

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 311 of 2026

Date of decision: 12.08.2026.

Ajay Doegar & another ...Petitioners.

Versus

Sajesh Kumar ...Respondent.

Coram:

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

*Whether approved for reporting?*¹

For the petitioners : Mr. B.N. Sharma and Mr. Prajwal
Sharma, Advocates.

For the respondent : Mr. Mukul Sood, Advocate.

Romesh Verma, Judge (Oral):

The instant petition arises out of the order passed by the learned Senior Civil Judge, Dehra, District Kangra, H.P. dated 18.05.2026, whereby the application filed by the petitioners/defendants under Order 8 Rule 1-A read with Section 151 of CPC for production of documents, came to be dismissed.

2. The facts as emerge in the present case are that the respondent/plaintiff filed a suit for perpetual prohibitory injunction, restraining the petitioners/defendants from interfering, raising construction, digging, changing the nature of the land, comprised in Khata No. 227 min, Khatauni No. 356

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

and 359 min khasra Nos. 2635/597, 2628/576, 2630/577, 2637/598, area measuring 41.10 square meters, situated in Mohal, Jawalamukhi, Tehsil Jawalamukhi, District Kangra, H.P., with further prayer for vacant possession by demolition of the construction raised over the suit land, situated in Mohal, Jawalamukhi. In alternative, it was prayed that decree for vacant possession by demolition of the construction be passed in favour of plaintiff in case the defendants during the pendency of suit succeed in raising the construction over the suit land.

3. As per the case, as set up by the plaintiff, the defendants are strangers to the suit land and they have got no right, title or interest over the suit land. The defendants being headstrong persons, forcibly started encroaching the suit land by raising construction on 23.09.2015, without prior express consent of the plaintiff. As per plaintiff, in case the defendants succeed in their illegal acts, in that event, the plaintiff shall suffer irreparable loss. Therefore, the plaintiff is entitled for injunction. Under such circumstances, it was prayed that decree for perpetual prohibitory injunction be passed against the defendants and in alternative, suit for vacant possession by demolition of the construction.

4. The suit was contested by the present petitioners

/defendants by filing written statement by raising preliminary objections with respect to maintainability, cause of action and estoppel, etc. On merits, all the averments as made in the plaint were specifically denied and refuted.

5. As per defendants, they are not strangers, rather they are owners of the adjoining land where their old building was existing for the last more than 70 years and the same has been demolished and now they have reconstructed the building on the same portion and much prior to the filing of the suit. As per defendants, they have raised the construction over their own land and there is no question of encroachment over the suit land.

6. The plaintiff filed replication to the written statement and reiterated all the averments as made in the plaint.

7. The record reveals that issues were framed by the learned trial Court on 09.05.2018 and thereafter, the parties were directed to adduce evidence in support of their contentions. Perusal of case file further shows that the plaintiff closed his evidence on 03.01.2024. Thereafter, the case was listed for the evidence of the defendants on 07.03.2024. However, on the said date, DWs were not present. Thereafter, the case was listed on 02.05.2024 and again, on the said date,

DWs were not present. Thereafter, on asking of the defendants, time was granted to them to lead their evidence and the matter was fixed for DWs on 11.06.2024. Again, on 11.06.2024, DWs were not present and time was sought by the learned counsel for the defendants and the case was fixed for DWs on 04.10.2024.

8. On 04.10.2024, DW Kamal Kant was present. However, he was discharged on the said date. Thereafter, the case was listed for DWs on 23.10.2024. On the said date, DW Kamal Kant was examined and his statement was recorded. Thereafter, learned counsel for the defendants sought time for concluding the evidence on behalf of the defendants and as per the order passed by the learned Senior Civil Judge, Dehra, last opportunity was granted to the defendants to conclude their evidence and it was ordered that the remaining DWs shall be brought on self responsibility for 15.01.2025, failing which the evidence of the defendants shall be closed.

9. On 15.01.2025, the learned Presiding Officer was not present due to training and thereafter, the case was posted on 03.07.2025. On the said date, no DWs were present and the learned counsel for the defendants filed an application under Order 17 Rule 1 of the CPC for adjournment of the case for leading the defendants' evidence.

10. The said application was allowed by the learned trial Court subject to exceptional last opportunity and it was ordered that witnesses shall be produced on self responsibility for 24.11.2025. When the matter was listed on 24.11.2025 for leading the defendants' evidence, an application under Order 8 Rule 1-A read with Section 151 of CPC came to be filed by the present petitioners and for filing of reply, the case was fixed on 27.11.2025.

11. Vide order dated 27.11.2025, the said application was allowed and it was ordered by the learned Senior Civil Judge that the matter be listed for examination of DWs who are to be brought on self responsibility for 25.02.2026, failing which, the evidence of the defendants shall be closed by the order of the Court. Further, it was ordered that exceptional last opportunity is granted to the defendants for leading and concluding their evidence and dasti summons, if required, be issued.

12. On 25.02.2026, one witness of the defendant, namely Onkar Singh, was present but he could not be examined as the learned counsel for the plaintiff filed an application for adjournment. The said application was allowed and thereafter, the case was adjourned for recording of the evidence of the defendant's witnesses, namely Onkar Singh,

on 01.04.2026.

13. When the case was listed on 01.04.2026, a second application came to be filed by the present petitioners/defendants on the ground that they intend to place on record certified copy of sale deed dated 03.12.2009 along with site plan and copy of Jamabandi for the year 2023–2024. The learned trial Court directed the non-applicant/respondent to file reply to the said application and the case was posted on 09.04.2026.

14. On 09.04.2026, the respondent filed reply to the said application and thereafter, the case was posted on 06.05.2026. On the said date, the application was heard and the matter was reserved for announcement of order on 07.05.2026 and again the matter was adjourned for 18.05.2026. On the said date, the impugned order came to be passed by the learned trial Court.

15. Feeling dissatisfied, the defendants have approached this Court by instituting the present petition under Article 227 of the Constitution of India.

16. It is contended by the learned counsel for the petitioners that the impugned order as passed by the learned trial Court is erroneous and liable to be set aside. He submits that the learned trial Court has not adhered to the provisions of

Order 8 Rule 1-A of the CPC and the application ought to have been allowed as prayed for by the present petitioners. He further submits that after accepting the present petition, the application which has been filed by the petitioners/defendants deserves to be allowed.

17. On the other hand, learned counsel for the respondent has defended the impugned order as passed by the learned trial Court. He submits that perusal of record demonstrates that the endeavour of the defendants is to delay the entire proceedings and since the issues were framed in the matter in the year 2018 and for the last more than six years, the defendants have failed to conclude their evidence. He submits that this Court will not exercise the jurisdiction by invoking the provisions of Article 227 of the Constitution of India.

18. I have heard the learned counsel for the parties and have also gone through the case file carefully.

19. The respondent/plaintiff had approached the learned trial Court for grant of perpetual prohibitory injunction and in alternative, for possession on the ground that defendants being headstrong persons are trying to encroach over the suit land and they be restrained from interfering over the suit land in any manner and in case it is found that during

the pendency of the suit, they encroached the suit land, in that event, the vacant possession be restored to the plaintiff. The said facts have been vehemently refuted by the present petitioners in their written statement.

20. The case file reveals that the suit came to be filed by the plaintiff on 03.10.2015. The written statement was filed by the defendants on 24.02.2016 and the replication to the same was filed on 09.08.2017. The issues came to be framed by the learned trial Court on 09.05.2018 and despite passing of more than six years, the evidence in the case in hand has not been concluded so far.

21. As observed above, the zimni orders have been placed on record along with the petition, which show that defendants were directed to start their evidence on 07.03.2024. On one pretext or the other, the petitioners/defendants have been able to prolong the matter and have not led the evidence. In order to scuttle the said process, initially, an application came to be filed by the petitioners under the provisions of Order 8 Rule 1-A read with Section 151 of CPC. The learned trial Court vide its order dated 27.11.2025 allowed the said application. At the time when the said application was allowed, the learned trial Court had specifically directed the defendants to lead their evidence on self responsibility, failing which, the

evidence of defendants shall be closed. Instead of concluding their evidence, another application came to be filed by the petitioners with a prayer for production of the documents i.e. copy of the sale deed dated 03.12.2009 along with site plan and copy of Jamabandi for the year 2023–2024. A perusal of the application demonstrates that this is a half page application and it does not disclose the reason that how these documents are relevant for the adjudication of the case at hand. In four lines, the application has been filed. Neither it has been specified that how these documents are relevant for adjudication of the present controversy nor it has been specified that how these documents go to the root of the case.

22. Even otherwise, as rightly held by the learned trial Court, the said documents were available, when the earlier application was filed by the petitioners under the same provisions of law. The petitioners have failed to establish that why when earlier a similar application was filed by the petitioners, those documents were not placed on record.

23. As rightly pointed out by the learned counsel for the respondent, the basic mandatory requirement of due diligence is missing in the present case. The application has been filed in a very cryptic and casual manner and no reason has been assigned for not placing on record those documents earlier well

in time. In absence of due diligence, the learned trial Court has rightly determined the point in controversy and rightly came to the conclusion that no case is made out for grant of discretion in the attending facts and circumstances of the case.

24. This Court, in **CMPMO 56 of 2026** titled as, **Khem Singh** vs. **Dila Ram**, decided on 24.03.2026, while dealing with the provisions of Order 8 Rule 1A of CPC, has held as follows:-

“15. A perusal of the application does not disclose what prevented the petitioner/defendant from producing the said documents at an earlier stage, particularly at the time of filing the written statement. The documents sought to be produced are certified copies of Jamabandi and mutations, which are public documents and it cannot be presumed that these were not within the knowledge of the petitioner.

16. The stage of the case indicates that it has been repeatedly listed for final arguments. The petitioner has failed to demonstrate what prevented him from filing these documents earlier, and due diligence has neither been explained nor established in the facts and circumstances of the case.

17. In the opinion of this Court, the application is highly belated, and the learned trial Court has rightly rejected the same. Even otherwise, the defendant cannot be permitted to prolong the litigation unnecessarily when the case is fixed for final arguments”.

25. It is well settled that the supervisory jurisdiction of this Court under Article 227 of the Constitution is confined to correcting jurisdictional errors, patent perversity or manifest miscarriage of justice. This Court does not exercise appellate jurisdiction over discretionary orders passed by Subordinate Courts. Where the discretion has been exercised upon relevant consideration and in conformity with settled legal principles, interference is wholly unwarranted.

26. In the present case the learned trial court has considered every relevant circumstance, mainly the stage of the proceedings, due diligence, admitted prior knowledge of the documents to be placed on record. The discretion exercised by the learned trial Court is thus fully consistent with the principles laid down and cannot be characterized as arbitrary, illegal or perverse so as to warrant interference in exercise of supervisory jurisdiction.

27. Therefore, the present petition, being devoid of merit, is dismissed. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

12th August, 2026.
(kck)