

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.208 of 2025
Reserved on: 25.09.2026
Date of decision: 29.09.2026

Sobha Ram ...Petitioner

Versus

Mehar Chand & others ...Respondents

Coram:

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

Whether approved for reporting?¹

For the petitioner : Mr. Mukul Sood, Advocate.

For the respondents : Mr. Sanjeev Kuthiala, Senior Advocate
with Ms. Tamanna Sharma and
Ms.Preeti Thakur, Advocates.

Romesh Verma, Judge:

The present petition has arisen out of the impugned judgment passed by the learned Additional District Judge, Kullu, dated 21.11.2024, whereby the appeal filed by the plaintiffs/respondents was allowed and the order as passed by the learned Civil Judge, Manali, District Kullu, H.P., dated 15.07.2024, was modified, whereby the learned trial Court, while adjudicating the application under Order 39 Rules 1 and 2 CPC, had passed the order of status quo.

2. The facts, as emerge in the present case, are that the plaintiffs/respondents filed a suit for permanent prohibitory injunction

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

restraining the defendant, himself, through his agents, servants and legal representatives, from raising construction over the suit land in such a manner so as to permanently block the path leading to the land of the plaintiffs, measuring 00-40-91 hectares, comprised in Khasra Nos.552, 553, 556, 557, 561, and 567, Kita 6, Khewat/Khatauni No. 349/459, as per the Jamabandi for the year 2016-17, to the extent of their respective shares, situated in Mohal Burua, Patwar Circle Burua, Tehsil Manali, District Kullu, H.P., till the same is lawfully partitioned.

3. As per the case as set up by the plaintiffs/respondents, the plaintiffs and the defendant are joint owners in possession of the suit land to the extent of their respective shares, measuring 00-40-91 hectares, which is unpartitioned. According to the plaintiffs, they are the owners in possession of the building/property situated over Khasra No. 556, Khewat/Khatauni No. 349/459 to the extent of their 4545/18180 shares, situated in Mohal Burua, Patwar Circle Burua, Tehsil Manali, District Kullu, H.P.

4. A case was projected by the plaintiffs that the suit land is joint and unpartitioned and the defendant, with a view to grab the most valuable portion of the suit land, has started collecting construction material in order to raise a permanent structure thereon by changing the nature of the suit land, without getting the same lawfully partitioned between them. As per the plaintiffs, the defendant is threatening to raise a permanent RCC structure in such a manner so as to

permanently block the only path leading to the suit land. As per the averments, the defendant, in order to raise illegal construction, has started collecting construction material and started digging the suit land, which is adjoining the road, in such a manner that the only path leading to the suit land shall be permanently blocked.

5. Therefore, it was prayed that a decree for permanent prohibitory injunction be passed in favour of the plaintiffs and against the defendant, and further a decree for mandatory injunction that in case the defendant succeeds in raising the construction of the building and obstructing the only path, the same may be demolished and restored to its original position be passed.

6. The plaintiffs, along with the suit, filed an application under Order 39 Rules 1 and 2 CPC with a prayer that the defendant be restrained from raising any construction over the suit land adjoining the main road in such a manner so as to permanently block the only path leading to the suit land, by issuing an ad-interim injunction.

7. The suit came to be resisted by the defendant by filing a detailed and comprehensive written statement. The suit as filed by the plaintiffs was resisted by raising preliminary objections with respect to maintainability, suppression of facts, cause of action, estoppel and being vexatious. On merits, all the averments made in the plaint were specifically denied and refuted. It was stated by the defendant that all the co-sharers, including the defendant, are in settled possession of

their respective shares over the suit land. As per the defendant, it is the plaintiffs who have occupied more land than their due shares, as the plaintiffs have already constructed their cottage. It was stated that the plaintiffs have constructed their cottage over Khasra No. 556 by occupying land to the extent of 8 biswas, whereas the share of the plaintiffs over Khasra No.556 is about 4 biswas.

8. It was alleged that the defendant, along with his sisters, is the owner in possession of land measuring 0-14-10 bighas in the suit land, as the shares of his sisters are also in possession of the defendant. It was submitted that there exists no path over the land where the defendant has already constructed his building. As per the defendant, there exists a path over Khasra No. 567, which is available on the spot, and the building of the defendant is far away from this path. Therefore, the allegations of the plaintiffs are false, imaginary, and incorrect. It was contended that the defendant has already raised construction over the land which has fallen to his share during a family arrangement, and no path exists or leads through the land falling to the share of the defendant.

9. Finally, it was stated that the defendant is not encroaching upon the alleged path existing over Khasra No.567, which is being used by the plaintiffs, the defendant and others on the spot without any hindrance or interference and the allegations to the contrary levelled

by the plaintiffs are wrong and emphatically denied. Therefore, the defendant prayed for the dismissal of the suit as filed by the plaintiffs.

10. The defendant also filed reply to the application filed by the plaintiffs under Order 39 Rules 1 and 2 CPC and all the allegations levelled in the application were denied. In the reply also, it was reiterated by the defendant that he is not encroaching upon the alleged path and the same exists over Khasra No.567, which is being used by the plaintiffs, the defendant and others on the spot without any hindrance or interference.

11. The learned trial Court, vide its order dated 15.07.2024, allowed the application under Order 39 Rules 1 and 2 CPC as filed by the plaintiffs/respondents and the parties were directed to maintain status quo qua the nature and possession of the path shown in the report of the Local Commissioner leading to Khasra No.556 from the main road till the disposal of the suit. It was ordered that the defendant is restrained from raising construction or changing the nature of the path existing on the suit land in any manner whatsoever till the disposal of the suit.

12. The plaintiffs were not satisfied with the order of status quo and they instituted an appeal in the Court of the learned Additional District Judge, Kullu, on 01.08.2024. The first appellate Court, vide its impugned judgment dated 21.11.2024, accepted the appeal preferred by the plaintiffs/respondents by restraining the defendant and

injunctioning him from raising any construction over the suit land till the final disposal of the suit.

13. Feeling dissatisfied, the defendant has approached this Court by invoking the provisions of Article 227 of the Constitution of India.

14. It is contended by Mr. Mukul Sood, learned counsel for the petitioner, that the impugned judgment passed by the learned Additional District Judge, Kulu, is erroneous and liable to be quashed and set aside. He submitted that the learned first appellate Court has gone beyond the pleadings placed on record by the respective parties and in a slipshod manner set aside the order of status quo, which was a well-reasoned order and in a cursory manner has injunctioned the present petitioner from raising any construction over the entire suit land. He would submit that after accepting 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 deserves to be restored.

15. On the other hand, Mr. Sanjeev Kuthiala, learned Senior Counsel, assisted by Ms. Tamanna Sharma, learned counsel, appearing for the plaintiffs/respondents, defended the impugned judgment passed by the learned first appellate Court. He would submit that there is no infirmity or illegality in the impugned judgment. He

submitted that the present petition, being devoid of any merit, deserves to be dismissed.

16. I have heard the learned counsel for the parties and have also gone through the record carefully.

17. The plaintiffs/respondents approached the learned trial Court for the grant of a decree of permanent prohibitory injunction and mandatory injunction restraining the defendant from raising construction over the suit land in such a manner so as to permanently block the path leading to the land of the plaintiffs and in case it was found that the defendant succeeded in raising construction of the building and obstructing the only path, the same may be demolished and restored to its original position by passing a decree of mandatory injunction.

18. In case the entire body of the plaint is seen, it appears that the main grievance/contention raised by the plaintiffs/respondents in the suit is that the defendant is trying to raise construction in such a manner so as to block the only path leading to the suit land permanently. Even the perusal of the application filed by the plaintiffs/respondents indicates that they had sought to injunct the defendant/present petitioner from raising any construction over the suit land adjoining the main road in such a manner so as to permanently block the only path leading to the suit land, by issuing an ad-interim injunction.

19. The sum and substance of the case of the plaintiffs/respondents is that the suit land is joint *inter se* the parties, and the defendant/petitioner, in order to grab the best and most valuable portion of the suit land, is trying to raise construction in such a manner that it shall block the only path leading to the suit land. As per the case set up by the plaintiffs/respondents, since the suit land is joint between the parties, therefore, the defendant should be enjoined from raising any construction over the suit land so as not to block the path.

20. The case as projected by the plaintiffs has been categorically denied by the defendants in their written statement. The stand as taken by the defendant is that the parties, including the plaintiffs and the defendant, are in settled possession of their respective shares over the suit land on the basis of a family arrangement. It has been contended by the defendant that the plaintiffs themselves have constructed a cottage over Khasra No. 556 by occupying land to the extent of 8 biswas, whereas the share of the plaintiffs over Khasra No. 556 is about 4 biswas. A stand has been taken by the defendant that there exists no path over the land over which the defendant has already constructed his building. As a matter of fact, there exists a path over Khasra No. 567, which is available on the spot and the building of the defendant is far away from this path on the spot. The said fact is evident from the copy of the '*aks shajra*' attached by the defendant.

21. In order to resolve the issue on the application filed by the plaintiffs/respondents, Shri Vijender Singh Chauhan, Advocate, was appointed as a Local Commissioner in order to verify the factual position. In his report, it has been stated by the Local Commissioner that a cemented path is in existence comprised in Khasra Nos. 555 and 553, which is approximately 17 metres in length, which leads to Khasra No. 556. The width of this path is somewhere about 1.5 metres and somewhere about 2 metres. As per the report, there is a three-storeyed hotel, namely Khuaab, the area of which is approximately 16 X 18 metres. There is another one-storeyed RCC building standing thereon in Khasra No. 553, the area of which is approximately 12 X 10 metres and just adjacent to that RCC building, RCC rods have been erected and in the aforesaid khasra number, there was construction material, i.e., sand, boulders and stones, but there was no construction work going on. It was found that there is no other path which leads to Khasra No. 556.

22. It is vehemently contended by the learned counsel for the petitioner/defendant that the pleadings of the parties demonstrate that the primary concern of the plaintiffs is to protect the alleged path leading to the suit land. It has been contended by Shri Mukul Sood, learned counsel for the petitioner/defendant, that the perusal of the plaint and the application under Order 39 Rules 1 and 2 CPC categorically shows that the plaintiffs/respondents sought an injunction

restraining the defendant from raising construction on the suit land in such a manner so as to permanently block the path leading to the land of the plaintiffs and in case any construction is raised, then by means of mandatory injunction, the said path should be restored by demolishing the said construction. He submitted that the learned trial Court, in a legal manner, had directed the parties to maintain status quo qua the nature and possession of the path shown in the report of the Local Commissioner leading to Khasra No. 556 from the main road. He would submit that the learned first appellate Court has disturbed the well-reasoned order passed by the learned trial Court, whereby the parties were directed to maintain status quo qua nature and possession of the path in question. However, the learned first appellate Court has passed a blanket injunction order, whereby it has enjoined the defendant/petitioner from raising any kind of construction over the entire suit land till the final disposal of the suit.

23. This Court is in agreement with the contention raised by the learned counsel for the petitioner/defendant. The grievance of the plaintiffs is to prevent the defendant from raising any kind of construction in such a manner which may be prejudicial to the right of path of the plaintiffs. The prayers made in the plaint and the application show that the plaintiff is seeking protection from the Court so that the right of the plaintiff may not be prejudiced by raising

construction over the suit land in such a manner so as to permanently block the path leading to the land of the plaintiffs.

24. Admittedly, the parties are joint owners in possession of the suit property. It has come on record that the respective parties have raised their construction over the suit land. The only concern shown by the plaintiffs that the construction of the defendant may permanently block the path leading to the land of the plaintiffs is substantiated on the strength of the report of the Local Commissioner, which shows that there exists a cemented path comprised in Khasra Nos. 555 and 553, which leads to Khasra No. 556. There is a mention in the report of the Local Commissioner that RCC rods were found erected in Khasra No. 553 and adjacent to the same, there was construction material, i.e., sand, boulders, and stones lying, but there was no construction work going on the spot. It has further been stated in the report of the Local Commissioner that no other path was found which leads to Khasra No.556.

25. Therefore, in the considered opinion of this Court, the learned trial Court was well within its rights to pass the order of status quo qua the nature and possession of the path as shown in the report of the Local Commissioner leading to Khasra No.556 from the main road till the disposal of the suit. Further, it has been rightly held by the learned trial Court that the defendant is restrained from raising construction or changing the nature of the path existing on the suit

land in any manner whatsoever. The learned first appellate Court has erred by injuncting the defendant from raising any construction over the entire suit land till the final disposal of the suit. Once the dispute only pertains to the path in question, therefore, to injunct the defendant from raising any construction in perpetuity over the entire suit land is uncalled for and not sustainable. The Court cannot go beyond the pleadings filed by the parties. The learned trial Court, in its wisdom and in a legal manner, had granted the relief which was sought by the plaintiffs from the said Court. Whatever was prayed by the plaintiffs from the learned trial Court was granted to them. However, the learned first appellate Court erred by granting a blanket injunction order restraining the defendant from raising construction over the suit land in its entirety. The impugned judgment passed by the learned first appellate Court is not sustainable in the eyes of law, and it is liable to be quashed and set aside.

26. Consequently, after setting aside the impugned judgment passed by the learned Additional District Judge, Kullu, dated 21.11.2024, the order as passed by the learned trial Court, dated 15.07.2024, is restored and the parties are directed to maintain status quo qua the nature and possession of the path leading to Khasra No. 556 from the main road, as shown in the report of the Local Commissioner, with a further direction that the defendant is restrained

from raising construction or changing the nature of the path existing on the suit land in any manner till the disposal of the suit.

27. In view of the observations made hereinabove after accepting the present petition, the impugned judgment passed by the learned Additional District Judge is quashed and set aside, and the order of the learned trial Court is restored.

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

29. Any observation made hereinabove is meant only for adjudication of the present proceedings and the same shall have no bearing on the merits of the main case.

(Romesh Verma)
Judge

29th September, 2026
(vt)