

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 235 of 2022

Reserved on : 1.9.2026

Decided on: 30.9.2026

Uploaded on:30.9.2026

Jagmohan

... Petitioner

Versus

Saraswati Vihar Welfare Association & others

...Respondents

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

For the Petitioner: Mr. Ajay Sharma, Senior Advocate, assisted by Mr. Tarun K. Brakta, Advocate.

For the Respondents : Mr. R.K. Gautam, Senior Advocate, assisted by Mr. Jai Ram Sharma, and Mr. Sahil Dixit, Advocates, for respondents No. 1 to 4.

Mr. Tejasvi Sharma and Mr. H.S. Rawat, Additional Advocates General with Mr. Rohit Sharma, Deputy Advocate General, for respondent No. 5-State.

Virender Singh, Judge

Petitioner Jagmohan has filed the present petition under Article 227 of the Constitution of India, against the

order dated 26.05.2022, passed in Civil Misc. Appeal No. 08-NL/14 of 2022, passed by the Court of learned Additional District Judge, Nalagarh, District Solan, H.P. (hereinafter referred to as 'the First Appellate Court').

2. Vide order dated 26.05.2022, the learned First Appellate Court has dismissed the Civil Miscellaneous Appeal, filed by the petitioner, against the order dated 17.12.2021, passed by the Court of learned Civil Judge, Court No. 2, Nalagarh, District Solan, H.P. (hereinafter referred to as 'the trial Court'), passed in an application under Order 39, Rules 1 & 2 of the CPC, being CMA No. 106/6 of 2021 in Civil Suit No. 52 of 2021, titled as, 'Jagmohan versus Saraswati Vihar Welfare Association Peersthan (Dadi Bhola) & others'. The learned trial Court, vide order dated 17.12.2021, has dismissed the application under Order 39, Rules 1 & 2 of the CPC.

3. 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 record, may be summed up as under:

Plaintiff Jagmohan has filed a suit for permanent prohibitory injunction, against the defendants. The subject matter of the lis is the land comprised in:

(A): Khasra No. 484, measuring 12 Bighas 10 Biswas, comprised in Khewat Khatoni No. 144/147, situated in Village Dadi Bhola, Tehsil Nalagarh, as per the Jamabandi for the year 2014-15, shown in Annexure P-1, and also shown as Street No. 3/passage in the site plan (Annexure P-2) and further shown in the photographs;

(B): Khasra No. 577, land measuring 1 Bigha 16 Biswas, out of which, land measuring 0-5 Biswas (plot of the plaintiff) comprised in Khewat Khatoni No. 15 min/15 min, situated in Village Dadi Kaniya, Tehsil Nalagarh, District Solan, H.P.;

(C): Khasra No. 483, measuring 3 Bighas 15 Biswas, comprised in Khewat Khatoni No. 358 min/361 min, situated in Village Dadi Bhola, Tehsil Nalagarh (above-mentioned lands are described as 'the suit land').

4.1 According to the plaintiff, he is a co-owner and co-sharer in joint possession of the suit land to the extent of 20 shares in the suit land described in para No. 1(A) of the plaint, along with other co-sharers. He is also a co-owner and co-sharer of the land measuring 1 Bigha 16 Biswas in Khasra No. 577, described in para 1(B) of the plaint. He has also purchased 5 Biswas of land from Shri Shekhar Chand, on 09.02.2021.

4.2 According to the plaintiff, he has no cause of action against his co-owner, from whom, he had purchased 5 Biswas of land through the said sale deed. According to his further stand, adjacent to Khasra No. 484, a link road exists in Khasra No. 483, which is owned by the proforma defendant. This link road leads from National Highway 21-A (Baddi-Nalagarh) through Khasra No. 483 and Khasra No. 484, up to Khasra No. 577. Further, this road and passage were developed by BBNDA (Baddi Barotiwala Nalagarh Development Authority).

4.3 It is the further stand of the plaintiff that he and other co-sharers are using the link road and street over Khasra No. 483 to approach their houses/plots.

4.4 Asserting the fact that the plaintiff has no cause of action, against the State/the Proforma Defendant, and is not seeking any relief against the State, it is the case of the plaintiff that in order to remove any legal flaw, the plaintiff has made the State of H.P. as proforma defendant.

4.5 According to the plaintiff, the defendants are strangers to the suit land. They are stated to have allegedly formed an association, namely Saraswati Vihar Welfare Association, Peersthan, Dadi Bhola, and they used to collect ₹200/- per month, as necessity charges, from every co-owner and co-sharer in Khasra No. 484, without any basis.

4.6 It is the further case of the plaintiff that BBND A constructed the passage, through the Government land, existing over Khasra No. 483. They have also constructed and developed the street by fixing cemented bricks to approach the houses of respective owners.

4.7 According to the plaintiff, the defendants, in collusion with each other, are now threatening to restrain the plaintiff from using the link road and other passages, specifically Street No. 3, to approach his land situated over Khasra No. 577, as the plaintiff wants to raise construction

of his house, on the said Khasra number, which, he recently purchased from his co-sharer, on 09.02.2021.

4.8 It is the further case of the plaintiff that the plaintiff, being a Khewatdar of Village Dadi Bhola and Village Dadi Kaniya, has every right to use the said passage to reach his plot in Khasra No. 577, by way of an easement of necessity, as he has no other alternative passage to reach at his plot in Khasra No. 577.

4.9 On the basis of the above facts, he has sought the relief of injunction, as prayed in the plaint.

5. When put to notice, the suit has been contested by the defendants, by taking preliminary objections regarding non-maintainability of the suit; the plaintiff has no cause of action to file the suit, the plaintiff has not approached the Court with clean hands; and that the plaintiff is estopped from filing the present suit, on account of his act, conduct and acquiescence.

5.1 Factual position, as contained in paragraphs 1, 2, 3, and 4 of the plaint, regarding the plaintiff, being a co-owner and co-sharer in the suit land, mentioned in para 1-A and the existence of the link road in Khasra No. 483, has not been disputed. However, according to the defendants, the

said link road does not lead from National Highway 21-A, through Khasra Nos. 483 and 484, up to 577 onwards.

5.2 It is the further case of the defendants that a residential colony was developed over Khasra Nos. 476, 478, 479, 484, 637/618/471, and 642/475, measuring 25 Bighas 17 Biswas, by the previous owner. The entire land was in the shape of a compact big chunk. At the time of development of the colony, the previous owner left land out of his land to be used as a road, by the inhabitants of the colony. Earlier, this area was outside the purview of BBNDA/TCP, but now, the suit land falls within the planning area. As per the norms of BBNDA, the width of the road is to be fixed, in accordance with the length of the road. The road was left by the promoter to cater to the requirements of the population to be settled in the colony.

5.3 According to the further stand of the defendants, the plaintiff has every right to use the road, being a co-sharer and co-owner, as it lies within the boundary of the society, however, he has no right to extend the use of the road to approach the land falling in another village. They have also denied that the plaintiff has a right to use the above-

mentioned road/passage to approach his plot in Khasra No. 577, by way of an easement of necessity.

6. Along with the suit, the plaintiff filed an application under Order 39, Rules 1 & 2 of the CPC seeking interim relief, during the pendency of the lis. This application was also contested on the same grounds. The learned Trial Court, after hearing learned counsel for the parties, dismissed the application, under Order 39, Rules 1 & 2 of the CPC, vide order dated 17.12.2021.

7. This order was unsuccessfully challenged by the plaintiff, by way of filing a miscellaneous appeal, before the learned First Appellate Court. His appeal was also dismissed by the learned First Appellate Court, on 26.05.2022.

8. Feeling aggrieved by the said judgment, the plaintiff has filed the present petition under Article 227 of the Constitution of India.

9. On the basis of the above facts, a prayer has been made by Shri Ajay Sharma, learned Senior Advocate, assisted by Mr. Tarun K. Brakta, Advocate that the learned trial Court has not considered the controversy, involved in the present case properly and has wrongly dismissed the

application under Order 39 Rules 1 and 2 CPC, as the purpose of this relief is to protect the subject matter of the lis, till the rights of the parties are decided by a full-fledged trial.

10. Per contra, Mr. R.K. Gautam, learned Senior Advocate, assisted by Mr. Jai Ram Sharma, Advocate, has supported the order passed by the learned trial court, as affirmed by the learned First Appellate Court, contending that the plaintiff is before this Court, under Article 227 of the Constitution, and the scope of interference, under Article 227 of the Constitution of India is very limited, confined only to the error in the jurisdiction, or by holding that the learned trial court has wrongly exercised the jurisdiction, or fails to exercise the jurisdiction, vested in it, or the order passed by the learned trial court, suffers from perversity. As such, a prayer has been made to dismiss the application.

11. In this case, the plaintiff has also annexed the copy of spot map. According to the spot map, the passage/road is existing over Khasra No. 483. The said road is bifurcated from the Baddi-Nalagadh National Highway, and the proposed plot of the plaintiff is on the extreme corner

of the spot map. The plaintiff has sought the relief on the ground of easement of necessity, as in paragraph 8 of the plaint, the plaintiff has pleaded that there is no other alternative passage for the plaintiff and his family members to approach their residential plot, existing in Khasra No. 577.

12. In reply to the averments contained in para-8 of the plaint, the defendants have denied that there is no other alternative road/passage for the plaintiff and his family members to approach their residential plot, existing over Khasra No. 577. According to them, the plaintiff wants to create a new right over the suit land, for which, he has no right to do so. According to them, the use of the internal road by the inhabitants of the adjacent village, for commercial benefit, will cause apprehension of insecurity, in the minds of the inhabitants.

13. The learned trial court has dismissed the application by holding that the road, which is being claimed to be used by the plaintiff, by way of easementary rights, exists in a different village than the place of the plot, which is intended to be approached by the plaintiff.

14. The plaintiff is before this Court by way of present petition, under Article 227 of the Constitution, where the scope of interference is very limited, as this Court cannot act as an Appellate Court or trial court, while deciding the dispute, involved in the present case.

15. Hon'ble Supreme Court in "**K. Valarmathi & Ors. Versus Kumaresan**", 2025 INSC 606" has elaborately discussed the scope of interference under Article 227 of the Constitution of India. Relevant para 9 of the judgment, is reproduced, as under:

"Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise of supervisory jurisdiction under Article 227."

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

17. Moreover, under Article 227 of the Constitution of India, this Court cannot re-assess or review the material, which was taken into consideration, by the learned trial Court. While holding so, the view of this Court is being guided, by the decision of Hon'ble

Supreme Court, in ***Vinay Raghunath Deshmukh versus Natwarlal Shamji Gada and another***, 2026 INSC 416.

Relevant paragraph-16 of the judgment is, reproduced, as under:-

*“16. Yet another aspect that goes to the root of the matter is that the tenants challenged the order passed by the Appellate Bench permitting the amendment by filing a writ petition under Article 227 of the Constitution of India. It is well settled that in exercise of such jurisdiction, it would not be open for the High Court to review or reassess the material that was taken into consideration by the Court while passing the impugned order. In this regard we may usefully refer to the decision in *Raj Kumar Bhatia Vs. Subhash Chander Bhatia*, wherein a three Judge Bench of this Court held as under:*

*“11 The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In *Sadhna Lodh v National Insurance Company*⁴, this Court has held that the*

supervisory jurisdiction conferred on the High Court under [Article 227](#) is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227.”

Thus, the discretion exercised by the Appellate Bench while allowing the amendment was not liable to be interfered with in exercise of the [Article 227](#) of the Constitution of India, especially when there was no error of jurisdiction nor a statutory bar for permitting the plaint to be amended based on subsequent events.”

(Self emphasis supplied)

18. Once, the learned trial court has exercised its jurisdiction, while deciding the application, under Order 39 Rules 1 and 2 of the CPC, then, the same can only be interfered with, by recording the finding that the learned trial court has wrongly exercised the

jurisdiction, vested in it, by dismissing the application under Order 39 Rules 1 and 2 of the CPC.

19. The plaintiff has simply averred in para-8 of the plaint that there is no other passage, through which, he can approach the plot over Khasra No. 577. In order to demonstrate the said fact, no document has been placed on record that except this passage, no other passage is there to claim the benefit of easement of necessity. The passage bearing Khasra number 483, is in village Dadi Bhola, whereas, according to the plaintiff himself, Khasra number 577 is situated in village Dadi Kania, in a different revenue estate.

20. Considering the rival stands of the parties, this court is of the view that the learned trial court has rightly exercised the jurisdiction vested in it, and the discretion, so exercised by the learned trial court, cannot be interfered with, by this court, under Article 227 of the Constitution of India.

21. Considering all these facts, there is no substance in the present petition and the same is accordingly dismissed.

22. The pending application(s), if any, are also disposed of.

23. 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.

24. The parties, through their counsel, are directed to appear before the learned trial Court, on 5.10.2026.

25. Send down the records.

30.9.2026
Kalpana

(Virender Singh)
Judge