IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 644 of 2026
Date of decision: 30.10.2026

Hans Raj and others …Petitioners

Versus

Jitender and others …Respondents

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? [1] *Yes.*

For the Petitioners. *Mr. Jeet Singh, Advocate.*

For the Respondents: *None for respondent No. 1 to 3.*

Mr. Raj Negi, Deputy Advocate General, for respondent No. 4.

Vivek Singh Thakur, Judge

This petition has been preferred against the orders dated 07.10.2026 and 13.10.2026, passed by Civil Judge, Court No. 5, District Shimla, H.P., in Civil Miscellaneous Application No. CMA/1981/2026 and Suit for Declaration No. 91/2026 whereby, passing of an order of injunction has been deferred by the Trial Court by granting opportunity to the respondents to file reply to the application for interim injunction.

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

2. It has been submitted on behalf of plaintiffs-petitioners that defendant-respondent No. 3 has sold a specific portion in Khasra No. 287, out of land measuring 0-04-58 hectare, to defendant-respondent Nos. 1 and 2, and defendant-respondent No. 4 (Sub-Registrar) has committed an illegality by registering the sale deed of specific portion from the joint land comprised in Khasra Nos. 287, 773, 774, 776, and 1000. According to him, sale of land out of Khasra No. 287 was and is not permissible to defendant-respondent No. 3, who is one of the co-sharers/co-owners along with the plaintiff-petitioners.

3. Copy of *Jamabandi* has been placed on record as Annexure P-3, which depicts that land comprised in aforesaid Khasra numbers is jointly owned and possessed by the plaintiffs-petitioners and defendant-respondent No. 3 along with other co-sharers/co-owners.

4. Copy of the sale deed has also been placed on record as Annexure P-4, whereby defendant-respondent No. 3 has sold his share, measuring 0-02-00 hectare, out of land comprising Khasra No. 287 measuring 0-04-58 hectare, situated in Mohal Basantpur, Patwar Circle Basantpur, Tehsil Sunni, District Shimla, to defendant-respondent Nos. 1 and 2.

5. It is not the case of petitioners-plaintiffs that share of defendant-respondent No. 3 in Khasra No. 287 is less than 0-02-00 hectare, rather, during the course of addressing arguments, learned

counsel for the petitioners-plaintiffs has admitted that defendant-respondent No. 3 has 7/16 share in the joint land. From the sale deed, it is apparent that defendant-respondent No. 3 has sold only 7/16 share measuring 0-02-00 hectare out of 0-04-58 hectare comprised in Khasra No. 287, and he has not exceeded the limits of his share while selling this share in favor of defendant-respondent Nos. 1 and 2.

6. Defendant-respondent No. 3 has not sold a specific portion of Khasra No. 287 and, therefore, mention of handing over possession of the share of defendant-respondent No. 3 in favour of defendant-respondent Nos. 1 and 2 does not amount to handing over possession of a specific portion of Khasra No. 287, but it amounts to handing over possessory rights of the co-sharer in favour of the purchaser. Therefore, on the basis of the sale deed, defendant-respondent Nos. 1 and 2 cannot claim possession over a specific portion of Khasra No. 287, rather, they have become joint owners in Khasra No. 287 by purchasing the share of defendant-respondent No. 3, and for any further action or specifying their share, they have to take appropriate steps for partition of Khasra No. 287, and, therefore, plea of the petitioners-plaintiffs that defendant-respondent No. 3 has sold a specific portion out of the joint land is not correct, as evident from the material placed on record.

7. Though, in the sale deed as well as mutation, it has been recorded that the seller has handed over possession to the purchasers,

but entries in the mutation depict that only ownership of share has been recorded in favour of purchasers/defendant-respondents No. 1 and 2 in Khasra No. 287 and, therefore, purchasers/defendant-respondent Nos. 1 and 2 have no exclusive right on any definite portion of Khasra No. 287, and for carrying out any activity on the land, as they are not natural co-sharers, they have to take appropriate steps for partition of Khasra No. 287.

8. Perusal of the memo of parties of plaint depicts that defendant-respondents Nos. 1 and 2 as well as defendant-respondent No. 3 have been arrayed as defendants being purchasers and seller respectively, whereas Sub-Registrar, Sunni, has been arrayed as defendant-respondent No. 4, being a Registering Authority of sale deed, who has not only registered sale deed and attested mutation, but has also reflected in the mutation that possession of land sold by defendant-respondent No. 3 to defendant-respondent Nos. 1 and 2 has also been delivered on the spot.

9. From the sale deed, it is evident that instead of selling a specific portion of Khasra No. 287, share of defendant-respondent No. 3 therein has been sold by respondent No.3 to defendant-respondent Nos. 1 and 2. The Khasra No.287 is joint in ownership and possession of numerous share-holders. Therefore, unless it is partitioned, there is no

occasion or right to hand over possession of specific portion in this Khasra No. 287.

10. As noticed supra, in mutation also, name of defendant-respondent No. 3 in the column of ownership has been shown to be replaced by defendant-respondent Nos. 1 and 2 in equal shares, but keeping the entry column of ownership as well as possession, entries of the rest of the joint owners/co-sharers as per the entries in the column of ownership and possession in *Jamabandi.* No specific portion/Khasra number has been carved out, out of Khasra No. 287 measuring 0-02-00 hectare, instead Khasra number has also been kept intact in the column of number of Khasra and nature of land in the revenue record.

11. However, apprehension of plaintiffs-petitioners of interference or raising construction on specific portion of land in Khasra No.287, which is in ownership and possession of various co-owners/co-sharers is not without any basis, as vague observations recorded in mutation may create an impression that some specific portion has been handed over by defendant-respondent No. 3 to defendant-respondent Nos. 1 and 2.

12. In order passed in application filed for interim injunction, it has been observed by the Trial Court that since the State has also been impleaded as party, it would be appropriate to pass any order of injunction on merits. Accordingly, vide order dated 07.10.2026, only

notice was issued to defendant-respondent Nos. 1 to 4 returnable on 13.10.2026.

13. On 13.10.2026, defendant-respondent Nos. 1 to 3 were present in person with Mr. Pradeep Verma, Advocate representing them, and respondent No.4, i.e. Sub-Registrar, was duly represented by Assistant District Attorney. However, instead of passing any interim injunction or dismissing the application for interim injunction, the application was adjourned on the request made by ADA, seeking time to file reply to the application, with observation that it was already made clear to the counsel for the applicant that injunction order will be passed on merits.

14. Trial Court has failed to notice that no stakes of the State are involved in the suit. In fact, State is not a party, it is the Sub-Registrar, Sunni, who has been arrayed as a party for the reason that he had registered the sale deed and attested mutation in favour of defendants No.1 & 2 with endorsement of handing over of possession by defendant-respondent No. 3 to them (defendant-respondent Nos. 1 and 2).

15. Possession of land sold and purchased could not have been handed over by indicating a specific portion. Instead, on purchasing share of defendant-respondent No. 3, purchasers (defendant-respondent Nos. 1 and 2) have entered in his shoes as co-owners, and in case they intend to have possession of specific portion of land, they have to resort for

partition of joint land, at least of Khasra No. 287, wherein they have purchased the share of defendant-respondent No. 3.

16. It is evident that State is not going to lose anything either way, because decree of suit, or dismissal thereof shall not have any impact or interest on the State. Thus, Trial Court has committed an error by not passing any order, either in favour or against plaintiffs-petitioners, on the first date or even on second date, despite the fact that copy of *Jamabandi*, sale deed, and mutation indicating the aforesaid circumstances have already been placed on record, as informed by learned counsel for the plaintiffs-petitioners.

17. With aforesaid observations, I am of the considered opinion that Trial Court, instead of deferring passing of any order on the pretext that State is a party, should have taken decision on merits, either for granting interim injunction or denying the same on the basis of material before it. However, instead of doing so, a lame excuse has been taken by the Trial Court that State is a party and, therefore, order in the application shall be passed on merit only, but not *ex parte* or in absence of reply of the State.

18. *Ex parte* injunction order or order even after service of the defendants but before filing their reply, has also to be and should be on merits only.

19. The notion that order in application on merits can only be passed after filing of reply by the defendants-respondents, is also misconceived. Even an ad-interim *ex parte* injunction order has to be passed on merits only, on the basis of material placed before the Court and by taking into consideration a *prima facie* case, the likelihood of irreparable loss to either side, as well as the balance of convenience.

20. The Trial Court should have undertaken this exercise on the very first date or on the subsequent date, as there is no rule that in case there is merit in favour of plaintiffs-petitioners for granting ad-interim injunction, there is necessity to wait for reply of the State, particularly when no stakes of the State are involved in the matter.

21. Where there are stakes of State involved in the suit and/or passing of interim injunction is going to impact or have adverse impact on the State, there may be necessity of issuing notice to the State first, and for that purpose Government Advocates are always available in the Court. In this case also, Government Advocate was there, who, according to Trial Court itself, did not make any specific argument, but sought only time to file reply to the application.

22. In the given facts and circumstances and material placed before me, I am of the considered opinion that there was sufficient material on record to pass an order directing the parties to maintain *status quo* regarding the nature and user of the land till the application for

interim injunction is decided on merits, with right reserved in favour of defendant-respondent Nos. 1 and 2 to get the land partitioned for identifying the specific portion of jointly owned Khasra No. 287 falling in share of defendant-respondent No. 3 purchased by them. Therefore, ordered accordingly.

23. Order passed by the Trial Court is modified to the aforesaid extent and Trial Court shall reflect this modification in its order also with any further condition, if so warranted on the basis of material already on record. However, this order shall be subject to final outcome of the application preferred by the plaintiffs-petitioners for interim injunction.

24. Needless to say, not only defendant-respondent Nos. 1 and 2, but plaintiffs-petitioners or any other joint owner/co-sharer shall also have right to get the joint land partitioned

25. It is made clear that application for interim injunction shall be decided by the Trial Court on the basis of material placed before it by the parties, assessing and evaluating merits thereof, but without being influenced by observations made in this order, which have been made on the basis of limited material available on record at the instance of plaintiffs-petitioners, and defendants-respondents have yet to file the reply to the application and written statement to the main suit, and they may have certain other documents depicting other side of the story, if any, which shall have to be considered by the Trial Court for disposing of

the application for interim injunction as well as final adjudication of the suit.

26. With aforesaid modification, present petition is disposed of. Pending application(s), if any, also stand(s), disposed of.

(Vivek Singh Thakur),
Judge.

30th October, 2026
(Susheel)