2026:HHC:46955

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 229 of 2024
Decided on : 26.10.2026

Kiran Bala ...Petitioner

Versus

Ram Pal & Ors. ...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

For the petitioner	:	Ms. Shrutika Chauhan, Advocate.
For the respondents	:	Mr. Mohit Jaitak, Advocate, (through video conferencing), for respondent No. 1.
		None for remaining respondents.

Virender Singh, Judge (Oral)

Petitioner-Kiran Bala, has filed the present petition under Article 227 of the Constitution of India, against the judgment dated 02.05.2024, passed by the Court of learned District Judge, Una, District Una, H.P. (hereinafter referred to as 'the first appellate Court'), in Civil Miscellaneous Appeal No. 26/2023, titled as "Ram Pal Vs Chanchal Kaur & Ors.".

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

2. By way of the judgment dated 02.05.2024, the learned first appellate Court has allowed the appeal filed by respondent-Ram Pal, against the order dated 01.06.2023, passed by the learned Senior Civil Judge, Una, District Una, H.P. (hereinafter referred to as 'the trial Court'), in CMA No. 113-VI of 2023, which has been filed in Civil Suit No. 62 of 2023, titled as "Chanchal Kaur & Ors. Versus Ram Pal".

3. Vide order dated 01.06.2023, the learned trial Court has allowed the application under Order 39 Rules 1 and 2 CPC, by restraining the present petitioner from raising construction, or in any other manner changing the nature of the suit land, during the pendency of the main suit.

4. For the sake of convenience, the parties to the present *lis,* are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

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

5.1 Plaintiff Chanchal Kaur and others have filed a suit for permanent injunction restraining the defendant from changing the existing nature and character by raising any sort of construction or in any other manner and further from ousting the plaintiffs from joint possession over the land measuring 00-04-08 hects., comprised in Khewat No. 59 min, Khatauni No. 211 min, Khasra No. 945 (hereinafter referred to as 'the suit land'), as entered in the Jamabandi for the year 2016-2017, situated at Mohal Nichla Badehar, Sub Tehsil Mehatpur, Basdehra, District Una, H.P., which according to the plaintiffs, is jointly owned and possessed by the parties to the lis, along with other co-sharers, till the final partition. In the alternative, suit for mandatory injunction, directing the defendant to remove any super structure, if so raised by the defendant forcibly during the pendency of the suit.

5.2 The suit has been filed on the ground that the suit land is joint between the parties to the lis, as well as, the other co-sharers and the same has not been partitioned yet, by metes and bounds and apprehending the raising of construction over the suit land.

6. When put to notice, the suit has been contested by the defendant, by taking preliminary objections that the suit is not maintainable; the plaintiffs have no cause of action; the plaintiffs have no locus standi; the plaintiffs have not approached the Court with clean hands; the plaintiffs are estopped from filing the suit on account of their act and conduct; and suit is not properly valued for the purpose of Court fees and jurisdiction.

6.1 On merits, the joint ownership of the land has not been disputed. However, according to the defendant, the suit land is Gair Mumkin Abadi and in physical possession of the answering defendant and he has been recorded as co-owner. However, they are in separate and distinct possession of different parcel of the joint land well within their shares.

7. Along with the suit, application, under Order 39 Rules 1 and 2 CPC, has been filed, for restraining the defendant from raising any construction or changing the nature of the suit land, during the pendency of the suit.

8. The learned trial Court, vide order dated 01.06.2023, has allowed the application.

9. Against the said order, defendant Ram Pal, has filed the appeal before the learned first appellate Court, which was allowed, vide order dated 02.05.2024, and the order passed by the learned trial Court has been set aside, by dismissing the application, under Order 39 Rules 1 and 2 CPC.

10. Aggrieved from the said order, plaintiff No. 4, is before this Court, by way of the present petition.

11. Heard.

12. Admittedly, the parties to the lis are co-sharers and the plaintiffs have sought the relief of permanent prohibitory injunction restraining the defendant from raising any sort of construction or changing the nature of the suit land, as well as, ousting the plaintiffs from the joint possession over the suit land, till the final partition of the suit land.

13. Admittedly, none of the parties has filed the application for partition of the suit land, nor, a prayer for partition has been made in the present suit. Meaning thereby, the co-sharers are seeking the relief against the co-sharer, to restrain him permanently from raising any

sort of construction, till the final partition, whereas, they have not made any efforts to get the suit land partitioned.

14. Relief of injunction is equitable relief and a person, who is seeking the equitable relief of injunction, must do equity. If the final relief as claimed in the suit is given to the plaintiffs, then the same amounts to ouster of the defendant from the suit land, as admittedly, the plaintiffs have not taken any steps to get the suit land partitioned. In other words, it can be said that defendant cannot be vexed twice in the litigation, first in the suit for permanent prohibitory injunction and secondly in the partition proceedings. The learned first appellate Court has rightly interfered with the order passed by learned trial Court, as the learned trial Court has exceeded its jurisdiction by restraining a co-owner from raising of any sort of construction over the suit land, without considering the fact that the persons, who are seeking the relief of injunction, have not taken any steps to get the suit land partitioned.

15. Considering the said fact, there is no occasion for this Court to interfere with the well reasoned judgment

passed by the learned first appellate Court. Consequently, the present petition is dismissed.

16. Any of the observations, made hereinabove, shall not be taken, as an expression of opinion, on the merits of the case, as these observations are confined, only to the disposal of the present petition.

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

(Virender Singh)
Judge

26th October, 2026
(*Pramod Kumar*)