IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 454 of 2026
Date of Decision: 09.10.2026

Shiv Kumar ...Petitioner.

Versus

Manjri Mitra & another ...Respondents.

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

For the petitioner: Mr. Nand Lal Thakur, Advocate.

For the respondents: Mr. Dikken Kumar Thakur, Advocate, for respondent No.1.

Mr. Neel Kamal Sharma, Advocate, for respondent No.2.

Romesh Verma, Judge (oral)

The instant petition has been filed assailing the order dated 27.06.2026 passed by the learned trial Court, allowing the application filed by respondent No. 2 for his impleadment under the provisions of Order I Rule 10 of the Code of Civil Procedure, 1908.

2. The facts, as emerge in the present case, are that the plaintiff/petitioner, Shiv Kumar, filed suit for declaration to the effect that the plaintiff is the absolute owner-in-possession of the estate of late Shri Subrata Dass with respect to his residential house, being Flat/House No. 2656, area measuring

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

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275 square yards, situated in a residential colony, Palam Vihar, in Village Chauma, Tehsil and District Gurgaon, Haryana on the basis of registered Will executed by late Shri Subrata Dass in his favour. It was averred in the plaint that the defendant has got no right, title, or interest of any manner, and the alleged Will claimed to have been executed in favour of the defendant dated 19th /20th December 2024 is the result of fraud and undue influence, and the same is not binding on the rights of the plaintiff.

3. It is the case of the plaintiff that the deceased, Shri Subrata Dass, died on 7th January 2025 at the Multi-Speciality Hospital, Hamirpur, at the age of 83 years. The plaintiff has averred that Subrata Dass had executed his last and final Will out of his own free will on 11th March 2015 in favour of the plaintiff, which was duly registered in the office of the Sub-Registrar, Gurgaon. On the basis of the said last and final Will, the plaintiff is the only successor to the estate of deceased Shri Subrata Dass.

4. It is further averred that after the death of late Shri Subrata Dass, the plaintiff is occupying and is in possession of the suit property, which was owned by the deceased. However,

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on the basis of the alleged Will dated 20th December 2024, the defendant started claiming that she is the owner-in-possession of the suit property and demanded the details of the Bank accounts of the deceased.

5. It is further the case of the plaintiff that the defendant procured the alleged Will by fraudulent means and falsely claimed to be the wife of deceased Shri Subrata Dass, which otherwise is totally wrong as his wife, Promila Dass, had already expired. Therefore, under such circumstances, a decree for declaration was prayed for in favour of the plaintiff and against the defendant, declaring the plaintiff as the sole legal heir of late Shri Subrata Dass on the basis of the registered Will dated 11th March 2015, along with a decree for permanent prohibitory injunction restraining the defendant, her agents, servants, and relatives, and a decree for mandatory injunction restoring the suit property to the plaintiff and for cancellation of any conveyance deed executed on the basis of the fraudulent Will dated 19th /20th December 2024.

6. The suit came to be resisted by filing comprehensive written statement by the defendant.

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7. However, it has been fairly conceded by learned counsel for the parties that during the pendency of the suit, both the parties i.e. plaintiff Shiv Kumar and defendant Smt. Manjari Mitra have almost compromised the matter inter se them.

8. Subsequent to the settlement between the parties, an application came to be filed by respondent No. 2, Shri Sanjay Dass, before the learned trial Court under the provisions of Order 1 Rule 10 of the Code of Civil Procedure for his impleadment in the present civil suit. It was contended in the application that applicant Sanjay Dass is the son of late Shri Subrata Dass and came to know about the pendency of the present suit from the pleadings of Civil Suit No. 2470-2025, titled Shiv Avtar vs. Smt. Manjir Mitra & others, pending in the Court of the learned Civil Judge (Junior Division), Gurgaon, Haryana.

9. As per the averments made in the application under Order I Rule 10(2) CPC, applicant Sanjay Dass claimed himself to be the sole surviving legal heir of late Shri Subrata Dass and entitled to his movable and immovable properties. It was asserted that being the sole legal heir, he has right, title,

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and interest in the suit property; thus, being a necessary party, he ought to be arrayed as a party-defendant in the proceedings.

10. The said application came to be resisted by the plaintiff, Shiv Kumar, stating in reply that in previous civil suit filed by the applicant, being Civil Suit No. 1101 of 2018, decided on 6th January 2024, it was held that the applicant is not the adopted son of either late Smt. Promila Dass or late Shri Subrata Dass. Therefore, once he had been held not to be the son of the deceased, he had no right, title, or interest in the present proceedings, and the application, being devoid of merit, deserves to be rejected.

11. The learned trial Court, vide its impugned order dated 27th June 2026, accepted the contentions raised by respondent No. 2 and allowed the application under Order I Rule 10 CPC.

12. Feeling dissatisfied, the plaintiff has approached this Court assailing the said order as passed by the learned trial Court.

13. It is contended by Mr. Nand Lal Thakur, learned counsel for the petitioner that the impugned order passed by

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the learned trial Court is erroneous and liable to be quashed and set aside. He submits that on the basis of the registered Will executed in the year 2015, the plaintiff is the sole legal heir of deceased Shri Subrata Dass. He further submitted that respondent No. 2 has no role to play in the present proceedings, the allegations leveled in the application are false, and he is neither a necessary nor a proper party. Therefore, application deserves to be rejected.

14. On the other hand, Mr. Neel Kamal Sharma, Advocate, contended that while exercising jurisdiction under Article 227 of the Constitution of India, this Court will not interfere with a well-reasoned order passed by the learned trial Court, which does not call for any interference.

15. The provisions of Order I Rule 10 of the Code of Civil Procedure, reads as follows:

> **"10. Suit in name of wrong plaintiff**.—
>
> (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.
>
> (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just,

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> order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.
> (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.
>
> (4) Where defendant added, plaint to be amended.––Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.
>
> (5) Subject to the provisions of the 1 [Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

16. The provisions clearly stipulate that the Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

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17. In the present case, the primary objection raised by learned counsel for the petitioner is that the civil suit filed by respondent No. 2, Sanjay Das, against Dr. Subrata Dass in the Court of the learned Civil Judge(Jr. Division), Gurgaon, came to be dismissed, holding that he is not the adopted son of Dr. Subrata Dass or Smt. Promila Dass. However, it has been fairly conceded by learned counsel for the parties that against the judgment passed by the learned Civil Judge, Gurgaon, respondent No. 2 has preferred an appeal before the Court of the learned Additional District Judge, Gurgaon, wherein the operation of the judgment dated 6th January 2024 has been stayed. Meaning thereby, the subject matter is *sub judice* before the superior appellate authority and is yet to be determined finally.

18. In the present case, the plaintiff has based his claim on the registered Will allegedly executed by late Shri Subrata Dass in his favour on 11th March 2015. On the other hand, Smt. Manjari Mitra has set up her claim on the basis of a Will allegedly executed in her favour on 20th December 2024. Now, the applicant/respondent No. 2 has set up a claim that he is the adopted son of Shri Subrata Dass and Smt. Promila Dass. The

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dispute inter se the parties is interrelated, and it cannot be said that respondent No. 2 is alien to the dispute in question.

19. Merely adding respondent No. 2 as a party-defendant will not prove his case. The plea of Will set up by the plaintiff and the defendant has to be proved by them, the parties have to establish their case on the basis of the material placed on record.

20. This Court finds merit in the submission of learned counsel for respondent No.2 that merely arraying applicant/respondent No. 2 in the civil suit causes no prejudice to the petitioner/plaintiff, rather, it will assist the Court to comprehensively determine the point in controversy for all times to come.

21. For the purpose of impleading a person as a party-defendant, two tests must be satisfied: (i) There must be a right to some relief against such party in respect of the controversy involved in the proceedings; and (ii) No effective decree can be passed in the absence of such party. In the present case, the learned trial Court has rightly concluded that the applicant-respondent is a proper party and deserves to be impleaded as party defendant. The interest of the applicant is very much

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related to the dispute in controversy which is pending before the Civil Court.

22. The parties have to prove their case by leading independent evidence and by merely adding the applicant/respondent No. 2 as the party defendant will not prove his case and the same has to be proved in accordance with law.

23. The Hon'ble Apex Court has repeatedly held that while exercising supervisory jurisdiction under Article 227 of the Constitution of India, the High Court will not interfere with the orders passed by subordinate Courts unless and until the same are found to be perverse, arbitrary, or illegal. 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*

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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 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."

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24. 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 axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.*
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> *16. Explaining the scope of jurisdiction under Article 227*, this Court in Estralla Rubber v. Dass Estate (P) Ltd.2 has observed:-
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> > *"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*

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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 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 that the application for setting aside the

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> *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."*

25. In the considered opinion of this Court, the learned trial Court has exercised its jurisdiction in a lawful manner, and the impugned order is legal, valid, sustainable, and does not call for any interference.

26. In view of the observations made here-in-above, this Court does not find any infirmity in the impugned order, and the same is affirmed. The petition, being devoid of merit, is dismissed.

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

(Romesh Verma)
Judge

October 09, 2026
(Nisha)

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