2023:HHC:14814

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 536 of 2023
Decided on : 2.11.2026

Raj Kumar …Petitioner

Versus

Mehar Chand …Respondent

Coram
The Hon'ble Mr. Justice Virender Singh, Judge.
Whether approved for reporting?[1]

For the petitioner : Mr. Hemant Kumar Vaid, Advocate.

For the respondent : Mr. K.B. Khajuria, Advocate.

Virender Singh, Judge (Oral)

Petitioner Raj Kumar has filed the present petition, under Section 115 of the Code of Civil Procedure (hereinafter referred to as 'the CPC'), which was, later on, converted into the petition, under Article 227 of the Constitution of India, against the order dated 06.01.2023, passed by the Court of learned Additional District Judge, Ghumarwin, District Bilaspur (hereinafter referred to as 'the Appellate Court') in Civil Misc. Appeal No.57 of 2022, titled as 'Raj Kumar versus Mehar Chand'.

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. By way of order dated 06.01.2023, the appeal preferred by the present petitioner, against the order dated 07.11.2022, passed by the learned Civil Judge, Court No.III, Ghumarwin, District Bilaspur (hereinafter referred to as 'the trial Court'), in CMA No.542-6 of 2022, titled as Raj Kumar versus Mehar Chand, has been ordered to be dismissed by the learned Appellate Court.

3. By way of order dated 07.11.2022, the learned trial Court has dismissed the application, filed under Order 39 Rules 1 and 2 of the CPC.

4. Parties to the *lis* are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

5. Brief facts, leading to the filing of the present petition before this Court, as emerged from the documents annexed with the petition, may be summed up, as under:

5.1. Plaintiff, Raj Kumar, has filed the suit for permanent prohibitory injunction, restraining the defendant from raising any sort of construction over the land measuring 23-19 Bigha, comprising Khasra No.42, 91/65/52, Khatauni

No.12/14, situated in village Khurari, Pargna Tiun, Tehsil Ghumarwin, District Bilaspur, H.P. (hereinafter referred to as 'the suit land').

5.2. In the said suit, the plaintiff has filed an application, under Order 39 Rules 1 and 2 of the CPC, on the ground that he, along with the respondent, and others are recorded as co-owners-in-possession of the said land. The suit land is stated to be very valuable portion of land, abutting to the link road, leading to National Highway No.103.

5.3. The suit land has not been partitioned between the parties and as such, the defendant has no right to raise construction over the valuable portion or specific portion of the suit land.

6. This application has been contested by the defendant, by admitting that the suit land is joint between the parties. However, according to him, 1/3rd share of the suit land was purchased by one Bali Ram, 1/3rd share was purchased by Shri Anant Ram and Jai Ram, and 1/3rd share was purchased by Sada Ram, vide registered sale deed dated 08.04.1960.

7. Thereafter, Jai Ram and Bali Ram entered into family settlement, whereby the suit land was given to Bali Ram and accordingly, he started cultivating and developing the suit land. He has also constructed his house and cow shed over the suit land in the year 1971.

8. The learned trial Court, after considering the said contentions, has concluded that the plaintiff is not able to make out a case, in his favour for granting the injunction and as such, the application, was dismissed on 07.11.2022.

9. Against the said order, appeal has been filed before the learned Appellate Court, where his appeal has also met with the same fate. Now, the plaintiff is before this Court, by way of the present petition.

10. Admittedly, no efforts have been made by the plaintiff to get the suit land partitioned. Meaning thereby, without taking the steps to get the suit land partitioned, he is seeking the relief of injunction, restraining the defendant from raising any sort of construction over the suit land.

11. It is not the case of the plaintiff that the alleged construction, amounts to ouster of plaintiff from the suit land. Moreover, when, a person is seeking the equitable relief of injunction, the law expects from such person to do equity, atleast, by making the efforts to get the suit land partitioned, as, defendant cannot be vexed twice, firstly; in the suit for injunction and secondly; in the partition proceedings.

12. Moreover, in revision, only jurisdictional errors can be corrected, and there is nothing on the record to demonstrate, at this stage, that the learned trial Court has committed any jurisdictional error, by dismissing the application, under Order 39 Rules 1 and 2 of CPC.

13. Considering the said fact, there is no occasion for this Court to differ with the findings recorded by the learned trial Court, as affirmed by the learned Appellate Court.

14. Consequently, the present petition is dismissed. Pending application(s), if any, shall also stand disposed of.

(Virender Singh)
Judge

November 02, 2026*(ps)*