

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**RFA No.4030 of 2013****Reserved on: 24..07.2026****Date of decision: 20.08.2026****Date of uploading on website: 20.08.2026**

Bhunger Ram Bhatia

....Appellant

Versus

Jagdish and others

...Respondents

*Coram***Hon'ble Mr. Justice Sushil Kukreja, Judge**¹ *Whether approved for reporting?*

For the appellant: Mr.Raju Ram Rahi, Advocate.For the respondents: *Ex-parte*.

Sushil Kukreja, Judge

The instant appeal has been preferred by the appellant, who was plaintiff before the learned Court below (hereinafter referred to as the plaintiff) under Section 96 of the Code of Civil Procedure (CPC) against judgment and decree, dated 02.05.2013, passed in Civil Suit No.2-S/1 of 2010, by learned District Judge, Solan, District Solan, HP, with the prayer that the impugned judgment and decree be set-aside and consequently the civil suit may be decreed.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

2. The facts of the case, in brief, are that the plaintiff had filed a suit for recovery of Rs.11,00,000/-, alongwith interest against the defendants on account of the damages, alleged to have been caused by the defendant to the construction raised by him. It was averred by the plaintiff that he was a retired person from Indian Army and his elder son was also serving in the Indian Army. He was owner in possession of the land comprised in Khasra No.110, measuring 0-7 bighas to the extent of 1/10 share, situated at Mauza Kayard, Tehsil Arki, District Solan (hereinafter referred to as the suit land), which was purchased by him from one Abhi Ram, vide sale-deed dated 02.12.2002 and possession of the land was delivered to him by the vendee at the time of the execution of the sale-deed. In the month of August, 2008, in order to raise construction over the suit land, the plaintiff engaged one Shri Pawan Kumar as contractor, who started the construction at the spot. However, defendant No.1 raised objection about the leveling of the plot with the help of JCB machine because he was apprehending that due to the cutting work through JCB machine, his house might get damaged. Therefore, the JCB machine engaged by the plaintiff, remained idle at the spot for two days,

causing loss of Rs. 15,000/- to the plaintiff. The plaintiff further averred that thereafter he was forced to engage manual labour to carry out the leveling work of the plot and after leveling the plot, the retaining wall/danga and the pillars were raised and then the shuttering was affixed for laying lintel. On 23.09.2008, when he had gone to PGI, Chandigarh for his treatment, at about 5:00 PM, he received a telephonic call that the defendants had damaged/broken the RCC pillars and the shuttering with the help of crowbars and hammers, so he rushed to the spot and noticed that his entire construction was damaged by the defendants badly. Thereafter, the matter was reported to the police, but no action was taken and then he approached higher officials and consequently an FIR was registered against the defendants.

3. Due to the act and conduct of the defendants, the plaintiff had suffered damage to his under construction house, amounting to Rs.2,00,850/-. Apart from this, he had also suffered physical as well as mental agony on account of the illegal acts and designs, which was assessed in the sum of Rs.5,00,000/- and the total loss suffered by him was to the tune of Rs.11,00,000/-, i.e. Rs.2,50,000/- on account of cost of construction, Rs. 5,00,000/-on

account of mental tension and harassment and Rs. 3,00,000/- on account of loss in the business and Rs. 50,000/- on account of treatment and pursuing the complaints at various levels against the defendants. The plaintiff issued a legal notice dated 02.07.2009 to the defendants, asking them to pay the aforesaid amount, suffered by him on account of damages, mental and physical harassment caused by them, but despite having received the said legal notice, they had miserably failed to pay the same.

4. The defendants contested the suit and filed written statement, wherein they raised preliminary objections qua maintainability, cause of action, estoppel, locus-standi, limitation and suppression of material facts. On merits, it was admitted that the plaintiff was co-owner in the suit land, but denied the fact that the possession of the land was delivered to him by the previous owner at the time of execution of the sale-deed. It was also denied that in the month of August, 2008, the plaintiff had started the construction work on the spot, through contractor Pawan Kumar. It was averred that defendant No.1 had filed a suit for permanent injunction against the plaintiff and the learned Civil Judge (Jr. Division), Arki had passed status quo order qua the construction,

changing nature of the suit land on 17.09.2008, which was made absolute, vide order dated 04.10.2008. The plaintiff had violated the order passed by the Court and the suit filed by the plaintiff was a counter to the suit filed by defendant No.1.

5. The plaintiff filed replication to the written statement, wherein the averments contained in the plaint were reiterated and reasserted, after refuting the averments made in the written statement.

6. On the pleadings of the parties, the following issues were framed by the learned Trial Court on 13.08.2010:-

- “1. Whether the plaintiff is entitled for recovery of Rs.11,00,000/- (Rs. Eleven lacs only) on account of damages caused by the defendants to the property of the plaintiff and causing mental tension and physical harassment, as prayed for? ...OPP.***
- 2. Whether the suit is not maintainable as the plaintiff has got no cause of action and locus standi to file the suit? ...OPD***
- 3. Whether the suit is barred by limitation? ..OPD***
- 4. Relief.”***

7. After hearing the learned counsel for the parties and examining the records, the learned Trial Court dismissed the suit filed by the plaintiff. Hence, the instant appeal preferred by the appellant-plaintiff.

8. I have heard learned counsel for the appellant-plaintiff and have also carefully gone through the records.

9. Learned counsel for the appellant contended that it has been duly proved on record that the defendants had damaged the construction of the appellant/plaintiff, thereby causing damage to the tune of Rs.11,00,000/- but despite that the learned Trial Court has not appreciated the evidence in its right perspective, which has materially prejudiced the case of the appellant/plaintiff as such the impugned judgment and decree passed by the learned Trial Court deserves to be set aside.

10. I have closely scrutinized the entire evidence on record. In support of his case, the plaintiff examined PW-1 HC Rajesh Pal, who has proved on record copy of FIR Ext. PW1/A. While appearing in the witness-box as PW-2, Plaintiff-Bhungar Ram tendered in evidence his affidavit Ext. PW2/A, wherein he reiterated and reasserted almost all the averments made in the plaint. He also produced on record copy of legal notice Ext. PW2/B, postal receipts Ext. PW2/C, Ext. PW2/D, UPC Ext. PW2/E, copy of *Jamabandi* for the year 2003-04 Ext. PW2/F. PW-3 Ram Pal, who was an Architect, deposed that he had assessed the

damage suffered by the plaintiff and produced on record his report Ext. PW3/A as well as spot map Ext. PW3/B. PW-4 Pawan Kumar tendered in evidence his affidavit Ext. PW4/A, wherein he stated that he was engaged by the plaintiff as contractor to raise construction of his house. He raised pillars and also laid shuttering for putting the lintel, however, on 23.09.2008, at about 5 PM, the defendants visited the spot and asked him as well as his labourers to stop the construction work and thereafter they pelted stones, so they ran away from the spot. Thereafter, the defendants damaged the shuttering and caused damage to the construction raised by the plaintiff. PW-5 Ravinder Kumar tendered in evidence his affidavit Ext. PW5/A, in which, he stated that on 23.09.2008, while he was waiting for a bus on the road, he heard some noise, coming from the plot of the plaintiff and thereafter when he went to the spot, he saw that the defendants were abusing labourers, who were carrying out the construction work at the spot. The defendants pelted stones upon them, so they ran away from the spot. Thereafter, when he returned in the evening, he found the shuttering and pillars damaged at the spot.

11. The perusal of copy of *Jamabandi* for the year 2003-04

Ext.PW2/F shows that the plaintiff has been recorded as owner in joint possession of the land comprised in Khasra No.110, measuring 0-7 bigha alongwith other co-sharers. Both the plaintiff and defendant No.1 are having $1/6^{\text{th}}$ share each in the aforesaid land. Though the case of the plaintiff is that previous owner was in specific portion of the aforesaid land, of which, the possession was delivered to him by vendee at the time of execution of the sale-deed, but there is no material on record to justify such plea of the plaintiff. The plaintiff has also placed on record copy of sale-deed Mark P-2, perusal of which shows that he had purchased $1/6^{\text{th}}$ share from one Abhi Ram. However, the sale-deed has not been accompanied by any *Tatima* showing that any specific portion of the aforesaid land had been sold to the plaintiff by the vendee. Even the plaintiff has failed to examine Abhi Ram, who had sold $1/6^{\text{th}}$ share in the aforesaid land to him, in order to prove that he was in possession of the specific portion of his share in the suit land, of which, the possession was delivered to the plaintiff by him at the time of execution of the sale-deed. Therefore, the plea of the plaintiff that he was delivered possession of the specific portion of the suit land by the vendee and he continued to be in actual

possession of such land, cannot be accepted. In view of the material placed on record, the plaintiff can be held to be joint owner in possession of the suit land alongwith defendant No.1 and others.

12. The plaintiff has also moved an application for partition before A.C. 1st Grade, Arki against other co-sharers qua the land in dispute and in pursuance of such application, mode of partition Ext. DY was prepared, whereas according to statement Ext. DY1, the possession of the share of plaintiff, measuring one biswa in the suit land was delivered to the plaintiff on 23.10.2010 in pursuance of the order of partition passed by A.C. 1st Grade, Arki. Therefore, the plea of the plaintiff that he was in exclusive possession of his share in the land in dispute since its purchase from Abhi Ram cannot be accepted as the sale-deed was executed on 02.12.2002, whereas the partition proceedings qua the suit land were initiated by the plaintiff in the year 2008 and he was delivered possession of his share in the suit land on 23.10.2010.

13. The case of the plaintiff is that in the month of August, 2008, he started construction work over the land so purchased by him and raised the retaining wall/danga alongwith pillars at the

spot and thereafter shuttering had been installed for lying the lintel, but on 23.09.2008, the defendants, in his absence, had damaged/ broken the RCC pillars and shuttering with the help of crowbar and hammers. The matter was reported to the police and later on the damage was got assessed, which was to the tune of Rs.2,00,850/- and, thus, he had suffered damage amounting to Rs.11,00,000/-, which was caused by the defendants.

14. The plaintiff himself appeared in the witness-box as PW-2 and tendered in evidence his affidavit Ext.PW2/A, however, perusal of his statement reveals that he was not present at the spot when the damage to pillars/shuttering was allegedly caused by the defendants. The plaintiff has also examined PW-4-Pawan Kumar, who also tendered in evidence his affidavit Ex.PW4/A, wherein he stated that he was engaged as contractor by the plaintiff to raise construction over the land and he raised pillars and also laid shuttering for the lintel, but on 23.09.2008 at about 5 PM, the defendants came to the spot and started abusing him as well as the labourers and asked them to stop the construction work. Thereafter, the defendants pelted stones, so they ran away from the spot and then the defendants started breaking/damaging

the pillars with the help of crowbar and hammers. However, perusal of the statement of PW-4 reveals that the statement of this witness has not been corroborated/supported by any other material on record and the plaintiff did not examine any other witness in whose presence the damage to the pillars/shuttering was caused by the defendants. The case of the plaintiff is that the labourers were also present at the spot alongwith contractor Pawan Kumar (PW4) when the alleged occurrence had taken place, however, none of labourers had been examined by the plaintiff to support the testimony of PW-4. Perusal of statement of PW-4 also reveals that all the defendants had damaged the RCC pillars/shuttering of the plaintiff with the help of crowbar/hammers, whereas, accordingly to the plaintiff, he was told by the contractor that only two of the defendants had caused damage to the pillars /shuttering while the other defendants remained there to protect them. It is the case of the plaintiff that he lodged a report before the police immediately after the occurrence, which fact is not disputed by the defendants. The defendants have placed on record the copy of judgment dated 28.12.2010, Ext.DY-2, passed the learned Special Judge, Solan, which was instituted at the

instance of the plaintiff qua the alleged occurrence. On perusal of the aforesaid copy of judgment Ext. DY2, it is clear that only defendants Jagdish Chand and Naresh Kumar were impleaded as accused persons in the said case, which means that as per version reported by the plaintiff to the police immediately after the occurrence, only two of the defendants have caused damage to the pillars /shuttering, which fact is also stated by plaintiff in his cross-examination. However, PW-4 stated that all the defendants had caused damage to the pillars/shuttering at the spot and they were six in number, who had been impleaded in the present case by the plaintiff including Jagdish Chand and Naresh Kumar. Therefore, in view of such discrepancy in the testimonies of PW-2 and PW-4, no reliance can be placed upon the testimony of PW-4 that all the defendants had caused damage to the shuttering as well as RCC pillars, raised by the plaintiff at the spot.

15. The plaintiff also examined PW-5, Ravinder Kumar, who deposed that on 23.09.2008 he was waiting for a bus on the road when he heard some noise coming from the plot of the plaintiff and thereafter, he went to the spot and saw that the defendants were abusing labourers, who were carrying on the

construction work at the spot. They pelted stones upon them, so some labourers ran away from the spot and thereafter he left the spot and went to Bhararighat and when he returned back in the evening, he found the shuttering and pillars damaged at the spot. Thus perusal of the testimony of this witness reveals that he was not present at the spot when the damage to pillars/shuttering was allegedly caused by the defendants.

16. As already observed, it is an admitted fact that the matter was reported to the police by the plaintiff immediately after the occurrence and in order to prove the said fact, the plaintiff examined PW-1 HC Rajesh Kumar, who proved on record FIR Ex.PW1/A. Perusal of FIR shows that only defendants Jagdish Chand and Naresh Kumar had caused damage to the pillars and shuttering with the help of crowbar and hammers, whereas other defendants were standing on the road and they pelted stones upon the labourers. Hence, FIR Ext. PW1/A contradicts the statement of PW-4 that all the defendants had caused damage to the RCC pillars /shuttering of the plaintiff on 23.09.2008. It is also an admitted fact that the charge-sheet was filed against defendants No.1 & 2, Jagdish Chand and Naresh Kumar before

the learned Special Judge, Solan and they were tried for committing the offences punishable under Sections 336, 447, 427, 506, read with Section 34, IPC and Section 3(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, in pursuance of the report lodged by the plaintiff. However, both the aforesaid defendants were acquitted by the learned Special Judge, Solan. Hence, no credence can be attached to the FIR Ext.PW1/A. From the perusal of the material available on record, it is clear that the plaintiff has failed to establish his case that the defendants have caused damage to his property.

17. Thus, in view of what has been discussed hereinabove, the learned Trial Court has not committed any illegality in dismissing the suit of the plaintiff and the instant appeal, which sans merits, deserves dismissal and is accordingly dismissed.

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

August 20, 2026
(V.Himalvi)

(Sushil Kukreja)
Judge