

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.277 of 2021

Reserved on: 09.07.2026

Decided on: 30.07.2026

Uploaded on : 30.07.2026

Phulma Devi (deceased) through LRs

...Petitioner

Versus

Bimla Devi

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?*¹ **Yes.*

For the petitioner : Mr. Y.P. Sood, Advocate.

For the respondent : Mr. Digvijay Singh Bisht and
Mr. Sumit Sharma, Advocates.

Virender Singh, Judge

Petitioner-Phulma Devi, has filed the present petition, under Article 227 of the Constitution of India, against the order dated 15.09.2021, passed by the Court of learned Civil Judge, Court No.III, Shimla, District Shimla, H.P. (hereinafter referred to as the learned trial Court), in CMA No.88 of 2019, in Civil Suit No.299-1 of 18/13, titled as Bimla Devi versus Phulma Devi.

2. During the pendency of the present petition, petitioner-Phulma Devi has expired and her legal representatives were ordered to be brought on record.

3. By way of order dated 15.09.2021, the learned trial Court has dismissed the application, under Order 6, Rule 17 of CPC, filed by the petitioner.

4. For the sake of convenience, the parties to the present *lis*, are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

5. 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:-

5.1. Plaintiff-Bimla Devi has filed a suit for declaration, seeking the following relief:

“That the suit of the plaintiff may kindly be decreed in his favour and against the defendant and a declaratory decree may be passed to the effect that the plaintiff continues to be in joint ownership and possession of the land as entered against Khasra Nos.291 and 295 measuring 4.1 bighas referred to above, which have been converted to new Khasra Nos.691, 694, 696, 688, 690 of Mauja Basantpur, Tehsil Suni, District Shimla, during the recent settlement operation and consequently, the defendant may be restrained from interfering in any manner with the joint ownership and possession of the plaintiff over the suit land.”

5.2. The said suit has been filed by her, on the ground, that Souju, resident of village and Post Office Basantpur, was having agriculture land at village

Basantpur. After his death, he was succeeded by his only son Molak Ram and Molak Ram had one son Jindu Ram and one daughter Phulma (defendant).

5.3. As per the Jamabandi for the year 1960-61, Molak Ram son of Fouju has duly been recorded, as owner in possession, qua land bearing Khata No.86, Khatauni No.66, Khasra Nos.332, 333, 245, 249, 269, 292, 684/329 and 478, kite-8, measuring 5.12 bighas. Area of Khasra No.323, measuring 10 biswas was recorded, to be in the ownership of Molak Ram, but, under the tenancy of Rattnu. Molak Ram is stated to be recorded, owner of Khasra Nos.246 and 263, measuring 2 biswas and he was also recorded, as owner, qua land bearing Khata No.86, Khatauni No.69, Khasra Nos.291 and 295, measuring 4 bighas, 1 biswas. According to the plaintiff, vide Mutation No.226, land bearing Khasra No.291, measuring 9 biswas and Khasra No.295, measuring 3.12 bighas, total measuring 4.1 bighas was gifted, by Molak Ram, in favour of defendant, for which, he was not competent to do so.

5.4. It is the further case of the plaintiff that Molak Ram son of Souju expired, in the year 1964 and mutation of inheritance was sanctioned, vide Mutation No.237, dated

21.03.1965, whereby, his estate measuring 5.18 bighas, situated in Mauja Basantpur was succeeded, by his daughter Phulma and his grand daughter (plaintiff) daughter of late Jindu.

5.5. Reasserting the fact that Molak Ram was not competent to make gift of the land, bearing Khasra Nos.291 and 295, total measuring 4.1 bighas, in favour of defendant, Mutation No.226, is stated to be illegal. When, the alleged mutation was attested, by the Assistant Collector, Second Grade, Sunni on 29.01.1961, neither, the defendant was present, nor, gift of area bearing Khasra Nos.291 and 295 was found to have been made.

5.6. In nutshell, it is the case of the plaintiff that the subject matter of the lis was ancestral property, in the hands of Molak Ram and as such, he has no right to alienate the same. He was member of Joint Hindu Family, with the plaintiff and defendant, therefore, without their knowledge and consent, he was not competent to transfer any portion of the suit land. Molak Ram was not competent to make gift in favour of the defendant, nor, he had ever made gift in her favour.

5.7. When, put to notice, the suit has been contested, by the defendant, by filing written statement, in which, it has been pleaded that the land was gifted to the defendant, in the year 1961 and thereafter, she is owner of the same and said gift has now been challenged, by the plaintiff, after a lapse of 53 years, which, as per her stand, is not permissible. Other contents have also been denied. Thus, a prayer to dismiss the suit has been made.

6. From the pleadings of the parties, following issues were framed, by the learned trial Court, vide order dated 20.08.2014:

1). Whether plaintiff continues to be in joint ownership and possession of the land as entered against Khasra Nos.291 and 295, measuring 4.1 bighas, which have been converted to new Khasra Nos.691, 694, 696, 688, 690 of Mauza Basantpur, Tehsil Sunni, District Shimla (hereinafter called as suit land) during the recent settlement operation, and is liable to be declared so, as alleged? OPP.

2). Whether the plaintiff is entitled for relief of permanent injunction restraining the defendant from interferring in any manner with the joint ownership and possession of the plaintiff over the suit land, as alleged? OPP.

3). Whether the present suit is not maintainable and deserve to be dismissed out rightly, as alleged? OPD.

4). Whether the present suit is barred by limitation, as alleged? OPD.

5). *Whether the present suit is false, frivolous and fictitious, besides being vague in nature, as alleged? OPD.*

6). *Whether the plaintiff has no locus-standi to file the present suit, against the defendant, since no cause of action, whatsoever, has arisen to the plaintiff against the defendant, as alleged? OPD.*

7). *Whether the plaintiff has concealed the material facts from this Court and has not come to the court with clean hands, as alleged? OPD.*

8). *Whether the plaintiff is guilty of suppression of true and material facts as also of making false suggestions with respect to facts to file the present suit, as alleged? OPD.*

9). *Whether the plaintiff is estopped to file the present suit due to her acts, conduct and acquiescence, as alleged? OPD.*

10). *Whether the suit has not been filed as per mandatory provision of Code of Civil Procedure, as alleged? OPD.*

11. *Relief.*

7. When, the case was listed for PWs, then, application under Order 7, Rule 14 of CPC, was moved, which was allowed by the learned trial Court, vide order dated 06.06.2017 and the plaintiff was permitted to place on record copy of documents and orders of revenue authorities.

8. After closure of evidence of PWs, when, the matter was listed for DWs, then, on 22.11.2017, the defendant has filed the application, under Order 8, Rule 1(2) read with Section 151 of CPC, which was allowed, by

the learned trial Court, vide order dated 04.09.2018. Thereafter, the matter remained on board, for DWs, on 13.11.2018, 14.01.2019 and 27.04.2019.

9. On 11.07.2019, no DWs, were examined, however, it has been pointed out by learned counsel for the defendant that an application, under Order 6, Rule 17 of CPC, has been filed, but, the same has been tagged, with another case file of the same title. After completion of the pleadings, the said application was dismissed, by the learned trial Court on 15.09.2021.

10. The said order has been assailed, by the defendant, by way of the present petition. The order has been assailed, mainly on the ground, that the learned trial Court has failed to exercise the jurisdiction vested in it, in accordance with law.

11. According to the petitioner, the provisions of Order 6, Rule 17 of CPC, have not been considered properly, as, every amendment will enable the Court to decide the real point of controversy between the parties and it would also avoid the multiplicity of litigation.

12. The findings have also been assailed, on the ground, that the learned trial Court has wrongly concluded

that in the event of acceptance of the application for amendment, it will amount to withdrawal of the admission, by the defendant, which she had made in her written statement, whereas, according to the defendant, it has not been disputed that the plaintiff-Bimla Devi is daughter of Jindu Ram.

13. The findings have further been assailed, on the ground, that the learned trial Court has wrongly held that the application for amendment could have been filed, when, the application under Order 8, Rule 1 of CPC, had been filed. In order to justify the said fact, it has been pleaded that the defendant and her GPA, who was prosecuting the case, are simpleton villagers and not aware about the technicalities of law. The application could not be filed earlier, as the defendant was not aware about the fact, sought to be introduced, by way of amendment.

14. On the basis of the above facts, Mr. Y.P. Sood, Advocate, appearing for the defendant has prayed that the present petition may kindly be allowed, by setting aside the order dated 15.09.2021 and application, under Order 6, Rule 17, may kindly be allowed, as prayed for.

15. Prayer, so made, by learned counsel appearing for the defendant has been opposed by Mr. Digvijay Singh Bisht and Mr. Sumit Sharma, Advocates, appearing for the plaintiff, on the ground, that the application, under Order 6, Rule 17 of CPC, is nothing, but, a futile attempt to prolong/protract the litigation, which was instituted way back, in the year 2013.

16. To buttress their contentions, learned counsel appearing for the plaintiff have drawn the attention of this Court, towards the pattern of moving the applications, in regular intervals of the proceedings, before the learned trial Court.

17. Lastly, it has been pointed out that the well reasoned order, passed by the learned trial Court, cannot be interfered with by this Court, that too, under Article 227 of the Constitution of India, where, the scope of interference is very limited.

18. Hon'ble Supreme Court in "**K. Valarmathi & Ors. Versus Kumaresan, 2025 INSC 606**" has elaborately discussed the scope of interference. 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.”

19. 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.”

20. Being guided by the above decisions, now, this Court would proceed further to determine the fact, whether the order passed by the learned trial Court is required to be interfered with by this Court.

21. As stated above, the application, under Order 6, Rule 17 of CPC, was moved, when, the lis was pending for DWs. The perusal of the application under Order 6, Rule 17 of CPC, shows that the amendment has been sought, by the defendant, mainly on the ground, that plaintiff Bimla Devi has concealed the material fact, with regard to the fact, that she is not entitled to succeed the property of Jindu Ram, as, she is not the daughter of Jindu Ram.

22. According to the defendant, she came to know about this fact, when, the local residents of Basantpur had disclosed this fact, to Ramesh Kumar son of defendant, who is GPA of defendant, in the present case. Thereafter, the applicant allegedly obtained the material document and then, filed the application.

23. By way of the application for amendment, following para-9(A), is required to be added, in the written statement, which is, reproduced, as under:-

“9(A). That plaintiff is not entitled to succeeded the property of Late Sh. Jindu Ram at Village Basantpur reason being that she is not the daughter of Late Sh. Jindu Ram, as a matter of fact, she is daughter of Late Sh. Nupu Ram R/o Village Chabha, P/o Chabha, Tehsil Sunni, District Shimla, H.P. It is pertinent to submit here that plaintiff never recorded in the Pariwar register of late Shri Jindu Ram, as his daughter however, she has been recorded in the Pariwar register of Nupu Ram, as his daughter which is evident from Nakal Pariwar

register of Late Shri Nupu Ram this material fact was concealed intentionally by the plaintiff only to grave property of defendant. Moreover, the father of the plaintiff in convenience of the revenue agency had succeeded to get the mutation of inheritance in favour of plaintiff when she was minor as a matter of fact this mutation No.237 upon which, the plaintiff has established his case is totally contrary to panchyat record and the same is not binding on the legal right of defendant in the present case.”

24. Further, it has been pleaded, in the application that the said amendment is essential, for just adjudication of the real controversy.

25. The provisions of under Order 6, Rule 17 of CPC, are reproduced, as under:-

Order VI

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“17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

26. Admittedly, the application for amendment has been filed, after commencement of the trial. The plaintiff has closed her evidence and after availing the opportunity to lead evidence, the defendant, instead of taking steps to

summon and examine the witnesses, has moved the present application. It has also been argued in this case that earlier, the defendant has moved the application, under Order 8, Rule 1(2) of CPC, for producing the documents, which was allowed by the learned trial Court on 04.09.2018.

27. The learned trial Court, while allowing the application on 04.09.2018, has also given last opportunity to the defendant, to lead her evidence on 13.11.2018, by taking the steps, failing which, evidence has been ordered to be brought on self responsibility. Despite this fact, present application has not been moved for three dates, nor, any witness has been examined.

28. The application is silent about the essential conditions for allowing the amendment, after the commencement of the trial, as per proviso under Order 6, Rule 17 of CPC.

29. By way of adding the proviso to Order 6, Rule 17 of CPC, the legislative intent is writ large to put a restriction, on the power of the Court, to allow the application for amendment, as, prior to the commencement of the trial, it has been intended by the legislature, that

the liberal approach should be adopted, as word 'may' has been used.

30. 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](#)³, 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)

31. Judging the facts and circumstances of the present case, in view of law laid down by the Hon'ble Supreme Court, to the considered opinion of this Court, in the absence of any explanation, the learned trial Court, has rightly doubted the bonafide of the defendant, in moving the application, under Order 6, Rule 17 of CPC and the same has rightly been dismissed.

32. No other point has been urged or argued.

33. In the given facts and circumstances, there is no occasion for this Court to differ with the findings, so recorded, by the learned trial Court. Consequently, the present petition is dismissed.

34. Parties, through their counsel, are directed to appear before the learned trial Court, on 17.08.2026 at 10:00 am.

35. Pending application(s), if any, shall also stands disposed of.

36. 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 petition.

37. Record be sent back.

July 30, 2026
(*subhash sharma*)

(Virender Singh)
Judge