

IN THE HIGH Court OF HIMACHAL PRADESH, SHIMLA

CMPMO No.713 of 2023
Reserved on: 02.12.2025
Decided on: 29.12.2025

Baldev Raj	... Petitioner
Versus	
Ashok Kumar & others	... Respondents

Coram
Hon’ble Mr. Justice Ajay Mohan Goel, Judge.
Whether approved for reporting?¹

For the petitioner	:	Mt. Surinder Kumar Saklani, Advocate.
For the respondents	:	M/s Amit Kumar Dhumal and Parul Negi, Advocates.

Ajay Mohan Goel, Judge

By way of this petition, the petitioner has prayed for the following relief:-

“It is therefore, most respectfully prayed that the present petition may kindly be allowed and impugned orders dated 05.04.2023 and 31.10.2023 as contained in Annexure P-7 and P-10 may very kindly be quashed and set aside, in the interests of justice and fair play.”

2. The petitioner herein is aggrieved by the order passed by the learned Trial Court, in terms whereof, the application filed by the petitioner/ plaintiff under Order 39, Rules 1 and 2 of the Civil Procedure Code was dismissed and also the judgment passed by the

¹ Whether reporters of the local papers may be allowed to see the judgment?

learned Appellate Court, in terms whereof, the appeal preferred by the petitioner against the order passed by the learned Trial Court was dismissed by the learned Appellate Court.

3. I have heard learned Counsel for the parties and have also carefully gone through the order passed by the learned Trial Court as well as the judgment passed by the learned Appellate Court.

4. Record demonstrates that the petitioner has filed a Civil Suit for permanent prohibitory and mandatory injunction against the defendants. Along with the Civil Suit, an application was filed by the plaintiff, in which it was mentioned that the suit land was a valuable one, abutting the road side Barani Awal in nature and the defendants without the consent and permission of the plaintiff had started collecting and spreading bricks and stones over the suit land with the intention to raise construction thereupon and to occupy the entire share, i.e. half share in the suit land, to the exclusion of the plaintiff. In this backdrop, interim was prayed for restraining the defendants from causing any interference whatsoever qua the nature and share and from raising any construction etc. over the suit land.

5. Learned Trial Court dismissed the application by holding as under:-

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“7. In order to succeed in an application under order 39 rule 1 and 2 CPC, the applicant has to establish three basic ingredients governing the grant of relief under order 39 rule 1 and 2, that is, firstly, a Prima-facie case in his favor which means that the applicant must show that he has got certain facts in the suit which will go on to make a contestable case for him. Secondly, an Irreparable injury to the applicant which means that the loss that will be caused to the applicant upon the refusal to grant the injunction cannot be compensated in money. Thirdly, Balance of convenience in his favor, which means a comparative juridical disadvantage to a party.

8. On perusal of Jamabandi placed on record it has transpired that suit land was in the joint ownership and possession of late Sh. Sita Ram i.e. the predecessor in interest of the parties to the suit and one Sh. Het Ram. But after the death of Sh. Sita Ram his share, has been devolved in the names of applicant, respondent no.1, respondent no.3, Shakunta Devi, Nirmala Devi and Santoshi Devi. As per Jamabandi suit land is joint among all the co-shares including parties to the suit. However as per defendants, late Sh. Sita Ram during his life time constructed two houses and gave them to the parties to the suit separately. As per defendants, late Sh. Sita Ram had given the suit land to them for construction of new house as their old house was found constructed on the government land. The averments of the defendants qua receiving a notice regarding illegal construction on the

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government land has been prima facie supported by the notice place on record. The fact that late Sh. Sita Ram had divided the land/houses among parties to the suit and pursuant to such private partition, plaintiff has also been possessing a separate house has not been specifically denied by the plaintiff in his replication/rejoinder. It is pertinent to note that plaintiff/applicant simply denied the averments of the - defendants/respondents mentioned in the written statement/reply and thereby filed evasive replication/rejoinder. In these circumstances the equitable relief of temporary Injunction can not be granted in favour of the applicant when he himself possessing the separate house pursuant to a private partition. More so when applicant concealed these material facts from the court and filed evasive reply to the averments of the respondents. In the above discussed facts balance of convenience lies in favour of respondents as they will suffer irreparable loss if they are restrained from raising construction of house when they have already received a notice for vacating/dismantling their already existing house.

9. In view of the above, the present application is dismissed. The observations made herein before shall remain confined to the disposal of the application and will have no bearing whatsoever with the merits of the case. The present application stands disposed of which after needful be tagged with the main case file.”

6. Learned Appellate Court, while upholding the order

passed by the learned Trial Court dismissed, the appeal filed by the plaintiff by returning the following findings:-

“11. It is well settled that before grant of injunction, a court is required to satisfy itself that the party praying for the H.P relief has a prima facie case and balance of convenience is also in its favour. Besides above, while granting injunction, Court is also required to consider whether refusal to grant injunction would cause irreparable loss/injury to such party. While deciding balance of convenience, Court is also required to weigh protection of the plaintiff's rights against need for protection of defendant's right or infringement of right. Apart from aforesaid well established parameters/ingredients, conduct of the party seeking injunction is also of utmost importance. It is also well settled that in case, a party seeking injunction fails to make out any of the three ingredients, it would not be entitled to injunction.

12. In the present case, the applicant has placed on record jamabandi of suit land and perusal of the same shows that suit land was in joint ownership and in possession of late Sh. Sita Ram i.e. predecessor-in-interest of parties to the suit and his brother namely Het Ram. This Sita Ram has expired and after his death, his share has devolved upon applicant, respondent no.1, respondent no.3 as well as upon Shakuntla Devi, Nirmla Devi and Santoshi Devi and mutation of inheritance no.426 has been attested in their favour. Thus, as per jamabandi on record, the suit

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land is jointly owned and possessed by applicant, respondents no.1 and 3 as well as other co-sharers. Now, it is the contention of applicant that respondents without his consent and permission, started collecting bricks and stones over the suit land with intention to raise construction and threatened to occupying the suit land. It is also alleged that respondents started occupying more land than their share to effect and force partition at their own choice.

13. On the other hand, respondents admitted that suit land is joint but they denied that it is in possession of applicant. As per respondents, their predecessor-in-interest Late Sh. Sita Ram was in possession of suit land as it had fallen in his share during family partition and after that during his life time, he put the respondents in possession of suit land. As per respondents, late Sh. Sita Ram had constructed two houses in village Chandesh i.e. one on main bazaar of Chandesh and second by the side of main bazaar i.e. more than 60 meters away and during family partition, main house situated in main bazaar was given to applicant and second house was given to respondents. However, late Sh. Sita Ram had received a notice regarding illegal construction of second house over HPPWD land and to dismantle the same and resultantly late Sh. Sita Ram put respondents in possession over the suit land for the H. Construction of house. It is averred that HPPWD is forcing the respondents to vacate the house and dismantle it and thus, now respondents intend

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to raise construction over the suit land which is given to them by late Sh. Sita Ram for the construction of house.

14. The averments of the respondents qua receiving a notice from HPPWD regarding illegal construction on Government land is proved from the fact that copy of such notice is placed on record. The fact that late Sh. Sita Ram had divided the land and house among parties during his life time and pursuant to such family partition, applicant is also given separate house is not specifically denied by the applicant in his rejoinder. The applicant simply denied the averments of respondents made in the reply and remained silent about the house given to him in family partition. Apart from it, respondents intend to raise construction over the suit land as they have already received a notice to dismantle their already existing house and in these circumstances, the balance of convenience lies in favour of the respondents as they will suffer an irreparable loss if they are restrained from raising construction of the house. Moreover, the relief of injunction is equitable relief and it cannot be granted in favour of applicant as he concealed the material fact that he himself is possessing the separate house given to him pursuant to the family partition. Thus, at this stage, I am of the view that applicant does not have any prima facie case and balance of convenience also does not lies in his favour and no irreparable loss is being caused to him.

15. Thus, keeping in view the aforesaid reasoning, I hold that Id. trial court has rightly dismissed the application

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and no interference is required by this court. Hence, the impugned order passed by the learned trial court is liable to be affirmed and upheld. Accordingly, point No.1 is answered in affirmative.”

7. This Court is of the considered view that in the facts of the case, the findings returned by the Learned Trial Court as well as the learned Appellate Court do not call for any interference. Both the learned Courts below have come to the conclusion that the suit land was in joint ownership and possession of late Shri Sita Ram, i.e. the predecessor-in-interest of the parties to the suit land and his brother Het Ram. Sita Ram expired and after his death, his share devolved upon the plaintiff, defendant No.1, defendant No.3, as well as upon Shakuntala Devi, Nirmala Devi and Santoshi Devi. Mutation of inheritance was also attested in their favour. Learned Courts below have also held that in terms of Jamabandi on record, the suit land was jointly owned and possessed by the plaintiff, defendants No.1 and 3 and other co-sharers. Learned Courts further held that the contention of the plaintiff was that the defendants were collecting bricks and stones over the suit land without the consent of the plaintiff with the intention to raise construction and had threatened to occupy the suit land by occupying more land than their share. However, the defendants had denied that the plaintiff was in

possession of the suit land, though, his co-ownership was not denied. Learned Courts also held that as per the defendants, Sita Ram was in possession of the suit land and as it had fallen in his share in the family partition and during his lifetime he had put the defendants in possession of the suit land. Sita Ram had constructed two houses in village Chandesh, i.e. one in the main Bazaar of Chandesh and other by the side of main Bazar, i.e. 60 metres away and during family partition the main house situated in main Bazar was given to the plaintiff and the second house was given to the defendants. However, Sita Ram had received a Notice regarding illegal construction of the second house over HPPWD land and to dismantle the same, Sita Ram put defendants in possession upon the suit land for the construction of house. It was also the contention of the defendants that HPPWD was forcing the defendants to vacate the house and dismantle it and the defendants intended to raise construction over the suit land which was given to them by Sita Ram for the construction of the house. Learned Courts also held that the stand of the defendants of having received a Notice from HPPWD was duly proved from documents on record and the factum of Sita Ram having divided the land and house among parties during his lifetime was also not specifically denied by the defendants during the course

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of hearing. Learned Courts below also held that the defendants intended to raise construction over the suit land as they had received a Notice from HPPWD to dismantle their already existing house and in these circumstances, the balance of convenience was in favour of the defendants, who would suffer irreparable loss if they were abstained from raising construction over the house.

8. This Court is of the considered view that the view which has been taken by the learned Courts below in the peculiar facts of the case cannot be faulted with. In light of the fact that Sita Ram had constructed two houses and the Notice for dismantlement received from HPPWD was with regard to the one which was given to the defendants by Sita Ram, which stood proved on record, both the learned Courts below rightly refused injunction in favour of the plaintiff and the view taken by the learned Courts below in the facts and circumstances of the case does not call for any interference. Even otherwise, the law is well settled that ordinarily a co-sharer cannot restrain the other co-sharer from raising construction and this Court would like to refer to Para-46 of the judgment of this Court in *Ashok Kapoor Versus Murthu Devi, 2016 Volume (i), Shimla Law Cases 207* on this point, which reads as under:-

“46. On consideration of the various judicial pronouncements and on the basis of the

dominant view taken in these decisions on the rights and liabilities of the co-sharers and their rights to raise construction to the exclusion of others, the following principles can conveniently be laid down:-

(i) A co-owner is not entitled to an injunction restraining another co-owner from exceeding his rights in the common property absolutely and simply because he is a co-owner unless any act of the person in possession of the property amounts to ouster prejudicial or adverse to the interest of the co-owner out of possession.

(ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such an act, which is detrimental to his interest.

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(v) Before an injunction is issued, the plaintiff has to establish that he would sustain, by the act he complains of some injury, which materially would affect his position or his enjoyment, or an accustomed user of the joint property would be inconvenienced or interfered with.

(vi) the question as to what relief should be granted is left to the discretion of the Court in the attending circumstances on the balance of convenience and the exercise of its discretion the Court will be guided by consideration of justice, equity and good conscience.”

9. Accordingly in light of the discussion made hereinabove, as this Court does not find any merit in the present petition, the same is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

December 29, 2025
(Rishi)