

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.254 of 2026

Reserved on: 15.09.2026

Date of decision: 23. 09.2026

Seema Rani ...Petitioner

Versus

Renu Bala ...Respondent

Coram:

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

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Ashok Sood, Senior Advocate with
Mr. Rajat Rana, Advocate.

For the respondent : Mr.Mohit Jaitak, Advocate (through
V.C.).

Romesh Verma, Judge:

The instant petition arises out of the judgment passed by the learned District Judge, Una, dated 02.02.2026, whereby the appeal filed by the present petitioner/plaintiff was ordered to be dismissed and the order passed by the learned Civil Judge, Court No. 3, Una, District Una, H.P., dated 22.02.2025, was affirmed, whereby the application filed by the plaintiff under the provisions of Order 39 Rules 1 & 2 CPC was ordered to be dismissed.

2. The facts, as emerge in the present case, are that the plaintiff/petitioner filed a suit under Sections 34 & 38 of the Specific

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

Relief Act for issuance of permanent prohibitory injunction restraining the defendant/respondent from changing the existing nature and character by raising any sort of construction or otherwise taking exclusive possession by ousting the plaintiff/petitioner from the suit land measuring 02-29-15 hectares. As per the averments made in the plaint, the suit land measuring 02-29-15 hectares is jointly owned and possessed by the parties along with other co-sharers. The suit land is a very valuable piece of land situated in the vicinity of the village abadi and, due to its prime location, its value runs into lacs of rupees per marla and the same is fit for raising residential abadi as well as shops.

3. As per the plaintiff, the suit land is still in joint ownership and possession and has not been partitioned amongst the co-sharers by metes and bounds through the revenue agency and, as such, no co-owner has any exclusive right to change the nature and character of the suit land by way of raising any sort of construction or in any manner without the consent of other co-sharers or without partition. The defendant/respondent is a very clever and influential person of the locality who, having no care for law, started threatening in the last one week to change the existing nature and character by raising construction over a specific portion of the suit land more than her entitlement, and further to oust the plaintiff from joint possession as owner. The defendant, in order to pursue her

illegal and mala fide designs, has collected huge raw material and also engaged labourers at the spot. It was averred in the plaint that the defendant has already filed an application for partition of the suit land before the Assistant Collector 2nd Grade, but still the defendant is raising construction over the suit land, which shows the mala fide intention on her part.

4. Therefore, under such circumstances, the plaintiff filed a suit for permanent prohibitory injunction restraining the defendant from changing the existing nature and character by raising any sort of construction or taking exclusive possession by ousting the plaintiff from the land measuring 02-29-15 hectares of the suit land. In the alternative, it was prayed that decree for mandatory injunction directing the defendant to remove any superstructure, if so raised by the defendant forcibly during the pendency of the suit, be passed in favour of the plaintiff and against the defendant.

5. The plaintiff, along with the suit, filed an application under Order 39 Rules 1 and 2 of CPC for grant of interim injunction restraining the defendant from changing the existing nature and character by raising any kind of construction or taking exclusive possession by ousting the applicant from the suit land.

6. The defendant/respondent contested the suit by filing comprehensive written statement by raising preliminary objections with respect to maintainability, cause of action, locus standi, etc. On

merits, it was contended that the suit land stood partitioned by the Assistant Collector 2nd Grade, Ispur, vide order dated 06.12.2024 and a copy of the same was attached with the written statement. It was submitted that the suit land has been partitioned by the revenue authority, therefore, it is incorrect that the suit land is jointly owned and possessed by the parties. The allegation of interference and threatening the plaintiff was denied in the defence raised by the defendant. It was prayed that suit as filed is without any substance and merit. Therefore, the same is liable to be rejected.

7. To the similar extent, the application filed by the plaintiff was contested by the defendant by denying all the contentions and allegations as made in the application and prayed for dismissal of the same.

8. In the replication to the written statement filed by the plaintiff, it was contended that it is wrong to say that the suit land has been partitioned, as the plaintiff has filed an appeal against the partition order dated 06.12.2024 before the learned Sub-Divisional Collector, Haroli. It was averred by the plaintiff that the defendant, under the garb and colour of the order dated 06.12.2024, is trying to take forcible possession of the best and the most valuable piece of land in order to take undue benefit and deprive the plaintiff of her valuable rights over the suit land.

9. The learned trial Court, vide order dated 22.02.2025, dismissed the application filed by the plaintiff/petitioner.

10. Feeling aggrieved, the plaintiff approached the Court of the learned District Judge by filing an appeal under Order 43, Rule 1 of the CPC on 11.03.2025.

11. The learned District Judge, vide impugned judgment dated 02.02.2026, affirmed the findings of the learned trial Court and dismissed the appeal preferred by the present petitioner/plaintiff.

12. Still feeling dissatisfied with the judgment passed by the learned District Judge, the plaintiff has approached this Court by invoking the provisions of Article 227 of the Constitution of India.

13. It is contended by Mr.Ashok Sood, learned Senior Counsel, assisted by Mr.Rajat Rana, learned counsel, for the petitioner that the impugned judgment and order as passed by the learned Courts below are erroneous and liable to be quashed and set aside. He submitted that the Courts below have not taken into consideration the fact that since the land is joint *inter se* the parties, nobody can be permitted to raise construction over the joint land to the detriment of the other co-sharers. It has further been contended that after accepting this petition, the application filed by the plaintiff/petitioner under Order 39 Rules 1 and 2 CPC deserves to be allowed.

14. On the other hand, Mr. Mohit Jaitak, learned counsel for the respondent (through V.C.), has defended the impugned judgment and order as passed by the learned Courts below. He submitted that the Courts below have passed a well-reasoned judgment and order, and this Court will not interfere with the well-reasoned orders passed by the learned Courts below. He further submitted that while invoking powers under Article 227 of the Constitution of India, the scope of interference by this Court is very limited and narrow; therefore, on this count, the present petition deserves to be dismissed.

15. In the present case, the plaintiff has approached the learned trial Court by filing a suit for permanent prohibitory injunction restraining the defendant from changing the existing nature and character by raising any kind of construction or taking exclusive possession by ousting the plaintiff from the suit land. It is the case of the plaintiff that the suit land is a valuable piece of land and is still joint in ownership and possession of the co-sharers and no co-owner has any exclusive right to change the nature and character of the suit land by way of raising construction without the consent of other co-sharers or without partition. As per the plaintiff, in case the defendant succeeds in her illegal designs by raising construction, it will definitely create problems at the time of final partition.

16. The suit has been contested by the defendant on the ground that the plaintiff has not approached the Court with clean hands, as she has concealed the material fact from the Court that the suit land stood already partitioned by the Assistant Collector 2nd Grade, Ispur, vide order dated 06.12.2024. It has been stated that since the suit land is not joint between the parties on the strength of the partition order passed on 06.12.2024, the suit as well as the application is not maintainable and deserves to be rejected.

17. It is contended by the learned counsel for the respondent that the plaintiff/petitioner has concealed material facts from the Court and since the grant of an injunction is a discretionary and equitable relief, therefore, she is not entitled for the same. A person who does not approach the Court with clean hands is not entitled for any relief in any manner.

18. Learned counsel for the respondent has drawn the attention of this Court to the pleadings, wherein in para 4 of the plaint, it has been stated by the plaintiff that the defendant has already filed an application for partition of the suit land before the Assistant Collector 2nd Grade, Ispur, but still the defendant is raising construction over the suit land, which shows mala fide intention on her part.

19. The case file shows that the plaint was filed by the plaintiff on 31.12.2025, whereas the order of partition by the

Assistant Collector 2nd Grade, Ispur, was passed on 06.12.2024, which was prior to the filing of the present suit.

20. The Hon'ble Apex Court, in its various decisions, has repeatedly held that the grant of the relief of injunction is an equitable and discretionary relief and in case a party does not approach the Court with clean hands, the said party is not entitled to any relief.

21. In the present case also, the plaintiff has suppressed material facts from the learned trial Court as well as the learned first appellate Court. Though it has been stated in the suit that the defendant has initiated partition proceedings, but it was concealed that the partition proceedings stood already finalized by the Assistant Collector 2nd Grade. Though an appeal was preferred by the plaintiff before the Sub-Divisional Collector and the said appeal was decided by the Collector on 29.08.2026 remanding the matter back to the Assistant Collector 2nd Grade with a direction to re-partition the land in accordance with the mode of partition and law, but the fact remains that there is suppression and concealment of material facts which goes to the root of the case.

22. In the present case since the plaintiff has suppressed and concealed the material facts from the Court, therefore, she is not entitled for equitable and discretionary relief.

23. Hon'ble Apex Court has laid down the parameters for grant of interim injunction. In **Gujarat Bottling Co. Ltd. and others vs. Coca Cola Co. and others, (1995)5 SCC 545**, the Hon'ble Apex Court has held as under:-

“43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been

prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies. [see:Wander Ltd.& Anr. v,. Antox India P. Ltd., 1990 (supp) SCC 727 at pp. 731-32]. In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

44 to 46 XXXXXXXXXXXXXXXX

47. *In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.”*

24. Similarly, the Hon’ble Apex Court in **Seema Arshad Zaheer and Ors. vs. Municipal Corpn. of Greater Mumbai and others, (2006) 5 SCC 282** has held as under:-

“30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

31. It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in [M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu](#) [1999 (6) SCC 464] made in a different context :

"This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles."

32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in

interfering in the matter and vacating the temporary injunction granted by the trial court.”

25. A perusal of the judgments shows that the conduct of the party is very material while granting or declining the interim injunction. It has been laid down that the Court has to look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. It was laid down that since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. It has further been held that these considerations will arise not only in respect of the person who seeks an order of temporary injunction but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.

26. As per the case set up by the plaintiff, the suit land is joint *inter se* the parties; therefore, the defendant cannot be permitted to raise construction without the consent of other co-sharers or to raise construction over the best and most valuable portion of the suit land. The pleadings of the plaintiff/petitioner do not reveal or indicate which portion is the most valuable and best

portion of the suit land or over which portion of the suit land the respondent/defendant is raising construction.

27. Further, the plaintiff/petitioner has not been able to make out a case that in case any construction is raised by the defendant, the same shall amount to an ouster of the plaintiff from the suit land and it shall be prejudicial to her rights.

28. The principle regarding raising construction without the prior consent of co-sharers has been settled by this Court in ***Ashok Kapoor vs. Murtu Devi, 2016 (1) Shim. LC 207***. As per the mandate of the law laid down by this Court, a co-owner has an interest in the whole property and also in every parcel of the same. The possession of joint property by one co-owner is, in the eyes of law, possession of all, even if all but one are actually out of possession. As per the said judgment, every co-owner has a right to use the joint property in a husband like manner, not inconsistent with the similar rights of the other co-owners.

29. A mere construction over a larger portion or even over an entire joint property does not necessarily amount to ouster, as the possession of one is deemed to be on behalf of all. It has been held that the remedy of a co-owner not in possession or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment.

30. The sum and substance of the aforesaid judgment, as rendered by this Court, is that a mere occupation of a larger portion or even of the entire joint property does not necessarily amount to ouster, as the possession of one is deemed to be on behalf of all.

31. In the present case also, the plaintiff has failed to establish or show that in case any construction is raised by the defendant, the rights of the plaintiff shall be prejudiced and the same shall amount to ouster or that the said construction will be detrimental to the rights of the plaintiff.

32. This Court, in ***CMPMO No.492 of 2015, titled Kalawati vs. Natar Singh and others***, decided on 11.03.2016, has held that while considering an application for injunction, it is well settled that the courts must pass an order thereupon having regard to prima facie case, balance of convenience, and irreparable loss. It has been laid down that a co-owner is not entitled to an injunction restraining another co-owner from exceeding their rights in the common property absolutely and simply because they are co-owners, unless any act of the person in possession of the property amounts to ouster, prejudice, or is adverse to the interest of the co-owner out of possession. As per the judgment mere raising of construction or making improvements in the common property does not amount to ouster. 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. But in the present case, the said parameters, as laid down by this Court, have not been met by the plaintiff.

33. The plaintiff, in order to obtain the relief of injunction, has to pass the tripartite test of prima facie case, balance of convenience and irreparable loss. The mere fact that the parties are co-owners and joint owners is not the sole criteria for granting or refusing an injunction. The conduct of the parties also plays an important role in such cases. The plaintiff's conduct has to be free from blame so as to enable the Court to conclude that the plaintiff has approached the Court with clean hands.

34. In the case in hand, it is apparent on the face of the record that the plaintiff has concealed the material fact from the Court that, on the date when the suit was instituted, the Assistant Collector 2nd Grade had already passed the order for partitioning of the suit land. Though the said order was assailed before the Collector, who, after accepting the appeal, remanded the matter back to the Court of the Assistant Collector 2nd Grade, the fact remains that a crucial and important aspect of the case was concealed and suppressed by the plaintiff, as a result of which she is not entitled for the grant of discretionary relief of injunction.

35. This Court, in **CMPMO No.392 of 2025**, titled **Ram Singh vs. Varinder Kumar & others**, decided on 13.03.2026, has held that a co-sharer cannot be restrained from raising construction over joint land unless it is shown that such an act would constitute prejudice and the mere raising of construction does not amount to prejudice as per the mandate of the law. The Court has held as follows:

“19. Similar is the judgment in **Raj Kumar versus Rakesh Kumar 2022 2 Shim LC 1083** wherein it was observed:

“5(a) It is not in dispute that the plaintiff had already raised construction over the suit land alleged by him to be the joint land of the parties along with other co-sharers. This fact was not disclosed by the plaintiff in the manner it ought to have been stated in the plaint. The plaintiff in a round about manner averred that the defendant was trying to block the air and light of the house of the plaintiff existing over the suit land. Prima facie observation of both the learned courts below that the plaintiff had himself raised construction on the best and most valuable portion of the suit land also assumes significance. It is well settled that when a person seeks equity, he must come with clean hands.

5(b) It is admitted fact that Sh. Kartar Chand brother of the petitioner/plaintiff and one of the co-sharer had also raised construction over the suit land in the year 2010. It is not the case of the petitioner/plaintiff that he had objected to the construction work done by his brother over the suit land or that the plaintiff had instituted any civil suit for restraining his brother from raising construction over the suit land. It is apparent that the petitioner/plaintiff has selectively chosen the respondent/defendant for filing the suit

for injunction. At this stage, it will be relevant to notice the following references:-

In (2010) 3 Shimla L.C. 205, titled Payar Singh Vs. Narayan Dass and others, the respondents pleaded themselves to be in settled separate possession of joint land in family partition over which they were raising construction. They also took up a stand that the petitioner had also constructed his house over the land in his possession. The Court upheld the contentions of the respondents. The following observations made in the judgment are material:

“12. The respondents in the written statement have specifically pleaded that parties are in separate possession under the family arrangement. The petitioner has also constructed his house on the joint land. It is not the stand of the petitioner that respondents are raising construction in an area which is more than their share. The case of the respondents is that the petitioner has constructed his house on a better portion of the land. The under-construction house of the respondents is away from National Highway 21 whereas the house of the petitioner abuts N. H.21. The respondents have placed on record on the file of revision photographs construction of an under- construction house of the respondents. The photographs indicate the sufficient gap between the already constructed house of the petitioner and the under-construction house of the respondents over which even a slab has been placed. It is the case of the respondents in the written statement that they are in separate possession of the land in the family arrangement. This fact has not been denied by filing replication. The respondents are claiming possession over the

*suit land under family arrangement i.e. with the consent of the petitioner over which they are raising construction. The respondents have thus established a prima facie case, balance of convenience, and irreparable loss in their favour. In these circumstances, no fault can be found with the impugned judgment. In revision, the scope is limited as held in The **Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another Vs. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad, AIR 1973 SC 76**. The suit is for permanent prohibitory and mandatory injunction. The rights of the parties will be decided in the suit. It has not been established that the view taken by the learned District Judge does not emerge from the material on record.”*

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*In a judgment dated 03.09.2021, delivered in **CMPMO No. 555 of 2018, Ajay Kumar Vs. Ishwar Dutt**, it was held that when a co-sharer himself raises a construction over the joint land when a co-sharer does not object to the raising of construction over the joint land by some other co-owners, then, he cannot seek to restrain one specific co-owner from raising construction over part of the suit land, more so, when the construction being raised by that particular co-owner is over a portion, which, as per the revenue record, is in his possession along with others and when the plaintiff has not been shown in possession of this specific portion of land.*

*Placing reliance upon various authorities, defendants in **CMPMO No. 77 of 2021, titled Smt. Vyasa Devi Vs. Harish Kumar** were permitted to undertake construction inter-alia on the ground that*

the plaintiff had also carried out construction on the joint land. Material observations made by the Court on facts are as under:-

“10. The facts involved in the case have been narrated by me hereinabove and the same are not being repeated for the sake of brevity. It is not in dispute that the parties are co- sharers of the suit land but the petitioners herein are recorded to be in possession of the portion of the suit land in issue along with other co-sharers. It is further not in dispute that the respondents herein are not recorded to be in possession of the suit land. It is also not in dispute that the respondents herein have also carried out construction activities by raising constructions over the joint land, as is evident from the record. In these circumstances, this Court is of the considered view that the petitioners herein, who besides being the co-owners of the suit land are also recorded to be in possession thereof, cannot be estopped from raising construction pending the adjudication of the civil suit. It is settled law that injunction cannot be granted against a co-sharer and further as the respondents herein themselves have constructed their houses over the joint suit land, in these circumstances, they cannot be permitted to restrain other co-sharers, i.e. present petitioners, from doing so. The construction, which is being carried out by the petitioners, however obviously shall be subject to the final adjudication of the suit as also partition proceedings, if any, and if the area upon which construction being carried out by the present petitioners ultimately falls in the share of the plaintiffs in partition proceedings, then, of course, consequences will ensue. However, this does not mean that till the suit land is partitioned, the

petitioners herein should be restrained from raising construction over the parcel of the suit land in their possession.”

20. The same is the position in the present case. After raising the construction, the plaintiff/petitioner filed the suit in order to deprive the defendants/respondents from utilizing the suit land. There is a specific averment in the written statement that the defendants/respondents want to raise construction within their share over the suit land. Therefore, the impugned order passed by the learned appellate Court, is legal, valid and sustainable. The mere fact that the land is joint and that the defendants/respondents are raising construction, will not entitle the plaintiff/petitioner to get the relief of injunction as rightly held by learned first appellate Court after relying upon the judgment of this Court in case titled as **Ashok Kapoor vs. Murtu Devi, 2016(1) Shim. L.C. 207.**

21. This Court in **RSA No.253 of 2025, titled Baldev Singh vs. Dayal Singh & Anr.** decided on 6th March, 2026, has reiterated the said principle and come to the conclusion that merely on the basis of raising construction by one party does not infer that the same is prejudicial to the other party. In the present case, the plaintiff/petitioner has not been able to establish that, if the construction is raised, in what manner the said construction would be detrimental to his rights. In order to get equitable relief, the plaintiff is required to establish his case beyond reasonable doubt. Merely stating that the land in question is joint and that the defendants/respondents are raising construction to his disadvantage, does not prove his case in any manner. Though, it is the case of the plaintiff that the suit land is joint between the parties, but he has failed to establish how and in what manner the construction, if any, raised by the defendants/respondents is detrimental to his rights. Further, the plaintiff/petitioner has failed to establish by pleading that the act of raising construction, if any, by the defendants/respondents, amounts to his ouster and the same

is prejudicial or adverse to the rights of the plaintiff/petitioner. Therefore, merely on the ground that the parties are co-sharers and that the construction is being raised on the joint land does not automatically entitle the plaintiff/petitioner to the relief of injunction.

22. The judgment in Ashok Kapoor's case was followed by Hon'ble High Court in ***Piar Chand and others Versus Sandhya Devi and others 2017 (2) Shim.LC 1040*** and it was held after quoting the above para that where the plaintiff had failed to lead evidence to prove that the proposed construction of the defendants will diminish the value or utility of property or the same is detrimental to the interest of other co-owners, including the plaintiff, the suit could not have been decreed

23. *Similar is the judgment of the Hon'ble High Court in **Ramesh Kumar vs. Sheetal and others 2021(1) Shim.LC 377** wherein, it was observed:*

"17. It is quite apparent from the aforesaid exposition of law that 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. The mere making of construction or improvement in the common property does not amount to ouster rather, if by any 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. 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."

36. The learned Senior Counsel for the petitioner has also relied upon judgments passed by this Court in (i) **2011 (1) HLR 80;** (ii) **2014 (2) SLC 1003; and 2016 (1) SLC 207**, which do not help the case of the petitioner in the attending facts and circumstances of the case.

37. The learned Courts below have concurrently appreciated the point in controversy, and this Court has come to an inescapable conclusion that both Courts have rightly appreciated the point in controversy and have rightly come to the conclusion that the plaintiff has failed to make out a prima facie case for the grant of an injunction.

38. The power under Article 227 is limited to see that the Courts below function within the limits of their authority or jurisdiction. The High Court cannot interfere with the findings of fact recorded by the subordinate Court or Tribunal while exercising its jurisdiction under Article 227. The Hon'ble Apex Court has held that, over the last 50 years, it has consistently been observed that the limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with findings of fact or by setting aside the judgments of the courts below on merits.

39. Hon'ble Apex Court in **Civil Appeal No. 2226 of 2010**, titled **State of Haryana & others** vs. **Manoj Kumar**, decided on 09.03.2010 has held as follow: -

"23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of Mohd. Yunus v. Mohd. Mustaqim & Others (1983) 4 SCC 566. The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. for this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the

determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. *This court again clearly reiterated the legal position in Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.*

27. *A three-Judge Bench of this court in Rena Drego (Mrs.) v. Lalchand Soni & Others (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.*

28. *In Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.*

29. *This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit."*

40. To the similar extent, the Apex Court in **Civil Appeal No. 3072 of 2022**, titled as **Ibrat Faizan vs. Omaxe Buildhome Private Limited**, decided on 13.05.2022 has held as follows: -

“14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58 (1) (a) (iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97, which has been consistently followed by this Court (see the recent decision of this Court in the case of Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigor of the powers to be exercised under Article 227 of the Constitution of India.”

41. Therefore, in the considered opinion of this Court, there is no infirmity, illegality or perversity in the impugned judgment/order as passed by learned Courts below as they have rightly determined

and adjudicated the point in controversy and the same does not call for any interference.

42. Consequently, the present petition, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending miscellaneous application(s), if any, shall also stand disposed of.

43. 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

23rd September, 2026
(vt)