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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 218 of 2008
Reserved on: 08.10.2026
Date of Decision: 29.10.2026

Mathra Dass & Anr ...Appellants

Versus

Sukh Dei (since deceased) through LR Ram Asra ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the Appellants : Mr. N.K. Thakur, Senior Advocate, with Mr Karan Sadyal, Advocate.

For the Respondent : Nemo

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 28.02.2008 passed by learned Additional District Judge, Una (learned Appellate Court) vide which the judgment and decree dated 21.10.2005 passed by learned Civil Judge (Junior Division), Court No. 1, Una, District Una (learned Trial Court) were set aside.

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court seeking permanent prohibitory injunction for restraining the defendants from interfering with the suit land described in the head note of the plaint, changing its nature, character or raising any construction over it. A relief of demolition was also sought in case the defendants succeed in raising any superstructure over the suit land or any part thereof. It was asserted that the suit land is owned and possessed by the plaintiff. The plaintiff has constructed an abadi on a part of the suit land, and some portion is lying vacant. The defendants have no right, title or interest in the suit land. The defendants threatened to change the nature and character of the suit land by raising construction over it. They were requested not to do so, but in vain. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objections regarding lack of maintainability and cause of action, the plaintiff being estopped from filing the present suit by his act and conduct, and the plaintiff having

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suppressed the material facts from the Court. The contents of the plaint were denied on merits. It was asserted that the defendants are owners in possession of the land located adjacent to the suit land. The plaintiff has covered the entire suit land by raising construction of the house and cowshed. No part of the suit land is lying vacant. The suit land was demarcated before filing the suit, and the plaintiff was duly satisfied with the report of the demarcation. The suit has been filed without any basis. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The learned Trial Court framed the following issues on 08.08.2002: -

(i) Whether the plaintiff is entitled to the relief of injunction as prayed for? OPP

(ii) Whether the suit is not maintainable in the present form? OPD

(iii) Whether the plaintiff is estopped by her act and conduct to file the present suit? OPD

(iv) Whether the plaintiff has suppressed true facts from the Court, if so, its effect? OPD

(v) Whether the plaintiff has no cause of action to file the present suit? OPD

(vi) Whether the defendants are entitled to special costs, if so, to what amount? OPD.

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(vii) Relief.

6. The parties were called upon to produce the evidence and the plaintiff examined Ram Asra (PW1) and Sher Singh (PW2). The defendants examined Madan Lal (DW1) and defendant No. 2 Vinod Kumar (DW2).

7. The learned Trial Court held that the plaintiff was the owner in possession of the suit land. The defendants are the owners of the adjacent land. The copy of jamabandi showed that the entire suit land was covered by the construction, and the plaintiff's plea that some part of the suit land was lying vacant was not established on record. The plaintiff had failed to prove any overt act on the part of the defendants, and she was not entitled to the relief of permanent prohibitory injunction. Hence, the learned Trial Court answered issue No. 1 in the negative, issue Nos. 2, 3 and 5 in the affirmative, issue Nos. 4 and 6 as not pressed and dismissed the suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal which was decided by the learned Additional District Judge, Una, H.P. (learned Appellate Court). The learned Appellate Court held that the plaintiff is the owner in possession of the suit land. The defendants

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admitted the ownership and possession of the plaintiff over the suit land. The defendants relied upon the demarcation but failed to produce its report, and an adverse inference has to be drawn against them for withholding the report. The plaintiff is seeking to protect her lawful possession, and the learned Trial Court erred in dismissing the suit. The judgment and decree passed by the learned Trial Court was not sustainable. Hence, the appeal was allowed, and the judgment and decree passed by the learned Trial Court were set aside.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the appellants/defendants filed the present appeal which was admitted on the following substantial question of law on 01.07.2008:

(i) What is the effect of non-stepping of the plaintiff in the witness box, and in the absence of which the suit ought to have been dismissed

(ii) Whether without proving any overt act of interference by the defendants/appellants, the plaintiff can legally claim the discretionary and equitable relief of injunction, more particularly in the absence of the site plan to show that the defendants are threatening to interfere in her land when apparently the defendants are owners of the adjoining land?

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10. I have heard Mr N.K. Thakur, learned Senior Advocate, assisted by Mr Karan Sadiyal, learned counsel for the appellants/defendant.

11. Mr N.K. Thakur, learned Senior Advocate for the appellants/defendants, submitted that the plaintiff had failed to prove any overt act on the part of the defendants to justify the grant of injunction. The learned Appellate Court erred in setting aside the well-reasoned judgment passed by the learned Trial Court. The Power of Attorney of the plaintiff admitted in his cross-examination that the demarcation was conducted and the plea taken by the defendants that the suit land was demarcated before filing the suit and the plaintiff was satisfied with the report of the demarcation was probable. The plaintiff had not stepped into the witness box and examined her Power of Attorney. An adverse inference should have been drawn against her. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Trial Court be set aside.

12. The plaintiff did not appear before the Court despite service and could not be heard.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

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Substantial Question of Law No. 1:

14. Ram Asra (PW1), plaintiff's general power of attorney, stated that the plaintiff is the owner in possession of the suit land. Some portion of the suit land is lying vacant, and some is covered by *Abadi*. The defendants threatened to raise construction over the vacant portion of the suit land.

15. The defendant Vinod Kumar (DW2) stated in his affidavit containing examination-in-chief that the plaintiff has constructed 2 rooms and 1 cowshed on her land and has covered the whole of the land. This statement shows that the plaintiff's ownership and possession are not disputed by the defendants. The copy of jamabandi for the year (Ext.P1) also shows the plaintiff to be the owner in possession of the suit land. The entry in the copy of jamabandi carries with it a presumption of correctness and the version of the plaintiff's Power of Attorney is duly corroborated by the entry in the jamabandi. There is nothing in the cross-examination of Ram Asra that some facts are within the exclusive knowledge of the plaintiff and that her appearance before the Court was essential. It was laid down by the Hon'ble Supreme Court in ***Rattan Dev v. Pasam Devi, (2002) 7 SCC 441: 2002 SCC OnLine SC 86***, that the non-appearance of the party will become insignificant

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when there is other evidence on record. It was observed at page 443: -

> "**5.** Learned counsel for the respondent has placed reliance on ***Iswar Bhai C. Patel v. Harihar Behera [(1999) 3 SCC 457]*** wherein this Court has emphasised that withholding of the plaintiff himself from the witness box and thereby denying the defendant an opportunity for cross-examination of himself results in an adverse inference being drawn against the plaintiff. That proposition of law is undoubted. However, as we have already said, that is a fact to be kept in view and taken into consideration by the appellate court while appreciating other oral and documentary evidence available on record. Maybe, from other evidence — oral and documentary — produced by the plaintiff, or otherwise brought on record, the plaintiff has been able to discharge the onus which lay on him, and, subject to the court forming that opinion, a mere abstention of the plaintiff himself from the witness box may pale into insignificance."

16. It was laid down by the Karnataka High Court in ***Smt. Gangavva vs. Arjunsa AIR 2001 Karnataka 231*** that it is not necessary that a party should examine himself in all the cases. If some facts are in the exclusive knowledge of the party, it has to appear before the court; otherwise, it can rely upon the other evidence. It was observed:

> "It is also not necessary in law that always the party to the proceedings should examine himself. The requirement of law insists only that the party who puts forth his case should prove the material facts set up. A party without examining himself can as well establish his case, if possible, by examining the witnesses who are competent to testify. However, in cases where there is an onus placed on the party to discharge and if the facts required to be deposed are

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> necessarily to be testified by the party in person, in such a situation, such a party runs the risk of facing adverse inference for non-examination. Otherwise, it is also open for the party to give evidence through the power of attorney, and such evidence would be valid substituted evidence of the plaintiff. Ultimately, appreciation of the probative value of the evidence and competence of the person testifying is a matter that is to be tested in the course of the cross-examination."

17. This position was reiterated in ***Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., (2005) 2 SCC 217: 2004 SCC OnLine SC 1538,*** and it was held that the power of attorney can depose for the principal for the acts done by him as a power of attorney. It was observed at page 222:

> "13. Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view, the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in the exercise of the power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined."

18. It was held in ***Man Kaur v. Hartar Singh Sangha, (2010) 10 SCC 512: 2010 SCC OnLine SC 1125*** that a power of attorney can

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appear as a witness to prove the transactions carried out by him as an attorney. It was observed at page 523:

> **18.** We may now summarise for convenience the position as to who should give evidence in regard to matters involving personal knowledge:
>
> (*a*) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction, can only give formal evidence about the validity of the power of attorney and the filing of the suit.
>
> (*b*) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder *shall* be examined, if those acts and transactions have to be proved.
>
> (*c*) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which the principal alone has personal knowledge.
>
> (*d*) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in the case of principals carrying on business through authorised managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.
>
> (*e*) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney-holder.

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> (*f*) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.
>
> (*g*) Where the law requires or contemplates the plaintiff or other party to a proceeding to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is, however, a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

19. The present suit was filed based on the revenue record and the assertion made by the plaintiff that the defendants threatened to interfere with the suit land is not within the plaintiff's exclusive knowledge. Therefore, the non-appearance of the plaintiff in the witness box will not be material. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No. 2:

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20. The learned Trial Court held that the plaintiff's version that some portion of the suit land is lying vacant is falsified by the revenue entry, wherein the suit land was shown to be constructed, and no portion of the suit land was shown to be vacant. This finding is not correct because only 0-0-48 hectares were shown to be Gair Mumkin Gohran (cowshed), whereas 0-0-25 hectares were shown to be Gair Mumkin Raun, which is not a constructed area. The Gair Mumkin merely means that it is not cultivable and does not refer to the constructed portion as inferred by the learned Trial Court. Therefore, the finding recorded by the learned Trial Court that the whole of the suit land was constructed is not correct.

21. Madan Lal (DW1) stated that the plaintiff has constructed a cowshed and she has covered the whole portion of the land. The suit land was demarcated in his presence. The learned Appellate Court had rightly held that the best evidence of the demarcation was the report of demarcation, and in the absence of the report, the oral evidence is not admissible. Further, the statement of this witness that the whole portion was constructed is not supported by the revenue record, in which only some portion is shown to be constructed in the form of a cowshed.

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22. The defendants have taken a plea that the whole of the suit land was covered by the construction, which is not found to be correct as per the revenue record. Therefore, the defendants have restricted the plaintiff's ownership and possession to the constructed portion only, and this was sufficient interference with the plaintiff's right justifying the grant of injunction to her.

23. Even otherwise, the plaintiff is the owner in possession of the suit land. She apprehends the interference from the defendants, which is corroborated by the plea taken by the defendants that no portion of the suit land is lying vacant. Therefore, the plaintiff had a reasonable belief that the defendants would interfere with her ownership and possession, justifying the grant of injunction. It was laid down in ***Lakshmamma vs. M.P. Krishnappa, 1999(1) Civil Court Cases 650 (Karnataka)*** that once the plaintiff is found to be in possession, the injunction should have been issued on the complaint of interference. It was observed: -

> 3. Once the Appellate Court finds the possession is with the plaintiff, thus rendering a concurrent finding with the Trial Court, there should not be any hesitation on the part of the Appellate Court to grant an injunction. An aggrieved person comes to the Court complaining of interference by the defendant; maybe at a particular point of time the defendant has not caused interference, but once the fear stands heavily in the mind of the aggrieved person, there shall be no difficulty for the Court to grant an injunction, especially

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> when it is found that the particular person is in possession. The fact that the plaintiff is in possession of the property has not been disputed. On the other hand, the Courts below rendered a concurrent finding on such possession. It is a fit case wherein injunction ought to have been granted by the First Appellate Court.

24. Similarly, it was held in ***Shri Ram vs. Rakesh Kumar 2019(3) Civil Court Cases 787*** that the plaintiff in possession is entitled to a decree for an injunction. It was observed: -

> 9. At the outset, it needs to be observed that the suit is simpliciter for an injunction and, therefore, what is required to be seen is only whether the plaintiff is in possession of the suit land. Once it is proved that the plaintiff is in possession, then regardless of the title of the property or the capacity in which the plaintiff is holding the property, he would normally be entitled to an injunction. This decision has to be arrived at on the basis of the pleadings and evidence of the parties.

25. This position was reiterated in ***Atma Ram Vs. Onkar Singh 2018(2) H.L.J. 1620*** wherein it was held: -

> 9. At the outset, it needs to be observed that an owner of a property is entitled to enjoy and seek the protection of such enjoyment of his property, and this right can never be denied by any Court. Therefore, the third party normally has no right to interfere or claim any title over the property belonging to the real owner, save and except based on the right of an easement or by way of adverse possession etc.

26. It was submitted that the plaintiff was required to produce the site plan showing the vacant area and the area covered by the construction. This submission is not acceptable. It was laid down in ***Ghisa Ram v. Sukhi Ram, 1977 SCC OnLine P&H 139: PLR***

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(1977) 79 P&H 745 that the plaint has to accompany a copy of jamabandi in respect of a defined khasra no. and a map in case of part of khasra no. It was observed at page 747:

> **5**.....Rule 9(ii) of Chapter I-C of the Rules and Orders of the Punjab High Court, Volume I, is in the following terms: —
>
> > "Every such plaint shall be accompanied by a statement, in the prescribed form setting forth the particulars relating thereto recorded in the Settlement record and in the last Jamabandi. This statement shall be verified by a signature of the Patwari of the Circle in which the land concerned is situate. Where by reason of partition, river action or other cause, the entries in the Settlement record in the last Jamabandi do not accord, a brief explanation of the reason should be given in the column of remarks. Where the suit is for a specific plot with definite boundaries, it shall also be accompanied by a map, drawn to scale, showing clearly the specific plot claimed, or in relation to which the decree is to be made, and so such of the fields adjoining it, also drawn to scale, as may be sufficient to facilitate identification. The specific plot and adjoining fields shall be numbered in accordance with the statement, and the map shall be certified as correct by the Patwari or other person who prepared it. Where, however, the suit is for the whole of one or more Khasra numbers as shown in the Settlement map or a share in such numbers, and not for a specific portion thereof, no map will be required unless it is necessary for other reasons to show the boundaries of such Khasra numbers".
>
> A plain reading of this rule shows that the plaint shall be accompanied by a statement, in the prescribed form, setting forth particulars relating thereto recorded to the Settlement record and in the last Jamabandi, and that the statement shall be verified by a signature of the Patwari of the Circle in which the land concerned is situated. According to this rule, in order to identify the suit land, the particulars recorded in the Settlement record and in the last Jamabandi are to be

given, and where the suit is for a specific plot with definite boundaries, it shall also be accompanied by a map showing the definite boundaries. The argument of the counsel is that since the last Jamabandi did not contain Khasra number 191, this decree is inexcusable. There is no force in this argument as the land is sufficiently described in the suit. It was Khasra number 191 which was exchanged, and it was only after the Consolidation of Holdings proceeding that in lieu of this land some other land was allotted, particulars of which are given in the execution application. Hence I do not find any infringement of rule 9(ii) of Chapter 1-C of the Rules and Orders of the Punjab High Court, Volume I.

6. The learned counsel for the appellant also relied upon Order 7, of 3 of the Code of Civil Procedure, which is in the following terms:—

> "Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of Settlement or survey, the plaint shall specify such boundaries or numbers."

A reading of this rule shows that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries in a record of settlement or survey, the plaint shall specify such boundaries or numbers. As I have observed earlier, no such objection was taken in the written statement filed by the judgment-debtor in the suit. The suit land was sufficiently described, and a specific decree was passed for possession of Khasra number 191....

27. In the present case, the suit was filed regarding the whole of the Khasra number defined in the revenue record, and there was no necessity to file a site plan showing the constructed portion or the vacant portion of the land.

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28. Therefore, the learned Appellate Court had rightly granted the injunction in the plaintiff's favour, and this substantial question of law is answered accordingly.

Final Order:

29. In view of the above, the present appeal fails, and it is dismissed.

30. The present appeal stands disposed of, and so also the pending miscellaneous applications, if any.

31. The record of the learned Courts below be returned along with a copy of this judgment.

(Rakesh Kainthla)
Judge

29th October, 2026
(Nikita)