

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.451 of 2026

Date of decision:23.09.2026

Tek Chand ...Petitioner

Versus

Diwan Chand ...Respondent

Coram:

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

*Whether approved for reporting?*¹

For the petitioner: Mr. Sat Prakash, Advocate.

For the respondent : Mr. Bodh Raj Thakur, Advocate.

Romesh Verma, Judge (oral):

The instant petition has been filed against the judgment as passed by the learned District Judge, Chamba, dated 20.05.2026, whereby the appeal filed by the defendant was dismissed and the order passed by the learned Civil Judge, Tissa, District Chamba, dated 30.11.2024, was affirmed, whereby the application filed by the plaintiff/respondent under Order 39 Rules 1 ad 2 of CPC came to be allowed.

2. The facts as emerge in the present case, are that Diwan Chand, respondent/plaintiff, filed suit for permanent prohibitory injunction restraining the defendant, his workmen and agents from interfering, causing nuisance, damaging the land and raising any

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

forcible and illegal construction of a link road in village Shuwai over the land comprised in Khata/Khatauni No.25/30, Khasra No. 357, measuring 02-08-00 bighas, situated at Mohal Shuwai, Pargana Himgiri, Tehsil Churah, District Chamba. Further, decree for mandatory injunction was sought in case, during the pendency of the suit, the defendant succeeded in raising any forcible and illegal construction of the road over the suit land.

3. It is averred by the plaintiff in the plaint that he is the recorded joint owner in possession of the land as per the copy of Jamabandi for the year 2021-2022. The parties, i.e., the plaintiff and the defendant, were joint owners in possession of the suit land till 04.12.2021, but the defendant transferred his entire share to his sons through a family settlement vide mutation No.661 and now he is a stranger to the said suit land and has got no right, title or interest over the same.

4. As per the case as set up by the plaintiff, the defendant, in the second week of December 2023, started raising the construction of a link road to village Shuwai, damaging the apple orchard over the suit land and trying to take illegal possession over the suit land. As per the plaintiff, in case the construction of the road is allowed to be raised by the defendant, in that event, the apple orchard of the plaintiff shall be damaged or destroyed. Though the plaintiff requested the defendant

time and again not to indulge in such illegal activities, the defendant failed to accede to the request of the plaintiff.

5. Therefore, under such circumstances, the plaintiff filed a suit for permanent prohibitory injunction and mandatory injunction restraining the defendant, himself or through his agents, servants, or workmen from creating any interference by raising construction of the road over the suit land. A decree for mandatory injunction was also sought in case it was found that during the pendency of the suit, the defendant succeeded in raising illegal construction of the road over the suit land.

6. The plaintiff, along with the suit, filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for the grant of a temporary injunction.

7. The defendant/petitioner contested the suit by raising preliminary objections with respect to maintainability, cause of action, suppression of facts, estoppel, non-joinder, etc. All the averments as made in the plaint were specifically denied and refuted. It was admitted that the defendant had given his entire share in the suit land to his sons, who are now recorded co-owners in the suit land along with the plaintiff. It was denied that the defendant had deployed huge labour in order to complete the construction work of the road and had cut the apple trees as alleged. It was stated that the present suit was filed by

the plaintiff merely to harass the general public by placing stones on the road, which were liable to be removed immediately.

8. The defendant also filed a reply to the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure and prayed for the dismissal of the said application.

9. The learned trial Court, i.e., Civil Judge, Tissa, vide its order dated 30.11.2024, allowed the application filed by the plaintiff/respondent and the present petitioner/defendant was restrained from causing interference, nuisance and raising any type of construction over the suit land.

10. Feeling dissatisfied, the defendant approached the learned District Judge, Chamba, by instituting an appeal on 25.07.2025. The learned first appellate Court, vide its impugned judgment, affirmed the findings of the learned trial Court and dismissed the appeal preferred by the present petitioner.

11. Feeling dissatisfied, the defendant has approached this Court by invoking the provisions of Article 227 of the Constitution of India.

12. It is contended by Mr. Sat Prakash, 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 submits that the Courts below have wrongly relied upon the documents placed on record and have erred in passing an injunction

order in favour of the plaintiff/respondent. He further submits that after accepting the present petition, the application filed by the plaintiff/respondent under Order 39 Rules 1 and 2 of the Code of Civil Procedure deserves to be dismissed.

13. On the other hand, Mr. Bodh Raj Thakur, learned counsel for the plaintiff/respondent has defended the impugned judgment and order passed by the learned Courts below. He submits that this Court will not interfere with the concurrent findings returned by the learned Courts below, especially while invoking the provisions of Article 227 of the Constitution of India and in view of the dictum of law laid down by the Hon'ble Supreme Court.

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

15. The plaintiff approached the learned trial Court seeking a permanent prohibitory injunction and mandatory injunction on the grounds that the parties, i.e., the plaintiff and the defendant, were recorded joint owners in possession of the suit land and the defendant, in the second week of December 2023, started raising the construction of a link road to village Shuwai and in this process damaged the apple orchard situated over the suit land by trying to encroach upon the said land. It is the case of the plaintiff that in case the defendant is not restrained from raising construction over the suit land, in that event, he shall suffer irreparable loss. It is further the case of the plaintiff that the

defendant has relinquished his share in favour of his sons vide mutation No. 661, therefore, he has got no right, title or interest over the suit property.

16. The plaintiff has placed on record the copy of jamabandi for the year 2021-2022, whereby the plaintiff is shown as one of the co-owners and vide mutation No. 661, the defendant has relinquished his share in favour of Om Prakash, Mahender Kumar Thakur, Pawan Kumar, Manish Kumar and Raj Kumar, who are his sons and the mutation in this regard was attested on 04.12.2021. A presumption of truth is attached to the said copy of jamabandi, meaning thereby that the defendant has got no right, title or interest over the suit property because, as of today, the plaintiff is one of the co-sharers along with the sons of the defendant and in the absence of any title over the suit property, the defendant cannot be permitted to raise any construction over the suit land. It is the case of the plaintiff that since the suit land is joint *inter se* the parties, the defendant cannot be permitted to raise any construction over the suit land.

17. At this stage, it is contended by Mr. Sat Prakash, learned counsel for the petitioner/defendant, that during the pendency of the proceedings, partition proceedings have taken place and the suit land has been divided amongst the co-sharers.

18. In response to this submission, it is contended by Shri Bodh Raj Thakur, learned counsel for the respondent/plaintiff that the

dispute is with respect to Khasra No. 357 and as per the partition proceedings, Khasra No. 357/1 has been allotted to the petitioner and Khasra No. 357/2 has been allotted to the respondent. It is contended by Shri Bodh Raj, learned counsel, that after raising construction of the road over Khasra No. 357/1, which belongs to the present petitioner, the petitioner now intends to raise the construction of a link road unlawfully through the suit land, i.e., Khasra No. 357/2, which has been allotted to the present respondent in the partition proceedings.

19. This Court is in agreement with the contention raised by the learned counsel for the respondent that in case, in the partition proceedings, Khasra No. 357/2 has been allotted to the respondent, then the petitioner/defendant has got no right, title or interest to raise illegal construction without obtaining consent from the said respondent.

20. The learned Courts below have concurrently adjudicated the point in controversy *inter se* the parties and this Court, while exercising powers under Article 227 of the Constitution of India, will not interfere with the said orders.

21. The Hon'ble Apex Court, while interpreting the provisions of Article 227, has consistently held that the High Court will not act as an appellate court and the scope of interference while deciding such issues is permissible only when the impugned judgment or order is perverse, illegal or without jurisdiction.

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 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. In the present case, the petitioner has failed to make out a case and has failed to demonstrate from the record that the impugned judgment and order passed by the learned Courts below are perverse or have been passed without jurisdiction.

25. In view of the observations made hereinabove, this Court does not find any merit in the contentions raised by the learned counsel for the petitioner. Therefore, the present petition deserves to be dismissed. Ordered accordingly. Pending application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

23rd September, 2026.
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