

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 499/2019

Decided on: 14.09.2026

Pat Ram (deceased) through LRs & ors.	Petitioners
Versus	
Anil Garg & ors.	...Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the Petitioners: Mr. Pratap Singh Goverdhan, Sr. Advocate, with Mr. Rakesh Thakur, Advocate.

For the Respondents: Mr. Sanjeev Kuthiala, Sr. Advocate with Ms. Tamanna Sharma, Advocate, for respondents No. 1 and 2.

Mr. O. C. Sharma, Advocate, for respondents No. 5 and 6(a) to 6(c).

Romesh Verma, Judge (oral)

The instant petition arises out of order, dated 26.12.2018, as passed by the learned Senior Civil Judge, Court No.1, Kasauli, District Solan, H.P., whereby an application filed by the defendants/respondents under Section 10 of CPC came to be allowed.

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

2 The facts, as emerge in the instant case are that the present petitioners/plaintiffs filed a suit for declaration before the learned trial court to the effect that they are owners in possession of the land bearing Khasra Nos. 2, 12 to 16, total kitta 6, measuring 44-5 bighas, situated in Mauza Shakri, Tehsil Kasauli, District Solan,H.P. and the revenue entries showing the suit land to be mortgaged with defendant Nos. 1 to 4(b) are wrong, illegal, null, and void, as the suit land has already been redeemed and mutation No. 548, dated 17.09.1996 attested in favour of the predecessor-in-interest of defendant Nos. 5 and 6 are wrong, illegal, null, and void, and without jurisdiction, and not binding on the rights of the plaintiffs. Further, the plaintiffs prayed that the defendants be restrained from causing any interference, changing the nature, raising any construction, cutting and removing the trees, alienation, creating third-party rights over the suit land.

3 As per the case set up by the plaintiffs/petitioners, their father mortgaged the suit land without possession with the predecessor-in-interest of defendant Nos. 1 to 4 (b) for a sum of Rs.100/-. The predecessor of plaintiffs was in need of an amount of Rs. 100/- on legal necessity and he approached Banarsi Dass to advance a loan of Rs.100/-. Banarsi Dass was a money lender of the area, who agreed to advance the loan of Rs.100/- by

mortgaging the suit land with him. Accordingly, a sum of Rs.100/- was paid by Banarsi Dass and the suit land was mortgaged with him.

4 As per the plaintiffs/petitioners, father of the plaintiffs was a poor person and during his lifetime, he could not redeem the suit land, but the possession of the mortgaged land remained with their father, and after his demise, the plaintiffs succeeded him, and thereafter they approached the predecessor-in-interest of defendants, Dinesh Kumar and paid the mortgage amount of Rs.100/- on 13.01.1968, who assured the plaintiffs to get the necessary correction done in the revenue record.

5 Further, it has been averred in the plaint that the predecessor of defendant Nos. 1 to 4(b), under the garb of wrong revenue entries, knowing fully-well that the suit land has been redeemed, filed a civil suit in the court of learned Civil Judge (Junior Division) Kasauli, in collusion with defendant Nos. 5 and 6, alleging therein that they became owners of the suit land by efflux of time. The suit was dismissed by the learned Civil Judge, (Junior Division) Kasauli, on 10.7.2009.

6 It has been contended in the suit that the plaintiffs are the owners in possession of the suit land and the revenue entries showing defendant Nos. 1 to 4(b) as mortgagees are wrong, illegal, null, and void, and the revenue entries which are

showing defendant Nos. 5 and 6 to be tenants in the land bearing Khasra Nos. 12 and 13, measuring 19-13 bighas, and mutation No. 548, of the year 1996 attested by the Assistant Collector, 2nd Grade, are wrong, illegal, null and void. It has been prayed that the judgment and decree, dated 10.07.2009 passed in case No. 772/1 of 2006/99, titled as Dinesh Chand versus Pat Ram and others, may be declared wrong, illegal, null, and void, and not binding on the plaintiffs, being the result of fraud and misrepresentation, and does not create any right or interest in favour of defendant Nos. 5 and 6. Further decree for permanent prohibitory injunction has been sought by the plaintiffs against the defendants. The suit was filed by the present petitioners/ plaintiffs, on 26.08.2010.

7 The suit as instituted by the present petitioners has been contested by the defendants by filing separate written statements, wherein preliminary objections with respect to the maintainability, cause of action, estoppel, limitation, etc. have been taken. All the allegations, which have been levelled in the plaint, have been specifically denied. It has been denied that on 13.01.1968, the land mortgaged was redeemed from the predecessor-in-interest Dinesh Kumar after making payment of Rs. 100/-.

8 Though, it has been admitted that in the previous round of litigation, civil suit, as filed by the present respondents/defendants has been dismissed and thereafter, the appeal before the learned first Appellate Court also came to be dismissed, however yet appeal bearing RSA No. 369/2016, as filed by the respondents/defendants is still pending for its adjudication before this Court.

9 During the pendency of the suit at hand, defendants/respondents filed an application under Section 10 of CPC for staying the suit as filed by the plaintiffs/petitioners, stating therein that another suit, titled as Dinesh Chand vs. Pat Ram, in which parties to the instant lis, were parties and the suit property involved therein was also same and has been adjudicated by the learned Civil Judge and District Judge and since RSA No. 369/2016 is pending before this court, therefore, proceedings as pending in the suit at hand be stayed during the pendency of RSA No. 369/2016.

10 The said application was duly resisted by the present petitioners/plaintiffs and it has been stated that both the suit as instituted by the plaintiffs and defendants are totally different and provisions of Section 10 of CPC are not at all applicable in the attending facts and circumstances of the case.

11 Learned Senior Civil Judge, Court No.1, Kasauli, vide
its impugned order, dated 26.12.2018 allowed the application
under Section 10 of CPC, as filed by the defendants.

12 Feeling dissatisfied, the plaintiffs/petitioners have
approached this Court by filing the instant petition under article
227 of the Constitution of India.

13 It is contended by Mr. P. S. Goverdhan, learned
Senior Advocate, assisted by Mr. Rakesh Thakur, Advocate, for
the plaintiffs/petitioners that the impugned order as passed by
the learned trial court is erroneous and liable to be set aside. He
has submitted that the learned trial court has not appreciated
the point in controversy in its true perspective and has passed
the impugned order, which is not sustainable in the eyes of law.
He would submit that after accepting the present petition, the
application, as filed by the defendants under section 10 of the
CPC, is liable to be rejected.

14 On the other hand, Mr. Sanjeev Kuthiala, learned
Senior Advocate, assisted by Ms. Tamanna Sharma, Advocate,
for respondents No. 1 and 2, has defended the impugned order
and submitted that this court, while exercising the powers under
Article 227 of the Constitution of India, will not disturb the well-
reasoned order as passed by the learned trial Court.

15 I have heard the learned counsel for the parties and have also gone through the material available on record.

16 In the present case, the plaintiffs/petitioners have approached the learned trial court by setting up the plea that they are owners in possession of the suit land and the revenue entries showing defendant Nos. 1 to 4(b) as mortgagees are wrong, illegal, null and void, and the revenue entries showing defendant Nos. 5 and 6 to be the tenants in the land bearing Khasra Nos. 12 and 13, measuring 19-13 bighas, are also illegal, wrong, null, and void. It has been prayed that the judgment and decree passed on 10.07.2009 in case No. 772/1 of 2006/99, titled as Dinesh Chand versus Pat Ram, be declared null and void and not binding on the rights of the plaintiffs, as the same is the result of fraud and misrepresentation.

17 The suit has been contested on the point of maintainability and all the averments as made in the suit have been specifically denied.

18 The learned senior counsel for respondent Nos. 1 and 2 has drawn attention of the court to the issues, which were framed by the learned Civil Judge (Junior Division), Kasauli, on 21.03.2003, in the earlier instituted civil suit No. 772/1 of 2006/1999, more particularly issue No.5 thereof, which reads as under:

“Whether defendant Nos. 1 to 3 have redeemed the suit land from the predecessor in interest of the plaintiff and the possession was handed over to the defendants, as alleged? OPD 1 to 3”.

19 It has been contended by the learned senior counsel that in the earlier round of litigation, the plea of redemption has been taken by the present petitioners. However, in the present round of litigation, it has been projected that though the suit land stood already redeemed, however, if the court comes to the conclusion that the said redemption has not taken place, then the decree for redemption may be passed.

20 The provisions of section 10 of the CPC read as follows:

“10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

21 The aforesaid provisions specifically lay down that no court shall proceed with the trial of any suit, in which, the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court having the jurisdiction to grant the relief claimed, or in any court beyond the limits of India established or continued and having like jurisdiction.

22 The memorandum of parties in both the cases show that the parties litigating are the same, the subject matter of the suit and even suit land inter se the parties is also similar. Thus, in the considered opinion of this court, the plea as taken in the previous round of litigation and the present suit are overlapping each other and both the pleas are interlinked.

23 The issue which has been framed in the earlier instituted civil suit is yet to be adjudicated in RSA No. 369 of 2016, and certainly, the findings therein shall have bearing on the present case. This Court is not in agreement with the contention raised by learned senior counsel for the petitioners that both the suits are separate and distinct. The record indicates that dispute in both the civil suits is related to each other, especially the plea of redemption has already been raised

by the petitioners in the case bearing No. 772/1 of 2006/99 and in the present suit, it has been pleaded that in case suit land has not been redeemed a decree for possession by way of redemption be passed in favour of the plaintiffs. The provisions of Section 10 of CPC are clearly attracted in the present suit. The Court below has rightly adjudicated the application in hand by taking into consideration the material placed by respective parties.

24 As rightly submitted by learned senior counsel for respondent No.1 and 2 that the respondents/defendants have been able to make out the case and the parameters of section 10 of CPC have been carved by them, therefore, the impugned order, as passed by the learned trial court does not suffer from any infirmity.

25 The object of section 10 of CPC is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The section enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigant to dictate to the court as to how the proceedings should be conducted, it is for the court to decide what will be the best course to be adopted for expeditious disposal of the case. In a given case the stay of

proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties.

26 The Hon'ble Supreme Court in ***Pukhraj D. Jain vs. G. Gopalakrishna, AIR 2004 Supreme Court 3504*** has laid down the dictum of law by taking into consideration the provisions of section 10 of CPC, relevant para thereof reads as under:

“4. We have heard learned counsel for the parties and have perused the records. In our opinion, the view taken by the High Court is wholly erroneous in law and must be set aside. The proceedings in the trial of a suit have to be conducted in accordance with provisions of the Code of Civil Procedure. Section 10 CPC no doubt lays down that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed. However, mere filing of an application under section 10 CPC does not in any manner put an embargo on the power of the court to examine the merits of the matter. The object of the section is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The section enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigant to dictate to the court as to how the proceedings should be conducted, it is for the court to decide what will be the best course to be adopted

for expeditious disposal of the case. In a given case the stay of proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties. However, where subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side.”

27 In the present case also, the dispute is between the same parties and the subject matter is also same, and the controversy in the aforesaid RSA and in the present civil suit is touching and interlinked to each other, therefore, section 10 of CPC is clearly applicable in the attending facts and circumstances.

28 The Hon’ble Supreme Court has repeatedly held that while invoking provisions of Article 227 of the Constitution of India, High Court will not act as a appellate court and it is only in those cases, where the impugned order is perverse or which has been passed without any jurisdiction, the High Court will exercise the jurisdiction under Article 227 of the Constitution of India.

29 The power under Article 227 is limited to see that the Courts below function within the limits of their authority or jurisdiction. The High Court cannot interfere with the findings of fact recorded by the subordinate Court or Tribunal while exercising its jurisdiction under Article 227. The Hon'ble Apex Court has held that, over the last 50 years, it has consistently been observed that the limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with findings of fact or by setting aside the judgments of the courts below on merits.

30 Hon'ble Apex Court in **Civil Appeal No. 2226 of 2010**, titled **State of Haryana & others** vs. **Manoj Kumar**, decided on 09.03.2010 has held as follow:-

“23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is

merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of *Mohd. Yunus v. Mohd. Mustaqim & Others* (1983) 4 SCC 566. The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. for this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. This court again clearly reiterated the legal position in *Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi* (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this court in *Rena Drego (Mrs.) v. Lalchand Soni & Others* (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

28. In *Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others* (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.”

31 To the similar extent, the Hon’ble Apex Court in **Civil Appeal No. 3072 of 2022**, titled as **Ibrat Faizan vs. Omaxe Buildhome Private Limited**, decided on 13.05.2022 has held as follows: -

“14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58 (1) (a) (iii) of the 2019 Act. We are in complete agreement with

the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97, which has been consistently followed by this Court (see the recent decision of this Court in the case of Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigor of the powers to be exercised under Article 227 of the Constitution of India.”

32 In the considered opinion of this court and in view of the observation as made hereinabove, this court does not see any jurisdictional error, perversity, or illegality in the impugned order.

33 Consequently, in view of aforesaid exposition of law and discussion, the present petition, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending miscellaneous application(s), if any, also stands disposed of.

34 Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case.

14th September, 2026
(pankaj)

(Romesh Verma)
Judge