IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 608 of 2025.

Decided on :28th April, 2026.

Dharamveer **...Petitioner**

Versus

Raj Krishan ....**Respondent.**

Coram:

The Hon'ble Mr. Romesh Verma, Judge.
Whether approved for reporting?[1]

For the Petitioner: Mr. Suneet Goel, Senior Advocate with Mr. Vishwas Kaushal, Advocate.

For the Respondent: Mr. Vishal Panwar, Advocate.

Romesh Verma, Judge (Oral).

The present petition arises out of order as passed by learned District Judge, Sirmaur District at Nahan in Civil Misc. Appeal No. 28-CMA/14 of 2024 on 19.07.2025, whereby the appeal preferred by the defendant/petitioner has been dismissed and the order as passed by learned Senior Civil Judge, Sirmaur District at Nahan dated 06.04.2024 has been affirmed.

2. Brief facts of the case are that the plaintiff/respondent filed a suit for grant of a decree of permanent prohibitory injunction with consequential relief of mandatory injunction to remove the wall and lintel in the Court of learned Senior Civil Judge, Sirmaur District at

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

Nahan. It has been averred that the plaintiff/respondent is owner in possession of House No.LIG-15, Housing Board Colony, Nahan, District Sirmaur, H.P. and the said house/plot had been purchased by the plaintiff/respondent in the year 2003 from Shri H.R. Bhatia. On the eastern side, there is plot No. 14 which is owned and possessed by the defendant/petitioner. The plaintiff/respondent after constructing a retaining boundary wall in his own land, had left two feet land area as Gali behind his house towards plot No. LIG 14 so that the sewerage pipe of his plot along with plots No. 6 & 7 could be laid or passed through the said left out land area, so as to avoid future complications in this behalf. Defendant is quite stranger to plot No.15 and he has no right, title or interest upon the retaining wall/boundary wall along with two feet gali of plot No.15 in any manner whatsoever, but recently the defendant has raised the construction on his plot No. 14 in Housing Board Colony Nahan immediately on ground floor, then first floor and then second floor and thereafter on third floor.

3. As per plaintiff, in front portion of plot No. 14 and left some vacant portion the back side of plot adjoining to Gali of two feet and retaining wall/boundary wall of plaintiff, the windows of two rooms set of plaintiff is opened towards aid two feet gali and retaining wall/boundary wall for light and air and used as easementary rights. That the defendant is very clever and quarrelsome person as he knows the present situation of plaintiff, therefore, in the absence of

plaintiff, he has raised the construction on the boundary wall of the plaintiff and put lintel on the said two feet wide gali of the plaintiff and closed the said gali, which is left for sewerage pipe and due to this illegal act and conduct of the defendant, the light and air towards the rooms of the house of plaintiff has been blocked permanently and the plaintiff is declined the use of easementary rights and on the back side of plot No.15, the said gali of two feet has also been closed by the defendant by putting lintel on it on 21.06.2023.

4. The suit as filed by the plaintiff/respondent was contested by the defendant/petitioner by filing a written statement by raising various preliminary objection with respect to maintainability, estoppel and cause of action etc. On merits, it has been submitted that no right of easement accrued in favour of the plaintiff. It has been stated that plot Nos. 14, 15 and 16 are adjoining to each other in a straight line which shows that there is no provision for the owner of one plot to open his window towards the side of plot of adjoining allottee as such no question arises of enjoying the light and air from the side of adjoining plot which has been allotted to the replying defendant by the HP Housing Board. All the averments as made in the suit has been refuted and denied. The defendant has prayed for dismissal of the suit.

5. Along with the suit, an application under Order 39 Rules 1 and 2 of CPC was also filed by the plaintiff/respondent seeking

injunction against the defendant/petitioner restraining him from causing any kind of interference or raising any construction on the boundary wall and gali of two feet of house No. LIG-15, situated in Mohal Amarpur, Housing Board Colony, Nahan, District Sirmaur, H.P. either himself or through his agents, servants, relatives etc., in any manner whatsoever, during the pendency of the suit.

6. The application was duly contested by the defendant/petitioner by filing reply.

7. Learned Senior Civil Judge, Sirmaur District Nahan vide its order dated 06.04.2024 allowed the application and the present petitioner/defendant was restrained through his agents, servants from raising any kind of construction and interference over the boundary wall/two feet left land of gali of House LIG-15 situated in Mohal Amarpur, Housing Board Colony, Nahan, District Sirmaur, H.P. till the final disposal of the main suit.

8. Feeling dissatisfied, the defendant/petitioner preferred an appeal in the Court of learned District Judge, Sirmaur District at Nahan on 02.12.2024. Learned first appellate Court vide its judgment dated 19.07.2025 dismissed the appeal preferred by the present appellant.

9. Still feeling aggrieved, the defendant/petitioner has approached this court by filing the instant petition under Article 227 of the Constitution of India.

10. It is contended by Mr. Suneet Goel, Senior Advocate assisted by Mr. Vishwas Kaushal, Advocate, for the defendant/petitioner that the judgment and order as passed by 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 and has wrongly passed the injunction order in favour of the plaintiff/respondent.

11. On the other hand, Mr. Vishal Panwar, learned counsel for the plaintiff/respondent has defended the order and judgment as passed by learned Courts below and submits that while invoking the provisions of Article 227 of the Constitution of India, this Court will not interfere in the concurrent findings, as rendered by the learned courts below.

12. I have heard learned counsel for the parties and carefully scanned the case file.

13. Admittedly, the present respondent is owner in possession of house No.15. The copy of sale deed has been filed by the respondent along with the suit which shows that House/Plot No. LIG-15 has been purchased by the plaintiff in the year 2003 from Shri H.R. Bhatia son of Shri A.R. Bhatia through GPA Shri Bachan Singh Rawat and that in the revenue record, respondent/plaintiff herein is shown one of the cosharer over the suit land. In order to make out a case for interim injunction, the respondent has to pass the triplicate test of

prima facie case, balance of convenience and irreparable loss. In the present case, respondent/plaintiff has got prima facie case in his favour on account of the fact that he is owner in possession of House/Plot No. 15 and in the revenue record, he has been shown one of the co-sharer, therefore, on the strength of title the plaintiff has got prima facie case in his favour and balance of convenience also lies in his favour. In case, the defendant is not injuncted from raising any construction or causing interference over the suit land, the plaintiff will definitely suffer irreparable loss. The learned trial court has rightly determined the point in controversy and after perusing the entire record, rightly passed the injunction order in favour of the plaintiff and has rightly been affirmed by the learned Appellate Court.

14. The Hon'ble Supreme Court in ***Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 181***, held that while exercising powers under Article 227 of the Constitution of India, the High Court will not reweigh the facts and evidence as placed on record and will not act as appellate Court to interfere with the findings as returned by learned Courts below. The relevant paras 15 and 16 of the said judgment read as under:

> *"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, 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."

15. Therefore, in view of the principle as laid down by the Hon'ble Apex Court, the scope of interference by this Court is very narrow and restricted. The learned courts below have rightly passed the impugned judgment and order and this Court sees no infirmity or illegality in the judgment and order as passed by learned Courts below. Consequently, the instant petition being devoid of any merit is dismissed, so also the pending application (s), if any, leaving the parties to bear their own costs.

16. Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here- in-above, which are only for the purpose of the instant petition.

(Romesh Verma)
Judge

28th April, 2026.
(jai)