2026:HHC:50678

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 447/2026

Decided on: 17.11.2026

Reice Begum ....Petitioner

Versus

Union of India & ors. ...Respondents

Coram:

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

Whether approved for reporting?[1]

For the Petitioner: Mr. Sarthak Upadhyay, Advocate.

For the Respondents: Mr. Bharat Bhushan, Senior Panel Counsel, for respondent No.1.

Mr. Diwakar Dev Sharma, Addl. A.G. for respondent Nos. 2 and 3.

Romesh Verma, Judge (oral)

The instant petition arises out of the order, dated 10.09.2025, as passed by the learned Senior Civil Judge, Chamba, whereby an application filed by private respondent Nos. 4 to 6 under the provisions of Section 10 of the CPC, came to be allowed.

2 Shorn of unnecessary details, the facts as emerge in the present case, are that present petitioner/plaintiff has filed a

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[1]Whether reporters of the local papers may be allowed to see the judgment? Yes.

suit before the learned trial Court against the respondents for declaration to the effect that late Mohammad Iqbal, father of the petitioner, had become the owner in possession of the land comprised in Khata Khatauni No. 877 min/1006, Khasra No. 8891/7342, measuring 2081.03 square yards, situated at Mohal Chamba, Shehar-II, Pargana Panjla, Tehsil and District Chamba, by operation of law, and subsequently, the father of the petitioner has bequeathed the suit land along with the other vide will dated 08.12.2011 in her favour.

3 As per the case, as set up by the plaintiff, the suit land stands recorded in the possession of her father as non-occupancy tenant, thus, being depicted as non-occupancy tenant in the revenue record maintained by the Collector, he had become the owner of the suit land automatically in the year 1975 by operation of law under the Himachal Pradesh Tenancy and Land Reforms Act, 1972. As per plaintiff, even after the year 1975, due to negligence and inadvertence on the part of the revenue authorities, status of her father is being shown and recorded in the revenue papers as non-occupancy tenant, instead of owner in possession or as occupancy tenant. Hence, the subsequent revenue entries are not binding on the rights of the petitioner or her father.

4 In para 6 of the plaint, it has been categorically stated that the plaintiff has already raised one-storeyed pucca house consisting of 7 rooms along with a kitchen, toilet and bathroom in half portion of the area comprised in Khasra No. 8891/7342, and even fruit trees were planted in the remaining area covering adjoining portion of the gifted land far back prior to the execution of the gift and will in the year 1980-81 and none of the defendants had raised any objection of any kind at the relevant time.

5 According to the plaintiff, the official defendants were requested several times to record ownership of the plaintiff over the suit land, and to that effect, notice under Section 80 of the CPC was also served upon them, but no action was taken by the official defendants for the reasons best known to them. Therefore, under such circumstances, the plaintiff/petitioner filed a suit for declaration, permanent prohibitory and mandatory injunction against the defendants/respondents before the learned Trial Court.

6 Official defendant Nos. 1 to 3 filed written statement controverting therein the averments and allegations, as levelled in the plaint, by raising preliminary objections with respect to maintainability, cause of action, jurisdiction, etc. On merits, all the averments as made in the plaint were refuted and denied,

and thus, defendant Nos. 1 to 3 prayed for the dismissal of the suit as filed by the plaintiff.

7 Defendant Nos. 4 and 6 filed their separate written statement, wherein preliminary objections with respect to maintainability of the suit under Order 2 Rule 2 of CPC, cause of action, locus standi etc. were raised. On merits, it was contended that the plaintiff has failed to disclose regarding Civil Suit No. 1161/2013 and the counter-claim filed by her pending between the parties, before the learned Senior Civil Judge, Chamba. They prayed for the dismissal of the suit, as filed by the present petitioner/plaintiff.

8 The learned Trial Court framed the issues in the matter, and thereafter, defendant/private respondent Nos. 4 to 6 filed an application under Section 10 of the CPC before the Court below with a prayer that the present suit may kindly be stayed till the final decision of the earlier instituted Civil Suit No. 1161/2013 and counter-claim No. 02/2013, which are pending in the shape of Civil Appeal Nos. 36 of 2022 and 37 of 2022 in the court of learned Additional District Judge, Chamba. As per the averments as made in the aforesaid application, it was contended by defendant Nos. 4 to 6 that the present petitioner/plaintiff has filed a suit for declaration, claiming herself to have become owner of the suit property on the strength

of the will dated 08.12.2011, however they, prior to the filing of the present suit, had preferred Civil Suit No. 1161/ 2013 against the present petitioner/plaintiff challenging the will dated 08.12.2011, with the assertion that the same is outcome of fraud and not binding on the rights of the defendant Nos. 4 to 6 in any manner.

9 As per defendant Nos. 4 to 6, the earlier suit was contested by the present plaintiff, and apart from filing the written statement, the present plaintiff also filed a counter-claim No. 02/2013 on 10.01.2013, claiming herself to have become exclusive owner of the entire property of late Mohammad Iqbal. After completion of the pleadings of the parties, the suit as filed by defendant Nos. 4 to 6 was finally decreed, whereas the counter-claim, as filed by the present plaintiff came to be dismissed vide common judgment dated 18.07.2022, as passed by the learned Senior Civil Judge, Chamba, HP.

10 Thereafter, feeling dissatisfied, the present plaintiff preferred two separate appeals against the judgment and decree dated 18.07.2022 before the learned Additional District Judge, Chamba. Though the plaintiff is having full knowledge about the outcome of the main suit and the counter-claim in respect of the will dated 08.12.2011, but she opted to file a fresh suit on the strength of the same will. It was specifically averred that the

matter in issue involved in the present case is directly and substantially the same as in Civil Suit No. 1161/ 2013 and counter-claim No. 02/2013, between the same parties and on the strength of the same will. Therefore, it was prayed that the application may be allowed thereby staying the suit till the final decision of the earlier instituted Civil Suit No. 1161/2013 and counter-claim No. 02/2013, which are pending in the shape of civil appeal Nos. 36 of 2022 and 37 of 2022 in the court of learned Additional District Judge, Chamba.

11 The said application came to be resisted by the plaintiff/petitioner by filing a reply, wherein all the averments as made in the application were denied. It was stated in the reply that the parties in the earlier instituted suit and present suit are different, and the cause of action is also different. Therefore, it was prayed that the instant application being devoid of any merit deserves to be dismissed.

12 The learned Trial Court vide its impugned order dated 10.09.2025, allowed the aforesaid application, as filed by defendant Nos. 4 to 6 and as a consequence thereof, the civil suit at hand came to be stayed till disposal of the Civil Suit No. 1161/2013.

13 Feeling dissatisfied, the plaintiff/petitioner has approached this court by instituting the present petition invoking provisions of Article 227 of the Constitution of India.

14 Mr. Sarthak Upadhyay, learned counsel for the plaintiff/petitioner, has contended that the impugned order as passed by the learned Trial Court, is erroneous and liable to be quashed and set aside. He has submitted that since the parties and the subject matter as well as the cause of action are entirely different in the present suit and the earlier instituted, therefore, the application, as filed by defendant Nos. 4 to 6 deserves to be rejected. Lastly, he has submitted that after accepting the present petition, the application, as filed by defendant Nos. 4 to 6 under Section 10 of the CPC, deserves to be rejected.

15 On the other hand, Mr. Bharat Bhushan, learned Senior Panel Counsel, appearing for respondent No.1 and Mr. Diwakar Dev Sharma, learned Additional Advocate General, appearing for respondent Nos. 2 and 3 have defended the impugned order. They would submit that while exercising the powers under Article 227 of the Constitution of India, this court will not disturb the findings as returned by the learned Trial Court, which are legal, valid, and sustainable in the eyes of law.

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

17 As observed above, the plaintiff/petitioner has instituted suit seeking declaration, permanent prohibitory injunction, and mandatory injunction against the private respondents along with the Central Government and State of Himachal Pradesh. The averments as contained in the plaint reveals that the suit land stands recorded in the possession of late Mohammad Iqbal, father of the petitioner, as non-occupancy tenant. It is the case of the plaintiff that her father is being depicted as non-occupancy tenant in the revenue record maintained by the Collector, whereas he had become the owner of the suit land automatically in the year 1975 by operation of law under the Himachal Pradesh Tenancy and Land Reforms Act, 1972. On account of the inadvertence and negligence of the revenue authorities, status of her father is being shown and recorded in the revenue as non-occupancy tenant instead of owner in possession or as occupancy tenant, hence the subsequent revenue entries are not binding on the rights of the plaintiff or her father. It would be apposite here to reproduce para 6 of the plaint, which reads as follows:

> *"That plaintiff had already raised pacca one storey house having seven rooms along-with kitchen, latrine and bath room in half portion of area of khasra No. 8891/7342 and fruit trees were planted in remaining area covering the adjoining portion of gifted land far back prior to execution of gift and will in the year*

1980-81 and none of the defendants have raised any objection. The house was fully equipped with electricity and water. The electricity meter is installed in the name of husband of plaintiff. The house tax is also being paid by the said the plaintiff."

18 In the prayer clause, it is a case of the plaintiff that by operation of law and thereafter subsequently, her father had bequeathed the suit land/property along with other vide will, dated 08.12.2011, in favour of the plaintiff and, thus, she has become owner in possession of the suit land /property and sanctioning of mutation No. 2127, dated 13.01.2015, by Assistant Collector, 2nd Grade, Chamba, in favour of defendant Nos. 4 to 8 is illegal, wrong, null and void.

19 The said suit has been duly resisted by the defendants. Defendant Nos. 4 to 6, have filed their separate written statement, wherein they have taken a preliminary objection with respect to the maintainability of the suit. It has been categorically stated in their defence that the plaintiff has withheld about filing of Civil Suit No. 1161/2013 with respect to the validity of the will dated, 08.12.2011. The said suit was filed by the defendant Nos. 4 to 6, and in the said suit, the present plaintiff/petitioner filed the counter-claim No. 02/2013.

20 The perusal of the plaint which has been filed by the present petitioner and the record which has been placed on

record along with the application under Section 10 of the CPC, reveals that earlier defendant Nos. 4 to 6 had instituted the Civil Suit No. 1161/2013, titled as Rafi Mohammad and others versus Raisa Begum, for declaration and permanent prohibitory injunction against the present petitioner challenging the will which is in dispute in the present proceedings. The prayer clause, especially para 16A of the earlier instituted civil suit reads as follows:

> *"16. In view of the foregoing submissions, it is therefore respectfully prayed that:-*
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> *A). A decree for Declaration that late Sh. Mohd. Iqbal died intestate on 20th March, 2012 and had not executed any will in of his property comprised in Khata Khatoni No. 824/911, Khasra No. respect 7325, 7336, 7337, 7338, 7339, 7340, 10299/7341, 10369/10301/7343, 10406/10301/8893, Kitta 9 measuring 3664-00 Square yards situated at Mouza Chamba town-II, Tehsil and District Chamba -H.P. and property comprised in Khata Khatoni No. 576/673, Khasra No. 1954/1755/856, 1837/1110 kitta 2 measuring 00-08-10 bighas Mouza Mugla, Pargna Panjla, Tehsil and District Chamba -H.P. on 08.12.2011 and the same is outcome undue fraud, misrepresentation and influence used by defendant No. 1 and as such is not of and binding upon the rights of the plaintiffs proforma defendants. In alternative in case the will dated 08.12.2011 is proved to be executed by late Sh. Mohd. Iqbal, then also the same having being executed in favour of the heirs and the plaintiffs have not given any consent to the bequest after the death of the testator, hence the same is not binding upon the rights of plaintiffs and*

proforma defendants and they are owners in possession to the extent of 7/16 shares, may kindly be passed in favour of the plaintiffs and proforma defendants against the defendants."

21 The said suit was duly contested by the present petitioner and finally on 18.07.2022, the learned Senior Civil Judge, Chamba, District Chamba, decreed the aforesaid suit as filed by defendant Nos. 4 to 6, and the will Ext. DW-2/A in the earlier instituted suit along with the mutation number 2127, dated 13.01.2015, was declared to be null and void and not binding on the rights of the present defendant Nos. 4 to 6, as Mohammad Iqbal died intestate and his entire property including suit property shall devolve amongst his heirs in accordance with the Sunni Mohammedan Law. Further, the counter-claim which was preferred by the present petitioner/plaintiff came to be dismissed by the learned Trial Court.

22 During the course of the arguments in the instant petition, it has been fairly conceded by the learned counsel for the parties that the appeals, as preferred by the petitioner before the learned Additional District Judge, Chamba stand dismissed and RSA Nos. 96/2024 and 97/2024 are pending adjudication before this Court .

23 The provisions of Section 10 of the CPC reads as follows:

> *10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between*
> *parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] and having like jurisdiction, or before the Supreme Court].*
> *Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action.*

24 Perusal of the record would go to indicate and rather reveal that earlier instituted Civil Suit No. 1161/2013 was filed by defendant Nos. 4 to 6 challenging validity of the will, which came to be decreed by the learned Trial Court, and the counter-claim, as preferred by the present petitioner was dismissed. Though the appeals as preferred by the present petitioner/plaintiff are still pending before this Court, but fact of the matter remains that the dispute remains the same with respect to the execution of the will by late Shri Mohammad Iqbal. The entire controversy revolves around the execution and the validity of the will, which has been determined and adjudicated in the previous round of litigation, and with that regard, appeals are still pending before this Court.

25 The perusal of the plaint in the present proceedings shows that the plaintiff/petitioner is claiming her title on the strength of the will, which is sub-judice and has been determined and adjudicated by the competent court of law. The parties are the same and the controversy is the same. Therefore, the learned Trial Court has rightly come to the conclusion that in order to avoid any conflicting judgments, the present suit has to be stayed under Section 10 of the CPC. Merely for the reason that in the earlier instituted suit, the Central Government and the State of Himachal Pradesh was not party, it will not make any difference. The fact of the matter is that the controversy revolves around the validity of the will of late Mohammad Iqbal, which stood adjudicated in the earlier round of litigation, though, as observed above, the appeals are pending adjudication before this Court.

26 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.

27 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.*
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> *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.*
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> *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:-*
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> > *"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."

28 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."*

29 This court is of the considered opinion that the learned Trial Court has rightly appreciated the point in controversy and has exercised the jurisdiction in a legal and valid manner, thus, the impugned order, dated 10.09.2025 is a well-reasoned order and the same deserves to be upheld as it does not suffer from any illegality, irregularity or jurisdictional error.

30 Consequently, in view of aforesaid discussion, the present petition, being devoid of any merit, is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

17th November, 2026
(pankaj)