

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.437 of 2026
Date of decision:30.09.2026

Nikka Ram ...Petitioner

Versus

Tripta Devi ...Respondent.

Coram:

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

Whether approved for reporting?¹

For the petitioner: Mr. Umesh Kanwar, Advocate.

For the respondent: Mr. Sanket Sankhyan, Advocate.

Romesh Verma, Judge (oral):

The present petition has arisen from the judgment passed by the learned Additional District Judge, Bilaspur, dated 23.04.2026, whereby the appeal filed by the present petitioner/plaintiff was ordered to be dismissed and the order passed by the learned Senior Civil Judge, Bilaspur, District Bilaspur, dated 25.04.2024, was affirmed, whereby the application filed by the petitioner/plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure came to be dismissed.

2. The facts, as emerge in the present case, are that the present petitioner/plaintiff filed a suit for declaration that the plaintiff

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

is a co-owner in joint possession of the land comprised in Khata/Khatauni No. 509/667, bearing Khasra No. 1556/556, measuring 00-16 bighas, i.e., 1/6th share of the total land measuring 05.00 bighas, situated at Mauza/Village Pangain, Tehsil Sadar, District Bilaspur, H.P. Further, a decree of declaration was sought that the plaintiff did not execute any document of transfer of land, i.e., the sale deed dated 13.07.2022, registered vide Registration No.636 of 2022 in the office of the Sub-Registrar, Bilaspur, in favour of the respondent/defendant and that the same has been procured on account of fraud, misrepresentation, undue influence and without possession and is not binding on the rights of the plaintiff.

3. As per the averments made in the plaint, it has been contended by the plaintiff that he is one of the joint owners in possession along with other co-sharers over the suit land. He is a simple, poor and rustic villager and that the defendant, being his neighbour, used to visit the house of the plaintiff on various occasions. The plaintiff has only one daughter, whereas his son had died on 10.10.2018. After his death, the plaintiff became mentally unstable, and also on account of his advanced age, the plaintiff was in a state of shock and started consuming liquor. As such, he was not in a fit position to execute any document.

4. As per the plaintiff, the alleged sale deed dated 13.07.2022 is illegal, null and void and surrounded by suspicious

circumstances, as the same was not executed in a sound state of mind. Therefore, under such circumstances, it was prayed that decree of declaration be passed in favour of the plaintiff declaring him to be co-owner of the suit land and that the sale deed dated 13.07.2022, registered vide Registration No. 636 of 2022, be declared null and void and not binding on the rights of the plaintiff. Further, a decree of permanent prohibitory injunction was also sought from the learned trial Court.

5. The suit came to be resisted by the defendant/respondent by raising preliminary objections with respect to maintainability, cause of action, estoppel, valuation, acquiescence, non-joinder, etc. It was stated that the plaintiff has not approached the Court with clean hands and has suppressed material facts from the Court regarding the receipt of Rs.2,10,000/- as sale consideration amount, out of which Rs.2,00,000/- was transferred by the defendant into the plaintiff's bank account by way of cheque and Rs.10,000/- was paid in cash, in addition to the total expenses of registration of the sale deed, including stamp duty Rs.11,280/-, registration fee Rs.5,640/-, service charges Rs.250/-, web camera charges Rs.50/-, and pasting fee Rs.10/-, i.e., total amount of Rs.17,230/-, in the presence of the plaintiff and the attesting witnesses. All the averments made in the plaint have been specifically refuted and denied.

6. As per the defendant, the sale deed is legal, valid and binding on the plaintiff. The plaintiff himself had come to the office of the Sub-Registrar for the execution of sale deed along with the witnesses. Therefore, there is no connivance of the Sub-Registrar or other officials, along with the scribe etc. As per the defendant, the sale deed is the result of sound and free volition of the plaintiff's mind, who has now turned hostile towards the defendant with an ulterior motive to extract more money from the defendant. There has been no misrepresentation of any facts regarding the execution of any mortgage deed or loan documents, etc. No liquor was provided by Jai Krishan and Suresh Kumar to the plaintiff on the way to the office of Sub-Registrar and all such allegations are incorrect and imaginary.

7. The defendant had paid the entire sale consideration amount along with other miscellaneous expenses on the date of execution of the sale deed and before the Sub-Registrar, the photograph of the plaintiff was also clicked. It was prayed that since the plaintiff has parted with the possession of the suit land in favour of the defendant, the suit deserves to be dismissed.

8. The plaintiff/petitioner, along with the suit, filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure with a prayer that an ad-interim injunction be granted in favour of the plaintiff and against the defendant, restraining the non-

applicant, herself and her family members, from raising any construction, changing the nature of the suit land, alienating or transferring the same, getting mutation sanctioned, creating any charge over the suit property or dispossessing the applicant from the suit land during the pendency of the suit.

9. The said application was duly resisted by the respondent/defendant, who prayed for the dismissal of the application.

10. The learned Senior Civil Judge, Bilaspur, District Bilaspur, vide order dated 25.04.2024, dismissed the application filed by the plaintiff.

11. Being dissatisfied, the plaintiff approached the Court of the learned Additional District Judge, Bilaspur, by preferring an appeal on 23.05.2024. The learned first appellate Court, vide its impugned judgment dated 23.04.2026, dismissed the appeal filed by the present petitioner/plaintiff and affirmed the findings of the learned trial Court.

12. Still being aggrieved, the plaintiff has invoked the provisions of Article 227 of the Constitution of India by filing the instant petition.

13. It is contended by Mr. Umesh Kanwar, learned counsel for the petitioner, that the impugned judgment and order passed by the learned Courts below are erroneous and liable to be quashed

and set aside. He submitted that the Courts below have not appreciated the point in controversy and have wrongly rejected the application filed by the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure. He further submitted that after accepting the present petition, the application filed by the plaintiff/petitioner under Order 39 Rules 1 and 2 of the Code of Civil Procedure deserves to be allowed.

14. On the other hand, it is contended by Mr. Sanket Sankhyan, learned counsel for the respondent, that this Court, while exercising power under Article 227 of the Constitution of India, will not interfere with the well-reasoned judgment and order passed by the learned Courts below. He submitted that there are concurrent orders passed by the learned Courts below which are legal, valid and sustainable and do not suffer from any infirmity, illegality or jurisdictional error. Therefore, the present petition, being devoid of any merit, deserves to be dismissed.

15. I have heard the learned counsel for the parties and have also gone through the record carefully.

16. In the present case, the plaintiff/petitioner approached the learned trial Court seeking declaration on the ground that the sale deed dated 13.07.2022, registered vide Registration No. 636 of 2022 in the office of the Sub-Registrar, Bilaspur, Tehsil Sadar, District Bilaspur, in favour of the defendant, is null and void and not

binding on the rights of the plaintiff. As per the case set up by the plaintiff, the said transaction is the result of fraud and misrepresentation and the plaintiff is not bound by the contents of the same. The plaintiff has tried to set up a case that after the death of his son in 2018, he became mentally unstable and started consuming liquor after the said incident. It is the case of the plaintiff that the defendant, taking undue advantage of the weak and ailing condition of the plaintiff, in a fraudulent manner procured the document in her favour, which is surrounded by suspicious circumstances.

17. The said case of the plaintiff has been specifically denied and refuted by the defendant, whereby she has stated that upon payment of the entire sale consideration amount, the possession of the suit land was delivered to the present respondent. More so, she is already a co-sharer in the suit land after purchasing the half share of one Shri Gopala. It has been contended that the formalities for the execution and registration of the sale deed were carried out in a legal manner, that the deed was prepared in the presence of the attesting witnesses and that the present plaintiff/petitioner can even be seen in the photograph taken in the presence of the Sub-Registrar, Bilaspur.

18. The sale deed is a registered document and there is a presumption of truth attached to the same. The provisions of

Section 114(e) of the Indian Evidence Act create a presumption to the registered document as in the present case. This Court is in agreement with the contention of the learned counsel for the respondent that the entire sale consideration amount stood paid to the plaintiff and that there was delivery of possession by the plaintiff in favour of the respondent.

19. In order to obtain the relief of temporary injunction, the plaintiff is required to pass triplicate test of a prima facie case, balance of convenience and irreparable loss. In the present case, admittedly, the sale deed was executed in favour of the defendant by the plaintiff, though the same has now been disputed by the plaintiff. The document which has been placed on record is a registered document and a presumption of truth is attached to the same. Therefore, it is not the plaintiff, but rather the defendant, who has been able to establish a prima facie case in her favour. The balance of convenience also lies in favour of the present respondent, as the plaintiff has received the entire sale consideration, which amount stood transferred into the bank account of the plaintiff. In case the respondent/defendant is enjoined from utilizing the suit property, in that event, she shall suffer huge and irreparable loss which cannot be compensated in terms of money. The plaintiff has thus failed to make out a case for the grant of injunction. More so, in view of the concurrent findings

returned by the learned Courts below, this Court will not interfere with the judgment and order passed by the Courts below while exercising power under Article 227 of the Constitution of India.

20. This Court is not convinced by the argument of the learned counsel for the petitioner that the sale deed which has been executed is the result of fraud and misrepresentation. The said fact is a matter of trial and the parties are yet to lead their evidence. Therefore, such facts can be determined in the main suit/trial, which shall be take to its logical end by the learned trial Court. The plea of fraud and misrepresentation cannot be decided in a miscellaneous application under Order 39 Rules 1 and 2 of the Code of Civil Procedure. This Court does not find any infirmity or illegality in the impugned judgment and order.

21. 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.

22. 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."*

23. 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.”

24. Therefore, in the considered opinion of this Court, there is no infirmity, illegality or perversity in the impugned judgment/order

as passed by learned Courts below as they have rightly determined and adjudicated the point in controversy and the same does not call for any interference.

25. Consequently, the present petition, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

26. Any observation made hereinabove is meant only for adjudication of the present petition and the same shall have no bearing on the merits of the main case.

(Romesh Verma)
Judge

30th September, 2026.
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