IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 34 of 2021
Reserved on: 15.09.2026
Date of decision: 23.09.2026

Tarvinder Kumar & others ...Petitioners.

Versus

Kishore Chand & others ...Respondents.

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

Whether approved for reporting?[1]

For the petitioners: Mr. N.K.Thakur, Senior Advocate with Mr. Divya Raj Singh, Advocate.

For the respondents: Mr. Sunny Modgil, Advocate, (through V.C. and Ms. Ananya Verma, Advocate, for respondents No. 1,3 and 4.

Mr. Rakesh Kumar Sharma, Advocate, for respondents No. 5 and 6.

Romesh Verma, Judge

The present petition arises out of the order as passed by the learned Senior Civil Judge, Court No.1, Una, HP dated 11th February, 2021, whereby the application filed by the petitioners/defendants under Order 7 Rule 11 of the Code of Civil Procedure, read with Section 151 CPC, has been ordered to be dismissed.

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

High Court of H.P.

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2. The facts, as emerge in the present case, are that the plaintiffs/respondents, Kishore Chand and others, filed a suit for declaration to the effect that the plaintiffs and the proforma defendants have become owners in possession of the suit land situated at Up-Mohal Uparli Bhatoli, Sub-Tehsil Mehatpur Basdehra, District Una, by efflux of time and foreclosure. Since the defendants have failed to avail the remedy of redemption within the statutory period of limitation, therefore, they have got no right, title, or interest of any kind over the same by efflux of time.

3. It was contended in the plaint that originally the suit land was identified as land measuring 11 Kanals 08 Marlas, bearing Khewat No. 61, Khatauni No. 129, Khasra Nos. 1008, 1009, 1010, 1012, which were carved out into new Khasra Nos. 1122, 1123, 1125 in the settlement in the year 1912–1913. Thereafter, the suit land was carved out in new Khasra Nos. 1588, 1590, 1591, measuring 10 Kanals 09 Marlas, comprised in Khewat No. 177, Khatauni No. 314, Khasra Nos. 1588, 1590, 1591, as per Jamabandi for the year 1971–1972.

4. It has been contended that ever since the inception of the mortgage, earlier the predecessors-in-interest of the plaintiffs

High Court of H.P.

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and proforma defendants, and after their death, the plaintiffs and proforma defendants, are coming in actual and physical possession of the suit land as mortgagees, and now they have become owners in possession by efflux of time, as the suit land has not been redeemed by the mortgagors within the statutory period of limitation as provided under the statute, either by the predecessors-in-interest of the defendants. Therefore, the defendants have lost their right of redemption, and the plaintiffs and proforma defendants have acquired the right of ownership by virtue of foreclosure.

5. It has been contended that the defendants filed an application for redemption of the suit land mischievously before the SDO (Civil), Una, who, without appreciating the law and evidence, illegally allowed the application vide impugned order dated 29th December, 2020. As per the plaintiffs, the order dated 29th December, 2020, passed in Redemption Application No. 3 of 2015, titled as Tarvinder Kumar v. Kishore Chand & others, passed by the Sub-Divisional Collector-cum-SDO (Civil), Una, is void, illegal, ab initio against the statute, and inoperative against the right, title, and interest of the plaintiffs. Therefore, it was prayed that a decree for declaration may be passed that the

High Court of H.P.

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plaintiffs and proforma defendants have become owners in possession in equal shares by efflux of time and foreclosure of the right of equity of redemption, the suit land having not been redeemed by the defendants or their predecessors-in-interest within the statutory period of limitation. Further, it was prayed that the order passed by the Sub-Divisional Collector-cum-SDO (Civil), Una, is wrong, illegal, void *ab initio*, and ineffective against the right, title, and interest of the plaintiffs.

6. The defendants were served in the said suit, and they filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint.

7. It was contended in the application that the plaintiffs have filed a suit for declaration to the effect that they and proforma defendants have become owners by efflux of time, since the suit land has not been redeemed by the defendants within the statutory period of limitation. In the application, it has been stated that the redemption of the land which is under mortgage is purely within the domain of the revenue Courts. The applicants along with others filed an application under Section 4 of the H.P. Redemption of Mortgages Act, 1971, bearing No. 3 of 2015, titled as Tarvinder Kumar v. Kishore Chand, for

High Court of H.P.

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redemption of the suit land in the Court of the learned Sub-Divisional Collector on 5th May, 2015, which was decided on 29th December, 2020, and the suit land was redeemed in favour of the defendants. The possession of the mortgaged land was ordered to be delivered to the defendants, as held by the Sub-Divisional Collector (c), by implementing the order dated 29th December, 2020, in the revenue record. As per the defendants/ applicants, the order passed by the Collector has attained finality, and the mortgage amount of ₹80/- was also deposited with the Collector in the said case. Therefore, after relying upon the judgment of the Hon'ble Apex Court, the defendants/petitioners prayed for the return/rejection of the plaint under Order VII Rule 11 of the CPC.

8. The application instituted by the defendant for rejection of the plaint came to be resisted by the plaintiffs on various grounds. It was stated in the reply that the order passed by the revenue authority on 29th December, 2020, is wrong and incorrect, since the said order has been passed illegally by the SDO (Civil), Una, without appreciating the fact that one petition under Section 4 of the H.P. Redemption of Mortgages Act, titled as Kalan Devi v. Mulkh Raj, had already been decided by the

High Court of H.P.

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SDO (Civil), Una, on 13.05.1969, filed by the predecessor of the defendants. As per Section 13 of the H.P. Redemption of Mortgages Act, no second petition can be filed by the same petitioner or his legal representatives. Therefore, since a similar petition stood already dismissed on the same ground by the Court, the second application which was filed was not maintainable.

9. Further, it was stated that as per Section 12 of the H.P. Redemption of Mortgages Act, it has been stipulated that any person aggrieved by the order of the SDO (Civil) under the Act can challenge the same before the Civil Court in the form of a civil suit, and that order will be a conclusive one. As per the plaintiffs, since the order dated 29th December, 2020, has been wrongly passed, as the same is in conflict with Section 13 of the H.P. Redemption of Mortgages Act, therefore, the instant application filed for rejection of the plaint deserves to be dismissed.

10. The learned Senior Civil Judge, Court No. 1, Una, District Una, vide impugned order dated 11th February, 2021, dismissed the application filed by the defendants/petitioners.

High Court of H.P.

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11. Feeling dissatisfied, the defendants/petitioners have approached this Court by filing the instant petition invoking the provisions of Article 227 of the Constitution of India.

12. It is contended by Mr. Naresh Kumar Thakur, learned Senior Counsel assisted by Mr. Divya Raj Singh, Advocate that the impugned order passed by the learned trial court is erroneous and liable to be quashed and set aside. He submits that the suit as filed by the plaintiffs/respondents is barred by law, therefore, the plaint as filed is liable to be rejected. He submitted that the learned Court below has not taken into consideration the provisions of Order VII Rule 11 and has wrongly rejected the said application in a routine manner. He would submit that after accepting the present petition, the application filed by the defendants for rejection of the plaint deserves to be allowed.

13. On the other hand, Mr. Sunny Modgil, Advocate (through V.C.) and Ms. Ananya Verma, Advocate, learned counsel for the respondents has defended the impugned order passed by the learned trial court. It is contended by the learned counsel that the learned trial Court has passed a well-reasoned

High Court of H.P.

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order, and this Court, while exercising power under Article 227 of the Constitution of India, will not disturb the said findings.

14. I have heard the learned counsel for the parties and gone through the record.

15. The plaintiffs/respondents have instituted the suit by seeking a decree of declaration to the effect that the plaintiffs and the proforma defendants have become owners in possession of the suit land by efflux of time. They have sought the decree of foreclosure, as according to them, since the suit land has not been redeemed by the defendants within the statutory period of limitation, therefore, by efflux of time, they have become owners in possession of the suit land. Further, it has been prayed that the order dated 29th December, 2020, passed in Redemption Application No. 3/2015, titled as Tarvinder Kumar & others v. Kishori Chand & others, passed by the Sub-Divisional Collector-cum-SDO (Civil), Una, is illegal, wrong, void *ab initio*, and ineffective against the right, title, and interest of the plaintiffs.

16. The learned Senior Counsel has laid challenge to the impugned order primarily on the ground that since the suit is

High Court of H.P.

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barred by law, therefore, the learned Trial Court has erred by not rejecting the plaint as filed by the plaintiffs.

17. The learned Senior Counsel has addressed his arguments on the provisions of Order VII, Rule 11(d) of the Code of Civil Procedure, which reads as follows:

> *"Order VII, Rule 11: Rejection of plaint.—*
>
> *The plaint shall be rejected in the following case:—*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;"*

18. He submits that as per the provisions and the legal principles of law as laid down by the Hon'ble Apex Court, the suit is liable to be rejected at the threshold, and the defendants cannot be permitted to be harassed at the hands of the plaintiffs by filing the present suit.

19. On the other hand, it has been contended by learned counsel for the respondents/plaintiffs that since a mixed question of fact and law is involved in the present proceedings, and since the plaintiffs have raised triable issues, therefore, it would not be appropriate in the present proceedings to reject the plaint outrightly.

High Court of H.P.

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20. The learned counsel for the respondents/plaintiffs have drawn the attention of this Court to the averments made in paragraphs 7 and 8 of the plaint, which reads as under:-

> *"7. That ever since the inception of mortgage, earlier the predecessor in interest of the plaintiffs and proforma defendants and after their death, the plaintiffs and proforma defendants are coming in actual and physical possession of the suit land as mortgagees and now they have become owners in possession by afflux of time having the suit land not been redeemed the mortgaged land within statutory period of limitation as provided under the statute either by the predecessor in interest of the defendants or by the defendants and it being so, the defendants which included their predecessor have lost the right to equity of redemption and the plaintiffs and proforma defendants have acquired the right of ownership under the principle of foreclosure.*
>
> *8. That thereafter the defendants moved an frivolous application of redemption for the suit land mischievously before the SDO (C) Una who without appreciating the law and evidence illegally allowed the said application vide impugned order dated 29.12.2020, the said impugned order dated 29.12.2020 passed in Redemption Application No. 3/2015 titled as 'Tarvinder Kumar etc. Versus Kishore Chand etc.' passed by Sub Divisional Collector Cum SDO (Civil) Una (HP) is void, illegal, void ab-initio, against the statute and ineffective against the right, title or interest of the plaintiffs and proforma defendants and has no bearing or binding effect on the right, title and interest of the plaintiffs and performa defendants more particularly when previously field application for redemption of the suit land by the predecessor in interest of the defendants stands dismissed by SDO (Civil) Una vide order dated 13.05.1969."*

21. He submits that by efflux of time, the plaintiffs have become owners in possession of the suit land, as the mortgagors have failed to redeem the suit land within the statutory period. Further, it is the case of the plaintiffs that on the strength of the Order dated 29th December, 2020 passed by the SDO (Civil), which in the eyes of law is illegal, the same is liable

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to be quashed and set aside as the same has not been passed in accordance with law.

22. The learned counsel for the plaintiffs/respondents have laid stress on Section 13 of the H.P. Redemption of Mortgages Act, 1971, which reads as follows:

> **"**Section 13 - No second petition
>
> *The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or his representative in respect of the same mortgage."*

23. He submits that as an earlier application under the same provisions, i.e., under Section 4 of the H.P. Redemption of Mortgages Act, in the case titled ***Kalan Devi v. Mulkh Raj*** had already been dismissed by the SDO (Civil) on 13.05.1969, therefore, there is a clear bar for the institution of the second application. As such, the order which has been passed by the authorities is illegal, void ab initio, null and void, and not binding on the rights of the plaintiffs.

24. It has further been contended that in Section 12 of the aforesaid Act, it has been stipulated that any party aggrieved by an order made under the Act may institute a suit to establish his rights in respect of the mortgage, but subject to the result of such suit, if any, the order shall be conclusive.

High Court of H.P.

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25. He submits that so far as the order dated 29.12.2020 passed by the SDO (Civil), Una is concerned, the subsequent application is hit by the provisions of Section 13 of the H.P. Redemption of Mortgages Act, as a similar application came to be rejected by the SDO (Civil) on 13.05.1969.

26. This Court is in agreement with the contention raised by the learned counsel for the respondents/plaintiffs, as the foundation of the plaint/suit filed by the plaintiffs is primarily on the ground that by efflux of time, they have become owner in possession of the suit property, as the same was not redeemed by the mortgagor within the statutory period of limitation, and the order of redemption dated 29th December, 2020 passed by the SDO (Civil), Una is barred by the provisions of Section 13 of the H.P. Redemption of Mortgages Act, 1971.

27. The allegations and counter-allegations leveled by the respective parties raise highly triable issues, which are to be determined by the learned Trial Court by framing the issues and calling for the evidence of the respective parties. Whether the order dated 29th December, 2020 passed by the SDO (Civil), Una is legal, valid, or sustainable has to be decided by the learned Trial Court in a full-fledged trial.

High Court of H.P.

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28. The plaintiffs/respondents cannot be barred outrightly on the basis of an application filed for rejection of the plaint. On the one hand, the plaintiffs have raised the plea of foreclosure and are challenging the order passed by the authority on the redemption application dated 29th December, 2020, therefore, mixed questions of fact and law are involved in the present proceedings, which are required to be adjudicated in a trial.

29. In the absence of any determination as to whether the order passed by the SDO dated 29th December, 2020 is valid or sustainable, the petition in hand filed by the defendants cannot be held to be sustainable or valid in the eyes of law. Such facts have to be decided by the learned Trial Court independently, after hearing the respective parties.

30. This Court does not see any infirmity or illegality in the impugned order passed by the learned Trial Court. The Court below has passed a well-reasoned order, and while invoking the provisions of Article 227 of the Constitution of India, this Court will not act as an Appellate Court.

31. The Hon'ble Apex Court has repeatedly held that the scope of interference in a petition filed under Article 227 of the

High Court of H.P.

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Constitution of India is very limited. The Hon'ble Apex in ***Civil Appeal No(s).13801 of 2025,*** titled as ***Shri Digant vs M/s P.D.T. Trading Co. & others,*** has discussed the scope of interference while exercising the power under Article 227 of Constitution of India. The relevant paragraphs thereof read as under:-

> *"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a threeJudge Bench of this Court in Radhey Shyam & another v. Chhabi Nath & Ors. 1 This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction."*
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> *23. In the case on hand, the appellate court had considered whether the proceeding in detail the issue as to court was justified in trial with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration surrounding circumstances, the appellate court held that the trial court had committed no wrong proceeding with the matter court representing with noticed the the that defendants matter. The appellate Court noticed tht the advocate representing the defndants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them*

High Court of H.P.

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> *therefore, they could not engage another counsel Besides that, the record also indicated that the intention of the defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification procedure went consider the procedure prescribed for withdrawal Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate Court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our view, appellate court's order was not amenable to interference in exercise of jurisdiction under Article 226/227 of the Constitution of India. The High Court clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with well reasoned order of the appellate Court."*

32. The Hon'ble Apex Court in ***M/S GARMENT CRAFT Vs. PRAKASH CHAND GOEL, (2022) 4 SCC 181,*** has held that High Court while exercising Supervisory Jurisdiction will not act as a Court of First Appeal to reappreciate, reweigh the evidence on facts upon which the determination under challenge is based. The Hon'ble Supreme Court has held as follows:-

> *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*

High Court H.P.

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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,1Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 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."

19. The factum that the counsel for the appellant had applied for the certified copy would show that the

HighCourt.C.I.P.

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counsel for the appellant was aware that the ex-parte decree had been passed on the account of failure to lead defence evidence. This would not, however, be a good ground and reason to set aside and substitute the opinion formed by the trial court that the appellant being incarcerated was unable to lead evidence and another chance should be given to the appellant to lead defence evidence. The discretion exercised by the trial court in granting relief, did not suffer from an error apparent on the face of the record or was not a finding so perverse that it was unsupported by evidence to justify it. There could be some justification for the respondent to argue that the appellant was possibly aware of the ex-parte decree and therefore the submission that the appellant came to know of the ex-parte decree only on release from jail on 6th May 2017 is incorrect, but this would not affect the factually correct explanation of the appellant that he was incarcerated and could not attend the civil suit proceedings from 6th October 2015 to 6th May 2017. If it was felt 30 that the application for setting aside the exparte decree was filed belatedly, the court could have given an opportunity to the appellant to file an application for condonation of delay and costs could have been imposed. The facts as known, equally apply as grounds for condonation of delay. It is always important to take a holistic and overall view and not get influenced by aspects which can be explained. Thus, the reasoned decision of the trial court on elaborate consideration of the relevant facts did not warrant interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution."

33. In the considered opinion of this Court, the impugned order does not call for any interference. Therefore, in view of the observations made here-in-above, the present petition, being devoid of any merit, deserves to be dismissed.

34. Needless to say, the observations made here-in-above are meant only for the adjudication of the present petition and

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shall not be construed as a reflection on the merits of the main case.

All the pending miscellaneous application(s) if any, shall also stands disposed of.

(Romesh Verma)
Judge

September 23, 2026
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High Court of H.P.

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