2023:HHC:7993

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.245 of 2024
Decided on: 24.04.2026

Kanshi Ram & others ….Petitioners

Versus

Jaram Singh & others ...Respondents

Coram
Hon'ble Mr. Justice Romesh Verma, Judge
Whether approved for reporting?

For the petitioners: Mr. Goldy Kumar, Advocate.

For the respondents: Mr. Rakesh K. Sharma, Advocate, vice Mr. R.L. Chaudhary, Advocate.

Romesh Verma, Judge (Oral)

The present petition arises out of judgment as passed by learned Additional District Judge-I, Kangra at Dharamshala, District Kangra, H.P. dated 30.09.2023, whereby the appeal preferred by the defendants/petitioners has been ordered to be dismissed and the order as passed by learned Civil Judge (Senior Division), Kangra dated 25.06.2022 has been affirmed, whereby the application under Order 39 Rules 1 and 2 of CPC filed by the plaintiffs was allowed and the parties were directed to maintain status quo qua nature and possession of the suit property till the final disposal of the main suit.

2. Brief facts of the case are that the plaintiffs/respondents filed a suit for declaration to the effect that the land bearing Khata No.55/54, Khatauni No.62, Khasra Nos.150, 153, 159, 160, 165, 336, 338, Kitta 8, area measuring 1-67-33 hects., situated at Mohal Thana, Mouza Dharkalia, Tehsil Harchakian, District Kangra, H.P. be declared to be under the joint ownership and possession of the plaintiffs along with the defendants. Further, the gift deed dated 17.09.1997 executed by Sh. Kihru Ram in favour of defendants No.1 to 3 by fraud, misrepresentation and manipulation by the defendants deserves to be declared null and void. Further, decree of permanent prohibitory injunction was sought against the defendants from raising any kind of construction, cutting and removing the standing trees and interfering with the peaceful possession of the plaintiffs.

3. It has been contended in the plaint that late Shri Kihru Ram was the grandfather of the plaintiffs. Shri Chater Bhuj was the father of the plaintiffs, who died on 02.08.1985. After the death of Shri Kihru Ram, the suit land is being cultivated under the joint ownership and possession by the parties. The parties, including the defendants, provided

services to late Shri Kirhu Ram during his life time. In order to grab the suit land, the defendants played a fraud upon late Shri Kihru Ram in the office of Sub Registrar, Kangra on 17.09.1997 by stating that the Will shall be executed in equal shares in favour of the parties. However, the defendants, in connivance with the witnesses, fraudulently fabricated the gift deed on 17.09.1997. The said deed is not genuine because the property of late Shri Kihru Ram was entered in favour of defendants No.1 to 3 on the basis of a Will dated 17.08.1997. No such Will was executed by late Shri Kihru Ram on 17.08.1997. Therefore, the said document is illegal, void and not binding on the rights of the plaintiffs. Consequently, under the attending facts and circumstances of the case, the suit was filed by the present respondents/plaintiffs.

4. Along with the suit, an application under Order 39 Rules 1 and 2 read with Section 151 of CPC was filed by the plaintiffs for grant of interim injunction.

5. The defendants filed a written statement raising various preliminary objections with regard to maintainability, cause of action, valuation etc. On merits, it was averred that

it is the defendants who were rendering services to late Shri Kihru Ram and on account of this, the deceased had executed a registered Will before the Sub Registrar, Kangra, in favour of the defendants on 17.09.1997 while in a sound and disposing state of mind. After the execution of Will, necessary mutation was attested in favour of the defendants on 22.09.2005 in presence of the Tehsildar. All the averments, as made in the plaint, were refuted and denied. It was specifically submitted that the plaintiffs never cultivated the suit land because the father of the plaintiff never rendered any service to late Shri Kihru Ram during his lifetime.

6. The defendants have also filed reply to the application under Order 39 Rules 1 and 2 of CPC.

7. Learned trial Court vide its order dated 25.06.2022 allowed the application filed by the plaintiffs, whereby both the parties were directed to maintain status quo qua nature and possession of the suit property till the final disposal of the main suit.

8. Feeling dissatisfied the defendants/petitioners preferred an appeal before the learned Additional District

Judge-I, Kangra at Dharamshala, District Kangra on 09.09.2022. Learned first appellate Court vide its judgment dated 30.09.2023 dismissed the appeal as preferred by the present petitioners.

9. Before coming to the factual matrix of the case, it will be relevant to discuss the law as laid down by Hon'ble Supreme Court with regard to scope of interference in a petition under Article 227 of the Constitution of India.

10. The Hon'ble Apex Court in ***Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 181***, has laid the parameters with respect to the scope of interference in a petition under Article 227 of the Constitution of India. The Hon'ble Supreme Court has held that the scope of interference is limited and the High Court will not act as an appellate Court to vary and reverse the findings of learned courts below. The relevant paras of the said judgment read 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. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, 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."

11. In the present case, the dispute pertains to a Will of late Shri Kihru Ram, allegedly executed on 17.09.1997, in favour of the defendants. The plaintiffs and the defendants have rival contentions, and the Will must be proved by the propounder, in accordance with law. The learned Courts below have rightly come to the conclusion that, during the pendency of suit, the property/suit land has to be preserved so that it may not create any undue advantage to either of the party. Learned Courts below, while examining the

material aspect of the case and taking into consideration the pleadings and documents, have rightly come to the conclusion that during the pendency of suit, the parties shall maintain status quo till the final adjudication and determination by the learned trial Court. This Court finds no infirmity in the impugned judgment as passed by learned Courts below.

12. Consequently, the present petition being devoid of any merit deserves to be dismissed and the same is accordingly dismissed along with pending application(s), if any.

(Romesh Verma)
Judge

April 24, 2026
(vt)