

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.665 of 2023
Reserved on: 14.05.2026
Date of Decision: 27th May, 2026.

Dhani Ram (deceased) through LRs & othersPetitioners

Versus

Ram Krishan & others ...Respondents

Coram

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

Whether approved for reporting?¹

For the Petitioners: Mr. Ashwani Sharma, Senior Advocate
with Mr. Ishan Sharma, Advocate.

For the Respondents: Mr. Rakesh Chauhan, Advocate.

Romesh Verma, Judge (oral)

The present petition has been preferred against the impugned judgment dated 22.09.2023, passed by the learned Additional District Judge, Dehra, District Kangra, H.P. in CIS Registration No. 20 of 2023, titled *Ram Krishan and others vs. Dhani Ram & others*, whereby appeal under Order 43 Rule 1(r) CPC filed by the present respondents was allowed and the Order dated 25.04.2023, passed by the learned Civil Judge, Court No. 2, Dehra, District Kangra, H.P. was set aside, whereby the application filed by the petitioners/plaintiffs under Order 39 Rules 1 & 2 CPC was allowed.

2. The brief facts of the case are that the plaintiffs/petitioners filed a suit under Sections 36, 38, and 39 of the Specific Relief Act, 1963, seeking a declaration to the following effect:

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

(a) that plaintiff no. 1 is owner to the extent of $\frac{4}{12}$ ($\frac{1}{3}$) share & defendants 1 to 3 are owner of $\frac{8}{12}$ in land bearing khata 242, khatoni 297, khasra 1393 area 00-24-35 hectares, jamabandi 2013-2014, mohal Mat umran, Sub Tehsil Pragpur, Tehsil Dehra, Distt. Kangra (HP) and revenue entries to the contrary are wrong, illegal, unauthorized, void-ab-initio & mutation no. 169 dated 16-07-1994 conferring proprietary rights upon Sh. Rulia i.e. predecessor - in - interest of defendant no 1 to 3 granting one half ownership right/ share upon him & now continuing in favour of his successors (defendants 1 to 3) are also wrong illegal and has no effect upon the $\frac{1}{3}$ rd share of plaintiff no. 1 i.e Dhani Ram. and defendants 1 to 3 have no right to get the share separated from the revenue authorities on the basis of wrong entries/shares alongwith decree for perpetual injunction restraining defendants 1 to 3 from changing the nature/user of suit land and making any alienation or create any charge/or/encumbrance of any kind upon said land till title is cleared by the court.

(b) that plaintiff no. 1 has $\frac{1}{3}$ rd share and plaintiff 2 and 3 have $\frac{1}{3}$ rd share in land bearing khata 241, khatoni 296, khasra 1382, 1385, 1389, 1395, kita 4 area 00-23-86 hectares, jamabandi 2013-2014, mahaal Mat Umraan, Sub Tehsil Pragpur, Tehsil Dehra, Distt.

Kangra (HP) and revenue entries to the contrary are wrong illegal & mutation 169 dated 16-07-1994 conferring proprietary rights qua $\frac{1}{2}$ share upon Sh. Rulia s/o Bhagtu i.e. predecessor - in - interest of defendants 1 to 3 are wrong illegal, unauthorized and all further entries in favour of defendants 1 to 3 are also wrong illegal and have no basis and defendants 1 to 3 have no rights to get the share separated from the revenue authorities on the basis of wrong entries/shares alongwith decree for perpetual injunction restraining defendants 1 to 3 from changing the nature/user of suit land and making any alienation or create any charge/or/encumbrance of any kind upon said land till title is cleared by the court.

(c) that plaintiffs are tenant-at-will to the extent of $\frac{2}{3}$ rd share (plaintiff 1 = $\frac{1}{3}$ rdShare) + (plaintiffs 2 & 3 = $\frac{1}{3}$ share) under defendant 1 to 9 and owner to the extent of $\frac{124}{432}$ ($\frac{62}{216}$) share and defendants 1 to 3 are tenant at will to the extent of $\frac{1}{3}$ rd share under defendant 4 to 9 and owner to the extent of $\frac{62}{432}$ share over land bearing khata 243, khatoni 298, khasra 1383, 1387, 1392, 1384, 1388, 1389, 1390, 1394, 1386 area 00-88-14 hectares, and revenue entries to the contrary are also wrong illegal, void ab-initio and have

no basis & confer no right upon defendants beyond their share.

(d) that land bearing Khasra No. 242, Khatauni No. 297, Khasra No. 1393, measuring 00-24-35 hectares, is wrongly recorded in the ownership of plaintiff No. 1, Dhani Ram, to the extent of 3/12 share, and defendants No. 1 to 3 as owners to the extent of 9/12 share. Plaintiff No. 1 and Sh. Khushi Ram, predecessor-in-interest of plaintiffs No. 2 and 3, are also wrongly recorded as owners to the extent of 1/2 share, and defendants No. 1 to 3 are wrongly recorded as owners to the extent of 1/2 share in Khasra Nos. 1382, 1385, 1389, and 1395.

3. Previously, the land referred to as the suit land was part and parcel of old Khasra No. 873, measuring 37 kanals and 6 marlas. While preparing the Jamabandi for the year 1971-72, the revenue officials, without any order of the Court, wrongly recorded Khushi Ram and Dhani Ram as tenants to the extent of 1/2 share and Rulia Ram as tenant to the extent of 1/2 share by tampering with the revenue record, which was done by Rulia Ram, predecessor-in-interest of defendants No. 1 to 3, in collusion with the revenue authorities. The said change is wrong, illegal, unauthorized, and without any justification. Hence, the suit.

4. The defendants No.1 to 3 filed a written statement raising various preliminary objections with respect to maintainability, locus standi, estoppel, jurisdiction, and the bar under Order 2 Rule 2

CPC. It was specifically pleaded by the defendants that the revenue entries qua the shares of defendants No.1 to 3 are correctly recorded. It was further averred that plaintiff Dhani Ram had earlier filed Civil Suit No.92/2008 before the Court of learned Civil Judge (Senior Division), Dehra, qua Khasra No.1393, which was dismissed on 01.12.2010. In the said suit, the plaintiff had the opportunity to contest the shares as recorded in the revenue record; however, he failed to do so. Therefore, the present suit is barred by the principles of res judicata and estoppel. It was further stated that the shares reflected in the revenue record have been rightly depicted and do not call for any interference.

5. As per the defendants, Khasra No.1393 was partitioned by the Assistant Collector, 1st Grade, Rakkar, on 29.11.2013, and the final order of partition was passed on 23.02.2015. Khasra No.1393 was allotted to the defendants in the said partition proceedings. Earlier, Khushi Ram, son of Gulabu and predecessor-in-interest of plaintiffs No.2 and 3, had transferred his entire share in Khasra No.1393 to defendants No.1 and 2 vide registered sale deed dated 06.02.2008. Therefore, plaintiffs No.2 and 3 have no locus standi or right to file the present suit. It has further been stated that possession of Khasra No.1393/1 was delivered to the defendants on 14.06.2018 pursuant to the order of the Assistant Collector, Rakkar, at the spot.

6. It was further submitted that the partition has rightly been effected as per the shares recorded in the revenue records. The

defendants are in possession of Khasra No.1393/1, measuring 0.18.25 hectares, where the plaintiffs, on the basis of the present civil suit, are interfering. Accordingly, the defendants have filed the counterclaim.

7. It was specifically stated that the plaintiffs were aware of the entries prevailing in the revenue record and had earlier filed a civil suit, sold their share, and were present at the time of attestation and mutation of the proprietary rights. The plaintiffs were also present at the time of settlement and consolidation proceedings, therefore, the suit is hopelessly time-barred and without any cause of action.

8. Along with the suit, the plaintiffs filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC, seeking to restrain the defendants from forcefully raising construction and changing nature of the suit land during the pendency of the suit.

9. The said application was duly contested by the non-defendants, and it was stated that the application had been filed without any basis and deserved to be rejected.

10. The learned Trial Court, vide its order dated 25.04.2023, allowed the application filed by the plaintiffs/petitioners and directed the parties to maintain status quo qua the nature, possession, and alienation of the suit land during the pendency of the suit.

11. Feeling dissatisfied, the defendants Ram Krishan and others preferred a Civil Miscellaneous Appeal under Order 43 Rule 1 read with Section 151 CPC before the Court of learned Additional

District Judge, Dehra on 09.06.2023. The learned First Appellate Court, vide its judgment dated 02.09.2023, allowed the appeal filed by the defendants and consequently dismissed the application filed by the plaintiffs for the grant of injunction.

12. Feeling dissatisfied with the impugned judgment passed by the First Appellate Court, the plaintiffs/petitioners have filed the instant petition under Article 227 of the Constitution of India.

13. It is contended by Mr. Ashwani Sharma, learned Senior Advocate, assisted by Mr. Ishan Sharma, Advocate, that the impugned judgment passed by the learned First Appellate Court is wrong and erroneous and, therefore, the same is liable to be quashed and set aside. He further submits that the learned Trial Court had rightly passed the order directing the parties to maintain status quo, and the said order has been wrongly interfered with in the first appeal. He further submits that, upon acceptance of the present petition, the impugned judgment passed by the learned First Appellate Court deserves to be quashed and set aside, and the order passed by the learned Trial Court is required to be restored.

14. On the other hand, Mr. Rakesh Chauhan, learned counsel for the respondents, has defended the impugned judgment. He submits that the learned First Appellate Court has rightly appreciated the point in controversy by allowing the appeal filed by the present respondents/defendants and dismissing the application filed by the plaintiff/petitioner. He has vehemently argued that while

invoking the provisions of Article 227 of the Constitution of India, this Court will not sit as an appellate court and will not re-weigh or re-appreciate the material which has already been considered by the courts below.

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

16. The plaintiff/petitioner filed the suit before the learned trial Court by challenging the revenue records and submitting that the shares of the parties have been wrongly incorporated in the revenue records.

17. It is the case of the plaintiff that the land comprised in Khata No.242, Khatauni No.297, Khasra No.1393 is wrongly recorded in the ownership of plaintiff No.1, Dhani Ram, to the extent of 3/12 share, and respondents No.1 to 3 as owners to the extent of 9/12 share. It is further the case of the plaintiff that applicant No.1 and Khushi Ram, predecessor-in-interest of applicants No.2 and 3, are wrongly recorded as owners to the extent of ½ share, and the respondents No.1 to 3 are also wrongly recorded as owners to the extent of ½ share in Khata No.241, Khatauni No.296, and Khasra Nos.1382, 1385, 1389, and 1395, Kitta 4, measuring 00-23-86 hectares, situated at Mohal Mat Umraan, Sub Tehsil Pragpur, Tehsil Dehra, District Kangra, H.P.

18. Further, it has been alleged that applicant No.1, Dhani Ram, and Khushi Ram are recorded as owners to the extent of 31/144 share, and respondents No.1 to 3 are recorded as owners to

the extent of 31/144 share, and that the applicants and respondents No.1 to 3 are recorded as tenants-at-will to the extent of $\frac{1}{2}$ share over Khasra Nos.1383, 1387, 1392, 1384, 1388, 1390, 1394, and 1386. Previously, the land referred to was part and parcel of old Khasra No.873, measuring 37 kanals 6 marlas, in which Khushi Ram, Dhani Ram, and Rulia were recorded as tenants-at-will to the extent of 1/3rd share each on payment of Galla Batai Tihara (1/3rd share), under which terms the said tenants were inducted as tenants by the then owners.

19. It is further the case of the plaintiff that during settlement operations, some of the land of the Khata was transferred in the name of the State of Himachal Pradesh vide Mutation No.22 dated 14.12.1982. It is further the case of the plaintiff that after consolidation, a wrong entry of tenancy continued as was in the earlier settlement, but the possession of the plaintiff remained at the spot.

20. The respondents No.1 to 3, on the basis of wrong entries, filed two partition cases qua Khasra No.1393, and in the said partition proceedings the applicants were not properly served as per law, nor was the legal procedure followed by the Revenue Court. Therefore, the suit for declaration has been filed by the plaintiff.

21. The plea of the plaintiff has been categorically and specifically denied by the defendants by stating that the revenue entries qua the shares of defendants No.1 to 3 are correctly recorded. It has been stated that plaintiff Dhani Ram had filed Civil Suit No.92/2008

before the Court of learned Civil Judge (Senior Division), Dehra, District Kangra, H.P., qua Khasra No.1393. The said suit was dismissed on 01.12.2010, and the plaintiff had the opportunity to contest the shares recorded in the revenue records. The plaintiff failed to contest the shares in those proceedings; therefore, the present suit is barred by the principles of res judicata and estoppel.

22. It is the case of the defendants that the revenue records, right from 1971–72 till date, are correct and reflect the correct position on the spot. Khasra No.1393 was partitioned by the Assistant Collector, Ist Grade, Rakkar, on 29.11.2013, and the order of partition was passed on 23.02.2015.

23. It is the case of the defendants that Khasra No.1393/1 has been allotted in partition to the defendants. Earlier, Khushi Ram, son of Gulabu and predecessor-in-interest of plaintiffs No.2 and 3, had transferred his entire share in Khasra No.1393 to defendants No.1 and 2 vide registered sale deed dated 06.02.2008. Therefore, plaintiffs No.2 and 3 have no locus standi or right to file the present suit.

24. It has further been stated that possession of Khasra No.1393/1 was given to the defendants on 14.06.2008 by the order of the Assistant Collector, Ist Grade, Rakkar, at the spot. The learned Trial Court did not appreciate the point in controversy and has wrongly passed the order directing the parties to maintain status quo. Primarily, the dispute pertains to the correction of

revenue records. Since 1970, the revenue record has been in existence.

25. The plaintiff, in the earlier civil suit filed qua Khasra No.1393, could have taken all these grounds. The earlier suit was dismissed on 01.12.2010, and now, in order to prejudice the rights of the defendants and to frustrate the partition order passed on 23.02.2015, the present suit has been filed. There are long-standing entries in favour of the defendants. Admittedly, whether the revenue entries in question are correct or incorrect has to be adjudicated by the Court after hearing both parties and considering the evidence led by them.

26. Merely, on account of the fact that challenge has been laid to the revenue entries, will not give any right to the plaintiffs to file the suit and seek an injunction. The revenue record shows that it is the defendants, who have prima facie case in their favour. The balance of convenience also lies in their favour. In case the defendants are enjoined, in that event, they shall suffer huge and irreparable loss, which cannot be compensated, in terms of monetary gains. The partition order was passed by the Assistant Collector, 1st Grade, Rakkar on 23.02.2015 and thereafter, the possession has been handed over to the defendants on 14.06.2018. Once the predecessor-in-interest of Khushi Ram has transferred his whole share qua Khasra No.1393 to defendants No.1 and 2 vide registered Sale Deed dated 06.02.2008, the suit filed by them, prima facie, is not maintainable. It has come in the

pleadings that after the partition, the suit land has been transferred or handed over to the defendants, therefore, the injunction if any passed against them shall be detrimental to their rights and interest. In the garb of the correction of the revenue records, the defendants cannot be prevented or injuncted in the present suit, more so, in view of the dismissal of the earlier suit on 01.12.2010.

27. The plaintiff has failed to pass the tripartite test of prima facie case, balance of convenience, and irreparable loss. The revenue record, prima facie, shows that the defendants have title over the suit land. The balance of convenience also lies in their favour. In the partition proceedings, the land has been allotted to them and possession thereof has been handed over to the defendants. In case they are injuncted, they shall suffer huge and irreparable loss.

28. The First Appellate Court has rightly appreciated and determined the point in controversy and rightly came to the conclusion that the plaintiffs do not have a prima facie case in their favour and has consequently dismissed the application under Order 39 Rules 1 and 2 CPC. Even otherwise, while invoking the provisions of Article 227 of the Constitution of India, the scope of interference is very limited and narrow.

29. The Hon'ble Apex Court, in its various decisions, has held that the jurisdiction conferred under Article 227 is not by any means appellate in 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. It has been held that the supervisory jurisdiction conferred on the High Court 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 errors apparent on the face of the record, much less errors of law.

30. The power under Article 227 is limited to seeing 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.

31. Hon' ble Apex Court in ***Civil Appeal No. 2226 of 2010***, titled ***State of Haryana & others vs. Manoj Kumar***, decided on 13.05.2022 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.

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.

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:-

"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 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 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 re-appreciating 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.”

32. 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 [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 rigour of the powers to be exercised under [Article 227](#) of the Constitution of India.”

33. The Court below have rightly determined the points in controversy after taking into consideration the material placed on record. The First

Appellate Court has rightly decided the case in hand, and there is no error, infirmity, or jurisdictional error in the same.

34. Consequently, the present petition, being devoid of any merit, deserves to be dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

35. Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here- in-above, which are only for the purpose of the instant petition. Records, if any, be sent back henceforth.

(Romesh Verma)
Judge

May 27th, 2026
(Nisha)