

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

CMPMO No. 542/2025

Reserved on: 08.09.2026

Decided on: 15.09.2026

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Balkrishan (deceased) through LRs  
& anr.

.....Petitioners

Versus

Shanti Swaroop & anr.

...Respondents

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**Coram:**

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

*Whether approved for reporting?<sup>1</sup>*

For the Petitioners: Mr. Ajay Sharma, Sr. Advocate with Mr. Atharv Sharma, Advocate.

For the Respondents: Mr. Mukul Sood, Advocate, for respondent No.1.

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**Romesh Verma, Judge**

The instant petition arises out of order, dated 05.08.2025, as passed by the learned Senior Civil Judge, Palampur, District Kangra, H.P., whereby an application filed by defendant/respondent No.1 for summoning of witnesses and depositing the process fee and diet money has been allowed.

2. Facts, as emerge in the present case, are that the plaintiffs/petitioners have filed a suit before the learned trial

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<sup>1</sup>Whether reporters of the local papers may be allowed to see the judgment? Yes.

court for the grant of decree of declaration to the effect that the plaintiffs and defendants have inherited land in equal shares, as entered in Khata No. 18, Khatouni No. 25 Khasra Kita 11, land measuring 00-63-99 hectares, Khata No. 20 Khatouni No.28 Khasra Kita 6 land measuring 00-03-53 hectares, Khata No. 26 Khatouni No. 35 Khasra Kita 4 land measuring 0-03-60 hectares, Khata No. 27 Khatouni No.37, Khasra No. 235 land measuring 00-06-93 hectares, Khata No. 28 Khatouni No. 38 Khasra No. 236 land measuring 00-02-50 hectares, Khata No. 115 Khatouni No. 127 Khasra No. 242, land measuring 00-02-62 Khasra No. 239 land measuring 00-04-75 hectares, Khata No. 342 Khatouni No. 445 Khasra Nos. 884 and 883, land measuring 00-12-39 hectares of Mohal Tanda, Tehsil Palampur and Khata No. 292 Khatouni No. 564, Khasra No. 1942, land measuring 0-21-86 hectares, Khata No. 297, Khatouni Nos. 570, 571 Khasra Nos. 1944, 1971 Kita 2 land measuring 00-01-58 hectares, Khata No.857, Khatouni No. 1342 Khasra Nos. 3429, 3107/1978 land measuring 0-11-73 hectares, Khata No. 290 Khatouni No. 562 Khasra Kita 3, land measuring 0-21-10 hectares, Khata No. 291 Khatouni No. 563 Khasra Nos. 1938, 2836/1941 Land measuring 0-14-81 hectares of Mohal Ghuggar Tehsil Palampur vide jamabandi for the years 2011-12 and 2012-13 alongwith house situated in the above Khasra numbers as entered in the

name of plaintiff, defendants and others co-shares. As per case, as set up by the plaintiffs/petitioners, the plaintiffs and defendants are sons and daughter of late Smt. Rattani Devi, wife of Sohan Lal and have inherited the suit land along with house in equal shares after death of Rattani Devi, who expired on 10.06.2014. Late Rattani Devi during her life time did not execute any will dated 01.04.1998 as registered on 02.04.1998 before Sub Registrar, Palampur and the Will, as set-forth by defendant No.1 is result of fraud and misrepresentation. It has been averred that in case defendant No.1 succeeds in proving the execution of the alleged will, then also suit land along with house is ancestral one and the same has been inherited by the parties from their forefathers. Since the suit property is ancestral one, therefore, the alleged will cannot be executed qua the suit property. Therefore, it was prayed that decree for declaration, to the effect that the plaintiffs and defendants have inherited suit property in equal shares and the alleged will is not genuine document, be passed in favour of the plaintiffs and against the defendants.

3. The aforesaid suit has been contested by the defendants by filing written statement, wherein preliminary objections qua maintainability, cause of action, locus standi, valuation etc. have been raised. As per the case of the

defendants, they have inherited the suit property as per registered will executed by Rattani Devi vide registration No. 53, dated 2.4.1998 and the said will became operative after the demise of Rattani Devi and the same is outcome of love and affection and services rendered by the defendants.

4. The learned trial court framed the issues on 04.12.2018 and thereafter additional issues were framed on 08.12.2021.

5. It would be noticed that on 04.12.2018, the case was fixed for 09.04.2019 for plaintiffs' evidence. However, on account of filing of miscellaneous applications, the case was adjourned repeatedly. Thereafter, the plaintiffs closed their evidence on 20.11.2023 and the matter was listed for leading evidence of the defendants on 26.12.2023. The defendant /respondent No.1 filed an application under Section 63 of the Indian Evidence Act for summoning or examining the witnesses to lead secondary evidence, wherein it was prayed that following witnesses be summoned to prove the Will dated 01.04.1998 and registered on 02.04.1998 of Rattani Devi in connection with the unavailability and/or existence of the original witnesses i.e. the Scribe and marginal witnesses due to their death to prove the legal necessities by their deposition as secondary evidence:

- i. Vishal Rana, son of late Kuldip Singh Rana

- ii. Anup Kumar, son of late Jagishar
- iii. Registration Clerk of the office of Sub Registrar,  
Palampur
- iv. S.C. Saklani, the then Sub Registrar, Palampur.

Defendant No.1 also sought permission to lead secondary evidence upon examination of the said witnesses, in accordance with Section 65 of the Indian Evidence Act, 1872.

6. The aforesaid application, as filed by defendant No.1, was duly resisted by the petitioners/plaintiffs by filing a detailed reply.

7. The learned trial Court vide order dated 28.07.2025 Annexure P-3, dismissed the aforesaid application being not maintainable. Thereafter, defendant No.1 filed an application for summoning of witnesses, Annexure P-4 i.e. Vishal Rana, son of late Kuldip Singh Rana; Anup Kumar, son of late Jagishar; Registration Clerk of the office of Sub Registrar, Palampur; and S.C. Saklani, the then Sub Registrar, Palampur. The said application was allowed by the learned trial Court on 05.08.2025 and the defendants were directed to deposit travel allowances and diet money of the witnesses. Thereafter, on the very same day, it was observed that steps are stated to have been taken except for diet money. Be deposited and put up on 13.08.2025.

8. Feeling dissatisfied with the orders, dated 05.08.2025, the plaintiffs/petitioners have approached this Court by filing instant petition under article 227 of the Constitution of India.

9. It is contended by Mr. Ajay Sharma, learned Senior Advocate, duly assisted by Mr. Atharv Sharma, Advocate, for the plaintiffs/petitioners that once the application under Section 63 of the Indian Evidence Act came to be dismissed being not maintainable by the learned trial court, on the same and similar grounds, application for summoning of the witnesses, as filed by defendant No.1, is neither maintainable nor it could have been allowed by the learned trial court. He has further contended that once prayer of defendant No.1 for leading secondary evidence especially for summoning similar persons in the form of secondary evidence was declined, therefore, under such circumstances, same prayer, which has been made in the subsequent application for summoning of the witnesses, could not have been accepted by the learned trial court.

10. On the other hand, Mr. Mukul Sood, learned counsel for defendant/respondent No.1, has defended the impugned order and submitted that since the impugned order does not suffer from any illegality or infirmity, therefore, while invoking

provisions of article 227 of the Constitution of India, this Court will not interfere with the same.

11. I have heard the learned counsel for the parties and have also gone through the material available on record.

12. As observed above, the petitioners/plaintiffs have filed suit for declaration on the ground that will dated 01.04.1998 and registered on 02.04.1998 before Sub Registrar, Palampur, as set-forth by defendant No.1, is result of fraud and misrepresentation, thus, the same is not binding on the rights of the plaintiffs/petitioners. It is the case of the plaintiffs that the plaintiffs and defendants are sons and daughter of late Smt. Rattani Devi and have inherited the suit land along with house in equal shares after death of Rattani Devi, who expired on 10.06.2014. Since the suit property is ancestral one, therefore, the alleged will cannot be executed qua the same.

13. On the other hand, the suit has been contested by the defendants by taking stand that the suit property has been inherited by them as per registered will dated 2.4.1998 executed by Rattani Devi on account of love and affection and services rendered by them.

14. Provisions of Section 63 of the Indian Evidence Act read as under:

**“63. Secondary evidence.**

*Secondary evidence means and includes*

*-(1)[ certified copies given under the provisions hereinafter contained;]*

*(2)copies made from the original by the mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;*

*(3)copies made from or compared with the original;*

*(4)counterparts of documents as against the parties who did not execute them;*

*(5)oral accounts of the contents of a document given by some person who has himself seen it.*

*Illustrations*

*(a)A photograph of an original is secondary evidence of its contents though the two have not been compared, if it is proved that the thing photographed was the original.*

*(b)A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.*

*(c)A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original although the copy from which it was transcribed was compared with the original.*

*(d)Neither an oral account of a copy compared with the original nor an oral account of a photograph or a machine copy of the original, is secondary evidence of the original.”*

15. The defendants had approached the learned trial Court by filing an application for summoning and examining the witnesses to lead secondary evidence on the ground that

defendant No.1 has to prove the will, dated 01.04.1998, but scribe of Will namely Kuldeep Rana and two marginal witnesses to the Will, namely, Jagisar Singh and Prem Chand, had died. Therefore, defendant No.1 intended to summon and examine their sons Vishal Rana and Anup Kumar respectively to prove handwriting and signatures of their respective fathers on the Will apart from Clerk of the office of Sub Registrar, Palampur and S. C. Saklani, the then Sub Registrar, Palampur.

16. Learned counsel for respondent/defendant No.1 has drawn attention of this Court to provisions of Section 68 and 69 of the Indian Evidence Act. He has contended that since will has been set up by defendant/respondent No.1, therefore, in order to prove contents of the same as primary evidence, defendant No.1 is supposed to lead evidence in support of his contentions. He has also drawn attention of this Court to the order, as passed by the learned trial Court in the application under Section 63 of the Indian Evidence Act, whereby the said application was held to be not maintainable observing therein that since basic burden to prove genuineness of the Will is on the propounder i.e. respondent/defendant No.1, therefore, he in his wisdom can call any witness to prove the Will. It was further observed that more over Anup Kumar, proposed witness has already been cited as one of the defence witnesses.

17. This Court is in agreement with the contention as raised by the learned counsel for respondent No.1 that once the application under Section 63 of the Indian Evidence Act was held to be not maintainable by the learned trial Court and the learned trial court itself has observed that in order to prove Will, defendant No.1 can call any witness to prove the same, the impugned order, as passed by the learned trial Court, is sustainable in the eyes of law.

18. After perusing the original records, as summoned by this Court, it reveals that the application for summoning of the witnesses was filed by defendant No.1 on 17.01.2024 and in the said application, it was prayed that apart from examining himself, he intended to examine Prem Chand Namberdar, Jageesar Singh, Namberdar and Kuldeep Singh Rana, Document Writer, Tehsil Compound Palampur, however when the summons were issued for their service, it was found that they had died.

19. Though in the opinion of this Court, the learned trial Court has rightly come to conclusion that the application, which was filed by defendant No.1 under Section 63 of the Indian Evidence Act was not maintainable, however after receiving the report and after passing of order by learned trial court on the application being not maintainable, the only remedy which was available to defendant No.1 was to summon the witnesses by

way of application at hand, which came to be allowed by the learned trial court vide the impugned order.

20. The records reveal that the evidence of the plaintiffs is complete and now the case is fixed for evidence of the defendants. The onus (burden of proof) to prove a Will lies primarily on the propounder.

21. In the present case, in the form of primary evidence, defendant No.1 is well within his right to examine the witnesses which have been cited in the subsequent application, filed on 05.08.2025. Merely that an application under Section 63 of the Indian Evidence Act was dismissed being not maintainable cannot preclude defendant No.1 to examine the proposed witnesses to prove his case in accordance with law.

22. As rightly pointed out by the learned counsel for respondent/defendant No.1 that by merely summoning and examining the proposed witnesses will not automatically prove the case of defendant No.1 and the petitioners/plaintiffs shall have right and get opportunity to cross-examine them.

23. This Court sees no reason to interfere with the impugned order as no prejudice has been caused to the plaintiffs/petitioners by allowing the application, as filed by defendant No.1, for summoning and examining the proposed witnesses.

24. The procedure of law is handmaid of justice and no one can be deprived of his right on account of technicalities of law. In the considered opinion of this Court the impugned order does not suffer from any illegality, irregularity or jurisdictional error.

25. 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.

26. 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.”*

27. 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.”*

28. Consequently, in view of aforesaid exposition of law and discussion, 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.

29. Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observations made here-in-above, which are only for the purpose of the instant petition.

**15<sup>th</sup> September, 2026**  
*(pankaj)*

**(Romesh Verma)**  
**Judge**