

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 231 of 2026
Date of Decision: 09.07.2026

Gautam Thakur ...Petitioner.
Versus

Sonam Angmo & others ...Respondents.

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

*Whether approved for reporting?*¹

For the petitioner: Mr. Nitin Thakur, Advocate.

For the respondents: Mr. Dibender Ghosh, Advocate, for respondents No. 1 to 3.

Mr. Baldev Singh Negi, Additional Advocate General for respondent No.4.

Romesh Verma, Judge (oral)

The present petition arises out of the order as passed by the learned Civil Judge, Manali, District Kullu, H.P. dated 16.04.2026, whereby application filed by the defendant/petitioner under Order 14 Rule 5 of CPC for framing of additional issues has been ordered to be dismissed.

2. The facts of the case are that the plaintiffs/respondents filed a suit for declaration to the effect that the plaintiffs along with defendant No. 1, are owners in possession of joint family property i.e. Hotel Monarch The Mall Manali, Chop stick

¹ Whether reporters of Local Papers may be allowed to see the judgment?

restaurant and Hotel Monarch Residency Chachoga Tehsil Manali District Kullu being legal heirs of late Shri Baldev Singh son of Shri Budh Ram which is under the management and control of defendant No. 1. As per the plaintiffs, defendant No.1 may be directed to render the account of the earning of the joint family property i.e. Hotel Monarch The Mall Manali, Chop stick restaurant and Hotel Monarch Residency Chachoga and in case of his making default therein a receiver may be appointed to manage the said joint family property till the final disposal of the suit. Further, it has been prayed that the defendant No. 2 may be restrained from implementing the order dated 29.4.2015 whereby the registration of Hotel Monarch the Mall Manali has been changed in the name of defendant No.1 in any manner.

3. It is the case of the plaintiffs that during his life time late Shri Baldev Singh, predecessor-in-interest of the parties, constructed a building over the above mentioned Land measuring 0-2-0 Bigha comprised in Khasra No. 967 min of Khata Khatauni No. 425min/825 of Phati Nasogi Kothi Manali Tehsil Manali Distt Kullu H.P In the front of the said building there is commercial shop and in the back side there is

residential building in which late Baldev Singh was residing with his family members.

4. In the commercial portion of the building, said late Sh. Baldev Singh was running business in the name and style of Chop Sticks Restaurant the Mall Manali Tehsil Manali District Kullu since the year 1994. After missing of late Sh. Baldev Singh, the predecessor-in-interest of parties, the plaintiffs and defendant No.1 started renovation of the residential building for converting the same into a hotel and have spent lot of money from the joint family income. After completion of the building and renovation of the same for Hotel purpose, the plaintiffs with the consent of defendant No.1 started hotel in the name and style of Hotel Monarch The Mall Manali Distt Kullu consisting of nine rooms. The said Hotel was registered in the name of the plaintiff No.1 with the department of tourism in the year 2002.

5. The parties filed an application No.1/ 2004, before the Assistant Collector. 1st grade Manali for the attestation of mutation of late Baldev Singh which application was decided by the A.C 1st Grade Manali vide order dated 6-4-2005 declaring late Sh. Baldev Singh as dead and mutation was attested with respect to the property of late Baldev Singh in the name of his

legal heirs. After the registration of Hotel Monarch The Mall Manali in the name of the plaintiff No.1, the management of the hotel and the Chop Stick restaurant remained with defendant No.1 Gautam Thakur elder son in the joint family. No partition of the property ever took place between the family members till date. The income of the aforesaid Chop Stick Restaurant and the Hotel Monarch was/is the joint family income in the hands of defendant No.1. Since the time from when the defendant No.1 is managing the joint family property being the elder son of deceased Baldev Singh, neither he has maintained any account of the income and profit of the said business nor he has paid any share of the amount from the joint family to the plaintiffs.

6. Therefore, suit was instituted seeking declaration that the plaintiffs and defendant No.1 are joint owners in possession of the suit property i.e. Hotel Monarch The Mall Manali, Chop stick restaurant and Hotel Monarch Residency Chachoga, Tehsil Manali, District Kullu, H.P. Further it was prayed that defendant No.1 be directed to render the account of the earning from the joint family property. Further defendant No.2 may be restrained from implementing the order dated 29.04.2015. The suit was

instituted by the wife, Smt. Sonam Angmo, son Sh. Suraj Thakur and daughter Smt. Sunita Joshi of late Sh. Baldev Singh Singh.

7. The said suit came to be contested by the defendants on various grounds by taking preliminary objections with respect to the suppression of facts, maintainability, cause of action, valuation and locus standi etc.

8. In the original written statement, it was averred by the defendant that plaintiffs have no locus standi to file the present suit against the defendant. They have not approached the Court with clean hands. As per the defendant, vide written family settlement dated 18.06.2010, the suit property was allotted to defendant No.1. Therefore, it is the case of defendant No.1 that by virtue of family settlement he is the owner in possession of the suit property and that the plaintiffs have no concern over the same.

9. Subsequently, an application for amendment was filed by plaintiffs, which was duly resisted by the defendant. The learned trial Court allowed this application and permitted the plaintiffs to amend the pleadings. The perusal of the amended written statement, especially, para 4 reveals that a stand was taken by defendant No.1 that parties to the suit are scheduled

tribe of Distt. Lahaul & Spiti and are agriculturists from generation to generation since time immemorial and are governed by the custom in the matter of marriage, adoption, alienation and succession as per custom recorded in the "Rewaz-E-Aam" prepared during the last settlement of Distt. Kangra. As per custom governing the parties no male proprietor can make a gift, will, or alienate the ancestral property to the exclusion of heirs and the aforesaid custom is ancient, reasonable, certain and being followed continuously from generation to generation since time immemorial. Further, as per custom in the succession no female is entitled to succeed the ancestral property, when the male successors are alive.

10. As per the defendant, after the death of the father of the plaintiffs No. 2 and 3 and replying defendant, the mother of parties in connivance with the revenue officials entered her name in the succession of Late Sh. Baldev Singh as at that time plaintiff No. 2 and defendant No. 1 were quite young and they were not knowing about this fact and not only so all the papers were prepared by the plaintiff No. 1 after the death of Late Sh. Baldev Singh.

11 After completion of pleadings, issues were framed in the present case twice, firstly, the issues were framed on 27.07.2016 and subsequently, issues were framed on 09.08.2018 in the following manner:-

1. Whether the plaintiffs along with defendant No. 1 are owners in possession of joint family property, hotel Monarch, Chopstick, Monarch Residency, if so whether the plaintiffs are entitled for grant of decree for declaration to this effect? OPP
2. Whether family settlement deed dated 18.07.2010 is forged and fictitious document and liable to be declared null and void? OPP
3. Whether the plaintiffs are entitled for grant of decree for directing the defendant No. 1 to render the account of earning from the joint family property to the plaintiffs? OPP
4. Whether the plaintiffs are entitled for grant of decree for restraining the defendant No. 2 for implementing order dated 29.04.2015 passed by defendant No. 2 ? OPP
5. Whether the suit of the plaintiff is maintainable? OPD-1
6. Whether the plaintiffs have got no locus standi and cause of action to file the present suit? OPD-1
7. Whether the plaintiffs have suppressed true and material facts from this Court? OPD-1
8. Whether the plaintiff No. 2 and defendant No. 1 have entered into a settlement deed dated 18.07.2010, as alleged? OPD-1

9. Whether the act and conduct of the plaintiffs is a bar to file the present suit? OPD-2

10. Whether this Court has got no jurisdiction to try and decide the present suit? OPD-2

11. Relief

12 The learned trial Court had directed the respective parties to adduce their evidence in support of their contentions. The learned counsel for the parties have admitted that both the parties have concluded their evidence and now the case is fixed for the arguments in the main matter.

13 After the conclusion of the evidence and at the stage of the arguments, an application came to be filed by the defendant/petitioner which has been placed on record as Annexure P-11. It has been stated in the application that the following additional issues was required to be framed, which reads as under:

“Whether the parties are governed by customary laws of Lahaul & Spiti in case of marriage, death and inheritance, if so, its effects ? OPD-1”

14 It has been stated that abovesaid issue is necessary for effective and proper adjudication and decision of the case. The said application came to be resisted by the plaintiffs and they prayed for the dismissal of the said application.

15 The learned trial Court vide its impugned order dated 16.04.2026, dismissed the application filed by the petitioner/defendant.

16 Feeling dissatisfied, the defendant No.1/petitioner has approached this Court by filing the present petition under Article 227 of the constitution of India.

17 It is contended by Mr. Nitin Thakur, Advocate, for the petitioner that the impugned order passed by the learned trial Court is erroneous and liable to be quashed and set aside. He submits that the additional issue being intended to be framed by defendant No.1 is very material issue and it goes to the root of the case. He further submits that though it is admitted that the case is at the stage of final arguments but no prejudice will be caused to the opposite side in case the application in hand filed by defendant No.1 is allowed.

18 On the other hand, Mr. Dibender Ghosh, Advocate and Mr. Diwakar Dev Shamra, learned Additional Advocate General have defended the impugned order as passed by the learned Trial Court. Mr. Dibender Ghosh, Advocate, has submitted that no interference of any kind is required in the well reasoned

order, as passed by the learned Court below, by this Court while exercising power under article 227 of the Constitution of India.

19 I have heard Mr. Nitin Thakur, Advocate, for the petitioner and Mr. Dibender Ghosh, Advocate and Mr. Diwakar Dev Shamra, learned Additional Advocate General, for the respondents.

20 In the present case, the suit as filed by the plaintiffs is primarily on the ground that the parties may be declared as joint owners in possession of the suit property i.e. Hotel Monarch The Mall Manali, Chop stick restaurant and Hotel Monarch Residency Chachoga, Tehsil Manali, District Kullu, H.P. and for the rendition of the accounts. The said fact has been vehemently opposed and denied by defendant No.1 in his written statement. As per the claim as set up by defendant No.1 on the basis of family settlement which took place *inter se* the parties on 18.06.2010 the suit property was handed over to him and thereafter he is owner in possession of the same. The defendant in para 4 of the amended written statement has taken a stand that the parties to the suit are scheduled tribe of Distt. Lahaul & Spiti and are agriculturists from generation to generation since time immemorial and are governed by the custom in the matter

of marriage, adoption, alienation and succession as per custom recorded in the "Rewaz-E-Aam". It is the case of the defendant that as per custom governing the parties no male proprietor can make a gift, will, or alienate the ancestral property to the exclusion of heirs and further, as per custom, in the matter of succession, no female is entitled to succeed the ancestral property.

21 The replication, which has been filed by plaintiffs/respondents, especially para 4 reads as follows:-

“ It is correct that though the parties are schedule tribe of Distt. Lahaul & Spiti and are agriculturists from generation to generation since time immemorial and are Governed by the custom in the matter of marriage adoption alienation and succession as per custom recorded in the Rewaz-E-Aam. This custom is binding to the parties for the property situated in tribal area in Distt. Lahaul & Spiti and not for the property situated in other Districts and with respect to the present property situated in Distt. Kullu which is self acquired by Late Shri Baldev Singh predecessor in interest of the parties and as such plaintiffs and defendant No.1 have every right to inherits the property of late Baldev Singh their predecessor in interest in equal share as per succession. It is very important to mention here that the revenue officials have rightly entered the mutation of succession of the property situated in Tehsil Manali Distt. Kullu H.P owned by Late Shri Baldev Singh in the name of the plaintiffs and defendant No.1 equally.”

22 The plaintiffs have categorically admitted that the parties are scheduled tribe of Distt. Lahaul & Spiti and are agriculturists from generation to generation since time immemorial and are governed by the custom in the matter of marriage, adoption, alienation and succession as per custom recorded in the "Rewaz-E-Aam".

23. The provisions of Order 14 Rule 1 CPC read as follows:

“1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. (3) Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue. (4) Issues are of two kinds: (a) issues of fact, (b) issues of law. (5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and 1 [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. (6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.”

24 The provisions of Order 14 Rule 1 CPC clearly stipulate that the framing of issues is required where a proposition of fact or law is affirmed by one party or denied by other. In the present case, the defendant No.1 intends to frame

an additional issue with respect to the fact whether the parties are governed by the customary law of the Lahul & Sapiti and the said fact has been admitted by the plaintiffs in the replication which has been reproduced herein above.

25 As rightly held by the learned Trial Court, once there is an admission by the plaintiffs that the parties belong to the Scheduled Tribe of District Lahaul & Spiti, are agriculturists from generation to generation since time immemorial, and are governed by the customs recorded in the '*Rewaz-e-Aam*' in matters of marriage, adoption, alienation, and succession, no additional issue is required to be framed in the present proceedings.

26 A perusal of the application filed by the present defendant No. 1/petitioner shows that it is vague and cryptic. No reasons have been assigned for the framing of an additional issue. By merely reproducing the issues that had already been framed earlier in one paragraph, it has been stated that the framing of additional issue is necessary for the effective and proper adjudication of the case, without assigning any reasons as to why such additional issue is required to be framed, especially, when the issues had already been framed in 2018

and no steps were taken by defendant No. 1/petitioner in that regard.

27 The learned Trial Court had framed the issues twice in the matter. Firstly, the issues were framed on 27.07.2016, and subsequently, the issues were framed on 09.08.2018. In paragraph 3 of the said order, it was recorded that the issues were duly read over and explained to the parties. No other issues were pressed or claimed. Therefore, as rightly contended by the learned counsel for the respondents, once the issues were framed in the presence of the respective parties and their counsel, and no other or fresh issues were pressed or claimed, the plea raised by defendant No. 1 at this stage, that too at the time of final arguments, is not sustainable.

28 Learned counsel for the respondents has submitted that, if the plea of defendant No. 1 is accepted, whereby he seeks framing of additional issue with respect to whether the parties are governed by customary law, defendant No. 1 is, infact, seeking a declaration. However, no such relief can be granted to the defendant in the suit filed by the plaintiffs in the absence of any counterclaim or an independent civil suit.

29 The case file reveals that the suit was filed in 2015, and after the lapse of more than 10 years, an application has been filed by defendant No. 1 for framing of additional issue, which, in the considered opinion of this Court, is neither legally sustainable nor warranted in the facts and circumstances of the present case.

30 The learned Trial Court has rightly considered the point in controversy and passed a well-reasoned order, which does not call for any interference.

31 The Hon'ble Apex Court has repeatedly held that the scope of interference in a petition filed under Article 227 of the Constitution of India is very limited. The Hon'ble Apex in ***Civil Appeal No(s).13801 of 2025***, titled as ***Shri Digant vs M/s P.D.T. Trading Co. & others***, has discussed the scope of interference while exercising the power under Article 227 of Constitution of India. The relevant paragraphs thereof read as under:-

"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a threeJudge Bench of this Court in Radhey Shyam & another v. Chhabi Nath & Ors. 1 This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the

purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."

23. In the case on hand, the appellate court had considered whether the proceeding in detail the issue as to court was justified in trial with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration surrounding circumstances, the appellate court held that the trial court had committed no wrong proceeding with the matter court representing with noticed the the that defendants matter. The appellate Court noticed tht the advocate representing the defndants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them therefore, they could not engage another counsel Besides that, the record also indicated that the intention of the defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification procedure went consider the procedure prescribed for withdrawal Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate Court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our view, appellate court's order was not amenable to interference in exercise of

jurisdiction under Article 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with well reasoned order of the appellate Court.”

32 The Hon'ble Apex Court in ***M/S GARMENT CRAFT Vs. PRAKASH CHAND GOEL, (2022) 4 SCC 181***, decided on 11.01.2022, has held that High Court while exercising Supervisory Jurisdiction will not act as a Court of First Appeal to reappreciate, reweigh the evidence on facts upon which the determination under challenge is based. The Hon'ble Supreme Court has held as follows:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under [Article 227](#) of the Constitution of India. 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.¹ The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse,¹[Celina Coelho Pereira \(Ms\) and Others v. Ulhas Mahabaleshwar Kholkar and Others, \(2010\) 1 SCC](#) violation of fundamental principles of law or justice. The power under [Article 227](#) is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the

finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under [Article 227](#), this Court in [Estralla Rubber v. Dass Estate \(P\) Ltd.](#)² has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under [Article 227](#) of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. 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. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

19. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex-parte decree had been passed on the

account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex-parte decree and therefore the submission that the appellant came to know of the ex-parte decree only on release from jail on 6th May 2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt 30 that the application for setting aside the exparte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution.”

33 The Court below has rightly appreciated the point in controversy by taking into consideration the material on record and in view of the above mentioned exposition of law, there is no error or illegality in the impugned order passed by the

learned Civil Judge, Manali, District Kullu, H.P. dated 16.04.2026.

34 Consequently, the present petition being devoid of any merit deserves to be dismissed and is accordingly dismissed.

35 However, it is made clear that observations as made in the present case will not have any bearing on the merits of the main case.

36 All the pending miscellaneous application(s) if any, shall also stands disposed of.

(Romesh Verma)
Judge

July 9, 2026
(Nisha)