



2026:HHC:34416

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.349 of 2026

Date of decision:11.08.2026

Dinesh Kumar & another

...Petitioners

Versus

Ashish Kumar & another

...Respondents.

Coram:

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

Whether approved for reporting?¹

For the petitioners : Mr. Anu Tuli Azta, Advocate.

For the respondents : Ms. Kamlesh Kumari, Advocate, for respondent No.1.

Mr. Anil Chauhan, Advocate, for respondent No.2.

Romesh Verma, Judge (oral):

The instant petition arises out of order as passed by learned Senior Civil Judge (1), Shimla, dated 15.06.2026, whereby the application filed by the respondent for the appointment of Local Commissioner came to be allowed.

2. The facts, as emerge in the present case, are that plaintiff-respondent No.1, Ashish Kumar, filed a suit for possession and mandatory injunction against the defendants for delivering vacant possession of the land measuring 2 × 15.1 meters of Khasra No.728/530, owned and possessed by the plaintiff and encroached by

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



defendants No.1 and 2 by way of construction of a retaining wall (danga) and two-storeyed building on the suit land and for grant of mandatory injunction for delivering the vacant possession by way of demolishing the construction from the encroached land.

3. As per the case as set up by the plaintiff, he is owner-in-possession of the land bearing Khasra No. 728/530, measuring 166.23 square meters, situated at Up-Muhal Challountti, Tehsil and District Shimla, H.P. Defendants No.1 and 2 are owners-in-possession of the adjoining plot bearing Khasra No. 729/530, measuring 173.60 square meters, situated at Up-Muhal Challountti, Tehsil and District Shimla, H.P. While constructing the above structure, the boundary of the plot owned and possessed by the plaintiff was found uprooted and the defendants have encroached upon the land measuring about 2×15.1 meters, total measuring 30 square meters, out of the land of the plaintiff. As per the averments made in the plaint, defendants No.1 and 2 have not constructed the building in accordance with the site plan allegedly approved by the Municipal Corporation and the construction is not in accordance with the law, rules, and regulations. On coming to know about the encroachment, the plaintiff requested the defendants to stop the construction, however, they failed to accede to the request of the plaintiff.

4. Therefore, under such circumstances, the plaintiff filed a suit for passing decree of possession and mandatory injunction for



removing the encroachment and handing over vacant possession of the encroached area by way of demolishing the constructed area from the encroached land and further that the defendants be restrained from raising further construction on the encroached suit land and from throwing or stacking any debris or material over the same.

5. The said suit came to be contested by the present petitioners/defendants by filing written statement, raising preliminary objections with respect to maintainability, cause of action, estoppel, valuation, etc. All the averments as made in the plaint have been specifically refuted and denied by the defendants. As per the case set up by the defendants, there is construction of two-storeyed house and a retaining wall and the allegation of encroachment has been specifically denied in the written statement. It has been denied that the defendants raised any illegal construction over the suit land by encroaching upon the same.

6. During the pendency of the suit, the plaintiffs had filed an application for the appointment of local commissioner. The learned trial Court kept the said application pending and proceeded to decide matter on its own merits.

7. Present respondent No.1 filed petition under Article 227 of the Constitution of India, being CMPMO No. 616 of 2024 before this Court. Vide its judgment dated 22.10.2024, after setting aside the impugned order as passed by the learned trial Court, this Court had



granted liberty to the present respondent No.1 to file application under Order 26 Rule 9 of the CPC, if need so arises in future. Further, it was ordered that the application kept pending by the trial Court under Order 26 Rule 9 of the CPC was disposed of.

8. Thereafter, present respondent No.1 filed an application for the appointment of local commissioner for the purpose of conducting demarcation on the spot to settle the boundaries between the parties.

9. In the application, it was stated by applicant/respondent No.1 that local commissioner may be appointed to settle the boundaries by conducting the demarcation of Khasra No.728/530, measuring 166.23 square meters, which is adjacent to the land of the defendants bearing Khasra No.729/530, measuring 173.60 square meters, situated at Up-Muhal Challountti, Tehsil and District Shimla, H.P

10. The said application came to be resisted by the present petitioners by stating that earlier in 2019, prior to the institution of the suit, demarcation was conducted by the revenue authorities in the presence of present respondent No.1. Therefore, subsequent application filed with the same prayer is not maintainable.

11. The learned Senior Civil Judge, Court No.1, vide order dated 15.06.2026, allowed the application as filed by plaintiff/respondent No. 1.



12. Feeling dissatisfied, the defendants have approached this Court by filing the present petition, challenging the impugned order as passed by the learned trial Court.

13. It is contended by Ms. Anu Tuli Azta, learned counsel for the petitioners, that the impugned order as passed by the learned trial Court is erroneous and liable to be set aside. She submits that the learned trial Court has not appreciated the factual matrix of the matter and has wrongly allowed the application, which is against the basic provisions of Order 26 Rule 9 of the CPC.

14. On the other hand, the impugned order has been duly defended by Ms. Kamlesh and Mr. Anil Chauhan, learned counsels for the respondents. It is contended by Ms. Kamlesh Kumari, learned counsel, that while invoking the provisions of Article 227 of the Constitution of India, this Court will not interfere with the well reasoned order as passed by the learned trial Court.

15. I have heard the learned counsel for the parties and have also gone through the material available on record.

16. Admittedly, prior to the institution of the suit, demarcation was conducted on the application of Dr. Dinesh Kumar and Shri Rajinder Singh Basoli and during conducting the said demarcation, present respondent No.1 was also present. The record shows that the said demarcation was done on 29.08.2019. Thereafter, alleging encroachment, the plaintiff approached the civil court by filing a suit for



grant of possession and mandatory injunction on the ground that the defendants have encroached upon the land measuring 2×15.1 meters of Khasra No. 728/530, seeking decree of mandatory injunction for delivery of vacant possession by way of demolition.

17. It is also fairly conceded by the learned counsel for the parties that during the pendency of the suit, though an application for the appointment of local commissioner was filed and since the learned trial Court kept the said application pending, therefore, the present respondent No.1 had approached this Court by instituting CMPMO No.616 of 2024.

18. This Court, while accepting the said petition, vide its order dated 22.10.2024, set aside the order passed by the learned trial Court and gave liberty to respondent No.1 to file an application under Order 26 Rule 9 of the CPC, if need so arises. Further, the application which was kept pending by the learned trial Court was disposed of.

19. In the fresh application which has been filed by present respondent No.1, it has been specifically stated that after conducting the demarcation in year 2019, the present petitioners have carried out further encroachments. Therefore, in order to verify the extent of the encroachment, the appointment of local commissioner is imperative to adjudicate the controversy in hand properly and effectively.

20. It is not disputed by respondent No. 1 that demarcation was conducted in the year 2019, but it is further elaborated by the



present respondent No. 1/plaintiff that thereafter the present petitioners have further carried out encroachment, which needs to be verified on the spot by the appointment of local commissioner.

21. This Court is in agreement with the order which has been passed by the learned trial Court, whereby, after appointing local commissioner, it has been ordered that the Naib Tehsildar shall visit the spot and ascertain whether there is any encroachment upon the land bearing Khasra No.728/530, measuring 166.23 square meters, situated at Up-Muhal Challountti, Tehsil and District Shimla, H.P, and if so, its extent, nature, etc., as per the demarcation conducted in the year 2019 of the aforesaid land and the adjoining land of respondents No.1 and 2 in the land comprising Khasra No. 729/530, measuring 173.60 square meters, as per the Jamabandi for the year 2018–19, which is adjoining the land of the plaintiff situated at Up-Muhal Challountti, Tehsil and District Shimla, H.P.

22. This Court is of the considered opinion that in order to determine the point in controversy *inter se* the parties the local investigation is requisite for the purpose of elucidating the truth especially to verify and ascertain the extent of encroachment if any made by the party. The appointment of local commissioner will assist the Court to arrive at the conclusion for the adjudication of case in hand. Moreso, it is common principle of law that merely on the basis of the report submitted by local commissioner, the suit cannot be



decided. The Court has to independently analyse the oral and documentary evidence along with the report. Certainly, onus is always on the party who alleges. Therefore, the appointment of local commissioner will help the Court to determine the point in controversy. The impugned order which has been passed by the learned trial Court is legal, valid, and sustainable and it does not call for any interference. Rather, the rights of the present petitioners have been protected, as it has been observed in the impugned order that the Naib Tehsildar shall demarcate the suit land as per the demarcation conducted in the year 2019 of the suit land.

23. Even otherwise, as per the exposition of law as laid down by the Hon'ble Apex Court, the Court can appoint local commissioner by invoking the provisions of Order 26 Rule 9 of the CPC in order to resolve the issue of boundary dispute *inter se* the parties.

24. Therefore, the learned trial court, after appreciating the material placed on record, has rightly come to the conclusion, and this Court does not find any infirmity in the same.

25. 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.

26. 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.

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 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."



27. To the similar extent, the Hon'ble 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



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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.”

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

29. 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.

(Romesh Verma)
Judge

11th August, 2026.
(vt)