IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO Nos. 656 of 2022
& 662 of 2022

Decided on: 28.10.2026

1. CMPMO No. 662 of 2022

Aman Dixit & others

... Petitioners

Versus

Balwant & ors.

...Respondents

2. CMPMO No. 656 of 2022

Aman Dixit & others

...Petitioners

Versus

Shiv Chand Shakeel

...Respondent

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Petitioner: Mr. Naveen Bhardwaj, Advocate.

For the Respondents *:* Mr. Sunil Mohan Goel, Senior Advocate, assisted by Mr.Abhinav Mohan Goel, Advocate, for respondents in CMPMO No. 662 of 2022.

Mr. Sudhir Bhatnagar, Advocate, for respondents in CMPMO No. 656 of 2022.

Virender Singh, Judge (oral)

The above titled CMPMO Nos. 662 of 2022 and 656 of 2022 are being disposed of by the common order, as these petitions have been filed by the petitioners against judgment dated 31.10.2022, passed by the Court of learned Additional District Judge, Kullu, District Kullu, H.P. (hereinafter referred to as 'the learned Appellate Court').

2. By way of the order dated 31.10.2022, the learned Appellate Court has decided the Civil Miscellaneous Appeal No. 7 of 2022, titled as, 'Balwan Singh and others versus Aman Dixit and others' as well as Civil Miscellaneous Appeal No. 10 of 2022, titled as, 'Aman Dixit and others versus Shiv Chand Shakeel'.

3. Above two Civil Miscellaneous Appeals were filed by the respondents, against the order dated 2.5.2022, passed by the Court of learned Senior Civil Judge, Lahaul & Spiti at Kullu, HP (hereinafter referred to as, 'the Trial Court') in Civil Miscellaneous Application number 305/6 of 2019 as well as in Civil Miscellaneous Application No. 540/6/2021, filed under Order 39 Rule

1 and 2 of the CPC, in Civil Suit, titled as, 'Aman Dixit etc. versus Nihal Singh'.

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. By way of order dated 2.5.2022, the learned Trial Court has directed the defendants not to alienate suit land, fully detailed and described in the headnote of the plaint.

6. Brief facts leading to the filing of the present petitions, before this Court, as born out from the record, may be summed up as under:

Plaintiffs Aman Dixit and others have filed a suit for declaration and injunction, against defendants Nihal Singh and others, seeking declaration to the effect that the land measuring 16-01-00 bighas, comprised in Khasra Kitas-17 of Khata Khatoni No. 1427/1961 and land measuring 21-02-00 bigha, being 1/2 share of land measuring, 42-04-00 bigha, comprised in khasra number in khata khatoni number 1429/1963 to 1969, as per Jamabandi for the year 2013-14, situated in

Mohal and Pathi Shillihar Kothi Kot Kandi, Tehsil Bhuntar, District Kullu, HP, (hereinafter referred to as, 'the suit land') is ancestral land in the hands of defendant No.1 and the sale deeds bearing No. 1546 dated 22/11/2017, 1547 dated 22/11/2017, 1548 dated 22/11/2017, 381 dated 24/2/2018, 382 dated 24/2/2018, and 385 dated 24/2/2018 were executed without legal necessity, as such, they be declared as null and void and not binding upon the rights of the plaintiffs.

6.1 In addition to this, consequential relief of injunction has also been sought, restraining the defendants from interfering in the suit land and from alienating, selling, creating any charge over the suit land.

6.2 The said suit has been filed on the ground that previously Shri Ali son of Karam Das was owner in possession of suit land. After the death of Ali, his share was inherited by his son Man Chand. Said Man Chand expired in the year 1990 and his share has been inherited by his son Nihal Singh, defendant No. 1,

exclusively being only son and thereafter, he became exclusive owner in possession of the suit land.

6.3. The parties to the suit are stated to be Kumhar by caste and agriculturist, as such, they are governed by custom of Kullu from generations to generations, according to which, a male holder of ancestral property, is not competent to alienate, relinquish, sell, gift, or will his ancestral land, in favor of his son or any stranger, so as to exclude his son and other legal heirs, without pressing genuine necessity, as such alienation, if any, which have been challenged, are stated to be null and void and not binding upon the reversionary right of his sons.

6.4 In addition to this, allegations have also been leveled against defendant No. 1 that he was a habitual drunkard and indulges in bad habits and threatening to alienate/transfer the ancestral property, without any legal necessity.

7. This suit has been contested by the defendants by filing the written statement.

8. Defendant Nos. 2 to 5 have filed their joint written statement, by taking preliminary objections that the plaintiffs have no cause of action to file the suit; the suit has not been properly valued, for the purpose of Court fee and jurisdiction; the plaintiff Nos. 2 to 7 have no right to challenge the sale deed, executed by defendant No. 1 in favor of defendant Nos. 2 to 5, as such, suit is stated to be not maintainable; suit land is stated to be not ancestral in the hand of defendant No. 1 and plaintiffs and defendant No.1 are not governed by agricultural custom.

9. On merit, the suit has been contested by pleading that Shri Nihal was exclusive owner in possession of the suit land, who has rightly sold the same to defendant Nos. 2 to 5 and it has been admitted that the plaintiffs and defendant No. 1 are Kumhar by caste, but according to defendant Nos. 2 to 7, they are not governed by the agricultural custom, as they are rural artisans, not belonging to agricultural family. According to them, only Jats and Kanaits are governed by agricultural family custom.

9.1 Defendant No. 1 has not opted to put appearance and to contest the suit, as such he was proceeded against ex parte.

9.2 The plaintiffs filed the replication, denying the preliminary objections, as well as, the contents of the written statement, by asserting that of the plaint.

9.3 Defendant No.6, although, filed the separate written statement, but, he has also contested the suit, mainly on the similar grounds.

10. Along with the suit, application, under Order 39 Rules 1 and 2 of the CPC, has been filed, with a prayer to restrain the defendants from alienating, selling or creating any charge over the suit land, during the pendency of the suit.

11. The said application has also been contested, on the similar grounds, upon which, the suit has been contested. Thereafter, the learned trial Court, vide order dated 02.05.2022, has decided the applications, under Order 39 Rules 1 and 2 of the CPC. One application has been filed against defendant Nos. 1 to 5 and other has been filed against defendant No. 6 Shiv Chand Shakeel.

12. While deciding the said applications, the learned Trial Court has restrained the defendants, from alienating the suit land, till the disposal of the main suit.

13. Aggrieved from the said order, defendant Nos. 2 to 5 filed Civil Misc Appeal No. 7 of 2022, before the learned Appellate Court, against the plaintiffs, whereas, the plaintiffs have filed the Civil Miscellaneous Appeal against defendant No. 6 Shiv Chand Shakeel.

14. The learned Appellate Court, vide order dated 31.10.2022 has decided the above titled Civil Misc. appeals, by passing the following order.

> *"In view of my above discussions, the appeal bearing CIS No. 07 of 2022, titled as, 'Balwan Singh etc. vs. Aman Dixit etc. is allowed and appeal bearing CIS Registration No. 10 of 2022, titled as, 'Aman Dixit versus Shiv Chand Shakeel' alongwith cross-objections filed by Aman Dixit etc. are hereby dismissed. Consequently, the order under challenge dated 2.5.2022 is set aside and the applications under Order 39 Rules 1 and 2 CPC filed by the plaintiffs/applicants are dismissed. The parties are left to bear their own costs. No doubt, these findings of mine pertain to the disposal of present appeals, but the same will not be construed as an expression of opinion on the merits of the main case. The parties through their counsel are directed to appear before the learned trial Court on 10.11.2022. The record of learned trial Court be returned alongwith copy of this judgment, whereas, the*

record of the present appeal, after due completion be consigned to record room."

15. Aggrieved from the said order, the plaintiffs have filed CMPMO No. 656 of 2022, against defendant No. 6 Shiv Chand Shakeel, challenging the order, passed by the learned Appellate Court, in Civil Misc Appeal No. 10 of 2022, whereby, the order dated 02.05.2022, passed in CMA No. 540-VI/2021, in Civil Suit No. 343 of 2019, has been set aside and the application under Order 39 Rules 1 and 2 of the CPC, has been dismissed, whereas, CMPMO No. 662 of 2022 has been filed by the plaintiffs, against the order dated 02.05.2022, passed by the learned Appellate Court, in Civil Misc Appeal No. 7 of 2022, whereby, the appeal preferred by the plaintiffs against the order dated 02.05.2022, passed in CMA No. 540-VI of 2021 in Civil Suit No. 343 of 2019 has been ordered to be dismissed, against the order dated 02.05.2022, passed by the Court of learned Trial Court.

16. The learned Trial Court, in the present case, while deciding the applications, under Order 39 Rules 1 and 2 of the CPC have restrained all the defendants from alienating the suit land, during the pendency of the

lis, whereby, the learned Appellate Court, while deciding the above mentioned two Civil Misc appeals, has set aside the order dated 02.05.2022, by virtue of which, the defendants were ordered to be restrained from alienating the suit land during the pendency of the lis, and consequently the application under Order 39 Rule 1 and 2 of the CPC, has been ordered to be dismissed.

17. On the basis of the above facts, the learned counsel appearing for the plaintiffs highlighted the fact that the learned Appellate Court has set aside the order dated 02.05.2022, without recording the fact whether the learned Trial Court has exceeded its jurisdiction, while directing the defendants not to alienate the suit land, during the pendency, or the learned Appellate court has also not recorded the findings that the learned Trial Court has exercised the jurisdiction, which is not vested in it, or the findings, so recorded by the learned Trial Court, falls within the definition of 'perverse findings'.

18. Once, the learned Trial Court has exercised the jurisdiction by partly allowing the applications, under

Order 39 Rules 1 and 2 of CPC filed by the plaintiffs, directing the defendants from alienating the suit land, during the pendency of the suit, then, the learned Appellate Court, before interfering or reversing those findings, was bound to record the findings to point out the jurisdictional error, or perversity in the order, so passed.

19. The powers of the Appellate Court, under Order 43 Rule 1 of the CPC has elaborately been discussed by the Hon'ble Supreme Court, in a recent decision, titled as, **'Ramakant Ambalal Choksi versus Harish Ambalal Choksi,** reported in (2024) 11 Supreme Court Cases 351. Relevant paragraphs 20 to 37 of the judgment are reproduced, as under:

> *"20. Order 43 of the CPC specifies the orders against which an appeal lies. Sub- Rule (r) of Rule 1 of the said order provides that an appeal would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.*
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> *21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India P. Ltd. reported in 1990 Supp SCC 727. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim*

injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:

a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and

b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.

22. With regards to (a), this Court held thus:

"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions … the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below … If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

23. This Court, while arriving at the above findings, relied on its earlier judgment in Printers (Mysore) v Pothan Joseph reported in (1960) SCC Online SC 62 where it was held thus:

"[…] as has been observed by Viscount Simon LC in Charles Osenton & Co v Johnston – the law as to reversal by a court of appeal of an order made by a judge below in

the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."

24. It is pertinent to note that in Printers (supra) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in Charles Osenton & Co v Johnston reported in 1942 A.C. 130, after stating the above, went on to quote Lord Wright's decision in Evans v. Bartlam reported in 1937 A.C. 473:

> *"It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order."*

25. In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and

b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

27. The principles of law explained by this Court in Wander's (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

28. In Neon Laboratories Ltd. v. Medical Technologies Ltd. reported in (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

29. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in Wander (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the

trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd." (Emphasis supplied)

30. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion

upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

31. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

32. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case.

PRINCIPLES GOVERNING GRANT OF TEMPORARY INJUNCTION

33. In the case of Anand Prasad Agarwal v. Tarkeshwar Prasad reported in (2001) 5 SCC 568,it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie

case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non- interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim

injunction pending the suit. (See: Dalpat Kumar v. Prahlad Singh reported in (1992) 1 SCC 719.) MEANING OF THE EXPRESSION "PERVERSE"

35. Any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough reported in (1878) 1 LR 1r 331, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey reported in 106 NW 814, the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

36. The expression "perverse" has been defined by various dictionaries in the following manner:

a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed. Perverse - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

b. Longman Dictionary of Contemporary English - International Edition Perverse - Deliberately departing from what is normal and reasonable.

c. The New Oxford Dictionary of English - 1998 Edition Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition) Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant. e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed. Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

> *37. The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See: Damodar Lal v. Sohan Devi and others reported in (2016) 3 SCC 78)"*

20. Judging the facts and circumstances of the case, in the light of the decision of Hon'ble Supreme Court in **Ramakant Ambalal Choksi's** case (supra), it can be said that the learned Trial Court has not recorded these findings, while dismissing the application under Order 39 Rules 1 and 2 of the CPC. Once, the learned Trial Court has exercised the discretion, in partly allowing the applications under Order 39 Rule 1 and 2 of CPC, then, before interfering with those findings, it was incumbent upon the learned Appellate Court to record the finding whether the learned Trial Court has exercised the said discretion wrongly or the findings, so recorded, falls within the definition of 'perverse findings'.

21. In the absence of those findings, the order passed by the learned Appellate Court does not survive,

in the judicial scrutiny, by this court, under Article 227 of the Constitution of India.

22. In view of above, this Court is of the opinion that the order passed by the learned Appellate Court does not sustain in judicial scrutiny of this Court and set aside the impugned order. Consequently, the CMPMO No. 662 of 2022 is allowed, whereas the CMPMO No. 656 of 2022 is ordered to be dismissed.

23. Consequently, the order passed by the learned trial Court, while partly allowing the application, under Order 39 Rules 1 and 2 CPC, dated 2.5.2022, in CMA No. 305-VI/2019, as well as, in CMA No. 540-VI/2021, is ordered to be restored.

24. Any of the observations, made hereinabove, 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 application.

25. Record be sent back.

26. Parties, through their counsel, are directed to put appearance, before the learned trial Court, on 18.11.2026 at 10:00 a.m.

(Virender Singh)
Judge

28.10.2026
Kalpana