

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CMPMO No. 778 of 2025
Date of Decision: 11.09.2026**

Hader Ali

...Petitioner.

Versus

Mohammad Rafik

...Respondent.

Coram

Hon'ble Mr. Justice Romesh Verma, Judge.

*Whether approved for reporting?*¹

For the petitioner:

Mr. Jia Lal, Advocate, vice
Mr. G.R.Palsra, Advocate.

For the respondent:

Mr. Vijay Chaudhary, Advocate.

Romesh Verma, Judge (oral)

The present petition arises out of the judgment dated 28.10.2025 passed by learned District Judge, Mandi, District Mandi, H.P., whereby the appeal filed by the present petitioner was ordered to be dismissed and the order as passed by the learned Senior Civil Judge, Court No. 1, Mandi, dated 23.05.2025, whereby the application filed by the respondent/applicant under Order 39 Rules 1 & 2 read with Section 151 CPC, was allowed.

2. The facts as emerge in the present case are that the respondent/plaintiff, Mohammad Rafik, filed a suit for permanent prohibitory and mandatory injunction in the Court of learned Senior

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Civil Judge, Court No. 1, Mandi. As per the case as set up by the plaintiff, the land comprised in Khata/Khatauni No. 284 min/369 min, Khasra No. 1045, measuring 00-18-02 bighas, situated in Mohal Dhaban/237, Tehsil Balh, District Mandi, H.P., was owned and possessed by late Shri Gulam Kadar, who was father of the plaintiff, defendant, and other co-sharers. Suit land was inherited in the name of plaintiff, defendant, and other co-sharers vide mutation No. 1683 dated 5th May, 2021. The plaintiff, defendant, and other co-sharers had become joint owners-in-possession of the suit land thereafter. The suit land, being valuable land, is situated by the side of the road and it is an agricultural land. The defendant, by taking advantage of the winter vacation in the Court and without the consent and permission of the plaintiff and other co-sharers, without getting the same partitioned, started occupying the valuable portion of the suit land by raising construction thereon since 13th January, 2022, which act on his part is wrong, illegal, and unlawful.

3. As per the plaintiff, though the defendant was requested time and again not to do so and not to indulge in the unlawful activities, however, the defendant refused to accede to the request as made by the plaintiff. In case, the defendant is able

to encroach the best and valuable portion of the suit land/road head during pendency of the suit by raising the construction, in that event, the said construction be ordered to be demolished and the suit land be restored to its original position. Therefore, under such circumstances, the plaintiff/respondent filed a suit for permanent prohibitory injunction restraining the defendant from raising any construction on the suit land or to cause any unlawful interference over the same in any manner till the land is partitioned by metes and bounds, and by passing a decree of permanent prohibitory injunction, or any other relief as the Court deems fit.

4. The present petitioner, being defendant before the learned trial Court, filed written statement to the suit as filed by the plaintiff and refuted all the allegations as made in the plaint and preliminary objections with regard to the maintainability, estoppel, valuation, non-joinder, locus standi, etc., were raised by the defendant. On merits, all the averments as made in the plaint have been specifically denied. As per the case as set up by the defendant, Khasra No. 1045 is in his exclusive possession through a family settlement made by late Shri Kader Ali, though the land has not been partitioned by metes and bounds. It has been contended by the defendant that in the year 2004, Gulam

Kadar, the father of the parties, in his lifetime, settled and put his three sons in exclusive possession of different parcels of the land, and thereafter, all the sons are in exclusive possession of different parcels of the land as owners in possession of the same. It has been vehemently denied that the suit land, that is Khasra No. 1045, is valuable land and situated by the side of the road. Accordingly to the defendant, Khasra No. 1045 is about 300 meters far away from the main road and is by the side of a Nullah, and the defendant has spent lakhs of rupees to protect the land and make it useful, whereas, out of the entire joint land described, only Khasra No. 951, measuring 00-05-12 bighas, and Khasra Nos. 1688/1587/915, measuring 02-02-03 bighas, is abutting to the Dadaur-Dhaban-Diyargi road leading to Sundernagar, and is the only valuable and commercial parcel of the joint land abutting to the roadside. Further, it has been averred that during the lifetime, the father of the parties had put the three brothers in exclusive and separate possession, and thereafter they are enjoying the suit property. It has been contended in the written statement that the construction of a house by the defendant over Khasra No. 1045 is less than his share and there is no ouster of the plaintiff from the

suit land in any manner. The defendant prayed for the dismissal of the suit as filed by the plaintiff.

5. The plaintiff/respondent, along with the suit, filed an application under Order 39 Rules 1 & 2 CPC for the grant of injunction. It was prayed that during the pendency of the suit, the defendant be restrained to dig the suit land, to raise any construction over the suit land, or to cause any unlawful interference over the same in any manner by issuance of temporary injunction order till the final disposal of the suit.

6. The said application came to be resisted by the defendant and all the allegations as made in the application were denied.

7. The learned trial Court, vide its order dated 23rd May, 2025, allowed the application as filed by the plaintiff/respondent, and the parties were directed to maintain status quo qua nature, possession, and construction over the suit land comprised in Khata/Khatauni No. 284 min/369 min, Khasra No. 1045, measuring 00-18-02 bighas, as per jamabandi for the year 2017-18, situated in Mohal Dhaban/237, Tehsil Balh, District Mandi, H.P., till the final disposal of the suit.

8. Feeling dissatisfied, the defendant, Haider Ali, preferred an appeal in the Court of learned District Judge, Mandi, on 5th June, 2025.

9. The learned First Appellate Court, vide its impugned judgment dated 28th October, 2025, dismissed the appeal filed by the defendant/petitioner and affirmed the findings as returned by the learned trial Court.

10. Still feeling dissatisfied, the defendant has approached this Court by filing the instant petition and invoking the provisions of Article 227 of the Constitution of India.

11. It is contended by Mr. Jia Lal, learned vice counsel, for the petitioner that the impugned judgment and order as passed by the learned Courts below are erroneous and liable to be quashed and set aside. He submits that the learned Courts below have not appreciated the point in controversy in hand and have wrongly passed the order of status quo in favour of the respondent/ plaintiff and against the petitioner/defendant. He further submitted that after accepting the present petition, the application filed by the respondent/plaintiff under the provisions of Order 39 Rules 1 & 2 CPC is liable to be dismissed.

12. On the other hand, Mr. Vijay Chaudhary, learned counsel for the respondent has defended the impugned judgment and order as passed by the learned Courts below. He submits that the Courts below have concurrently and rightly adjudicated the case in hand and there is no scope of interference in the same. He would submit that this Court, while exercising the power under Article 227 of the Constitution of India, will not interfere in the well-reasoned judgment and order as passed by the learned Courts below.

13. I have heard the learned counsel for the parties and gone through the case file.

14. The plaintiff/respondent has primarily approached the learned trial Court for the grant of permanent prohibitory and mandatory injunction on the ground that the suit land bearing Khata/Khatauni No. 284 min/369 min, Khasra No. 1045, measuring 00-18-02 bighas, situated in Mohal Dhaban/237, Tehsil Balh, District Mandi, HP is joint *inter se* the parties. The plaintiff has pleaded that after the death of their father, late Shri Gulam Kadar, the plaintiff, defendant, and other co-sharers have become joint owners-in-possession of the suit land. The defendant, taking advantage of winter vacation and without getting the suit land

partitioned, started occupying the valuable portion of the suit land by raising construction thereon since 13th January, 2022. It is the case of the plaintiff that the defendant cannot be permitted to raise the construction over the best and the valuable portion of the suit land till the time formal partition takes place by metes and bounds.

15. It is the case of the respondent/plaintiff that, in order to earn his livelihood, he is residing in Saudi Arabia, and taking undue advantage of his absence, the petitioner/defendant started raising construction over the best and valuable portion abutting the road by raising forcible construction to the detriment of the rights of the respondent.

16. Though the said fact has been denied by the defendant/petitioner in the written statement, the only stand taken by the defendant is that in the year 2004, late Shri Gulam Kadar, father of the parties, during his lifetime, put his three sons into exclusive possession and family arrangement took place between the parties. Thereafter, on the basis of the same, Khasra No. 1045 came into the exclusive possession of the defendant. It is further the case of the defendant that though the land has not been partitioned by metes and bounds, on the basis of the family settlement, Khasra No. 1045 is in exclusive possession of the

defendant and he is raising construction only on his own share. It is pleaded that the construction being raised over Khasra No. 1045 is less than his share and there is no ouster of the plaintiff from the suit land in any manner, therefore, no question of injunction arises in the present proceedings.

17. The copy of the Jamabandi placed on record by the plaintiff for the years 2017–2018 shows the parties to be joint owners of the suit land. The said fact was required to be rebutted by the defendant by placing on record relevant material. In the present case, save and except the bald statement made in the written statement that on the basis of a family settlement the defendant is in exclusive possession of the suit land, no reliance can be placed on his bald statement in the attending facts and circumstances of the case. The plea of family settlement/family arrangement has to be determined by the learned Courts below by affording opportunity to the respective parties to adduce evidence in support of their contentions. At this stage, and that too while adjudicating an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, this fact can not be finally decided as no material has been placed on record to demonstrate that on the

basis of the family arrangement, the entire Khasra No. 1045 is in the exclusive possession of the present petitioner.

18. The defendant has primarily relied upon the plea of family arrangement and asserted that by virtue of a Will, father of the parties had separated the total land and the respective parties were put in separate possession thereof. However, learned counsel for the petitioner has not been able to establish that there is any reference to Khasra No. 1045 in the said Will. In order to dislodge the case of the respondent/plaintiff and to rebut the presumption of truth attached to the copy of the Jamabandi for the years 2017–2018, the defendant has not been able to establish and prove anything on record.

19. The learned Courts below have rightly determined the point in controversy and arrived at the conclusion that till the suit is finally decided, the suit land has to be preserved, otherwise, the very purpose of filing the suit as well as the application under Order 39 Rules 1 and 2 CPC shall stand defeated. The parties shall be afforded an opportunity by the learned trial Court to lead evidence in support of their contentions, and in case any of the parties succeeds in doing so, the learned trial court shall pass appropriate orders in accordance with law.

20. At this stage, in the considered opinion of this Court, and based upon the presumption of truth attached to the Jamabandi for the year 2017–2018, the land is joint *inter se* the parties. In view of the allegations levelled by the respondent that the defendant is trying to encroach upon and occupy the best and most valuable portion adjacent to the road, the defendant cannot be permitted to take undue advantage of the absence of plaintiff. In case defendant is permitted to raise construction, it is the plaintiff who shall suffer huge and irreparable loss.

21. The plaintiff has successfully satisfied the tripartite test of prima facie case, balance of convenience, and irreparable loss. On the strength of the material placed on record in conjunction with the Jamabandi, the plaintiff has a prima facie case in his favour, the balance of convenience also lies in his favour, and in case the defendant is permitted to raise construction, the plaintiff will certainly suffer irreparable injury. The Courts below have rightly adjudicated and determined the point in controversy, and this Court finds no infirmity in the impugned judgment and order.

22. The Hon'ble Apex Court has repeatedly held that the scope of interference in a petition filed under Article 227 of the Constitution of India is very limited. The Hon'ble Apex in **Civil**

Appeal No(s).13801 of 2025, titled as **Shri Digant vs M/s P.D.T. Trading Co. & others**, has discussed the scope of interference while exercising the power under Article 227 of Constitution of India. The relevant paragraphs thereof read as under:-

“22. The scope of High Court’s jurisdiction under Articles 226/227 fell for consideration before a three Judge Bench of this Court in Radhey Shyam & another v. Chhabi Nath & Ors. 1 This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.”

23. In the case on hand, the appellate court had considered whether the proceeding in detail the issue as to court was justified in trial with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants’ counsel, claiming no instructions. After a threadbare analysis and taking into consideration surrounding circumstances, the appellate court held that the trial court had committed no wrong proceeding with the matter court representing with noticed the the that defendants matter. The appellate Court noticed tht the advocate representing the defndants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer’s notice was not served on them therefore, they could not engage another counsel Besides that, the record also indicated that the intention of the

defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification procedure went consider the procedure prescribed for withdrawal Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate Court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our view, appellate court's order was not amenable to interference in exercise of jurisdiction under Article 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with well reasoned order of the appellate Court."

23. The Hon'ble Apex Court in ***M/S GARMENT CRAFT Vs. PRAKASH CHAND GOEL, (2022) 4 SCC 181***, decided on 11.01.2022, has held that High Court while exercising Supervisory Jurisdiction will not act as a Court of First Appeal to reappreciate, reweigh the evidence on facts upon which the determination under challenge is based. The Hon'ble Supreme Court has held as follows:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under [Article 227](#) of the Constitution of

India. 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.¹ The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse,¹[Celina Coelho Pereira \(Ms\) and Others v. Ulhas Mahabaleshwar Kholkar and Others](#), (2010) 1 SCC violation of fundamental principles of law or justice. The power under [Article 227](#) is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under [Article 227](#), this Court in [Estralla Rubber v. Dass Estate \(P\) Ltd.](#)² has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under [Article 227](#) of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or

justice, where if the High Court does not interfere, a grave injustice remains uncorrected. 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. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

19. The factum that the counsel for the appellant had applied for the certified copy would show that the counsel for the appellant was aware that the ex-parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex-parte decree and therefore the submission that the appellant came to know of the ex-parte decree only on release from jail on 6th May 2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt 30 that the application for setting aside the exparte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of

delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."

24. Consequently, in view of the observations made herein-above, this Court is of the considered view that the Courts below have concurrently passed orders in favour of the plaintiff after duly appreciating the material placed on record. This Court finds no perversity, illegality, or jurisdictional error in the impugned judgment and order.

25. Consequently, the present petition being devoid of any merit deserves to be dismissed.

26. However, it is made clear that observations as made in the present case will not have any bearing on the merits of the main case.

All the pending miscellaneous application(s) if any, shall also stands disposed of.

(Romesh Verma)
Judge

September 11, 2026
(Nisha)