IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.557 of 2026
Reserved on: 16.10. 2026
Date of decision: 28.10.2026

Malkiat Singh & another ...Petitioners

Versus

Multan Singh ...Respondent

Coram:

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

Whether approved for reporting?[1]

For the petitioners : Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate.

For the respondent : Mr. Ajay Kumar, Senior Advocate with Mr. Vinay Thakur, Advocate.

Romesh Verma, Judge:

The instant petition arises out of judgment dated 07.08.2026 as passed by learned Additional District Judge, Amb, District Una, H.P., whereby the appeal filed by the plaintiff-respondent was allowed and the parties were directed to maintain status quo from raising any construction, changing the nature, character till the final disposal of the main suit or until partition, whichever is earlier, over the suit land.

2. The facts, as emerge in the present case, are that the plaintiff-respondent, Shri Multan Singh, filed a suit for issuance of permanent prohibitory injunction restraining the defendants, their

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

family members, agents and servants from raising any sort of construction, changing the nature, taking forcible exclusive possession over the suit land measuring 0-04-47 hectares, comprised in khewat No.34 min, khatauni No.74 min, khasra number 2686, kita 1, situated in revenue village Ghangret, sub-tehsil Bharwain, Tehsil Amb, District Una, H.P.

3. As per the case set up by the plaintiff, the suit land situated in revenue village Ghangret, sub-tehsil Bharwain, Tehsil Amb, is jointly owned and possessed by the parties along with the other co-sharers. It has been stated that the suit land is very valuable piece of land and until and unless the suit land is finally partitioned by the competent authority, none of the co-sharers has any right to raise further construction, change the nature or take forcible possession of suit land as per their own choice. The defendants, who are very clever, headstrong and shrewd persons, have no regard for law and are threatening to raise forcible construction of a boundary wall, change the nature, and take forcible exclusive possession without the consent of the plaintiff, though they have got no right to do so till the final partition.

4. Therefore, under such circumstances, the plaintiff prayed for a decree of permanent prohibitory injunction restraining the defendants from raising any construction, changing the nature, and taking forcible exclusive possession over the suit land measuring 0-04-

47 hectares, comprised in khewat number 34 min, khatauni number 74 min, khasra number 2686, kita 1, situated in revenue village Ghangret, sub-tehsil Bharwain, Tehsil Amb, district Una, till final partition takes place.

5. The suit as filed by the respondent-plaintiff came to be resisted by filing comprehensive written statement by the defendants. A defence was raised by the defendants that they are co-sharers in the suit land having joint possession over the same, and that the plaintiff is not in exclusive possession over any part of the suit land. It was contended that the suit as filed is malicious, false and fabricated and that an injunction against a co-sharer is not maintainable without specific pleadings, which are totally missing in the present case. A co-sharer is entitled to use joint property to the extent of their share. It was further contended in the written statement that the plaintiff has not approached the court with clean hands and has suppressed material facts. As per the jamabandi of the suit land, the total area under khasra No. 2686 is 23 marlas. According to the defendants, the plaintiff has got a very meager share in the suit land that is less than one marla, but surprisingly has occupied joint holding of approximately 6.25 marlas in order to grab the suit land and prejudice the rights of the defendants.

6. It was submitted by the defendants that after having demolished their ancestral home with the consent of the plaintiff, the

family has been put in a position of extreme vulnerability. It was stated that the plaintiff himself is in unauthorized exclusive possession of land far in excess of his actual share and is enjoying almost the entire valuable frontage of the suit property measuring 90 feet frontage, whereas the defendants are left with only 9 feet frontage. It was reiterated that the defendants have only demolished their own old, dilapidated ancestral structure and constructed a new residential house on the exact same location, site, footprint and spot where the previous ancestral house stood for more than 100 years. No new land has been encroached, no valuable portion has been picked and it does not cause any hindrance, damage, encroachment, obstruction or alteration to the peaceful portion, path or common usage of any other co-sharer. The defendants prayed for the dismissal of the suit filed by the plaintiff.

7. The plaintiff-respondent along with the suit filed an application under Order 39 Rules 1 and 2 of CPC seeking an injunction against the defendants from raising any sort of construction, changing the nature and taking forcible exclusive possession according to their own choice over the valuable portion of the land measuring 0-04-47 hectares, comprised in khewat No. 34 min, khatauni No.74 min, khasra No.2686, situated in revenue village Ghanagret, sub-tehsil Bharwain, Tehsil Amb, District Una, H.P., till final decision of the main suit.

8. The application was resisted by the present defendants/petitioners by refuting all the averments made in the application.

9. The learned trial Court vide its order dated 09.06.2026 dismissed the application filed by the plaintiff-respondent.

10. Feeling dissatisfied, plaintiff Multan Singh preferred an appeal in the court of learned Additional District Judge, Amb, District Una, H.P. on 12.06.2026. The learned First Appellate Court vide its impugned judgment dated 07.08.2026 accepted the appeal filed by the plaintiff and directed the parties to maintain status quo from raising any construction, changing the nature and character, till the final disposal of the main suit or until partition, whichever is earlier over the suit land bearing khasra No.2686, kita 1, khewat No.34 min, khatauni No.74 min, as per latest jamabandi for the year 2020-2021, Tehsil Amb, District Una, H.P.

11. Feeling aggrieved, the defendants/petitioners have approached this Court by instituting the present petition under Article 227 of the Constitution of India.

12. It is contended by Mr. Ajay Sharma, learned senior counsel, assisted by Shri Atharv Sharma learned counsel, for the petitioners/defendants, that the impugned judgment passed by learned First Appellate Court is erroneous and liable to be quashed and set aside. He submitted that learned First Appellate Court, while reversing

the well-reasoned order passed by the learned trial Court, did not take into consideration the material facts, as a result of which the impugned judgment passed is not sustainable and deserves to be quashed and set aside. He submitted that after accepting the present petition, the application filed by the respondent/plaintiff under Order 39 Rules 1 and 2 of the CPC deserves to be rejected.

13. On the other hand, Mr. Ajay Kumar, learned senior counsel, assisted by Mr.Vinay Thakur, learned counsel for the respondent/plaintiff, defended the impugned judgment passed by the learned Additional District Judge. It is contended by Mr. Ajay Kumar, learned senior counsel that the judgment passed by the learned Additional District Judge is legal, valid and sustainable and does not call for any interference in any manner. He submitted that the present petition, being devoid of any merit, deserves to be rejected.

14. I have heard the learned counsel for the parties and have also gone through the record carefully.

15. In the present case, the plaintiff-respondent approached the learned trial Court by filing a suit for permanent injunction restraining the defendants, their family members, agents and servants from raising any sort of construction, changing the nature and taking forcible exclusive possession over the suit land in any manner. As per the plaintiff, the suit land is jointly owned and possessed by the parties along with other co-sharers and until and unless the suit land is finally

partitioned amongst the parties, none of the co-sharers has any right to raise further construction and change the nature of the suit land in any manner. As per the allegations levelled by the plaintiff-respondent, the defendants are forcibly trying to raise construction of a boundary wall, changing the nature and taking forcible exclusive possession according to their own choice and when requested not to do so, they threatened the plaintiff with dire consequences.

16. In the written statement, the defendants have refuted the allegations made by the plaintiff in the plaint. It is the case of the defendants that every co-sharer has a right to use joint property. The defendants have only demolished their own old, dilapidated ancestral structure and constructed a new residential house on the exact same location, site, footprint and spot where the previous ancestral house stood for over 100 years. As per defendants no new land has been encroached, no valuable portion has been utilized exclusively and it does not cause any hindrance, damage, encroachment or obstruction to the plaintiff in any manner.

17. As per the defendants, the plaintiff has a very meager share in the suit property of less than one marla, whereas he has occupied approximately more than 6.25 marlas of the suit land. The plaintiff himself is in unauthorized exclusive possession of the land in excess of his actual share and is enjoying almost the entire valuable

frontage of the suit property measuring about 90 feet frontage, whereas the defendants are left with only about 9 feet frontage.

18. The precise defence set up by the defendants is that, as per the jamabandi for the year 2020-2021 of village Ghangret with respect to khasra No.2686, the total area measures 23 marlas. According to the defendants, the plaintiff has a minimal share of less than one marla, whereas the share of the defendants is more than 11½ marlas. According to the defendants despite having a share of less than one marla, the plaintiff has occupied joint holding of approximately 6.25 marlas, which is in excess of his actual share.

19. The learned Senior Counsel for the petitioners/defendants has drawn the attention of this Court to the copy of the jamabandi for the year 2020-2021, whereby the present petitioners have a share to the extent of 82/100, whereas the share of the plaintiff is only 41. The contention and submission of the learned Senior Counsel for the petitioners is corroborated by a perusal of the copy of the jamabandi, which clearly reveals that the share of the plaintiff/respondent is very meager, whereas the share of the present petitioners is more than 11½ marlas.

20. The copy of the site plan placed on record before the learned trial Court as well as this Court demonstrates that the construction being raised upon demolishing the old structure along the old lines is being raised only on 7.58 marlas. It is vehemently

contended by the learned Senior Counsel for the petitioners that though the share of the present petitioners over the suit land bearing khasra No. 2686 is more than 11½ marlas, however, they are raising construction well within their share and the allegations levelled by the plaintiff that the defendants are raising construction exceeding their share are totally false, incorrect and imaginary.

21. The copy of the site plan also shows that there is a house of the plaintiff over the suit land and it has been vehemently argued by the learned Senior Counsel for the petitioners/defendants that though as per the revenue record the share of the respondent is less than one marla, he has raised construction over more than 6.25 marlas, meaning thereby he has exceeded his entitlement while occupying the suit land. Therefore, the allegations made in the plaint are false, incorrect, and illegal.

22. This Court is of the considered opinion that the plaintiff has not approached the Court with clean hands and has suppressed material facts from the Court. A perusal of the plaint clearly shows that neither it has been stated that he has raised construction of a house over more than six and a half marlas, nor it has been specified what are the respective shares of the plaintiff and the defendants. He has set up the plea that since the parties are co-sharers, till the time the suit land is partitioned, no co-sharer can be permitted to raise construction to the detriment of any other co-sharer.

23. The defendants/petitioners have averred that though the parties are co-sharers, the defendants have only demolished their own old house which was in a dilapidated condition and the new construction is being raised exactly on the same location, site, footprint, and spot where the previous ancestral house stood for over 100 years. As rightly pointed out by the learned Senior Counsel, the share of the present petitioners/defendants over the suit land is more than 11½ marlas and they are raising construction only over 7.58 marlas, which is well within their share. The copy of the site plan is part of the record and falsifies the case of the plaintiff. Merely for the reason that the parties are co-sharers as per the revenue record will not entitle the plaintiff to the discretionary relief of injunction. The grant of injunction is a discretionary and equitable relief and the plaintiff has failed to elaborate and specify the entire factual matrix of the case.

24. The learned First Appellate Court reversed the well-reasoned order passed by the learned trial Court, holding that the affidavit of Lambardar is nothing more than an unsworn statement not subjected to cross-examination, as the deponent neither entered the witness box nor was tested by the appellant. It came to the conclusion that an affidavit does not constitute evidence within the meaning of Section 3 of the Indian Evidence Act.

25. The provisions of Order 19 of the CPC read as follows:

"19. Power to Order any point to be proved by affidavit

> *Any Court may at any time for sufficient reason Order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :*
> *Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an Order shall not be made authorizing the evidence of such witness to be given by affidavit*.

26. The High Court of Gujarat in ***Civil Revision No.551 of 1967, titled as Kanbi Mavji Khimji and others vs. Kanbi Manjibhai Abjibhai and others, decided 24.06.1967***, while dealing with the provisions of Order 19 of CPC, has held as follows:

> *"(5) Section 2 of the Civil Procedure Code relates to 'Definitions'. Sub-section (1) of it states that in this Act, unless there is anything repugnant in the subject or context,-'Code' includes rules. Sub-section (16) of it states that 'prescribed' means prescribed by rules. In sub-section (18) of it, it is stated that 'rules' means rules and forms contained in the First Schedule or made under Section 122 or Section 125. Taking into consideration these definitions, it is clear that the rules of O. 39 and O. 19, which fall in the First Schedule, would be included within the meaning of the word Code. These rules will, therefore, also form a part of the Code wherein substantive sections fall. Section 30 of the Code, which is material for our purposes, runs as under:-*
> *"Subject to such conditions and limitation as may be prescribed, the Court may, at any time, either of it s own motion or on the application of any party, order any fact to be proved by affidavit."*
> *As seen earlier, 'prescribed' means prescribed by rules and the rules that find place in the First Schedule, will be the rules referred to. In my opinion, this Section 30 deals with general*

power given to the Court, empowering the Court, either of its own motion or on the application of any party to order any fact to be proved by affidavit. If this general power given to the Court is to be exercised by the Court by ordering any fact to be proved by affidavit, that power is subject to such conditions and limitations as may be prescribed. Those conditions and limitations have been prescribed in O. 19 of the Code, which deals with a topic 'on affidavit'. If we read this Section 30 and the relevant provisions of O. 19, Rules 1 and 2 and bear in mind the aforesaid definitions, it appears to me that only in cases where the Court exercised general power of ordering the facts to be proved by affidavit either of its own motion or on the application of any party, that power is to be exercised, subject to the conditions and limitations, imposed upon it under Order 19, Rules 1 and 2. On taking into consideration the scheme of the Act, we find several provisions in the Code, especially in the First Schedule, where the Court has been expressly permitted to decide certain matters on affidavit. One of such provisions finds place in Order 39, Rule 1. The material part of it runs as under:-

"1. Where in any suit it is provided by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such Act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders."

A perusal of the wording of this Rule 1 of Order 39, clearly indicates that in such interlocutory applications for in term injunctions, the Court has been expressly permitted by the Legislature itself to decide such applications on affidavits. If the Court on affidavit finds that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to

the suit, or being wrongfully sold in execution of a decree, the Court is entitled to grant such ad interim injunction. Rule 4 of that order states that-

"Any order for an injunction may be discharged or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order."

We do not find any provision in Order 39 whereby the Court is expressly permitted to decide such matters by affidavit, that those powers are to be exercised subject to the conditions and limitations prescribed. If really the Legislature intended that even though the Court was expressly permitted by the Legislature itself to decide such matters on affidavits, that power was to be exercised subject to the conditions and limitations prescribed, those wordings would have ordinarily found place in this Order 39, as it has been done in Section 30 of the Civil Procedure Code. As seen earlier rules that fall in the First Schedule, form a part of the Code. This is a special power given to the Court whereby it has been empowered to decide such interlocutory applications on affidavits. As stated earlier, S. 30 deals only with general power, given to the Court and when the Court exercises that power, that power has got to be exercised by it, subject to conditions and limitations that be prescribed and those conditions and limitations are prescribed in the O. 19, which relates to affidavits. If we now read the relevant provisions of Order 19, the same intention of the Legislature could be gathered therefrom. Order 19, Rule 1, runs as under:-

"1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable".

This Rule 1 is a sort of on exception to the provisions that find place in Order 18 of the Code. Ordinarily, evidence is to be led. If it is a case of oral evidence, witnesses have to be examined to the open Court. If documentary evidence is to be led, documents have to be filed and they have to be proved Ordinarily, that is what is contemplated by reference to

evidence. That also appears to be the position, if we refer to Secs. 1 and 3 of the Evidence Act. This Rule 1 of Order 19 of the Civil Procedure Code empowers the Court to depart from that ordinary rule. But when the Court exercises that power, it can do if only for sufficient reasons. Even the affidavit of any witness can be read at the time of hearing, but it is to be on conditions which the Court may impose and conditions imposed would be the conditions which the Court thinks reasonable in safeguard the interests of the parties to the proceedings. When this departure from the ordinary rule is to but made, a proviso added to it will have to be taken into account. It runs as under :-

"Provided that where it appears to the Court that either party bona fide desires the production of a witness can be produced, an and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit." By this proviso, the powers of the Court are further circumscribed. If either party bona fide describes the production of a witness for cross-examination and such witness can be produced, ordinarily, in such witness can be produced make an order of authorising the evidence of such witness to be given by affidavit. This rule will apply when the Court in exercise of its general power, directs a particular fact to be proved by affidavit. Rule 2 of the Order 19 of the Code run as under:-

(i) "Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(ii) Such attendance shall be in Court unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs."

This rule gives a right to the parties also to apply to the Court that evidence may be given by affidavit. The Court can grant such a permission and accept the request made by either party. But that power is also circumscribed. Either party can request the Court to order the attendance for cross-examination of the deponent. That will sufficiently safeguard

the interests of the other side. On a perusal of these two rules, it is quite evident that even where evidence is required to be given as contemplated under Sections 1 and 3 of the Indian Evidence Act. I.e., in case of substantial applications or suit, the Court has been empowered, If sufficient reason is shown to order that a particular fact may be proved by affidavit. But in that case, if it appears to the Court that either party bona fide desires a production of a witness for cross-examination and such witness can be produced, an order should not be made authorising the evidence of such witness to be given by affidavit. Similarly, on application of the party, evidence can be given by affidavit. But in that case also, either side can move the Court to order the attendance of such deponent for cross-examination. It is, therefore, evident that these limitations and conditions will govern the matter, if the Court exercises the power in view of these provisions of Order 19, or in view of its power under Section 30 of the Code. I am of opinion that these conditions and limitations, prescribed will be attached, only if the Court exercises this general power, vested in it. Special power is vested in the Court to decide such interlocutory applications on affidavit, and that power has been expressly given to it, these conditions and limitations will not be attached, to the exercise of that power. Either party therefore, cannot lay any claim or urge that others got a right to cross-examine such deponents. In short, the provisions of Order 39 Rule 1 or similar provisions found in several other orders, where the Court is expressly permitted to decide such interlocutory matters on affidavit, the provisions of Order 19, Rules 1 and 2, cannot be pressed into service. The learned Advocate, Mr. Daru contended that the Court derived this power to decide matters by affidavit only from Section 30 of the Civil Procedure Code. In my opinion, that power, which the Court derives, is a general power which the Court derives, is a general power and if that power is to be exercised, it is subject to the limitations and conditions prescribed. But when the Court has been given special power to decide certain interlocutory matters by affidavit, that power is unfettered. It is not subject limitations

and conditions prescribed. If really the Legislature intended to place any conditions and limitations, in exercise of that special owner also, the Legislature intended to place any conditions and limitations, in exercise of that special power also, the Legislature could have used those words in that order like the Order 39, Rule 1 of the Code. The Legislature has, in my opinion, wisely not done it. The object underlying it may be that the rights of the parties in such interlocutory applications are not being decided finally, the parties are not going to suffer as only for certain limited purposes, these interlocutory applications were being decided and the rights of the parties were not being finally decided. That appears to be the reason why no such conditions and limitations have been prescribed in exercise of that special power. I am of opinion that the arguments advanced by the learned Advocate Mr. Daru are, therefore, not well found."

27. Similarly, the Hon'ble High Court of Andhra Pradesh in ***Sakalabhaktula Vykunta Rao and others vs. Made Appalaswamy, reported in AIR 1978 Andhra Pradesh 103***, held as follows:

"6. As stated above, the respondent plaintiff filed the above cited interlocutory application requesting the court to grant temporary injuction against the petitioners and also filed some affidavits in support of his contentions. Order 39, R. 1 C.P.C. provides expressly that the Court is permitted to dispose of the interlocutory application of affidavits. In view of the urgency involved in the matter, the regular procedure of examining the petitioner and his witnesses and respondent and his witnesses is dispensed with and the Court is given a special power to decide the matter by affidavits. Further, the scope of enquiry is quite limited and the rights of parties are not decided finally. That being the purpose of giving special power to the Court under O. 39, R. 1, the question of summoning the deponent for the purpose of cross-examination at the instance of a party under O. 19, Rules 1 and 2 does not arise at all. The power

> *given to the Court under O. 39, R. 1 to decide the matters by affidavits is unfettered and is not subjected to the provisions of O. 19, Rules 1 and 2. In short, the provisions of O. 19, Rules 1 and 2 have no application at all to interlocutory matters governed by O. 39, R. 1. I am supported in this view by the decision of Gujarat High Court in Mavji Khimji v. Manjibhai, . Before the learned single Judge, it was contended that deponent who gave affidavit in support of the interlocutory application filed for the grant of temporary injunction, should be summoned for the purpose of cross-examination. Repelling this contention, J. M. Seth, J., held that when the court was given special power to decide certain interlocutory matters by affidavit, that power is not subject to limitations and conditions prescribed by the provisions of Rules 1 and 2 of O. 19. If really the legislature intended to place any conditions, and limitations in exercise of that special power also, the Legislature could have used those words in O, 39, R. 1 of the Code. The object underlying it may be that right of the parties in such interlocutory applications are not decided finally. The parties are not going to suffer as only for certain limited purposes, these I. As. were being decided and the rights of the parties were not being finally decided and that appears to be the reason why no such conditions and limitations have been prescribed in exercise of that special power."*

28. This Court is dealing with the legality of the order passed under the provisions of Order 39 Rules 1 and 2 of the CPC. In order to obtain the relief of injunction, a party is required to satisfy the triplicate test of prima facie case, balance of convenience and irreparable loss. In the present case, the defendants have placed on record a copy of the site plan, a copy of the jamabandi for the year 2020-2021, and the affidavit of Lambardar Shri Kewal Singh, who in his affidavit has

categorically stated that defendant No.2 recently demolished his old dilapidated ancestral structure and started constructing a new residential house on the same location, site and footprint where the previous ancestral house stood, and that the construction of this house has been carried out strictly within the boundaries of his own ancestral house and long-standing physical possession. Photographs of the same have also been appended by the defendants.

29. The Jamabandi, which has been placed on record, clinches the controversy in hand, which clearly shows that the share of the plaintiff is very meager and despite that fact, as per the copy of the site plan, he has raised the construction of a house over and above his share. On the other hand, the share of the defendants is more than 11½ marlas, and as per the site plan, they are raising the construction over the old site within their permissible share.

30. The presumption of truth is attached to the revenue record and it shows a prima facie case in favour of the defendants in place of the plaintiff. Though it is true that the rival contentions of the parties have to be adjudicated in the main trial, however, at the time of passing of the injunction order, the court has to examine the legality of the order, whether it stands the judicial scrutiny of the court and whether the parties have been able to make out a prima facie case, balance of convenience and irreparable loss in their favour or not.

31. The copy of the revenue record read in conjunction with the site plan, photographs and the affidavit of the Lumberdar, indicates that it is the defendants who have a prima facie case in their favour. The balance of convenience also lies in their favour. In case they are injuncted from raising the construction which is being carried out after demolishing the old existing house on the very same site, in that event, they shall suffer an irreparable loss, which cannot be compensated in terms of money.

32. As far as the contention raised by the plaintiff-respondent that the suit land is joint inter se the parties, therefore no co-sharer can be permitted to raise any construction till the time the suit land is partitioned. The principle regarding seeking an injunction against a co-sharer has been well settled by this Court in ***Ashok Kapoor versus Murtu Devi, 2016 Volume 1 Shim. LC 207***, wherein it has been held that a co-sharer cannot be restrained from raising construction on the joint land merely on the ground that he has no right to raise construction on the joint land. After an exhaustive review of the case law, it was held as under:

> *"46. On consideration of the various judicial pronouncements and on the basis of the dominant view taken in these decisions on the rights and liabilities of the co-sharers and their rights to raise construction to the exclusion of others, the following principles can conveniently be laid down:-*
>
> *(i) 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.*
> *(ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.*
> *(iii) If by the act of the coowner 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.*
> *(iv) If the acts of the co-owner in possession are detrimental to the interest of other co- owners, a coowner out of possession can seek an injunction to prevent such an act, which is detrimental to his interest.*
> *(v) Before an injunction is issued, the plaintiff has to establish that he would sustain, by the act he complains of some injury, which materially would affect his position or his enjoyment, or an accustomed user of the joint property would be inconvenienced or interfered with.*
> *(vi) the question as to what relief should be granted is left to the discretion of the Court in the attending circumstances on the balance of convenience and the exercise of its discretion the Court will be guided by consideration of justice, equity and good conscience."*

33. The settled principle of law is 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. Mere raising 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. The co-owner out of possession can seek an injunction to prevent such an act which is detrimental to his interest. Therefore, a co-sharer cannot be restrained from raising construction over the joint land unless it is shown that such an act would constitute prejudice, and mere raising of the construction does not amount to any prejudice, as has been held by this Court in ***Ramesh Kumar versus Sheetal and others, 2021 (1) SLC 377***.

34. As has been held in ***Ashok Kapoor's case (supra)***, mere raising of construction by a co-sharer will not infer that there is any diminution of the value of the property or that there is an ouster of the other co-sharer. The plaintiff has failed to establish that by raising construction, the value of the suit land shall be diminished or that there shall be an ouster of the plaintiff from the suit land in any manner.

35. The learned First Appellate Court, while upsetting the findings of the learned trial Court, has ignored the provisions of Order 43 Rule 1 of the CPC. While exercising supervisory power under Article 227 of the Constitution of India, this Court has to consider the fact whether the learned court below has exercised the jurisdiction vested in it or exceeded its jurisdiction under Order 43 Rule 1 of the CPC.

36. The Hon'ble Apex Court in ***Ramakant Ambalal Choksi versus Harish Ambalal Choksi and others, reported in 2024 INSC 913***, has held as follows:

> *"20. Order 43 of the CPC specifies the orders against which an appeal lies. Sub- Rule (r) of Rule 1 of the said order provides that an appeal would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.*
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> *21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India P. Ltd. reported in 1990 Supp SCC 727. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:*
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> *a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.*
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> *22. With regards to (a), this Court held thus:*
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> *"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions … the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below … If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that*

the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

23. This Court, while arriving at the above findings, relied on its earlier judgment in Printers (Mysore) v Pothan Joseph reported in (1960) SCC Online SC 62 where it was held thus:

"[...] as has been observed by Viscount Simon LC in Charles Osenton & Co v Johnston – the law as to reversal by a court of appeal of an order made by a judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."

24. It is pertinent to note that in Printers (supra) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in Charles Osenton & Co v Johnston reported in 1942 A.C. 130, after stating the above, went on to quote Lord Wright's decision in Evans v. Bartlam reported in 1937 A.C. 473:

"It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order."

25. In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:

a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

27. The principles of law explained by this Court in Wander's (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

28. In Neon Laboratories Ltd. v. Medical Technologies Ltd. reported in (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

29. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in Wander (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

> *"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction*

was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd." (Emphasis supplied)

30. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd.

reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

31. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

> *32. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case."*

37. The learned First Appellate Court was not within its right to upset the well-reasoned order passed by the learned trial Court, save and except in view of the principles laid down by the Hon'ble Apex Court in the judgment (supra).

38. In the present case, this Court is of the considered opinion that learned First Appellate Court has not exercised jurisdiction in view of the mandate laid down by the Hon'ble Apex Court in case titled ***Wander Ltd. And Anr. vs Antox India P. Ltd., 1990 Supp SCC 727,*** which reads as follows***:***

> *"9. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be*

> *justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :*
>
> > *... These principles are well established, but as has been observed by Viscount Simon in Charles Osention & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.*
>
> *The appellate judgment does not seem to defer to this principle.*

39. The learned trial Court, after taking into consideration the material, factual and documentary evidence placed on record, had rightly determined the point in controversy inter se the parties. However, the learned First Appellate Court upset those findings in a routine manner. As stated earlier, the defendants have been able to make out a prima facie case in their favour and the plaintiff has failed to pass the triplicate test as enunciated by the Hon'ble Apex Court. Therefore, in the considered opinion of this Court, learned First Appellate Court has erred by upsetting the well-reasoned order passed by the learned trial Court.

40. This Court is in agreement with the contention of the learned Senior Counsel for the petitioners that learned First Appellate

Court, while dealing with the application under Order 39 Rules 1 and 2 of the CPC, has directly or indirectly touched the merits of the case, whereas it was supposed to give a finding on the veracity of the order passed by the learned trial Court.

41. In view of the observations made hereinabove and in view of the exposition of law as laid down by the Hon'ble Apex Court, the impugned judgment passed by learned First Appellate Court is not sustainable and the same is liable to be quashed and set aside.

42. Consequently, after accepting the present petition, the impugned judgment dated 07.08.2026, as passed by the learned Additional District Judge, Amb, District Una, H.P., is quashed and set aside and the order passed by the learned trial Court dated 09.06.2026 is restored.

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

44. 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

28th October, 2026
(vt)