

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 75 of 2025

Decided on: 7.10.2026

Rajesh Kumar & others

... Petitioners

Versus

Jwala Devi

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

For the Petitioners: Mr. Mohinder Verma,
Advocate.

For the Respondents : Mr. Naresh K. Sharma,
Advocate.

Virender Singh, Judge (oral)

Petitioners Rajesh Kumar & others have filed petition, under Article 227 of the Constitution of India, against the order dated 9.1.2025, passed in Civil Miscellaneous Appeal No. 47-14 of 2024, titled as, 'Jwala Devi versus Rajesh Kumar & others, by the Court of Learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. (hereinafter referred to as 'the Appellate Court').

2. Vide order dated 9.1.2025, the appeal preferred by the plaintiff has been allowed, against the order dated 3.9.2024, passed in CMA No. 347-6 of 2024, titled as, 'Jwala Devi versus Rajesh Kumar & others', passed by the Court of learned Civil Judge, Court No. 2, Ghumarwin, H.P. (hereinafter referred to as, 'the trial Court'), whereby, the application, under Order 39 Rules 1 and 2 CPC has been dismissed.

3. The parties to the lis are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. Brief facts leading to the filing of the present petition, before this Court, as borne out from the documents, annexed with the petition, may be summed up as under:

Plaintiff Jwala Devi has filed the suit for permanent prohibitory injunction, restraining the defendants from digging the land, raising any construction, occupying the valuable and specific portion of the land, changing the nature of the land, measuring 10 bighas 7 biswas, comprised in khasra No.

774/714/355, 773/714/355, kita No. 2, khata 17/1 No. Khatauni Nos. 52 and 53, situated in vilage Dakri Sehari, Pargana Tiun, Tehsil Ghumarwin, District Bilaspur, (hereinafter referred to as, 'the suit land'), in any manner, personally or through their agents, servants, representatives and assignees, until the partition of the suit land, by metes and bounds, by the competent Revenue Authorities.

4.1 The said suit has been filed by the plaintiff on the ground that she, along with the defendants and other co-sharers, are joint owners in possession of the suit land. Suit land has not been partitioned between the parties. As such, it has been pleaded that the defendants have no right, title or interest, in any manner, over the suit land or a part of it, to raise construction.

4.2 According to the plaintiff, defendants No. 1 to 3 had instituted the suit for permanent prohibitory injunction, against the husband of defendant No. 1, Shri Ramdhan, titled as, 'Surender Kumar and others versus Ramdhan and others, bearing Civil Suit No. 151-1 of

2008, which has been decreed, but the defendants themselves are raising construction, over the suit land by occupying the best and valuable portion.

4.3 On the basis of the above facts, the plaintiff has sought the following relief:

“i) Decree for permanent injunction restraining the defendants from digging the land, raising any construction, occupying the valuable and specific portion of the suit land, changing the nature of the land in suit i.e., land measuring 10-7 bighas, comprised in Khasra Nos. 774/714/355 and 773/714/355, Kitta-2, Khata No. 17/1, Khatoni Nos. 52 and 53, situated in Village Dakri Sehari, Pargana Tiun, Tehsil Ghumarwin, District Bilaspur, H.P., in any manner either personally or through their agents, servants, representatives, and assignees until the partition of the suit land by metes and bounds by the competent revenue authority amongst co-sharers, be passed;

ii) In the alternative, a decree for joint possession by demolishing the construction, if any, raised by the defendants during the pendency of the suit or found to be raised by the defendants over the suit land or any part of it exceeding to share forcibly.”

5. The suit has been contested by the defendants by filing the written statement, in which, they have taken the preliminary objections that the suit is not maintainable; the suit is barred by limitation, plaintiff has no cause of action, to file the present suit; plaintiff is

estopped from filing the suit, on account of her own act and conduct; suit is bad for misjoinder of necessary parties; plaintiff has no locus standi to file the present suit; the suit is not maintainable in view of the judgment and decree dated 26.7.2014 passed in Civil Suit No. 151/1 of 2018, as the judgment and decree regarding the suit land has already been passed, and as such the suit is stated to be barred by res judicata.

5.1 It is the further case of the defendants that the plaintiff, as well as, her predecessor Hardei and Ramdhan had sold the land, out of the suit land, measuring 0-19 biswas, in which, Hardei has sold land 00-14 biswa to Shri Hira Lal. Hira Lal had raised construction on the land measuring 0-05 biswa, which has been sold by Ramdhan to Shri Jagjeet Kumar, which, he had occupied on the side of the road and he has also raised construction over the land.

5.2 It is the further case of the defendants that the land measuring 3 bighas 7 biswas, comprising in khasra No. 484/426, is situated on the roadside, in which, she

had also raised the construction of a house and deprived the defendants from the land, situated on the roadside.

5.3 On merits, the factual position, with regard to the jointness of the suit land has not been disputed. It has also been admitted that the suit land has been recorded as joint between the parties, in the revenue record, but, according to them, the co-sharers are in separate possession of the suit land.

5.4 It is the further case of the defendants that the plaintiff has herself admitted in the written statement, filed in Civil Suit No. 151/1 of 2008 that the suit land has already been partitioned between all the co-sharers in the family settlement. Other contents have been denied. Thus, a prayer has been made for dismissal of the suit.

6. Along with the suit, plaintiff Jwala Devi has filed the application under Order 39 Rules 1 and 2 CPC, restraining the defendants from digging the land, raising any construction, occupying the valuable and specific portion of the suit land, during the pendency of the suit.

6.1 The application has been contested on the similar grounds, upon which, the suit has been contested.

7. The learned trial Court, after hearing the learned counsel for the parties, has dismissed the application, under Order 39 Rules 1 and 2 of the CPC filed by the plaintiff, vide order dated 3.9.2024.

8. The said order has been assailed by the plaintiff by filing the Civil Miscellaneous Appeal before the learned Appellate Court. The learned Appellate Court, vide order dated 9.1.2025, has allowed the application, by restraining the defendants from raising any new construction or changing the nature of the suit land, during the pendency of the main suit, or till partition, by metes and bounds.

9. Aggrieved from the said order, passed by learned Appellate Court, defendants are now before this Court by way of present petition, which has been filed, under Article 227 of the Constitution of India.

10. According to the defendants, the learned Appellate Court has fallen into error, by reversing the

order passed by the learned trial Court and by allowing the application, under Order 39 Rules 1 and 2 of the CPC.

11. According to the further stand of the defendants, the plaintiff herself has raised the construction over the joint land, therefore, she is not entitled for any kind of injunction, against the co-sharers.

11.1 The findings of the learned Appellate Court have further been assailed on the ground that the learned trial Court has decided the application, as if the said Court is trial Court, and without recording the finding that the learned trial Court has exceeded its jurisdiction, while dismissing the application, filed under Order 39 Rules 1 and 2 of the CPC.

12. On the basis of the grounds of petition, so taken, Mr. Mohinder Verma, Advocate, appearing for the petitioners-defendants has prayed that the present petition may kindly be allowed by setting aside the order passed by the learned Appellate Court, by virtue of which, the order passed by the learned trial Court has

been reversed and the application, under Order 39 Rules 1 and 2 of the CPC may kindly be dismissed.

13. Per contra, Mr. Naresh K. Sharma, Advocate appearing for the respondent/plaintiff has supported the order passed by the learned Appellate Court, by arguing that the learned Appellate Court has rightly appreciated the stand taken by the parties, and the application, under Order 39 Rules 1 and 2 of the CPC has been allowed to preserve the subject matter of the lis. As such, a prayer has been made to dismiss the present petition.

14. Further, the application under Order 39 Rule 1 and 2 of the CPC filed by the plaintiffs was dismissed by the learned trial Court, however the learned Appellate Court has allowed the appeal.

15. Powers of learned Appellate Court, under Order 43 of the CPC, has elaborately been discussed, by the Hon'ble Supreme Court, in a case titled as, '**Ramakant Ambalal Choksi Vs Harish Ambalal Choksi & Others**', reported in (2024) 11 SCC 351. Relevant paragraphs 19 to 31 of the judgment, are reproduced, as under:-

19. Order 43 of the CPC specifies the orders against which an appeal lies. Sub Rule (r) of Rule 1 of the said order provides that an appeal would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.

20. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in **Wander Ltd. v. Antox India P. Ltd.** reported in 1990 Supp SCC 727. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:

a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and

b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.

21. With regards to (a), this Court held thus:

"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had

ignored the settled principles of law regulating grant or refusal of interlocutory injunctions ... the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below ... If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

22. This Court, while arriving at the above findings, relied on its earlier judgment in *Printers (Mysore) v Pothan Joseph* reported in (1960) SCC Online SC 62 where it was held thus:

"[...] as has been observed by Viscount Simon LC in Charles Osenton & Co v Johnston – the law as to reversal by a court of appeal of an order made by a judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."

23. It is pertinent to note that in *Printers* (supra) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in *Charles Osenton & Co v Johnston* reported in 1942 A.C. 130, after stating the above, went on to quote Lord Wright's decision in *Evans v. Bartlam* reported in 1937 A.C. 473:

"It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not

entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order.”

24. *In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.*

25. *What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:*

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

26. *The principles of law explained by this Court in **Wander’s** (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on*

perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

27. In *Neon Laboratories Ltd. v. Medical Technologies Ltd.* reported in (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

28. In *Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan* reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in *Wander (supra)* and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

“20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in

serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd.”

(Emphasis supplied)

29. This Court in *Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.* reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the

appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

30. *This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.*

31. *The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case.”*

16. Being guided by the above decision, now, this Court would proceed further to ascertain the fact whether the findings, so recorded by the learned Appellate Court require any interference, by this Court?

17. In a recent decision in "**Nandi Infrastructure Corridor Enterprises Ltd. & Anr. Versus B. Gurappa Naidu & Ors.**", 2026 INSC 434", the scope of interference

has been explained by the Hon'ble Supreme Court. Relevant paragraph 35 of the judgment, is reproduced, as under:-

"35. In short, the principles laid down in the above matters is as follows:

a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.

b) It is also well settled that the High Court while acting under this. Article 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.

c) The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal."

18. Perusal of the record shows that the learned Appellate Court has decided the application, under

Order 39 Rules 1 and 2 CPC, as if the learned Appellate Court is trial Court, whereas, the scope of interference, by the learned Appellate Court, has elaborately been discussed by the Hon'ble Supreme Court in ***Ramakant Ambalal Choksi's*** case (supra).

19. The learned Appellate Court has acted as trial Court, without recording the findings that the learned trial Court, has failed to exercise the jurisdiction, vested in it, while dismissing the application, under Order 39 Rules 1 and 2 CPC, or has wrongly exercised the jurisdiction, vested in it. Without recording the perversity in the findings of the learned trial court, the learned Appellate Court cannot act as trial court, while reassessing the material, which has been taken into consideration, by the learned trial Court, while deciding the application, under order 39 Rules 1 and 2 of CPC.

20. In view of the above facts, the present petition is allowed, and the order passed by the learned Appellate court is set aside, whereas, the order passed by the learned trial court, is restored. Consequently the

application under Order 39 Rules 1 and 2 of CPC is dismissed.

21. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present application.

7.10.2026
Kalpana

(Virender Singh)
Judge

