

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 127 of 2024

Decided on : 06.10.2026

Narender Kumar

...Petitioner

Versus

Lokesh Kumar & Others

...Respondents

Coram

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

*Whether approved for reporting?*¹

For the petitioner : Mr. Madhurika Sekhon Verma,
Advocate.

For the respondents : Mr. Devender K. Sharma,
Advocate for respondents
No.1, 2 and 6.

Mr. Jia Lal Thakur, Advocate
vice Mr. G.R. Palsra, Advocate
for respondents No.3 to 5.

Virender Singh, Judge (Oral)

Petitioner-Narender Kumar has filed the present petition, under Article 227 of the Constitution of India, against the order dated 04.10.2023 passed by the Court of Learned District Judge, Mandi, HP, (hereinafter referred as the learned First Appellate Court'), in Civil Miscellaneous Appeal No.38 of 2023.

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

2. By way of the order dated 04.10.2023, the learned First Appellate Court has dismissed the Civil Miscellaneous Appeal No.38 of 2023, titled as Narender Kumar versus Lokesh Kumar & Others, preferred against the order dated 22.08.2023, passed by the Court of learned Senior Civil Judge, Court No. 1, Mandi, District Mandi, HP, (hereinafter referred as the trial Court'), in an application, under Order 39 Rules 1 and 2 of the Code of Civil Procedure (hereinafter referred to as 'the CPC'), filed in Civil Suit No.72 of 2023 titled as Narender Kumar versus Lokesh Kumar and others.

3. By way of the order dated 22.08.2023, the learned trial Court had dismissed the application, under Order 39 Rules 1 and 2 of the CPC.

4. Parties to the lis are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

5. Brief facts, leading to the filing of the present petition, under Article 227 of the Constitution of India, before this Court, as borne out from the record, may be summed up, as under:

5.1. Petitioner Narender Kumar has filed a suit for declaration, permanent, prohibitory and mandatory injunction, as well as, under Sections 34, 38 and 39 of the Specific Relief Act and Section 22 of the Hindu Succession Act, on the ground that the land, as detailed and described in para 1 of the plaint (hereinafter referred to as suit land), is recorded in the joint ownership and possession of the plaintiff and defendants, along with the other co-sharers, as per the *jamabandi* for the year 2014-2015.

5.2. The said suit land was earlier owned and possessed by Shri Girjanand, predecessor-in-interest of the plaintiff and defendants No.1 to 5. The predecessor-in-interest of the parties to the *lis* had expired on 24.04.2001, and thereafter, the suit land was inherited by the plaintiff and defendants No.1 to 5, being legal heirs of the said Girjanand, vide mutation No.1005 dated 07.01.2002. Thereafter, on the basis of the said mutation, plaintiff, defendants No.1 and 2, and one Mohinder Singh, predecessor-in-interest of defendants No.3 to 5, being Class-I legal heirs, became joint owners of the suit land.

5.3. In the month of January 2023, it has come to the notice of the plaintiff that a few months back, defendants No.3 to 5 executed an agreement to sell behind the back of the plaintiff with one property dealer, namely Baldev, resident of Lohara, about their share, in the suit land, without the knowledge and consent of the plaintiff, and it has been agreed between defendants No.3 to 5 and property dealer Baldev that the sale deed will be executed, after final partition of the suit land, in accordance with law.

5.4. Since, the plaintiff is not having the original document of the said agreement to sell, as such, he has pleaded that the original documents are lying with defendants No.3 to 5. The act of defendants No.3 to 5 to sell their share to a property dealer is stated to be an act to deprive the plaintiff of his right, as such, he has asserted his right, as per Section 22 of the Hindu Succession Act. The plaintiff came to know about the agreement to sell on 08.01.2023. Then, he has requested defendants No.3 to 5 to receive the sale consideration amount and, on the basis of the above facts, he has sought the decree of declaration

that the said agreement to sell is wrong, illegal, null and void, and does not confer any title. It is the further case of the plaintiff that the partition proceedings are pending before the revenue authorities and the suit land is still joint and not partitioned by metes and bounds.

6. On the basis of the above facts, the following relief has been sought:

- i) *That a decree of declaration to the effect that the plaintiff is class-1 heir of late. Sh. Girjanand, father of the plaintiff, defendant No.1, deceased Mohinder Singh (father and husband of defendants No. 3 to 5 being his son and husband of defendant No. 2 has preferential right to acquire the suit land on payment of sale consideration to the defendants No. 1 to 5 and all agreement to sell or contract /transactions are wrong, illegal, null and void and not binding upon the right of the plaintiff and the plaintiff is entitled to acquire the right. title and interest of the defendants in the suit land. The defendants No. 1 to 5 be directed to execute the sale deed of the suit land in favour of the plaintiff and wrong, illegal, biased, arbitrary, ex-parte, without jurisdiction mode of partition dated 13/09/2019 passed by the A.C. 2nd Grade Balh of the suit land being built-up area may kindly be declared null & void.*
- ii) *That the defendants be restrained not to change the nature of the suit land by raising construction etc. thereupon and to create charge by way of alienation and further transfer the same in any manner through a decree for permanent prohibitory injunction as a consequential relief.*

- iii) *That in case, during the pendency of the present suit, the defendants succeed to raise any construction/structure over the suit land, in that event the same be ordered to be demolished and the suit land be restored to its original position by passing a decree of mandatory injunction and to handover the possession of the same to the plaintiff and the interested defendants, who wants to sell their share of the suit land may further be directed to execute sale deed in favour of plaintiff as a right of pre-emption."*

7. When put to notice, the suit has been contested by the defendants No.1 to 5, by taking the preliminary objections that the suit is not maintainable; the plaintiff has no locus standi to file the suit; the plaintiff has got no enforceable cause of action; the plaintiff is estopped from filing the suit on account of his own act and conduct; the plaintiff has suppressed material facts from the Court; the suit is stated to be bad for non-joinder and misjoinder of necessary parties; and the suit is not properly valued for the purpose of Court fee and jurisdiction.

7.1. On merit, jointness of the suit land has also not been disputed, and it has also not been disputed that the suit land was earlier owned by one Girjanand, who had expired on 24.04.2001, and thereafter, land was inherited by the parties to the lis. Other allegations have also been

denied. However, the pendency of the partition proceedings has not been disputed.

7.2. It is the further case of defendants No.1 to 5 that defendants No.1 and 2, have executed an agreement of shops situated over Khasra No.1171 in Mohal Nagchala for Rs.27,00,000/-, and a sum of Rs.7,00,000/- was received as advance, as proceedings, under Section 138 of the Negotiable Instruments Act, were pending against defendant No.1, before the Court of learned Judicial Magistrate First Class, Court No.2, Mandi, District Mandi and HP State Cooperative and Agriculture Rural Development Bank, has also started auction proceedings against defendant No.1.

7.3. Similarly, father of defendants No.3 and 4 and husband of defendant No.5 had taken the loan from SBI and Central Bank, and after the death of Shri Mohinder Singh, predecessor-in-interest of the parties, the said amount could not be repaid, then, the banks have started issuing the notices.

7.4. Defendant No.5 had also requested the plaintiff to purchase the land before Vice President Nagar Parishad,

Ner Chowk, and plaintiff has totally refused to purchase the land situated in Mohal Majhaithal (Luna Pani) on 22.12.2022.

8. On the basis of the above facts, a prayer has been made to dismiss the suit.

9. Replication has been filed denying the allegations, as made, in the written statement. However, the contents of the written statement in para 8 of the plaint, are evasively denied.

10. Along with the suit, the plaintiff has filed the application, under Order 39 Rules 1 and 2 of the CPC to restrain the defendants from creating any third-party right by way of alienation, mortgage through registered/unregistered document, and restrain from creating any type of nuisance and obstruction over the path, leading to the residential of the plaintiff, through the suit land.

11. The said application has also been contested, on the similar grounds, upon which, the suit has been contested.

12. The learned trial Court, after hearing the counsel appearing for the parties, has dismissed the

application, under Order 39 Rules 1 and 2 of the CPC, vide order dated 08.02.2023.

13. The said dismissal order has unsuccessfully been assailed, by the plaintiff, before the learned First Appellate Court.

14. Now, the plaintiff is before this Court, under Article 227 of the Constitution of India, assailing the order passed by the learned First Appellate Court, mainly, on the grounds that the learned trial Court has failed to consider the fact that the suit land is jointly owned and possessed by the parties and no partition had taken place. The partition proceedings have been challenged by the plaintiff before the Divisional Commissioner.

15. All these facts have been pleaded to demonstrate that the suit land is still joint between the parties.

16. The learned trial Court has not taken into consideration the fact that the defendants have admitted about the factum of selling the land, by way of agreement to sell, without getting the suit land partitioned.

17. According to the plaintiff, application, under Order 1 Rule 10 of the CPC, for impleading the person, who has purchased the property, by way of agreements to sell dated 02.04.2023 and 29.08.2019, is pending, and application, under Order 39 Rules 1 and 2 of the CPC, has been decided without deciding the said application.

18. According to the plaintiff, if the relief, under Order 39 Rules 1 and 2 of the CPC, is not granted, then, the very purpose of filing of the suit, would be frustrated, as, being the co-sharer, the plaintiff has preferential right over the suit land, under Section 22 of the Hindu Succession Act.

19. On the basis of the above facts, Ms. Madhurika Sekhon Verma, Advocate, appearing for the plaintiff, has prayed that the petition may kindly be allowed, by setting aside, the order dated 22.08.2023, passed by the learned trial Court, by virtue of which, the application, under Order 39 Rules 1 and 2 of CPC has been dismissed, as well as, the order by virtue of which, the appeal of the plaintiff was dismissed, by the learned First Appellate Court, may kindly be set aside and the application under Order 39

Rules 1 and 2 of the CPC may kindly be allowed, as prayed for.

20. Per contra, Mr. Devender K. Sharma, Advocate, appearing for respondents No.1, 2, and 6, and Mr. Jia Lal Thakur, Advocate vice Mr. G.R. Palsra, Advocate, appearing for respondents No.3 to 5, has supported the order passed by the learned trial Court, as well as, by the learned First Appellate Court, by arguing that the instrument of partition has been prepared, and according to them, in the writ petition filed by the plaintiff Narender Kumar, this Court has directed the parties to maintain *status quo* qua nature and possession of the suit property.

21. All these facts have been pleaded to demonstrate that the suit land has now been partitioned, and as such, the plaintiff has no right to seek the relief, as claimed, in the suit.

22. The plaintiff is before this Court, under Article 227 of the Constitution of India, where scope of interference by this Court is very limited.

23. Hon'ble Supreme Court in **"K. Valarmathi & Ors. Versus Kumaresan", 2025 INSC 606**" has elaborately discussed the scope of interference under Article 227 of the Constitution of India. 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."

24. 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."

25. 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*, 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)

26. In view of the above decision, one thing is not in dispute that before correcting the jurisdictional error, the findings are required to be recorded, by this Court about the fact that the learned trial Court has wrongly exercised the jurisdiction vested in it, or has failed to exercise the jurisdiction vested in it. Moreover, this Court cannot act,

as appellate Court or trial Court, while deciding the petition under Article 227 of the Constitution.

27. In other words, it can be said that the scope of interference under Article 227 of the Constitution of India is very limited to correct the jurisdictional error only.

28. In this case, the learned trial Court has elaborately discussed the ingredients of Order 39 Rules 1 and 2 of the CPC and considering those facts, the application of the plaintiff, under Order 39 Rules 1 and 2 of the CPC, has been dismissed.

29. Considering the arguments, as made, in the petition, under Article 227 of the Constitution of India, according to which, the plaintiff has moved the applications, under Order 1 Rule 10 of the CPC, for impleading the person, who has purchased the property, by way of agreements to sell dated 02.04.2023 and 29.08.2019, are pending, and application under Order 39 Rules 1 and 2 of the CPC has been decided, without deciding those applications, it can be said that the sale deed has yet not been executed by the defendants, and it is no longer *res integra* that the agreement to sell, does not

confer any title. Meaning thereby, the suit of the plaintiff is premature.

30. Considering the stand taken by the parties, before the learned trial Court, this Court is of the view that the learned trial Court has rightly dismissed the application, under Order 39 Rules 1 and 2 of the CPC, which has rightly been affirmed by the learned First Appellate Court. As such, there is no occasion for this Court to interfere with the well-reasoned order passed by the learned trial Court.

31. Moreover, the partition proceedings have already been finalized between the parties.

32. Considering all these facts, there is no merit in the present petition, and the same is accordingly dismissed.

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

34. Parties, through the learned counsel, are directed to appear before the learned trial Court on **28th October, 2026**, at 10.00 a.m.

35. Any of the observations made herein above 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.

Record be sent back immediately.

October 06, 2026_(ps)

(Virender Singh)
Judge