Gupta, wife of Ramchandra Gupta

Both residents of A wing, 202, Blue Heaven, Thakur Complex, P.S.-Samtanagar, Kandivali (East) Mumbai-400101 (Maharashtra)

**Official Address:-** R.C. Gupta and Co. 301, Rajgore Chamber Surat Street, Masjid Station (East) above SBI Bank Mumbai-400009 (Maharashtra)

... ... Petitioner/s

Versus

Geeta Gupta wife of Late Siddharth Gupta, resident of A wing, 202 Blue Heaven, Thakur Complex, P.S.-Samtanagar, Kandivali (East), Mumbai-400101. At present resident at C/o Binod Kumar Gupta J/C3 Officer's Colony, P.S.-Madhubani, District-Madhubani.

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr.Alok Ranjan, Advocate
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**
**ORAL JUDGMENT**
**Date : 01-10-2024**

The present writ petition has been filed seeking the following relief:-

> *"1. This writ application is directed against the order dated 28.01.2016 passed by the Learned Principal Judge, Family Court, Madhubani, in Guardianship Case No.1/14 brought u/s 6 of the Hindu Minority and Guardianship Act and Section 7(g) of the Family Court Act for custody of her minor son Vansh Gupta aged about two years four months (presently about four years four months), by which the Learned Court below has illegally and erroneously disposed off the*

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*petition dated 08.05.2015 filed by these petitioners U/s 20 of the Code of Civil Procedure read with section 9(1) of Guardians and Wards Act, by which these petitioners have challenged the territorial jurisdiction of the Court below for hearing and trial of the said Guardianship Case No.1/14 and also challenged the maintainability of the case, because the same has been filed at wrong Forum, and prayed to decide the question of jurisdiction as a preliminary issue, which was disposed off stating that the question of jurisdiction is a mixed question of facts and law to be decided later on so at this stage jurisdiction of the Court cannot be decided and that it shall be decided later on after framing of issue with other issues."*

2. The learned counsel for the parties have pointed out, at the outset, that earlier writ petitions were being filed against the interlocutory orders (such orders which have not finally decided the suits or proceedings in favour of the parties and the suits or such proceedings have not stood disposed off), in view of the law laid down by the learned Division Bench of this Court in a judgment ***dated 13.05.2010,*** passed in ***C.R. no. 1067 of 2009 (Durga Devi v. Vijay Kumar Poddar & Ors.)***, however, subsequently, the Hon'ble Apex Court, by a judgment rendered in the case of ***Radhey Shyam and Another v. Chhabi Nath and Others,*** reported in ***(2015) 5 SCC 423,*** has held that judicial

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orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India and the jurisdiction under Article 227 of the Constitution of India is distinct from the jurisdiction under Article 226 of the Constitution of India. It would be relevant to reproduce paragraphs no. 18 and 25 to 30 of the said judgment rendered in the case of ***Radhey Shyam and Another (supra)*** hereinbelow :-

> *"18. While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32.*
>
> *25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial*

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*courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to the judicial courts, as rightly observed in the referring order [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] in paras 26 and 27 quoted above.*

*26. The Bench in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh v. Amarnath*

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*[AIR 1954 SC 215 : 1954 SCR 565] , Ouseph Mathai v. M. Abdul Khadir [(2002) 1 SCC 319] , Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] and Sameer Suresh Gupta v. Rahul Kumar Agarwal [(2013) 9 SCC 374 : (2013) 4 SCC (Civ) 345] . In Shalini Shyam Shetty [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] this Court observed: (SCC p. 352, paras 64-67)*

> *"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*

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*there is a 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 [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] and in view of the recent amendment to Section 115 of the Civil Procedure Code by the 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 the 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 the 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*

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*jurisdiction will adhere to them strictly."*

*(emphasis supplied)*

*27. 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 [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] 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.*

*28. We may also deal with the submission made on behalf of the respondent that the view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] stands approved by larger Benches in Shail [Shail v. Manoj Kumar, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401] , Mahendra Saree Emporium (2) [Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy, (2005) 1 SCC 481] and Salem Advocate Bar Assn. (2) [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344] and on that ground correctness of the said view cannot be gone into by this Bench. In Shail [Shail v. Manoj Kumar, (2004) 4 SCC 785 : 2004 SCC (Cri) 1401], though reference has been made to Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In Mahendra Saree Emporium (2) [Mahendra Saree Emporium (2) v. G.V. Srinivasa Murthy, (2005) 1 SCC*

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*481] , reference to Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in Salem Advocate Bar Assn. (2) [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344] in para 40, reference to Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent.*

*29. Accordingly, we answer the question referred as follows:*

*29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.*

*29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.*

*29.3. Contrary view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled.*

*30. The matters may now be listed before the appropriate Bench for further orders."*

3. It is further submitted that in view of the law laid down by the Hon'ble Apex Court in the case of ***Radhey Shyam and Another (supra), The Rules of The High Court at Patna*** have also been amended and vide ***Rule 6 of Chapter IIIA,*** it has been stipulated as follows :-

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> *"(6) Petitions under Article-227 of the Constitution of India in respect of any order or any proceeding before any Civil Court, would be filed in Civil Miscellaneous Jurisdiction and would be numbered as Civil Miscellaneous no. (C. Misc. No.)."*

4. The learned counsel for the petitioners submits that considering the aforesaid aspect of the matter, four weeks' time be granted for converting the present writ petition into a Civil Miscellaneous Petition. Time so sought, is granted.

5. The registry is directed to extend its cooperation to the learned counsel for the petitioners in order to ensure that the present writ petition is converted into Civil Miscellaneous Petition at the earliest, whereafter, the registry shall list the present case on priority basis, before the concerned Bench, *in seisin* of the subject matter of the present case, in view of the fact that the present case is pending since more than eight years.

**(Mohit Kumar Shah, J)**

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