

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.402 of 2026
Reserved on: 16.09.2026
Date of decision: 23.09.2026

Dogru ...Petitioner

Versus

Jai Singh & another ...Respondents

Coram:

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

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Sarthak Upadhyaya, Advocate.

For the respondents : Mr. Nimish Gupta, Advocate, for respondent No.1.

Respondent No.2 ex parte.

Romesh Verma, Judge:

The instant petition arises out of the order as passed by the learned Senior Civil Judge, Chamba, dated 09.04.2026, whereby the application filed by the plaintiff-petitioner for amendment of the plaint under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, as well as under Order I Rule 10 of the Code of Civil Procedure, came to be dismissed.

2. The facts, as emerge in the present case, are that the plaintiff-petitioner instituted a suit for permanent prohibitory injunction against respondent Jai Singh for restraining him, his agents, servants,

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

and workmen from interfering, causing nuisance or causing damage by digging and raising unauthorised and illegal construction over the suit land comprised in Khata Khatauni No. 23/26, Khasra No. 941, measuring 04-17-00 bighas, situated at Mauza Gulel, Hadbast No. 199, Kanungo Circle Bhandal, Tehsil Salooni, District Chamba.

3. Further, decree for mandatory injunction was prayed for to the effect that the plaintiff is in possession of the suit land and if during the pendency of the suit, the defendant succeeds in raising any forcible and illegal construction over the suit land or any part thereof by making an encroachment, then the same be ordered to be demolished and vacant possession of the suit land, after restoring it to its original condition, be delivered to the plaintiff.

4. It is the case of the plaintiff that he is the recorded joint owner in possession of the suit land comprised in Khata Khatauni No. 23/26, Khasra No. 941, measuring 04-17-00 bighas, situated at Mauza Gulel, Hadbast No. 199, Kanungo Circle Bhandal, Tehsil Salooni, District Chamba, H.P. As per the plaintiff, the defendant is a complete stranger to the suit land and has no right, title or interest over the same. The defendant, since the first week of June 2020, commenced construction work of his house on his own land and by digging the foundation, he extended the excavation over the suit land and has been raising columns thereon, which is evident from the photographs placed on record.

5. It was further alleged that the defendant has also collected huge construction material such as sariya, cement, bajri, sand and bricks and engaged 3/4 masons and 12/15 labourers to complete the illegal construction at war footings. Though the plaintiff approached the defendant and requested him not to indulge in these illegal acts, but the defendant did not pay any heed. As per the plaintiff, the defendant is a headstrong person who has no regard for the law and in case he succeeds in raising the forcible construction during the pendency of the suit, in that event, the same may be ordered to be demolished and vacant possession of the suit land may be restored to the plaintiff by removing the said illegal construction. Under such circumstances, the plaintiff filed the suit for permanent prohibitory injunction and mandatory injunction with respect to the suit land on 19.06.2020.

6. The defendant Jai Singh filed a comprehensive written statement denying all the averments raised in the plaint. Preliminary objections with respect to maintainability, cause of action and concealment of material facts were specifically raised. On merits, it was contended that the plaintiff had earlier instituted a suit for possession against the defendant, his father, and Smt. Himti, for taking possession of Khasra No. 941/1, vide Civil Suit No. 27 of 2006, before the Court of learned Senior Civil Judge, Chamba.

7. The defendant contested the said suit by taking a categorical plea that land measuring 00-12-00 bighas, comprised in

Khasra No. 941/1 measuring 00-05-00 bighas and Khasra No. 941/2 measuring 00-07-00 bighas, was gifted by late Shri Chimmu, father of the plaintiff, to Smt. Himti, mother of the defendant and they had already constructed a house over Khasra No. 941/2, whereas the remaining land comprised in Khasra No. 941/1 was being utilised as a kitchen garden. As per the defendant, he had raised the construction of his house over Khasra No. 941/1 measuring 00-05-00 bighas to the very knowledge of the plaintiff. Though the said suit was decreed for possession with respect to Khasra No. 941/1 on 17.01.2009, but it was specifically held by the learned trial Court that land measuring 00-07-00 bighas out of the suit land had been gifted by Shri Chimmu to the mother of the defendant.

8. As per the defendant, the appeal preferred by the defendant was dismissed by the learned District Judge, Chamba, on 15.08.2009 and the regular second appeal bearing RSA No. 566 of 2009 was decided and dismissed by this Court on 20.08.2015.

9. The present petitioner thereafter filed an execution petition for taking possession of Khasra No. 941/1 and the defendant, in compliance to the decree, demolished the entire structure situated over Khasra No. 941/1, measuring 00-05-00 bighas in the month of April 2019. The Tehsildar, Salooni, submitted his report to this effect before the Court of learned Senior Civil Judge, Chamba. As such, land measuring 00-07-00 bighas comprised in Khasra No. 941/2 out of the

suit land, gifted by Shri Chimmu to Smt. Himti, mother of the defendant, about 55 years ago, over which the defendant's family had constructed an old house, is owned and possessed by them.

10. It is the specific case of the defendant that his family members are in lawful possession of 7 biswas of land, on which an old house stands constructed, more specifically depicted as Khasra No. 941/2 as per the demarcation report dated 15.12.2004, Ext.PB, proved in Civil Suit No. 27 of 2006.

11. Therefore, the defendant prayed for dismissal of the suit filed by the plaintiff. The defendant filed the said written statement on 07.12.2020.

12. During the pendency of the suit, the plaintiff-petitioner filed an application for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure on 11.11.2024. It was stated in the application that during the pendency of the suit, the defendant raised structures over the suit land as denoted by Khasra No. 941/2, area measuring 00-01-12 bighas, Khasra No. 941/3, measuring 00-00-10 bighas, and Khasra No. 941/4, measuring 00-05-11 bighas, comprised in Khata Khatauni No. 23 min/26 min, situated at Mohal Gulel, Hadbast No. 199, Pargana Pichhla Diur, Tehsil Salooni, District Chamba. Therefore, the plaintiff-applicant sought to insert aforesaid khasra numbers in the headnote and relief clause of the plaint.

13. The said application was contested and resisted by the respondent-defendant. The learned trial Court, vide its impugned order dated 09.04.2026, dismissed the application filed by the plaintiff.

14. Feeling aggrieved and dissatisfied, the plaintiff has approached this Court by filing the instant petition invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

15. It has been contended by Mr. Sarthak Upadhyaya, learned counsel for the petitioner, that the impugned order as passed by the learned trial Court is erroneous, perverse and liable to be quashed and set aside. He submitted that the learned trial Court failed to appreciate the provisions of Order 6 Rule 17 of the Code of Civil Procedure in its true perspective and wrongly rejected the application filed by the plaintiff. He submitted that the petition deserves to be accepted and the amendment sought ought to be allowed to determine the real controversy between the parties.

16. On the other hand, Mr. Nimish Gupta, learned counsel appearing for respondent No.1, defended the impugned order and submitted that, while exercising supervisory powers under Article 227 of the Constitution of India, this Court will not interfere with a well-reasoned order passed by the learned trial Court. He submitted that the present petitioner is abusing the process of law, as the matter in question has been put to rest in the previously instituted suit filed by the present plaintiff. Now, in order to get the relief which was not

granted in the earlier instituted suit, the proceedings have been initiated and the present application has been filed after elapse of more than four years when the trial has commenced.

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

18. The plaintiff-petitioner approached the trial Court seeking decree of permanent prohibitory injunction and mandatory injunction on the assertion that he is the recorded joint owner in possession of the suit land comprised in Khata Khatauni No. 23/26, Khasra No. 941, measuring 04-17-00 bighas, situated at Mauza Gulel, Hadbast No.199, Kanungo Circle Bhandal, Tehsil Salooni, District Chamba, H.P. As per the case as set up by the plaintiff-petitioner, the defendant is a stranger to the suit land, who is trying to raise construction on his own land and while excavating the foundation, extended the digging over the suit land and raised columns over it without any right, title or interest. The case of the plaintiff is that in the event the defendant succeeds in raising any forcible construction over the suit land during the pendency of the suit, vacant possession be restored to him by demolishing the said construction.

19. The defendant, in his written statement, categorically averred that the plaintiff had earlier instituted Civil Suit No. 27 of 2006 in the Court of learned Senior Civil Judge, Chamba, wherein decree for possession with respect to 00-05-00 bighas of land comprised in

Khasra No. 941/1 was passed on 17.01.2009 against the defendant. However, in the very same judgment, it was held that 00-07-00 bighas of land out of the suit land had been gifted by Shri Chimu to the mother of the defendant.

20. The first appeal preferred before the learned District Judge and the second appeal preferred before this Court were both dismissed.

21. In the execution proceedings preferred by the plaintiff, the defendant, in compliance to the decree, demolished the entire structure over Khasra No. 941/1 measuring 00-05-00 bighas in the month of April 2019, which fact was duly verified and reported by the Tehsildar, Salooni, on spot inspection. As per the defendant, the finding with respect to Khasra No. 941/2 was rendered in favour of the defendant, holding that the said portion was gifted by Shri Chimnu to Smt. Himti, mother of the defendant, about 55 years ago, over which the defendant's family had constructed an old house.

22. The provisions of Order 6 Rule 17 of the Code of Civil Procedure read as follows:

"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."

23. The stipulation as contained in the aforesaid provision categorically states that no application for amendment shall be allowed after the commencement of trial, unless the Court reaches the conclusion that in spite of due diligence, the party could not have raised the matter before such commencement.

24. Admittedly, in the present case, the issues were framed by the learned trial Court on 22.03.2025 and the case is fixed for the evidence of the plaintiff.

25. Even if the contention of the petitioner is accepted for a moment, the alleged demarcation report relied upon by the plaintiff was prepared on 06.04.2023. However, the application came to be filed after an inordinate delay. In the application, there is no explanation or averment of due diligence, which is the statutory requirement under the Code of Civil Procedure.

26. From a bare perusal of provision to Order 6 Rule 17 of the Code, it is evident that ordinarily, an amendment of pleadings is not to be allowed after the trial has commenced, unless the Court is satisfied that the party concerned could not apply even after the exercise of due diligence. In other words, it was incumbent upon the plaintiff to have specifically pleaded that in spite of due diligence, he could not raise the matter now sought to be raised. But as observed, since the plaintiff

is relying on the copy of the demarcation dated 06.04.2023, there is no averment in the application of the said due diligence.

27. In **Salem Advocate Bar Association vs. Union of India, AIR 2005 SC 3353**, it was held as under: -

“27. Order VI Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

28. What is 'due diligence' has not been defined in the Code, but it has been explained by the Apex Court in **Chander Kanta Bansal vs. Rajinder Singh Anand, (2008) 5 SCC 117**, in the following terms:

“16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn.2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given

situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn.13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

29. Further, the Hon'ble Apex Court ***in M. Revanna vs. Anjanamma, (2019) 4 SCC 332***, held that the burden lies upon the person, who seeks an amendment after the commencement of the trial to show that he could not have sought the amendment before the commencement of trial, and it was observed as follows:

"7. .. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after the commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other

side which cannot be compensated adequately in terms of money.”

30. The said position was reiterated in ***Vijay Hathising Shah vs. Gita Devi, (2019) 5 SCC 360***, wherein it was observed as follows:

“9. In our view, the trial court was right in rejecting the application. This we say for more than one reason. First, it was wholly belated; second, Respondent 1-plaintiff filed the application for amendment of the plaint when the trial in the suit was almost over and the case was fixed for final arguments; and third, the suit could still be decided even without there being any necessity to seek any amendment in the plaint. In our view, an amendment in the plaint was not really required for the determination of the issues in the suit.”

31. In view of the settled exposition of law and the clear mandate of Order 6 Rule 17 of the Code of Civil Procedure, the plaintiff-petitioner has failed to make out a case for amendment of the plaint. As rightly pointed out by the learned counsel for the respondent that neither in the application any due diligence has been explained, nor it has been satisfied by the plaintiff that even if it is presumed that demarcation was given on 06.04.2023, why the application was filed belatedly.

32. This Court is of the considered opinion that the present suit was instituted by the plaintiff-petitioner by suppressing and concealing material facts that go to the root of the case. A perusal of the plaint reveals that nowhere has it been disclosed that prior to the

institution of the present suit, the plaintiff had filed Civil Suit No. 27 of 2006 for possession of Khasra No. 941/1.

33. In the said civil suit, the learned Civil Judge (Senior Division), Chamba, framed the following issues:

1. Whether the plaintiff is entitled for vacant possession of suit land by way of demolition of structure? OPP.
2. Whether the suit of the plaintiff is barred by limitation? OPD.
3. Whether the suit of the plaintiff is barred under order 2 Rule 2 of CPC as alleged? OPD.
4. Whether the suit of the plaintiff is not properly valued with Court fee? OPD.
5. Whether Sh. Chimnu gifted piece of land out of suit land to Himti mother of defendant No.1 and wife of defendant No.2 for the construction of the house as alleged? OPD.
6. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD.
7. Whether the plaintiff has no locus standi to file the present suit? OPD.
8. Relief.

34. Issue No. 5 was framed by the learned trial Court with respect to the fact whether Shri Chimnu gifted a piece of the suit land to Smt. Himti, mother of the present defendant and wife of defendant No.2 for the construction of a house.

35. While rendering findings on the said issue, it has been held that 7 biswas of land, over which the old house of the defendants

is situated, had been gifted by Shri Chimnu to the mother of defendant No.1 and wife of defendant No. 2.

36. In the said previously instituted suit, it was held by the learned Civil Judge (Senior Division), Chamba, that the petitioner was entitled only to vacant possession of the land comprised in Khatauni No. 20/23, Khasra No. 941/1. The said judgment was affirmed by the learned District Judge, Chamba, vide its judgment and decree dated 15.08.2009. The defendant had preferred Regular Second Appeal No.566 of 2009 before this Court, which came to be dismissed on 20.08.2015.

37. The plaintiff filed execution proceedings for obtaining vacant possession of Khasra No. 941/1. It has come on record that the defendant demolished the structure over Khasra No. 941/1 and the said fact was duly verified by the Tehsildar, Salooni, who acted as Local Commissioner and submitted his report to that effect before the learned Senior Civil Judge, Chamba.

38. This Court is in agreement with the contention raised by the learned counsel for the respondent that the endeavor of the petitioner-plaintiff is to obtain relief which was declined in the earlier round of litigation. The most important fact is that the plaintiff failed to disclose these previous proceedings in the present suit. The controversy that was set at rest in Civil Suit No. 27 of 2006 is sought to be reopened by the plaintiff by filing the subsequent proceedings.

39. There is force in the submission of the learned counsel for the respondent that, in connivance with revenue officials, the plaintiff is seeking to complicate the controversy by carving out various Khasra numbers out of Khasra No. 941 in order to get the relief over Khasra No. 941/2, which was declined by the learned trial court in earlier round of litigation.

40. On the face of the record, the plaintiff-petitioner is attempting to reagitate the already adjudicated issue which was put to rest by this Court in RSA No. 566 of 2009. Therefore, under the garb of the present application, the petitioner cannot be permitted to reopen a controversy which stands already decided.

41. The learned trial Court, while rejecting the application for amendment of the plaint, rightly came to the conclusion that the plaintiff failed to establish a case for amendment. Neither due diligence has been shown, nor the proposed amendments are necessary for determining the real question in controversy, particularly in view of the adjudication in the previous suit and execution proceedings, which cannot be allowed to be reopened.

42. The demarcation dated 06.04.2023, on which the plaintiff is trying to harp upon, was available prior to the framing of issues and the said application was not filed at the relevant time. Now, under the garb of the present application, the plaintiff/petitioner is trying to make out a new case to overreach the judgments which were passed by the

Courts and affirmed by this Court in Regular Second Appeal. The said approach on the part of the plaintiff-petitioner is against the principles of law and the plaintiff/petitioner cannot be permitted to rake up such kind of points in the present proceedings.

43. This Court finds no jurisdictional error, illegality, or perversity in the impugned order passed by the learned Trial Court. The supervisory jurisdiction under Article 227 of the Constitution of India does not permit this Court to act as an appellate court. Consequently, the petition, being devoid of merit, deserves to be dismissed.

44. 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.

45. 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.”

46. To the similar extent, the 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.”*

47. Therefore, in the considered opinion of this Court, there is no infirmity, illegality or perversity in the impugned order as passed by learned Courts below as the same have been rightly determined and adjudicated the point in controversy and the same does not call for any interference.

48. 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.

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

(Romesh Verma)
Judge

23rd September, 2026
(vt)