IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 251 of 2026

Date of Decision: 27.07.2026.

Jyoti Parkash .....Petitioner.

Versus

Sh. Jaswant Singh ... Respondent.

Coram:

Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting? [1]

For the petitioner: Mr. S.D. Gill, Advocate.

For the respondent: Mr. Raditya Katoch, Advocate.

Romesh Verma, Judge(*oral*):

The instant petition arises out of the order dated 15.12.2025, passed by learned Senior Civil Judge, Palampur, in an application under Order 21 Rule 32 CPC, filed by the decree-holder/respondent, Jaswant Singh, which came to be allowed.

2. The facts as emerge in the present case are that the present respondent/decree-holder filed a suit for permanent

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

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prohibition injunction in the Court of learned Senior Civil Judge, Palampur, on 3rd April 2008. The said suit for injunction was filed by the decree-holder against the present petitioner/JD, Shri Jyoti Prakash. As per the averments, as made in the said suit bearing No. 53 of 2008, it was averred by the plaintiff/decree-holder that he is exclusive owner-in-possession of the land measuring 0-06-26 hectares, and that the defendant has got no right, title or interest over the same. It was the case of the plaintiff that though the defendant is recorded in the column of ownership in the revenue record as co-owner, but he is not in possession of any part of the suit land, and as such he has got no right, title or interest over the same. It was submitted by the decree-holder in the said suit that on 7th March 2008, defendant tried to start excavation work over the suit land, but the said attempt of the defendant was foiled by the plaintiff. That on 25th March 2008, again the defendant tried to interfere in the peaceful possession of the plaintiff and threatened to take the forcible possession. As per the plaintiff/decree-holder, the defendant was requested several times to admit his claim, but he refused to do so.

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3. The said suit was duly contested by the JD/present petitioner on various grounds.

4. The learned Civil Judge (Senior Division), Palampur, vide its judgment dated 1st November 2008, decreed the suit as filed by the decree-holder, and the present petitioner/JD was restrained from interfering, encroaching upon, or taking forcible possession of the suit land, bearing Khata No. 95 min, Khatauni No. 160, Khasra No. 101, land measuring 0-06-26 hectares, situated at Mohal and Mauja Tikker, Tehsil Palampur, District Kangra, along with costs of Rs. 1,000/-.

5. It has been fairly conceded by learned counsel for the parties that though the said judgment was assailed by the present petitioner/JD before the learned First Appellate Court, however, the said appeal came to be dismissed by the said Court. Thereafter, no further appeal was filed by the present petitioner/JD, by way of regular second appeal or by any other petition, meaning thereby that the said judgment has attained finality in the eyes of law.

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6. Thereafter, the respondent/decree-holder, on 1st October 2010, filed an application under Order 21 Rule 32 of CPC, alleging disobedience and violation of the judgment, which was passed by the learned Civil Judge (Senior Division), Palampur, on 1st November 2008. The said application, under Order 21 Rule 32 of CPC, was duly resisted by the present petitioner. Vide order dated 17th April 2015, the learned Civil Judge (Senior Division), Palampur, dismissed the application filed by the decree-holder.

7. The decree-holder again, on 6th December 2016, filed a fresh application under Order 21 Rule 32 of CPC, alleging violation of the judgment and decree as passed by the learned trial court dated 1st November 2008. In the application, it has been stated that though the civil suit filed by the decree-holder came to be allowed by the learned trial court, whereby the present petitioner/JD was restrained from interfering, encroaching upon, or taking forcible possession of the suit land, however, the JD/present petitioner has started interfering in the suit land and trying to encroach over the same. As per the averments made in the application, on 10th

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May 2016, the JD/petitioner started digging the suit land, and finally on the same day, the JD has taken forcible possession of a part of the suit land. Therefore, it was prayed that the application filed by the decree-holder be allowed, and the JD be detained in civil imprisonment for a period of three months, and his property may be ordered to be attached and sold out, and the sale proceeds may be awarded as compensation to the decree-holder.

8. The said application was resisted by the present petitioner by denying all the averments and contents of the same. It was stated that the allegations of interference are totally false and incorrect, and that earlier also, an application on account of violation of the judgment passed by the learned trial court dated 1st November 2008 was filed by the present respondent/decree-holder, and that came to be dismissed on 17th April 2015. Therefore, it was prayed in the reply that the allegations as levelled by the decree-holder are imaginary, incorrect, and false.

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9. The decree-holder filed rejoinder to the reply filed by the JD and reiterated all the averments as made in the application.

10. The learned Senior Civil Judge, Palampur, District Kangra, Himachal Pradesh, vide impugned order dated 15.12.2025, allowed the application filed by the decree-holder by ordering to send the JD to civil imprisonment for a period of three months on depositing subsistence allowance of Rs. 3,800 per month and Rs. 2,000 as diet money for the Bailiff, initially for a period of one month. The immovable property of JD was also ordered to be attached for a period of six months, details of which were to be specified by the decree-holder through a separate application within one month from the date of passing of the order.

11. Being dissatisfied and aggrieved by the impugned order dated 15.12.2025, the judgment-debtor/petitioner has approached this Court by filing the instant petition invoking the provisions of Article 227 of the Constitution of India.

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12. It is contended by Mr. S.D. Gill, learned counsel for the petitioner that the impugned order as passed by the learned trial court is erroneous, illegal and contrary to law. He submits that the decree-holder has failed to plead and prove the allegations of disobedience and violation; therefore, the application filed by the decree-holder under Order 21 Rule 32 CPC deserves to be rejected. He submits that earlier also, the decree-holder had instituted a similar petition under Order 21 Rule 32 of CPC, and that was dismissed by the learned Civil Judge (Senior Division), Palampur, on 17th April 2015. He further submits that in the previous round of litigation, a Local Commissioner was appointed to demarcate the suit land, and in the said report it was found that there is no encroachment or violation of the judgment as passed by the learned trial court dated 1st November 2008.

13. On the other hand, Mr. Raditya Katoch, learned counsel for the respondent has defended the impugned order as passed by the learned Senior Civil Judge, Palampur, District Kangra. He submits that the well-reasoned order as passed by the learned trial court does not suffer from any infirmity, and

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while invoking the provisions of Article 227 of the Constitution of India, this Court will not interfere in the said order. He further submits that the decree-holder has been able to establish and prove that the judgment-debtor has encroached over the suit land in violation to the judgment as passed by the learned Civil Judge (Senior Division), Palampur, dated 1st November 2008; therefore, the natural consequences of the encroachment are that the JD has to be sent to civil imprisonment.

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

15. In the present case, the decree-holder/respondent had initially filed a suit in the Court of learned Civil Judge (Senior Division), Palampur, on 3rd April 2008, seeking permanent prohibitory injunction against the petitioner/JD on the ground that he is interfering in the peaceful possession of the plaintiff and threatening to take forcible possession of the same.

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16. The said suit was duly contested by the present petitioner; however, the learned trial court, vide its judgment and decree dated 1st November 2008, decreed the suit filed by the decree-holder by restraining the JD/petitioner from interfering, encroaching over or taking forcible possession of the suit land, bearing Khata No. 95 min, Khatauni No. 160, Khasra No. 101, land measuring 0-06-26 hectares, situated at Mohal and Mauja Tikker, Tehsil Palampur, District Kangra, alongwith costs of Rs. 1,000/-.

17. It is also admitted by the respective parties that a similar application under the provisions of Order 21 Rule 32 of CPC came to be filed by the present respondent/decree-holder on 1st October 2010 and a Local Commissioner was appointed in those proceedings, and while relying upon the same, the learned trial court dismissed the said application on its merits. After elapse of one year, the decree-holder/respondent filed a fresh application on the ground that in the month of May 2016, the JD/petitioner started interfering in the suit land and tried to encroach over the land of the decree-holder. As per the respondent, on 10th May 2016, the judgment-debtor started

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digging the suit land, and finally on the same day, the present petitioner has taken forcible possession of the part of the suit land.

18. In order to corroborate his case, the decree-holder, Jaswant Singh, has entered the witness box as AW-5. In his deposition, he has stated that the learned Civil Judge had passed a decree of injunction in his favor on 1st November 2008, and that a cost of Rs. 1,000/- was imposed over the JD/petitioner. He stated in his affidavit that against the said judgment, Jyoti Prakash/petitioner had preferred an appeal, however, the learned First Appellate Court dismissed the same.

19. As per AW-5, the JD/petitioner in the month of May 2016, started interfering over the suit land and tried to take forcible possession of the suit land. He further stated that on 10th May 2016, Jyoti Prakash/petitioner started digging the suit land and forcibly took possession of the same. Therefore, it was prayed that since he has violated the decree as passed by the learned trial court dated 1st November 2008, therefore, appropriate action be taken against him by sending him to civil imprisonment and by attachment of his property. In his cross-

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examination, he stated that though in 2010, he had filed the application on account of interference and disobedience made by the present JD, however, the same came to be dismissed. He admitted that previously Tehsildar, Palampur, had demarcated the land. He admitted that the JD, for the last 4-5 years, is not residing in the said village.

20. In order to prove the encroachment, the decree-holder examined AW-2, Lachhman Dass, who has placed on record the copy of demarcation Ext. AW-2/A. AW-2 Shri Lachhman Dass in his deposition stated that he has prepared the demarcation report Ext. AW-2/A. In cross-examination, the JD/petitioner could not extract anything favorable from the said witness, who demarcated the suit land, and his report is Ext. AW-2/A.

21. AW-3 is the statement of Billo Devi, and she stated that at the time of carrying out the demarcation, she was present on the spot. She stated that the Local Commissioner had demarcated the suit land and prepared the report Ext. AW-2/A, and her statement was recorded as Ext. AW-2/E. She stated that her signatures are encircled on mark 'A'.

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22. In order to rebut the evidence as led by the decree-holder/respondent, Jyoti Prakash (JD) has also filed his affidavit, whereby he has denied all the averments of the decree-holder. In his deposition, he stated that in 2010 a Local Commissioner was appointed, the land was duly demarcated, and as per the same, no encroachment of any kind was found over the suit land. Based upon that, the application which was filed by the decree-holder was ordered to be dismissed in the year 2015.

23. The copy of the demarcation report has been appended in the present proceedings, which is at page 40 of the paper book. The demarcation was carried out by AW-2 Lachhman Dass, retired Tehsildar, and as per his report dated 23rd May 2022, it has been found that part of the suit land has been encroached/occupied by the JD by raising the structure of his house. It is fairly conceded by the learned counsel for the petitioner that the said report has attained finality, and no challenge has been led to the same.

24. In order to substantiate the case of violation by the decree-holder/respondent, he has examined himself along

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with the statement of AW-2 Lachhman Dass, who demarcated the suit land and categorically held that a part of the suit land stood encroached by the JD/petitioner. In the absence of any challenge to the said report, the learned trial court has rightly relied upon the same and has come to the conclusion that there is a clear-cut violation of the judgment as passed by the learned Civil Judge (Senior Division), Palampur dated 1st November, 2008.

25. As far as the contention of learned counsel for the petitioner that in the previous round of litigation, Local Commissioner was appointed and once the demarcation was carried out, therefore, no reliance can be placed upon the report of the retired Tehsildar, AW-2 Lachhman Dass.

26. To his submission, it is a case of the present respondent/decree holder that the JD started interfering in the possession of the present respondent in the month of May 2016. It is case of the respondent/decree holder that on 10th May 2016, the JD had taken forcible possession on the part of the suit land, meaning thereby the cause of action arose to the decree holder in 2016, that is, one year after the passing of the

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order dated 17.04.2015, whereby the application filed by the decree holder under the similar provisions of law came to be dismissed. On the fresh cause of action, the application has been filed by the decree holder, and on the strength of the report of AW-2, Lachhman Dass, the decree holder has been able to establish and prove that there an encroachment has been made by the judgment debtor over the suit property and this is a clear-cut violation of the judgment as passed by the learned trial court dated 1st November, 2008.

27. In the considered opinion of this Court, the learned trial court has appreciated the point in controversy after discussing the oral as well as documentary evidence placed on record. As such, there is no infirmity, illegality or jurisdictional error in the impugned order as passed by the learned Senior Civil Judge, Palampur.

28. The Hon'ble Apex Court has repeatedly held that in order to maintain its majesty, the order of the Courts has to be strictly followed and implemented. Once a judgment and decree has been passed by the competent court of law, the JD/petitioner cannot be permitted to violate the same or to

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encroach the suit land in violation of the same. The decree of injunction stood affirmed by the learned First Appellate Court, therefore, in all eventuality, the said decree is binding on the right, title or interest of both the parties. Even otherwise, the Hon'ble Apex Court has examined the validity of the provisions of Article 227 of the Constitution of India, and it has been held that the scope of interference by the High Court while adjudicating the case under Article 227 of the Constitution of India is very limited and narrow.

29. 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.

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30. 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*

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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

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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."

31. To the similar extent, the 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

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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."

32. Learned counsel for the petitioner submits that the report of the local commissioner, which is part of the record, has not been taken into consideration by the learned trial

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court, which will demonstrate that no encroachment has been made by the JD/ petitioner. However, it is observed that since the JD encroached the suit land in 2016, after the dismissal of the earlier application; therefore, on the strength of the new demarcation report and fresh cause of action, the learned trial court has rightly passed the order.

33. Consequently, in view of the observations as made hereinabove, this Court does not see any infirmity and illegality in the impugned order and the petition being devoid of any merit, is dismissed.

34. Pending miscellaneous applications, if any, also stand disposed of.

(Romesh Verma),
Judge

27th July, 2026.
(Guleria)

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