IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 647 of 2026.
Decided on : 3rd November, 2026

Jagat Ram ...**Petitioner.**

Versus

Heeru Ram ....**Respondent.**

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Sudheer Thakur, Senior Advocate with Mr. Karun Negi, Advocate.

For the respondent: Nemo.

Jyotsna Rewal Dua, Judge.

A civil suit was instituted by the petitioner under Sections 38 and 39 of the Specific Relief Act for permanent prohibitory and mandatory injunction against the respondent/defendant. Along with the civil suit, an application under Order 39, Rules 1 and 2 of Civil Procedure Code (CPC) for temporary injunction was also moved. The application was allowed by the learned Trial Court on 12.05.2026 by directing the parties to maintain status quo qua nature, possession and construction over the suit land. The respondent/defendant's appeal against the aforesaid order was allowed by the learned District Judge on 27.10.2026, thereby dismissing the application moved by the petitioner/plaintiff under Order

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

(2026:HHC:48483)

39, Rules 1 and 2 read with Section 151 CPC. Feeling aggrieved, the plaintiff has taken recourse to this petition.

2. **In the application** moved under Order 39, Rules 1 and 2, read with Section 151 CPC, the petitioner *inter-alia* claimed that: (i) Suit land comprised in khata/khatauni number 49 min/57 min, khasra number 579/78, measuring 00-15 -05 Bigha, situated at Mauza Jadla, Hadbast No. 446, Up-Tehsil Krishangarh, District Solan, was joint amongst the petitioner, respondent and other co-sharers; it had not been partitioned by metes and bounds. (ii) Respondent/defendant had already constructed his house over part of the suit land. He, thereafter, had started digging the vacant portion/common courtyard over the suit land by raising pillars for fresh construction. The courtyard/common vacant land had been continuously used by the parties for family functions/common ingress and egress to their respective houses. (iii) No co-sharer had any right to raise construction over any portion of the joint land without the consent of the other co-sharers and without lawful partition. (iv) Despite petitioner/plaintiff's repeated requests, the respondent/defendant had continued with the construction.

The stand taken by the respondent/defendant was that: (i) Suit land was jointly owned by the parties in the revenue records; all three co-sharers of the suit land i.e. petitioner, respondent and one other

(2026:HHC:48483)

co-sharer, namely, Shyam Lal were owners in equal shares of 5 biswas each. They were in separate and specific possession on the spot pursuant to an oral/private partition amongst themselves. (ii) The petitioner/plaintiff had already occupied more than his share over the suit land by raising construction and fencing a courtyard over the joint land. The petitioner had covered land measuring 6 biswa 6 biswansi i.e. more than his share of 5 biswas. Whereas, respondent/defendant was in possession of only 3 biswa 6 biswansi out of his total 5 biswas of share and out of that portion in possession of the respondent, he had raised construction over land measuring 1 biswa, 2 biswansi only. (iii) Respondent's stand was that open land was in front of his house where he was raising construction; it had been in his possession and within his share. He denied the same being a common courtyard as alleged by the petitioner/plaintiff. (iv) The respondent/defendant also relied upon a map and tatima prepared by one Shri Gurmail Singh, a registered Civil Draftsman. As per the respondent, in terms of this site plan prepared on the spot, the map depicted the respective possession of all the co-sharers; the place where the construction was being raised fell within the possession of the respondent/defendant. Respondent/defendant also urged that continuation of the ad-interim order granted by the learned Trial Court on 02.04.2026 was causing irreparable loss and injury to him.

(2026:HHC:48483)

3. Learned Trial Court, after taking into consideration the respective stand of the parties, allowed the application by confirming the ad-interim order dated 02.04.2026, directing the parties to maintain status quo regarding nature, possession and construction over the suit property vide order dated 12.05.2026. While allowing the application, learned Trial Court held that the photographs placed on record along with the application demonstrated excavation activity at the spot; the respondent/defendant's admission that he intended to raise construction on the spot was also kept in view. It was then held that in case respondent was permitted to raise construction over the disputed portion, the same would change the nature of the property and may further complicate their rights, which may result in multiplicity of proceedings and creation of complications regarding possession and equities.

Respondent/defendant’s appeal against the aforesaid order has been allowed by the learned District Judge on 27.10.2026.

In the above background, the petitioner/plaintiff has come up in this petition against the order dated 27.10.2026 passed by the learned District Judge.

4. **Heard** and considered the case file.

(2026:HHC:48483)

4(i). It will be appropriate to notice the legal position applicable to the issue involved in this petition:-

In ***Payar Singh*** *Vs.* ***Narayan Dass and others***[2]**,** the respondents pleaded themselves to be in settled separate possession of joint land in family partition over which they were raising construction. They also took up a stand that petitioner had also constructed his house over the land in his possession. The Court upheld the contentions of the respondents. Following observations made in the judgment are material :-

> *"12. The respondents in the written statement have specifically pleaded that parties are in separate possession under family arrangement. The petitioner has also constructed his house on the joint land. It is not the stand of the petitioner that respondents are raising construction on an area which is more than their share. The case of the respondents is that petitioner has constructed his house on a better portion of the land. The under construction house of the respondents is away from the National Highway 21 whereas the house of the petitioner abuts N. H.21. The respondents have placed on record on the file of revision photographs construction of under construction house of the respondents. The photographs indicate sufficient gap between the already constructed house of petitioner and under construction house of the respondents over which even slab has been placed. It is the case of the respondents in written statement that they are in*

[2](2010)3 Shimla L. C. 205

(2026:HHC:48483)

separate possession of the land in family arrangement. This fact has not been denied by filing replication. The respondents are claiming possession over the suit land under family arrangement i.e. with the consent of the petitioner over which they are raising construction. The respondents have thus established prima facie case, balance of convenience, irreparable loss in their favour. In these circumstances, no fault can be found with the impugned judgment. In revision the scope is limited as held in The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another Vs. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad, AIR 1973 SC 76. The suit is for permanent prohibitory and mandatory injunction. The rights of the parties will be decided in the suit. It has not been established that the view taken by the learned District Judge does not emerge from the material on record."

In ***Ashok Kapoor Vs. Murtu Devi***[3], following principles were culled out after considering several judgments on the inter-se rights and liabilities of co-sharers :-

"41. The exposition of law as enunciated in the various judgments referred above including those of this High Court, insofar as the rights and liabilities of the co-owners is concerned, gives rise to the following propositions:-

1. *A co-owner has an interest in the whole property and also in every parcel of it.*
2. *Possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.*

[3](2016)1 Shim. L.C. 207,

(2026:HHC:48483)

3. *A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*
4. *The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of either as, when a co-owner openly asserts his own title and denies that of the other.*
5. *Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*
6. *Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*
7. *Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to dispute the arrangement without the consent of others except by filing a suit for partition.*
8. *The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.*
9. *Where a portion of the joint property is, by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner, if he does so, he is liable to be ejected*

(2026:HHC:48483)

and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered.

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 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.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such 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.

(2026:HHC:48483)

(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 in exercise of its discretion the Court will be guided by consideration of justice, equity and good conscience.

47. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff :-

(i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction;

(ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's right or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and

(iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the Court with clean hands."

In ***Ajay Kumar*** *Vs.* ***Ishwar Dutt***[4], it was held that when a co-sharer himself raises a construction over the joint land, when a co-sharer does not object to raising of construction over the joint land by some other co-owners, then, he cannot seek to restrain one specific co-owner from raising construction over part of suit land,

[4]CMPMO No. 555 of 2018, decided on 03.09.2021.

(2026:HHC:48483)

more so, when the construction being raised by that particular co-owner is over a portion, which, as per the revenue record, is in his possession alongwith others and when the plaintiff has not been shown in possession of this specific portion of land.

Placing reliance upon various authorities, defendants in ***Smt. Vyasa Devi*** *Vs.* ***Harish Kumar***[5] were permitted to undertake construction inter-alia on the gro.und that the plaintiff had also carried out construction on the joint land. Material observations made by the Court on facts are as under :-

> *"10. The facts involved in the case have been narrated by me hereinabove and the same are not being repeated for the sake of brevity. It is not in dispute that the parties are co-sharers of the suit land but the petitioners herein are recorded to be in possession of the portion of the suit land in issue alongwith other co-sharers. It is further not in dispute that the respondents herein are not recorded to be in possession of the suit land. It is also not in dispute that the respondents herein have also carried out construction activities by raising constructions over the joint land, as is evident from the record. In these circumstances, this Court is of the considered view that the petitioners herein, who besides being the co-owners of the suit land are also recorded to be in possession thereof, cannot be estopped from raising construction pending the adjudication of the civil suit. It is settled law that injunction cannot be granted against a co-sharer and further as the respondents herein themselves have constructed their houses over the joint suit land, in these circumstances, they cannot be permitted to restrain other co-sharers, i.e. present petitioners, from doing so. The construction, which is being carried out by the petitioners, however obviously shall be subject to the final*

[5]CMPMO No. 77 of 2021 decided on 22.12.2021.

(2026:HHC:48483)

> *adjudication of the suit as also partition proceedings, if any, and if the area upon which construction being carried out by the present petitioners ultimately falls in the share of the plaintiffs in partition proceedings, then, of course, consequences will ensue. However, this does not means that till the suit land is partitioned, the petitioners herein should be restrained from raising construction over the parcel of the suit land in their possession."*

Chanchal Kumar Vs. Prem Parkash & Anr.[6] *was a case where plaintiff was one of the co-sharers over the suit land. He raised construction and filed suit for prohibitory injunction to restrain the respondents from raising construction on the vacant portion of land. The Court held that :-*

> *".....Once, plaintiff himself raised construction over one portion of the land, it is not understood, how he could raise objection, if any, qua the construction on the other portion of land, by the defendants, who are admittedly co-owners of suit land to the extent of one half share. Needless to say, applicant, while seeking relief of injunction is required to show that he/she has a prima facie case in his/her favour and balance of convenience also lies in his/her favour, but, in the instant case, aforesaid basic ingredients/conditions are totally missing, rather, very conduct of the plaintiff suggests that he wants to take advantage of the situation."*

4(ii). Learned District Judge has categorically observed that plaintiff had admitted in his rejoinder about the suit land having been orally partitioned on the spot and all co-sharers being in specific possession of their respective portions. I have gone through the rejoinder which has been appended herewith as Annexure P-8, wherein the plaintiff

[6]CMPMO No. 522 of 2016, decided on 29.11.2018.

(2026:HHC:48483)

pleads that *"It is admitted to the extent that on the spot the suit land has been orally partitioned and all the co-sharers are in their specific possession on the spot."* The learned Appellate Court has justly held that though such an arrangement would not necessarily establish a legally effected partition by metes and bounds, however, it is a material circumstance for determining actual possession of the parties and their entitlement to interlocutory relief. Intrinsically related is the construction admittedly carried out by the petitioner/plaintiff over the suit land (joint property). The respondent/defendant has pleaded that petitioner/plaintiff occupies approximately 6 biswa 3 biswansi against his share of 5 biswas. Learned District Judge has further held that the site plan produced by the plaintiff depicts an enclosed portion marked B-1, measuring 93.22 sq. m. Though, this would be required to be proved in evidence in accordance with law, the existence of separate residential houses over different portions of suit land has not been disputed by the petitioner/plaintiff and has justly been taken into consideration by the Appellate Court. As against the plaintiff's construction and occupation over 6 biswa 3 biswansi of suit land, the respondent/defendant claims to be in possession of 3 biswa 6 biswansi. As per the respondent/defendant, he has constructed upon 1 biswa 2 biswansi and possesses a vacant portion measuring 2 biswa 4 biswansi in front of his house. His total share comes to 5 biswas. The

(2026:HHC:48483)

respondent/defendant had *prima facie* substantiated his plea by placing on record tatima and site plan prepared after spot measurements by a registered Draftsman. Though, these documents are also required to be proved in accordance with law, the learned District Judge justly gave them due credence vis-a-vis plaintiff's own admission regarding separate possession of the parties over the suit property.

4(iii). It is well settled that there is no prohibition against construction by a co-sharer over the joint land. The important factor that needs to be considered in that situation is whether the proposed construction would interfere with the settled possession of the co-sharers, their lawful rights, whether that would diminish the utility of the property, or any prejudice will be caused to the co-sharers. Plaintiff has already raised construction over his share in the suit land. He has admitted separate possession of the parties. His assertion that construction intended to be raised by the respondent/defendant is over a common courtyard or passage is not demonstrated. *Prima facie* case does not exist in favor of the petitioner/plaintiff. There is nothing on record to establish that construction will obstruct plaintiff's access and disturb his settled possession or will prejudice his rights. Learned Appellate Court has justly given due credence to the plaintiff's conduct, having himself raised construction over joint land and occupied a separate portion, which

(2026:HHC:48483)

according to the respondent/defendant, is much more than plaintiff's share in the joint land. Plaintiff cannot, without demonstrating corresponding prejudice, seek to prohibit the defendant from constructing upon the portion as per his share. Balance of convenience is also not in favor of the plaintiff.

5. In view of the above, I do not find it to be a case requiring interference with the impugned order passed by the learned District Judge. Accordingly, the instant petition is dismissed. It is however clarified that observations made above shall remain confined to the adjudication of this petition and shall not be construed as an opinion on the merits of the matter as also shall have no bearings whatsoever on the orders that may be passed in the partition proceedings statedly pending between the parties.

Jyotsna Rewal Dua
Judge

3rd November, 2026.
(jai)