IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 763 of 2019
Decided on : 27.10.2026

Asha Rani ...Petitioner

Versus

Ramesh Kumar ...Respondent

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

Whether approved for reporting?[1]

For the petitioner : Mr. N.K. Thakur, Senior Advocate, with Mr. Divya Raj Singh, Advocate.

For the respondent : Ms. Shrutika Chauhan, Advocate.

Virender Singh, Judge (Oral)

Petitioner-Asha Rani, is before this Court, under Article 227 of the Constitution of India, against the judgment dated 30.09.2019, passed by the Court of learned Additional District Judge (1) Una, District Una, H.P. (hereinafter referred to as 'the learned First Appellate Court').

2. By way of judgment dated 30.09.2019, the appeal preferred by the present petitioner-Asha Rani, has been ordered to be dismissed. Petitioner-Asha Rani has preferred the said appeal against the order dated

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

28.01.2019, passed by the Court of learned Senior Civil Judge, Court No. 1 Amb, District Una, H.P. (hereinafter referred to as 'the learned trial Court), in CMA No. 110-VI/2015, which has been filed in Civil Suit, titled as "Asha Rani Versus Ramesh Kumar".

3. 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.

4. As per the admitted case of the parties, plaintiff-Asha Rani has filed a suit for permanent prohibitory injunction restraining the defendant from changing the nature, raising any sort of construction, over the subject matter of the lis, which has duly been explained in the head-note of the plaint, till the final partition of the same. It is not in dispute in this case that the said suit has been filed on the ground that the suit land is jointly owned and possessed by the parties to the lis, along with other co-sharers.

5. Along with the said suit, application under Order 39 Rules 1 and 2 CPC, has been filed.

6. When put to notice, the suit, as well as, the application has been contested by the defendant, mainly on the ground that the suit land has been partitioned.

7. The application under Order 39 Rules 1 and 2 CPC, has been dismissed by the learned trial Court, on 28.01.2019.

8. Perusal of the order dated 28.01.2019, shows that the application under Order 39 Rules 1 and 2 CPC, has been dismissed mainly on the ground that the suit land has been partitioned and as per allotment after Dakhal Khangi, the suit land ceases to be joint between the parties.

9. Perusal of the record also demonstrates that the Collector Sub Division, Gagret, District Una, H.P., vide order dated 24.02.2025, has allowed the appeal preferred by plaintiff-Asha Rani, Ashish Kumar and Rohit Kumar, by passing the following order:-

> *"Accordingly, keeping in mind what emerges from the facts enumerated hereinabove is that the appeal is accepted, and the case is being remanded back, the AC 1st Grade is again directed to start denovo partition proceedings in the matter as per mutual compromise order of the Collector Amb, dated 12.12.2012 and finalize it. That the value and quality should be taken into account at the time of partition. In the present case there is a big difference in value in different parts and both parties are entitled to a share in both type of land. The order dated 17.11.2021 passed by AC 1st Grade Ghanari, District*

> *Una, H.P. is set aside. Lower court record be returned to the forthwith concerned. File after due completion be consigned to GRR."*

10. From the above admitted fact, at this stage, it can be said that the suit land is still joint between the parties and the steps have been taken by the parties to get the suit land partitioned. In such situation, it cannot be said that the suit filed by the plaintiff is merely for permanent prohibitory injunction, without taking any steps to get the suit land partitioned. During the pendency of the lis, the subject matter is required to be preserved, otherwise the very purpose of filing the suit, will be frustrated.

11. Consequently, the present appeal is accordingly disposed of, by directing the parties to the lis to maintain status quo as it exists today, qua construction over the subject matter of the lis, during the pendency of the suit, or the partition, which ever is earlier. Considering the submission as made by the learned counsel for the parties that the lis is pending before the learned trial Court, from the year 2015, the learned trial Court is requested to decide the lis, on or before 31.03.2027.

12. 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.

13. Petition is accordingly, disposed of. Pending application(s), if any, shall also stand disposed of.

CMP (M) No. 1159 of 2026

14. The application is disposed of, being not pressed, at this stage.

(Virender Singh)
Judge

27th October, 2026
(*Pramod Kumar*)