

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.108 of 2025

Date of Decision : 30.12.2025

Medisys Biotech Pvt. Ltd.

..... Appellant

Versus

Ramesh Kumar

.....Respondent

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellant : Ms. Madhurika Sekhon Verma, Advocate.

For the respondent : None.

Bipin Chander Negi, Judge (oral)

The Appellant, by filing this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), has assailed the judgment and decree dated 29.06.2024, passed by learned Additional District Judge, Nahan, District Sirmaur, Himachal Pradesh, in Civil Appeal (Registration) No.20-N/13 of 2023, titled *Medisys Biotech Pvt. Ltd. vs. Ramesh Kumar*, whereby the judgment and decree dated 26.09.2019, passed by learned Senior Civil Judge, Nahan, District Sirmaur, Himachal Pradesh, in Civil Suit No.41/1 of 2016, have been affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.

3. Briefly stated, the facts of the case are that the plaintiff-appellant is the owner in possession of the suit land bearing Khata/Khatauni No. 4/5, comprising Khasra Nos. 842/228/1 and 842/228/2 (Khasra number appears to have been incorrectly mentioned as 842/828/2 in the plaint), Khas 2, measuring 3-19 bighas, situated in Mauza Moginand, Tehsil Nahan. The suit land is stated to be a built up area being factory and structure thereon and also vacant land. It was alleged that the defendant-respondent, being a complete stranger to the suit land and having no right, title or interest in the same, threatened to forcibly dispossess the plaintiff. It was further alleged that on 27.06.2016, the defendant forcibly entered the suit land and started digging the vacant land and, upon being confronted by the plaintiff's servants, became violent and threatened to take forcible possession. A decree for permanent injunction was sought to restrain the defendant from interfering with the suit land, with an alternative prayer for a decree of possession in case of forcible dispossession during the pendency of the suit.

4. The suit was contested by the defendant by filing a written statement raising preliminary objections *inter alia* regarding maintainability and suppression of facts, specifically that the suit land and the defendant's land abut each other. On merits, while the plaintiff's ownership and possession were not specifically disputed, the defendant's case was that the plaintiff had encroached upon a portion of his adjoining land and that a boundary dispute existed between the parties.

5. On the pleadings of the parties, following issues were framed by the learned Trial Court on 7.05.2018 :-

- “1. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as prayed for?...OPP
2. Whether the plaintiff in the alternative, is also entitled to a decree of possession by way of mandatory injunction, as prayed?...OPP
3. Whether the suit is not maintainable, as alleged? ...OPD
4. Whether the plaintiff has suppressed the material facts from the Court, therefore, not entitled to discretionary relief of injunction, as alleged?...OPD
5. Whether there is a boundary dispute and the plaintiff has encroached upon the land of defendant and the dispute can be settled by carrying out demarcation of suit property, as alleged?...OPD
6. Relief.”

6. The plaintiff examined two witnesses and exhibited documents, including the Jamabandi and a Board resolution. The defendant did not lead any evidence and was proceeded against *ex parte*. During proceedings, an application by the defendant for appointment of a Local Commissioner was allowed. The report of the Local Commissioner dated 26.04.2017 was accepted by the Trial Court. Vide judgment and decree dated 26.09.2019, the learned Trial Court decided issues Nos. 1 to 3 in the negative and issues Nos. 4 & 5 in the affirmative, thereby dismissing the suit.

7. Aggrieved by this, the plaintiff preferred the first appeal. The appellant contended before the First Appellate Court that the Trial Court had failed to properly appreciate the oral and documentary evidence on record, had erroneously relied upon the report of the Local Commissioner,

and had incorrectly decided the issues, particularly by holding that there was a boundary dispute and that material facts were suppressed, despite the defendant having failed to substantiate his claims through evidence. It was argued that the dismissal of the suit was unsustainable in law. However, the First Appellate Court, upon reconsideration, dismissed the appeal and affirmed the judgment and decree of the Trial Court. Hence, the present second appeal.

8. Heard Counsels for the parties and perused the impugned judgments.

9. The core dispute in the present suit relates to the application filed by the defendant under Order 26 Rule 9 of the Code of Civil Procedure, seeking demarcation in the Trial Court, to which the plaintiff had given no objection.

10. Consequently, the Trial Court had allowed the said application. A Local Commissioner was appointed, who visited the spot and submitted a report dated 26.04.2017. This report conclusively found that the plaintiff had encroached upon the land of the defendant to the extent of 0-2 bighas in Khasra No. 220/2/1. Both the parties filed objections of general nature to this report which were duly considered by the Trial Court and held to be strictly in accordance with the High Court Rules and Orders and Chapter X of H.P Land Records Manual.

11. The plaintiff, despite having filed objections to this report on 16.05.2017, led its evidence subsequently by examining two witnesses on 27.02.2019. Significantly, neither witness stated anything against the

contents or findings of the demarcation report, nor did the plaintiff choose to summon the Local Commissioner for cross-examination. The plaintiff's evidence, therefore, remained wholly silent on this crucial aspect.

12. The report of the Local Commissioner, by virtue of the mandate under Order 26 Rule 10(2) of the Code of Civil Procedure, constitutes evidence in the suit and forms part of the record. The Trial Court, after due consideration, rightly dismissed the plaintiff's objections and accepted the said report. The findings in the report directly negate the plaintiff's core allegation that the defendant was interfering with the suit land. On the contrary, the evidence establishes that the interference was from the plaintiff's side, who had encroached upon the defendant's land. Consequently, the plaintiff failed to discharge the burden of proving any cause of action for the injunction sought. The mere fact that the defendant was subsequently proceeded against *ex parte* does not absolve the plaintiff of this failure, as a plaintiff's case must stand on its own merits.

13. In light of this evidence, it is clear that the plaintiff suppressed the material fact of its own encroachment from the Court. Having approached the Court with unclean hands by concealing the true nature of the dispute, which was essentially a boundary dispute precipitated by the plaintiff's own actions, the plaintiff is not entitled to the discretionary and equitable relief of injunction. The suit was, therefore, rightly found to be not maintainable on these grounds.

14. In view of the aforesaid, no question of law much-less a substantial question of law arises for consideration of the Court, therefore, the appeal is dismissed being devoid of any merit.

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

December 30, 2025 (KS)

(Bipin Chander Negi)
Judge