IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 645 of 2026

Reserved on: 02.11.2026

Decided on: 17.11.2026

Mohan Singh .... Petitioner

Versus

Santosh .... Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No.

For the Petitioner : Mr Rajesh Kumar, Advocate.

For the Respondents/State : *Nemo.*

Rakesh Kainthla, Judge

The petitioner has filed the present petition against the order dated 02.09.2026 passed by the learned Senior Civil Judge, Lahaul and Spiti at Kullu (learned Trial Court), vide which the objections preferred by the petitioner (Judgment Debtor before learned Trial Court) were dismissed. (*The parties shall*

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

hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present petition are that the decree holder (DH) filed a civil suit for permanent prohibitory injunction and mandatory injunction for restraining the JD/respondent from obstructing her (DH) from using and enjoying the vacant portion of the suit land and the path passing through it, and to restore the old stairs leading to the house of DH. The Court decreed the suit vide judgment and decree dated 29.09.2016 and restrained the JD from obstructing the DH from using and enjoying the vacant suit land till it is partitioned by metes and bounds. The Court also passed a decree for mandatory injunction directing the JD to remove the bricks collected on the vacant portion of the suit land. The JD filed an appeal, which was dismissed by the learned Additional District Judge, Kullu on 11.10.2017. The JD also filed a second appeal before this Court, which was registered as RSA No. 537 of 2017. This Court dismissed the Regular Second Appeal and held as under:

> "4. Therefore, while dismissing the instant appeal, a direction is given to the Assistant Collector, 1st Grade,

> Kullu, to decide the partition proceedings as expeditiously as possible and in no event later than **31.5.2018**. Till then, the parties are directed to maintain *status quo qua* nature and possession of the suit land.
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> 5. The appeal is disposed of in the aforesaid terms, leaving the parties to bear their own costs. Pending application(s), if any, also stands disposed of..."

3. The DH filed an application seeking execution of the judgment and decree, claiming that the JD had intentionally and willfully disobeyed the decree; hence, he was liable to be arrested and detained in civil prison, and his property was liable to be attached and sold.

4. The JD contested the execution petition by filing reply/objections, asserting that the execution was premature. The JD had filed an application for partition before the learned Assistant Collector, Kullu, which was pending. The DH could not have filed an application for execution during the pendency of the partition proceedings; hence, it was prayed that the present application be dismissed.

5. Learned trial Court framed the following issues on 6.03.2020:

> 1. Whether the JD has intentionally and willfully disobeyed the judgment and decree dated 29.09.2016, as alleged, if so, its effect?OPP

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2. Whether the petition is not maintainable, as alleged?OPP
3. Relief.

6. The parties were called upon to produce the evidence, and the DH examined herself (AW-1), HC Rajesh Kumar (AW-2), and Mohan Lal (AW-3). Respondent/JD examined himself (RW-1).

7. Learned trial Court held that the application for partition filed by the JD was dismissed by learned Assistant Collector First Grade, Kullu on 25.05.2019 after holding that the suit land was in possession of the third party, part of the suit land had been constructed, intricate questions of law and possession were involved, and it was not possible to partition the land. The order passed by this Court directing the parties to maintain *status quo* was in force till the pendency of the partition proceedings. The partition proceedings had been decided, and the order no longer remained in force. Hence, the plea taken by the JD that the execution petition was premature was not acceptable. JD had not complied with the judgment and decree; hence, the execution application was allowed, and the JD was directed to obey the decree for mandatory injunction. The DH

was given liberty to get the decree executed through the Bailiff of the Court in case of failure to comply with the decree.

8. Being aggrieved by the order passed by the learned Trial Court, the JD has filed the present petition, asserting that the learned Trial Court erred in interpreting the judgment passed by this Court in RSA No.537 of 2017, decided on 2.05.2018. The Assistant Collector, First Grade, erred in dismissing the partition application. The learned Trial Court erred in shifting the burden of partitioning the land to the JD, whereas it was the duty of both the parties to get the land partitioned. The DH had not taken any steps to get the land partitioned, and the learned Trial Court erred in ordering the execution. Hence, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

9. Mr Rajesh Kumar, learned counsel for the petitioner/JD, submitted that the learned Trial Court erred in allowing the application for execution. The Court had directed the parties to maintain *status quo* till the land is partitioned, and the learned Trial Court erred in holding that this Court had directed the parties to maintain status quo till the application for

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partition is decided. Assistant Collector, First Grade, had also erred in dismissing the application for partition; therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

10. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

11. The present petition has been filed under Article 227 of the Constitution of India. The Hon'ble Supreme Court held in ***Nandi Infrastructure Corridor Enterprises Ltd. v. B. Gurappa Naidu, 2026 SCC OnLine SC 745***, that the jurisdiction conferred upon the High Court under Article 227 of the Constitution of India is not appellate; it cannot sit in appeal and can exercise the jurisdiction where the learned trial Court had assumed the jurisdiction not vested in it, refused to exercise the jurisdiction vested in it, or abused the jurisdiction. It was observed:

> **A. EXERCISE OF THE POWER BY HIGH COURT UNDER ARTICLE 227.**
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> **30.** Before adverting to the factual matrix, it would be apposite to examine whether the High Court exceeded the jurisdiction vested in it under Article 227 of the Constitution of India.
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> **31.** The scope and ambit of the power of the High Court under Article 227 of the Constitution has been the subject matter of consideration before this Court in several judgments, and the law governing the exercise of such power now stands well settled. In exercise of its supervisory jurisdiction, the High

Court cannot act as an appellate court, nor can it sit in appeal over the correctness of the orders passed by courts and tribunals over which it exercises the power of superintendence under Article 227.

32. This Court, in ***Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329: (2010) 3 SCC (Civ) 338***, has held:

> "35. Nasirullah Beg J. of the Allahabad High Court in a very well-considered judgment rendered in the case of *Jodhey* v. *State*, 1952 SCC OnLine All 10: AIR 1952 All 788, discussed the provisions of Section 15 of the Indian High Courts Act of 1861, Section 107 of the Government of India Act, 1915 and Section 224 of the Government of India Act, 1935 and compared them with almost similar provisions of Article 227 of the Constitution. The learned judge considered the power of the High Court under Article 227 to be plenary and unfettered but at the same time, in paragraph 15 at page 792 of the report, the learned judge held that the High Court should be cautious in its exercise. It was made clear, and rightly so, that the power of superintendence is not to be exercised unless there has been (a) unwarranted assumption of jurisdiction, not vested in the Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals. The learned judge clarified that only if there is a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice, the power of superintendence can be exercised. This is a discretionary power to be exercised by the Court and cannot be claimed as a matter of right by a party.
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> .....
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> 40. The same principles have been followed by this Court in the case of ***Mani Nariman Daruwala @ Bharucha (deceased) through LRs. v. Phiroz N. Bhatena etc., (1991) 3 SCC 141***, wherein it has been held that in exercise of its jurisdiction under Article 227, the High Court can set aside or reverse the finding of an inferior Court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the Court or tribunal has come to.

> This Court made it clear that, except to this 'limited extent ', the High Court has no jurisdiction to interfere with the findings of fact (see para 18, page 149-150). In coming to the above finding, this Court relied on its previous decision rendered in the case of ***Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447***. The decision in ***Chandavarkar*** (supra) is based on the principle of the Constitution Bench judgments in ***Waryam Singh v. Amanath, (1954) 1 SCC 51: AIR 1954 SC 215*** and ***Nagendra Nath Bora v. The Commissioner of Hills Division, 1958 SCC OnLine SC 45: AIR 1958 SC 398*** discussed above."

33. This Court, in the case of ***Estralla Rubber v. Dass Estate (P) Ltd. (2001) 8 SCC 97***, has held that the power of the High Court in interfering with the order of the Court or Tribunal would be restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice. It has been further held:

> "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 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 by 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 courts subordinate 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 that is not apparent on the face of the record. The High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there

> is no evidence at all to justify the finding, 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."

34. This Court, in a recent judgment of ***Garment Craft v. Prakash Chand Goel (2022) 4 SCC 181 : (2022) 2 SCC (Civ) 424***, had an occasion to again deal with the exercise of Jurisdiction under Article 227 of the Constitution of India and held that the High Court, exercising supervisory jurisdiction, would not act as a Court of First Appeal. It was also held:

> "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 re-appreciate, 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." (Emphasis supplied)

35. In short, the principles laid down in the above matters are as follows:

a) The power of superintendence under Article 227 is not to be exercised unless there has been (a) an unwarranted assumption of jurisdiction, not vested in the 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.

12. In the present case, it is undisputed that the Civil Court had passed a decree in favour of the DH for permanent prohibitory injunction and mandatory injunction. It is also undisputed that the first appeal and Regular Second Appeal were dismissed. This Court had specifically held, while deciding RSA No.537 of 2017, that the findings recorded by the learned Courts below regarding the plaintiff's entitlement to a decree of mandatory injunction are based on pure findings of fact, which cannot be interfered with while exercising jurisdiction under Section 100 of CPC. However, the Court had noticed that partition proceedings were pending before the Assistant Collector, First Grade; hence, a direction was

issued to the Assistant Collector, First Grade to decide the partition proceedings as expeditiously as possible and not later than 31.05.2018. The parties were directed to maintain *status quo* till the decision by learned AC, First Grade.

13. Therefore, it is apparent that the Court had only directed learned AC, First Grade to decide the partition proceeding pending before him and had not passed any order that *status quo* is to be maintained till the partition of the land. It is undisputed that the AC, First Grade had dismissed the application for partition; thus, the order of *status quo* came to an end after the order of the AC, First Grade.

14. It was submitted that the AC, First Grade had wrongly dismissed the application. This submission will not help the JD because his remedy is by way of filing an appeal or taking other proceedings for setting aside the order passed by the learned AC, First Grade. There is nothing on record that the JD had taken any steps to set aside the order of the learned AC, First Grade; hence, he

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cannot be heard to say in the collateral proceedings that the order is bad.

15. The Court had specifically directed the JD to remove the bricks collected on the vacant part of the suit land. This part of the decree has attained finality. The JD never claimed that he had removed the bricks lying on the spot; therefore, the learned trial Court had rightly held that the decree is to be executed.

16. In view of the above, there is no error in the exercise of jurisdiction, failure to exercise the jurisdiction, or abuse of the jurisdiction justifying the interference by this Court under Article 227 of the Constitution of India. Hence, the present petition fails and is dismissed.

17. The observations made hereinbefore shall remain confined to the disposal of the present petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

17th November, 2026
(Ravinder)