IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 382 of 2026
Decided on 22.09.2026.

Brij Lal & another ...Petitioners.

Versus

Rakesh Kumar & others ...Respondents.

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

Whether approved for reporting?[1]

For the petitioners: Mr. Pranshul Sharma, Advocate.

For the respondents: Mr. Prashant Sharma, Advocate.

Romesh Verma, Judge (oral)

The present petition arises out of the judgment as passed by the learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. dated 3rd July, 2026, whereby the appeal filed by defendant No. 1, Rakesh Kumar, came to be allowed and the order passed by the learned Civil Judge, Court No.2, Ghumarwin, District Bilaspur, H.P. dated 15.01.2026 was set-aside, whereby the application filed by the plaintiffs/petitioners under Order 39 Rules 1 & 2 of the Code of Civil Procedure (CPC) was allowed.

2. The facts, as emerge in the present case, are that the present petitioners, Brij Lal and Gian Chand, filed a suit for permanent prohibitory injunction restraining the defendants from

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

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occupying and demolishing the old house of the plaintiffs situated over part of the abadi deh land measuring 9-15 bighas, comprised in Khasra No. 191, Khata/Khatoni No. 172/180, situated in Village Ladda, Pargana Sariun, Tehsil Ghumarwin, District Bilaspur, H.P. and further restraining the defendants from causing any damage to the house, construction, and courtyard of the plaintiffs, as shown in the photographs.

3. As per the case set up by the plaintiffs, it has been stated that defendants No. 1 and 2 are the successors-in-interest of the deceased brother of the plaintiffs, late Shri Chaman Lal, son of Shri Jiunu Ram. Land measuring 9-15 bighas comprised in Khasra No. 191, Khata/Khatoni No. 172/180, situated in Village Ladda, Pargana Sariun, Tehsil Ghumarwin, is abadi deh land as recorded in the revenue record, and the houses of the plaintiffs, defendants, and other right holders of the abadi deh are situated over the suit land since the time of their ancestors.

4. It was averred that Chaman Lal, predecessor-in-interest of defendants No. 1 and 2, got constructed a house after demolishing the old house of his share, and as such, the defendants are having a house as shown in the photographs,

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Annexures A-1 and A-2. The houses on the abadi deh are situated since the time of their ancestors, and now the defendants are encroaching over the aforesaid house of the plaintiffs, as shown in photograph A, which is a double-storeyed slate-roofed house consisting of two rooms on the ground floor and two rooms on the first floor, along with a courtyard and backyard.

5. It was further pleaded that the defendants, being headstrong persons, intend to forcibly occupy the house of the plaintiffs with malafide intention. Therefore, under such circumstances, the plaintiff/petitioner filed a suit for permanent prohibitory injunction restraining the defendants from occupying and demolishing the old house of the plaintiffs situated over the suit land measuring 9-15 bighas. In the alternative, a decree for restoration of the house/construction, as shown in photographs A and B, to its original position was also sought if the defendants demolish the aforesaid house of the plaintiffs during the pendency of the suit. Further, a decree for damages was also prayed for before the learned trial Court. Along with the suit, the plaintiffs/petitioners filed an application under Order 39 Rules 1 & 2 CPC seeking interim injunction restraining the defendants

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from occupying and demolishing the old house situated over the suit land measuring 9-15 bighas.

6. The suit filed by the plaintiffs came to be resisted by the defendants/respondents by filing a written statement raising preliminary objections with respect to maintainability, cause of action, locus standi, etc. On merits, all the averments made in the plaint were denied. It was contended in the written statement that Shri Jiunu Ram, predecessor-in-interest of the plaintiffs and the defendants, resided with late Shri Chaman Lal till his death in the old house. The old house came to the share and possession of the defendants in a family partition, and after the death of Jiunu Ram, which took place in the year 2012, it is the defendants and Shri Pyare Lal who took possession of the old house. Thereafter, Pyare Lal reconstructed a new house over part of his share in place of the old house.

7. It was asserted that Chaman Lal, father of defendants No. 1 and 2 had expired and during the lifetime of the grandfather of the defendants, the father of the defendants was serving as a Range Officer. When all the brothers were living together, the father of defendants No. 1 and 2 constructed

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houses from his personal income for Shri Brij Lal and Shri Gian Chand (plaintiffs), and they are residing in the said houses with their families, situated in the joint land inherited from Shri Jiunu Ram and Krishni Devi. The house of Gian Chand is constructed partly over the abadi deh land and partly over the joint land. The other brother, Shri Pyare Lal, has constructed his house in the abadi deh land, while Shri Ram Lok has constructed a separate house over the joint land of the parties. All these houses were constructed during the lifetime of the grandfather of defendants No. 1 and 2. After separation, plaintiff No. 1 is residing in a newly built-up house situated about 400 meters away from the suit land, and there is no possession of Brij Lal in the abadi deh land, as he constructed the house on malkiyati land after division of the suit land and settled there with his family.

8. According to the defendants, their father, along with his parents, used to reside in the old house, and he also constructed a new house attached to the old house, partly in the abadi deh land in Khasra No. 191 and partly in the joint land. In order to connect the new house of the defendants with the old structure, the defendants dismantled one wall of the new house facing towards the old house to give uniform shape to the house.

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Consequently, there is an imminent danger to the new construction of the defendants, and the plaintiffs are taking undue benefit of this situation to prejudice the rights of the defendants. It was contended that the suit and application under Order 39 Rules 1 & 2 CPC are devoid of merit and liable to be dismissed.

9. The learned trial Court, vide its order dated 15.01.2026, allowed the application filed by the plaintiffs/petitioners, directing the respondents to maintain status quo qua nature, possession, and construction over the entire suit land measuring 9-15 bighas comprised in Khasra No. 191, Khata/Khatoni No. 172/180, situated at Village Ladda, Pargana Sariun, Tehsil Ghumarwin, District Bilaspur, H.P.

10. Feeling dissatisfied, the defendants/respondents filed an appeal before the learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. The learned First Appellate Court, vide impugned judgment dated 03.07.2026, accepted the appeal and dismissed the application filed by the plaintiffs under Order 39 Rules 1 & 2 CPC.

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11. Feeling aggrieved, the petitioners/plaintiffs have approached this Court invoking the provisions of Article 227 of the Constitution of India.

12. It has been contended by Mr. Pranshul Shamra, learned counsel for the petitioners that the impugned judgment passed by the learned First Appellate Court is erroneous and liable to be set aside. He submits that the learned First Appellate Court erred in upsetting the well-reasoned order passed by the learned Trial Court. He further submits that the plaintiffs have been able to make out a prima facie case for injunction, therefore, the learned First Appellate Court has erred by dismissing the application filed by the present petitioners. He submits that after accepting the present petition, the application filed for grant of injunction deserves to be allowed.

13. On the other hand, Mr. Prashant Sharma, learned counsel for the respondents defended the impugned judgment as passed by the learned Additional District Judge. He submits that this Court will not interfere with the well-reasoned judgment passed by the learned First Appellate Court while invoking the provisions of Article 227 of the Constitution of India. He submits that the learned First Appellate Court has appreciated the point

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in controversy and has rightly passed the impugned judgment, therefore, the same does not call for any interference.

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

15. In the present case, the dispute pertains to the old house which is being claimed by the respective parties in their favour. It is the case of the plaintiffs that the defendants be restrained from demolishing the old house which is situated over the abadi deh land measuring 9.15 bighas, and in order to support and corroborate their case, the plaintiffs have placed on record copies of photographs.

16. On the other hand, the defendants have taken the plea of family partition, and as per the averments made in their written statement, it has been stated that by virtue of the family partition/family arrangement, it is the defendants who are in possession of the same. Since one wall has been dismantled, there is an imminent danger to the new structure raised by the present respondents/defendants.

17. From the perusal of the plaint placed on record (Annexure P-1), it reveals that the plaintiffs filed a suit for permanent prohibitory injunction restraining the defendants from

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demolishing their old house situated over part of the abadi deh land measuring 9.15 bighas comprised in Khasra No. 191, Khata/Khatauni No. 172/180, situated in Village Ladda, Pargana Sariun, Tehsil Ghumarwin, District Bilaspur, H.P.

18. The learned Trial Court passed an order whereby the respondents were directed to maintain status quo qua the nature and possession of the entire suit land measuring 9.15 bighas. Such an approach on the part of the learned Trial Court is totally erroneous and does not stand to the judicial scrutiny of this Court.

19. This Court is of the considered opinion that the entire suit land is a big chunk of land, and in the absence of any identification of the structure and the other part of the suit land, the plaintiffs cannot be granted the discretionary relief of injunction qua the entire suit property. The learned First Appellate Court has rightly come to the conclusion that in the absence of identification of the suit land over such a large chunk of land, the plaintiffs are not entitled to any relief.

20. The suit land is abadi deh, and in order to get the relief of injunction, the plaintiffs are required to satisfy the tripartite test viz. prima facie case, balance of convenience and

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irreparable loss. Except for the photographs (Annexures A and B), no material has been placed on record to substantiate and prove a prima facie case in their favour.

21. More so, the learned counsel for the respondents has drawn the attention of this Court to the submission made by the learned counsel for the defendants before the learned First Appellate Court that they are ready to furnish security bond to the effect that in case the suit is decreed in favour of the plaintiffs in the future, the defendants undertake to compensate the plaintiffs by payment of damages or compensation.

22. As the respondents/defendants have set up a plea of family partition, the said fact has to be proved by leading evidence, and these are triable issues which are required to be adjudicated by the learned Trial Court.

23. The fact that which party is in possession of the old house and remaining land is not clear from the available record as both the parties have made claims as per their choice. Which part of the suit land is in occupation/possession of the parties comprising of total land measuring 9.15 bighas is to be determined on the basis of independent evidence to be led by the parties except photographs. There is nothing on record to

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prove that it is the plaintiffs/ petitioners who have got prima facie case in their favour. They have failed to pass the triplicate test for the grant of injunction, therefore, the order of injunction passed by learned trial Court qua the entire suit land is not sustainable in the eyes of law. The First Appellate Court has appreciated the controversy in a legal and valid manner.

24. In the considered opinion of this Court, the findings returned by the learned learned First Appellate Court do not call for any interference in the absence of any description, identification, and location of the suit land. This Court finds no infirmity, illegality, or jurisdictional error in the judgment passed by the learned Additional District Judge, Ghumarwin, District Bilaspur, H.P.

25. The Hon'ble Apex Court, while dealing with the scope of interference under Article 227 of the Constitution of India, has repeatedly held that the High Court will not act as an Appellate Court. 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:-

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"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."

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 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

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> *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."*

26. 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 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*

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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 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

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> *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."*

27. Therefore, in view of the observations made here-in-above, the present petition, being devoid of any merit, deserves to be dismissed.

28. Needless to say, the observations made here-in-above are meant only for the adjudication of the present petition and 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 22, 2026
(Nisha)

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