

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 260 of 2026

Decided on : 15.09.2026

Hem Chand

...Petitioner

Versus

Khyali Ram & Ors.

...Respondents

Coram

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

*Whether approved for reporting?*¹

For the petitioner : Ms. Ritu Raj Sharma & Mr.
Santosh Kumar, Advocates.

For the respondents : Mr. Vipin Pandit, Advocate.

Virender Singh, Judge (Oral)

Petitioner-Hem Chand has filed the present petition, under Article 227 of the Constitution of India, against the order dated 09.03.2026, passed by the Court of learned Senior Civil Judge, Kasauli, District Solan, H.P., (hereinafter referred to as 'the trial Court'), in Civil Suit No. 304/1 of 2015, titled as "Khyali Ram Versus Dhani Ram & Ors."

2. By way of order dated 09.03.2026, the learned trial Court has allowed the application under Order 6 Rule

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

17 of CPC, filed by respondent No. 1, in the above titled suit.

3. 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.

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:-

4.1 Plaintiff-Khyali Ram has filed a suit for injunction, restraining defendant No. 1 from causing waste and causing loss, injury to the rights, title and interest of the plaintiff, with regard to the suit property, as mentioned in para 1 of the plaint (hereinafter referred to as 'the suit property'), along with rendition of accounts and further partition of the suit property.

4.2 The said suit was filed by the plaintiff, on the ground, that one Luddar was one of the owners in possession of the suit property, who has inherited the same from ancestors. Sh. Luddar had two sons i.e. Sh. Dhani Ram (defendant No. 1) and late Biru, predecessor-in-interest of proforma defendant No. 7. Late Sh. Luddar was coparcener with his father and grandfather, on

account of having been born in a Hindu family, governed by Hindu Mitakshra Law, in the matter of succession and also other matters. Sh. Dhani Ram and late Sh. Luddar having been born in a Hindu family, acquired birth right in the suit property and became coparceners with their father(s) and so the plaintiff. Defendant No. 1 is aged about 85 years and the plaintiff is aged about 60 years. Defendant No. 1 was recorded owner in possession of the suit land, but, such revenue entries do not depict true and correct picture, because the suit property is coparcenary property of the plaintiff, defendants No. 1 to 3 and proforma defendants No. 5 and 6. Defendant No. 1 being “Karta” of HUF is morally and legally bound to manage the coparcenary property in a beneficial manner to all the coparceners and further in such a manner, which, may not cause any type of loss, injury or any type of prejudice to the enjoyment, user, rights, title and interest etc. of the plaintiff and other coparceners over the suit property.

4.3 According to the plaintiff, defendant No. 1 being “Karta” of HUF and on the basis of the position, as reflected in the revenue records, has leased 13-1 bighas of land, out of the suit land to defendants No. 3 and 3(a), for

mining purposes, on monthly lease amount of Rs. 35,000/- and thus, defendants No. 3 and 3(a) were authorized to take out the material.

4.4 On the basis of above facts, the plaintiff has sought the relief, which is being reproduced, as under:-

“It is, therefore, prayed that a decree in favour of the plaintiff and against the defendants that:

(i) the plaintiff is entitled to 1/6th share of the suit land recorded in the name of defendant No. 1 in the revenue record and on account of his decision to get separated from HUF and coparcenary is entitled to have exclusive ownership and use of 1/6th share i.e. approximately 5-12 bighas, by seeking partition and such share is ordered to be separated by way of partition;

(ii) the defendants are directed not to put coparcenary property to such use which may cause any type of loss, injury and prejudice to the user, rights, title and interest of the plaintiff qua the same till the share of plaintiff is separated;

(iii) the defendants are restrained from cutting and removing valuable trees, changing nature, causing loss and damage, effect dispossession of the plaintiff from the suit land and further from carrying out mining operation on the area more than 5 bighas permitted in the mining lease qua the part of suit land including causing any type of injury to remaining portion of the suit land;

(iv) defendant No. 1 is directed by mandatory injunction to tender the accounts of income of the coparcenary property, settle and get the share of plaintiff determined in the said income and further to make payment of the same to the plaintiff, may very kindly be passed.”

5. When put to notice, suit has been contested by defendants No. 1 to 3, by filing the written statement taking preliminary objections that the plaintiff has no locus

standi, suit is not maintainable, plaintiff is estopped by his own act and conduct, plaintiff has concealed the material facts and Court has no jurisdiction to entertain the present suit.

5.1 On merits, factual position, as mentioned in para 1 of the plaint has been admitted, by pleading that he is co-owner and exclusive owner in land bearing Khata Khatauni No. 15/40, however, the nature of the suit property, as pleaded by the plaintiff, has been disputed.

6. During the pendency of the lis, the plaintiff has moved an application under Order 6 Rule 17 of CPC, on the ground that defendant No. 9 moved an application dated 03.04.2023, in Civil Suit, titled as “Jagdish Chand Vs Hem Chand”, whereby it has been averred that suit land stands partitioned vide mutation No. 278 dated 28.08.2012 and mutation No. 308 dated 22.08.2016, between him and late Dhani Ram, however, in the written statement, filed by the defendants, there is no reference with regard to the family partition, as well as, khangi takseem and mutations No. 278 and 308. The said plea has been taken for the first time, in the application dated 03.04.2023. As such, in view of the above, plaintiff has

sought to permit him, to add para 7-a and 7-b, in the
plaint, which are reproduced, as under:-

“7-a That suit land is jointly owned and possessed by plaintiff and defendants except defendant No. 3 and 3-a. The defendant No. 9 in civil suit Jagdish Chand Vs Hem Ram, pending in the Hon'ble Court, during pendency of said suit, defendant No. 9 has moved an application dated 03.04.2023 in which plea of khangri takseem, new plea has been taken. It is now asserted that has not been taken in the written statement i.e. that there had been a khangri takseem between late Dhani Ram and defendant No. 9. Two applications for khangri takseem was moved before AC IInd Grade Kasauli and mutation No. 278 dated 28.08.2012 and mutation No. 308 dated 22.08.2016 have been sanctioned vide which khangri takseem has been effected. The mutation No. 278 and 308 supra are wrong, illegal, null and void ab-initio and are to be treated as non est for all intends and purposes. Moreover, the said mutations have been sanctioned without any proper factual and legal foundations, no application for effecting private partition has ever been moved by late Dhani Ram before A.C. IInd Grade Kasauli, no inquiry with regard to alleged private partition has ever been made, the mutations have been sanctioned behind the back of late Dhani Ram after committing gross violation of statutory provisions, in an arbitrary, unilateral, unjust, unfair manner and principles of natural justice and fair play. The mutations which have been sanctioned without any jurisdiction to do so, the same neither create any right nor extinguish any right, title or interest of any of the co-sharers nor brings the status of co-owners or jointness of the suit land to an end. The mutations are result of manipulation and fabrication besides fraud played by defendant No. 9, 3 and 3-a in league and connivance with certain vested interests. Late Dhani Ram was an illiterate village simpleton person, not worldly wise, the mutations have been sanctioned behind his back in a wrong and illegal manner, the same do not contain his thumb impression. The thumb impressions on mutations is result of impersonation and fraud etc., the mutations have not been attested in the concerned revenue village nor in the concerned patwar khana, further HP Land Revenue Act does not permit partial partition. There was no private partition nor there was any occasion for the same, there was no circumstance or no prudent person will give up his rights with regard to valuable portions of the joint land which provides solid support to keep and maintain him and his family members, so the late Dhani Ram.

There had not been any khangi takseem, the mutation No. 278 and 308 are result of manipulation and fraud. In case for any reason the Hon'ble Court comes to conclusion that the above mentioned mutations have been thumb marked by late Dhani Ram, a fact which is denied, in that eventuality such thumb marks are result of cheating misrepresentations and fraud etc. done by defendant No. 9, 3 and 3-a. It may not be out of place to mention that on account of payment of lease money, the defendant No. 9, 3 and 3-a have been obtaining signatures or thumb impression etc. of late Dhani Ram. Late Dhani Ram was having good relations with the plaintiffs and successors of late Ram Lal, at no point of time he disclosed factum of khangi takseem nor there had been any khangi takseem on spot, the suit land is still jointly owned and possessed by the plaintiff and defendant No. 1, 2 and 4 to 9. The mutation No. 278 and 308 supra have been sanctioned in a wrong and illegal manner after committing gross violation of statutory provisions specially those of HP Land Revenue Act, HP Land Record Manual, further have been sanctioned not only behind the back of late Dhani Ram but in arbitrary, unilateral, unjust and unfair manner as such are to be treated as non est. Late Dhani Ram had no knowledge of the said mutations nor such fact could be noticed by the plaintiffs till application dated 03.04.2023 was filed by defendant No. 9, moreover the suit land is in joint possession on spot. On the basis of said non-est mutations wrong revenue entries have been incorporated and it is only on 03.04.2023 when on the basis of said wrong revenue entries, the rights, title and interests of the plaintiffs have suit land have been challenged and substantial threat to status of land being joint on the basis of said mutations and wrong revenue entries has been put forward.

7-b The defendant No. 9 has further mentioned in said application about one affidavit executed by late Dhani Ram. Late Dhani Ram never executed any affidavit whereby he has stated that some portion of suit land has been partitioned by way of family partition, there was no occasion for partition of any portion of land out of the joint holding i.e. suit land, the alleged affidavit is result of manipulation by defendant No. 9, 3 and 3-a, these clever persons might have made impersonation to obtain false affidavit, such affidavit is a forged and fabricated document. In alternate if for any reason it is taken, a fact which is emphatically denied that any affidavit admitting family partition bears thumb impression of late Dhani Ram, said document is result of cheating, misrepresentation and fraud played by defendant No. 9, 3 and 3-a, these persons have been obtaining signatures

or thumb impression of late Dhani Ram under the pretext of lease of some portion of joint land for mining purpose and establishment of stone crusher. As at no point of time, there has been any partition of the joint land i.e. the suit land so there was no occasion for executing the affidavit in this regard or getting mutation No. 278 and 308 supra attested.

Consequently, the applicants intend to add para ii-a in prayer clause:

(ii-b) defendant No. 9 is co-sharer in possession with the plaintiffs and defendant No. 1, 2 and 4 to 9 to the extent of half share, the mutation No. 278 and 308 supra are wrong, illegal, null and void and are to be treated as non-est."

7. The said amendment is stated to be necessary for the just and proper adjudication of the case. According to the plaintiff, the proposed amendment will clarify and explain the stand taken by the plaintiffs, on the basis which, the suit land is being claimed to be jointly owned and possessed by the plaintiffs and defendants No. 1, 2 and 4 to 9.

8. It is the further case of the plaintiff that, being illiterate and simpleton villager, despite due diligence, the factum of mutation Nos. 278 and 308 could not be noticed by them. On the basis of above facts, a prayer has been made to allow the application.

9. When put to notice, the application was contested by the defendant by filing reply taking preliminary objections that the application is not maintainable, the application is abuse of process of law,

the applicant has not approached the Court with clean hands and application is stated to be filed on manipulated facts.

10. On merits, the application has been contested by defendant No. 9. It is denied that defendant No. 9 moved an application dated 03.04.2023 in Civil Suit titled as “Jagdish Chand Vs Hem Chand”, whereby, it has been averred about the partition of the suit land, as well as, with regard to the mutations.

11. Learned trial Court, after hearing learned counsel for the parties, has allowed the application under Order 6 Rule 17 CPC, subject to cost of Rs. 3,000/-.

12. Feeling aggrieved from the said order, defendants have filed the present petition.

13. Heard.

14. Admittedly, in this case, trial has not commenced, as learned trial Court has not framed the issues, in the present case. As such, learned trial Court while relying upon the decisions of Hon’ble Supreme Court in “**Baldev Singh Vs Manohar Singh, (2006) 6 SCC 498**” and “**Life Insurance Corporation Vs Sanjeev Builders,**

(2022) 10 SCC 792”, has allowed the application under Order 6 Rule 17 CPC.

15. Now, the defendants are before this Court under Article 227 of the Constitution of India. The scope of interference by this Court, under Article 227 of the Constitution of India, has elaborately been discussed by Hon’ble Supreme Court in **“K. Valarmathi & Ors. Versus Kumaresan, 2025 INSC 606”**. 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](#)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)

18. If the facts and circumstances of the present case, are seen in the light of the decision of Hon’ble Supreme Court in **Life Insurance Corporation of India versus Sanjeev Builders Pvt. Limited and another, (2022) 16 SCC 1.**, then the order passed by the learned trial Court does not require any interference. Relevant para 71.2, of the judgment, is reproduced, as under:-

“71.2 All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the later part of Order 6 Rule 17 CPC.”

19. Once, the learned trial Court has exercised its jurisdiction, vested in it, in favour of the plaintiff, then the

said order can only be interfered with, if the same falls within the definition of 'perverse findings'. The trial has not commenced and proposed amendment is stated to be based upon whatsoever revealed by defendant No. 9, in some other proceedings.

20. In such situation, there is no occasion for this Court, to interfere with the well reasoned order passed by the learned trial Court. Consequently, the present petition is dismissed.

21. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits, of the case pending adjudication before the learned trial Court, as these observations are confined, only, to the disposal of the present petition.

22. Pending application(s), if any, shall also stand(s) disposed of.

23. Send down the record, forthwith.

(Virender Singh)
Judge

15th September, 2026
(Pramod Kumar)