IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 549 of 2026

Decided on: 2.11.2026

Sushma Kumari

... Petitioner

Versus

Lalita Devi & anr.

...Respondents

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

For the Petitioner: Dr.Rajesh Kumar Parmar, Advocate.

For the Respondents *:* Mr. Ashok Thakur, Advocate.

Virender Singh, Judge (oral)

Petitioner has filed the present petition, under Article 227 of the Constitution of India, against the order dated 30.06.2026, passed by the court of learned District Judge, Kangra at Dharamshala, District Kangra, HP (hereinafter referred to as, 'the First Appellate Court'), in Civil Miscellaneous Appeal No. 16-K/XIV/2025, titled as, 'Sushma Kumari versus Lalita Devi and another'.

2. By way of order dated 30.06.2026, the appeal preferred by the petitioner, against the order dated 6.11.2025, passed by the Court of learned Civil Judge, Court No. 2 Kangra, District Kangra, HP (hereinafter referred to as 'the trial Court'), in CMA No. 1079/2022 filed in Civil Suit CIS No. 229/2022, titled as 'Sushma Kumari versus Lalita Devi & anr.', has been challenged.

3. Vide order dated 6.11.2025, by virtue of which, the learned Trial Court has dismissed the application, under Order 39 Rules 1 and 2 of the CPC, preferred by the present petitioner.

4. Parties to the present lis, are hereinafter referred to, in the same manner, in which, they were referred to by the learned Trial Court.

5. Brief facts, leading to filing of the present petition, as borne out from the documents, annexed with the petition, may be summed up, as under:

Plaintiff Sushma Kumari has filed a suit for permanent prohibitory injunction, restraining the defendants from cutting, felling, removing the trees, raising construction of residential house, boundary

wall/retaining wall and digging the foundation of residential house, interfering in the privacy of the plaintiff, changing the nature of the land, bearing Khata No. 401, Khatauni No. 495, Khasra Nos. 242 and 272, kita 2 area measuring 00-24-35 hectares, situated at R/o Mohal Haler Khurd, Patwar Circle Jogipur, Tehsil and District, Kangra, H.P. (hereinafter referred to as 'the suit land'), which is recorded in the ownership of the plaintiff, other co-sharers and defendants.

5.1 In the alternative, decree of mandatory injunction has been sought, directing the defendants to demolish and restore the suit land, to its original position.

5.2 The suit has been filed on the ground that the suit land is owned and possessed by the plaintiff and other co-sharers, as per the revenue record; suit land is joint between the parties, and the same has not yet been partitioned, by metes and bound.

5.3 According to the plaintiff, the defendants are threatening to forcibly lay the foundation stone of the residential house in the suit land.

6. On the basis of the above facts, the following relief has been sought:

> *"It is therefore prayed that, decree for permanent prohibitory injunction restraining to the defendants from cutting felling, removing the trees, raising construction of residential house and digging the foundation of residential house Wall interference in the privacy of plaintiff, changing the nature in any manner over the suit land bearing khata No 401 Khatauni 495 Khasra Nos 242 and 272 kita 2 area measuring 00-24-35 Hects, Jamabandi for the year 2019-202 situated at R/O Mohal Haler Khurd, Patwar Circle Jogipur, Tehsil, Distt Kangra H.P is recorded in the ownership of the plaintiff, othersCo shares and defendants and other alternative suit for the mandatory injunction directing the defendants to demolish or restore the suit land in the original position in case defendant succeed to raise construction over the suit land during the pendency of the suit."*

7. Along with the suit, an application, under Order 39 Rules 1 and 2 CPC, has been filed, with the prayer to issue the ad interim injunction, restraining the defendants from raising construction of residential house, boundary/retaining wall, as well as, interference, in the privacy of the plaintiff/applicant and changing the nature of the suit land.

8. The said application has been contested on the ground that the applicant has not approached the Court with clean hands.

9. The suit, as well as, application has been contested, by denying the allegations, which have been leveled, against the defendants, in the suit.

10. The learned trial Court, after hearing the learned counsel, for the parties, has dismissed the application, under Order 39 Rules 1 and 2 of the CPC, vide order dated 6.11.2025.

11. The said order has unsuccessfully been assailed by the plaintiff, by filing the appeal, before the learned First Appellate Court.

12. Now, the plaintiff is before this Court, by way of present petition.

13. Heard.

14. The plaintiff is before this Court, under Article 227 of the Constitution of India, where scope of interference by this Court is very limited.

15. Hon'ble Supreme Court in "**K. Valarmathi & Ors. Versus Kumaresan"**, 2025 INSC 606" has elaborately

discussed the scope of interference under Article 227 of the Constitution of India. Relevant para 9 of the judgment, is reproduced, as under:

> *"Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise of supervisory jurisdiction under Article 227."*

16. In a recent decision in **"Nandi Infrastructure Corridor Enterprises Ltd. & Anr. Versus B. Gurappa Naidu & Ors."**, 2026 INSC 434", the scope of interference has again been explained by the Hon'ble Supreme Court. Relevant paragraph 35 of the judgment, is reproduced, as under:-

> *"35. In short, the principles laid down in the above matters is as follows:*
> *a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.*
> *b) 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.

c) 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."

17. Moreover, under Article 227 of the Constitution of India, this Court cannot re-assess or review the material, which was taken into consideration, by the learned trial Court. While holding so, the view of this Court is being guided, by the decision of Hon'ble Supreme Court, in ***Vinay Raghunath Deshmukh*** *versus* ***Natwarlal Shamji Gada and another, 2026 INSC 416.*** Relevant paragraph-16 of the judgment is, reproduced, as under:-

"16. Yet another aspect that goes to the root of the matter is that the tenants challenged the order passed by the Appellate Bench permitting the amendment by filing a writ

petition under Article 227 of the Constitution of India. It is well settled that in exercise of such jurisdiction, it would not be open for the High Court to review or reassess the material that was taken into consideration by the Court while passing the impugned order. In this regard we may usefully refer to the decision in Raj Kumar Bhatia Vs. Subhash Chander Bhatia, wherein a three Judge Bench of this Court held as under:

"11 .....The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In Sadhna Lodh v National Insurance Company4, this Court has held that the supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The Trial Court had in the

> *considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227."*
>
> *Thus, the discretion exercised by the Appellate Bench while allowing the amendment was not liable to be interfered with in exercise of the Article 227 of the Constitution of India, especially when there was no error of jurisdiction nor a statutory bar for permitting the plaint to be amended based on subsequent events."*
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> *(Self emphasis supplied)*

18. Being guided by the above decision, now this Court would proceed further to point out the jurisdictional error, if any, committed by the learned trial Court.

19. Admittedly, the parties to the lis are co-sharers and without making any effort to get the suit land partitioned, no relief can be granted to the applicant.

20. Moreover, the subject matter of the lis is abadi deh and even in the spot map, no dimension of the suit land has been mentioned by the plaintiff. Meaning thereby, the plaintiff is not entitled for the final relief. As

such, the interim relief has rightly been declined to her by the learned trial Court.

21. The suit of the plaintiff is totally silent about the description of the land, which is in her possession.

22. Even in the pleadings, nothing has been mentioned about the portion, upon which, defendants are now trying to raise construction forcibly.

23. In view of above, this Court is of the considered opinion that the learned trial Court has rightly concluded that the plaintiff has no prima-facie case, in her favour. As such, the findings of the learned trial Court do not require any interference, by this Court.

24. Consequently, the present petition is dismissed, so also the pending application(s), if any.

25. 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.

(Virender Singh)
Judge

2.11.2026
Kalpana