IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 20 of 2026
Decided on : 17.08.2026

Prem Chand ...Petitioner

Versus

Suresh Kumar ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioner : Mr. Vijay Bir Singh, Advocate.

For the respondent : Mr. Alok Ranjan, Advocate.

Virender Singh, Judge (Oral)

Petitioner-Prem Chand has filed the present petition, under Article 227 of the Constitution of India, against the order dated 27.10.2025, passed by the Court of learned Civil Judge, Indora, District Kangra, H.P., (hereinafter referred to as 'the trial Court'), in CMA No. 173/2025, in Civil Suit No. 185/2018, titled as "Prem Chand Versus Suresh Kumar.

2. By way of order dated 27.10.2025, the learned trial Court has allowed the application under Section 65 of the Indian Evidence Act, for granting permission to lead secondary evidence, for proving the Will dated 24.08.1990,

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

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executed in favour of the defendant. The said application was moved by the defendant, in the above titled suit.

3. For the sake of convenience, the parties to the present *lis,* are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

4. Brief facts, leading to the filing of the present petition, before this Court, as borne out from the record, annexed with the petition, may be summed up, as under:-

4.1 Plaintiff-Prem Chand has filed a suit for declaration to the effect that the Tabniyat Nama/Will, registered with Sub-Registrar Indora, vide document No. 101, dated 24.08.1990, in favour of the defendant, pertaining to the land, subject matter of the lis, is null and void, illegal and not binding upon the rights of the plaintiff.

5. The said suit has been contested by the defendant by filing the written statement. Thereafter, the learned trial Court has framed the issues and subsequently, the parties to the lis, were directed to adduce evidence.

6. During the pendency of the lis, before the learned trial Court, the defendant has moved an application under Section 65 of the Evidence Act, to prove

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the Will dated 24.08.1990, by way of leading the secondary evidence.

7. In the said application, a prayer has been made that another case is pending before the Hon'ble High Court Shimla and original Will dated 24.08.1990, is attached with that pending case. As such, the applicant/defendant could not produce the Will, in the present case. He has obtained the certified copy of the Will and wants to prove the same by way of secondary evidence.

8. The said application has been contested by the plaintiff by way of filing the reply, in which, the preliminary objections have been taken that the present application is not maintainable, the applicant has no locus-standi to file the present application, the applicant has no cause of action to file the present application, the respondent-plaintiff is a Mohtmim of Shiv Mandir Badukhar, along with the land, as mentioned in the head note of the main suit and looking after the management of the said Mandir, after the demise of Sh. Kanshi Gir. The plaintiff has claimed himself to be the Chela of Sh. Kanshi Gir @ Mela Ram and after his death, the plaintiff moved the application before DC Kangra at Dharamshala, on

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15.06.2017, for appointment of Mohtmim of Shiv Mandir Badhukhar. The very execution of the Will in favour of the defendant has also been disputed.

9. On the basis of above facts, a prayer has been made to dismiss the application.

10. The learned trial Court, after hearing the learned counsel for the parties, has allowed the said application, vide order dated 27.10.2025.

11. The said findings have been assailed before this Court.

12. The application under consideration was filed before the learned trial Court, when, the case was listed for DWs and the defendant has sought the indulgence of the learned trial Court to prove the Will dated 24.08.1990, by leading secondary evidence.

13. The learned trial Court, in the present case, has allowed the application by giving the opportunity to the defendant to prove the Will dated 24.08.1990, by leading the secondary evidence.

14. The learned counsel for the plaintiff, could not point out as to how the learned trial Court has wrongly exercised the jurisdiction, vested in it, while allowing the

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application, as the matter should be decided on merits, by giving the opportunity to the parties, to prove their respective claims.

15. When, the case was listed for DWs, then, the defendant sought the indulgence of the learned trial Court to prove the Will dated 24.08.1990, by way of secondary evidence. No fault can be found with the said order, by this Court, that too, while exercising the limited jurisdiction, under Article 227 of the Constitution of India.

16. Hon'ble Supreme Court in "**K. Valarmathi & Ors. Versus Kumaresan, 2025 INSC 606**" has elaborately discussed the scope of interference, under Article 227 of the Constitution of India. Relevant para 9 of the judgment, is reproduced, as under:

> *"Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise of supervisory jurisdiction under Article 227."*

17. In a recent decision in "**Nandi Infrastructure Corridor Enterprises Ltd. & Anr. Versus B. Gurappa Naidu & Ors., 2026 INSC 434**", the scope of interference has again been explained by the Hon'ble Supreme Court.

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Relevant paragraph 35 of the judgment, is reproduced, as under:-

> *"35. In short, the principles laid down in the above matters is as follows:*
> *a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, or (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.*
> *b) 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.*
> *c) 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."*

18. The grounds, upon which, the application for leading the secondary evidence has been opposed, would be considered by the learned trial Court, at the time of hearing, as the plaintiff would get an opportunity to cross-examine the witnesses, through whom, the defendants wants to prove the Will allegedly executed in his favour by the testator.

19. Considering all these facts, there is no occasion for this Court to interfere with the well reasoned order,

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passed by the learned trial Court. Consequently, the present petition is dismissed.

20. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits, of the case pending adjudication before the learned trial Court, as these observations are confined, only, to the disposal of the present petition.

21. Pending application(s), if any, shall also stand(s) disposed of.

22. The parties to the lis are directed to appear before the learned trial Court on **07.09.2026** at 10:00 am.

23. Pending application(s), if any, shall also stand(s) disposed of.

(Virender Singh)
Judge

17th August, 2026
(*Pramod Kumar*)

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