

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CMPMO No. 480 of 2024

Reserved on: 07.04.2026

Date of decision : 29.04.2026.

Lachhmi Ram ...Petitioner.

Versus

Roop Ram ...Respondent.

*Coram:****The Hon'ble Mr. Justice Romesh Verma, Judge.****Whether approved for reporting?¹*

For the petitioner : Mr. Tek Chand Sharma, Advocate.

For the respondent : Mr. Nand Lal Chauhan, Advocate.

Romesh Verma, Judge:

The present petition arises out of the judgment, as passed by the learned District Judge, Shimla, dated 14.05.2024, whereby the appeal, as preferred by the present petitioner, was partly allowed and both the parties were directed to maintain status quo qua the nature, possession and construction over the suit land/property comprised in Khasra No. 436, measuring 00-01-62 hectares (Gair Mumkin Abadi), situated at Hadbast No.66, Mohal Manghech, Mauza Manghech, Tehsil and District Shimla, H.P., till the final disposal of the suit.

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**



2. The facts of the case are that the plaintiff/respondent filed a suit for permanent prohibitory injunction, restraining the defendant from raising construction or changing the nature of the suit land, comprised in khewat khatauni No. 16/16, khasra No. 436, measuring 00-01-62 hectares, situated at Village Manghech, Mauja Manghech, Tehsil and District Shimla, till the suit land is not partitioned by metes and bounds.

3. It was averred in the plaint that the plaintiff is co-sharer/joint owner in possession over the suit property and the share of the plaintiff is recorded in the revenue record as per Jamabandi for the year 2012-13.

4. It is averred that the plaintiff and defendant had raised construction of house in the year 1975. The said house was constructed over khasra No. 436, which is recorded in Mauza Manghech. It is further averred that the defendant had recently started demolishing his portion of the house, situated over the suit property/land. Though, a request was made to the defendant not to demolish his portion of the house or not to cause any danger or damage to the portion of the house of the plaintiff, but the defendant did not adhere to the request of the plaintiff and demolished the portion of the house of the plaintiff.



5. It was further averred that the defendant is trying to permanently change the nature of the suit land against the detriment to the rights of the plaintiff, therefore, the plaintiff/respondent filed a suit for permanent prohibitory injunction, restraining the defendant, his agents, servants, contractors or any other persons acting for or under his direction or supervision from changing the nature of the suit land.

6. Along with the plaint, an application under Order 39 Rules 1 and 2 was also filed by the plaintiff and by means of the said application, it was prayed that the defendant be restrained from raising construction or changing the nature of the suit land.

7. The suit, as preferred by the plaintiff, was contested by the defendant by filing detailed written statement. It was averred in the written statement that the plaintiff has not approached the Court with clean hands. It was submitted that both the co-owners are in exclusive possession of their respective shares according to family settlement/arrangement, taken place amongst their ancestors and also recorded in the revenue record after settlement operation took place in the year 1999-2000, that too by the consent of the respective parties. The said fact was recorded in the revenue record by the officials



of the Settlement Department and the parties to the suit had declared by giving their respective statements about the family arrangement taken place between them and a particular parcel of the land (khasra) in their possession according to factual possession/family arrangement at spot in the revenue record. The revenue record remained unchallenged and presumption of truth is attached to the said revenue record. It was further averred in the written statement that the ancestral house of the parties was constructed over Abadi Deh, which is double storeyed house, having separate kitchen at a distance of one-two meters of the said house. As per family arrangement, the predecessor-in-interest of the plaintiff allowed the predecessor-in-interest of the defendant to construct a separate house over khasra No. 436 in the year 1976-77, which was in exclusive ownership and possession of the defendant. The plaintiff has not filed any plan of the house depicting the true facts before the Court. It has been further submitted that the construction of the house is virtually on the same land over which it was standing and there is no new construction over new site, rather the construction is over the old site, which fact has been admitted by the plaintiff while filing the suit.

8. It is stated that the major portion of the house belonging to the defendant was constructed over khasra Nos.



434 and 435 and only a meager portion of the same was part of khasra No. 436. Most of the land belonging to khasra No. 436 was in the shape of courtyard and part of the open land of the house. The house is being constructed over khasra Nos. 434 and 435 and the plaintiff is a stranger to the same. It was submitted that the defendant is residing in a very small room at present and is unable to live in a comfortable manner.

9. It is submitted that the defendant and his family members are forced to use a washroom even of other inhabitants of the village and facing extreme hardship. The defendant is forced to live in a canopy for the last about one and half years. It was submitted that reconstruction of the house on old place/spot/land does not tantamount for grabbing of the land or occupying any best/valuable portion of the suit land as its nature is not being changed, rather the construction of the land is being done on the very same land in a new manner. The defendant has further stated that not only the plaintiff but other co-owners have also constructed their new houses during the last 30-40 years over the land which was in their exclusive possession and nobody has ever raised any objection qua the same. The plaintiff has failed to demonstrate that the land over which the house is being constructed is best and valuable portion, as compared to the



other lands situated in the village. The area of khasra No. 436 is measuring about four biswas, however, the parties to the suit are having land in the village and the defendant is having share of about 13 bighas in the said khata. Therefore, the defendant prayed for the dismissal of the suit, as filed by the plaintiff.

10. The defendant also filed reply to the application filed under Order 39 Rules 1 and 2 of the CPC. It is submitted that the application has been filed without any merit and substance as such, it was prayed that the application may be dismissed.

11. The learned trial Court vide its order dated 20.02.2024 allowed the application, as filed by the plaintiff/respondent under the provisions of Order 39 Rules 1 and 2 CPC and the petitioner/defendant was directed to maintain quo qua nature, possession and construction over the suit land comprised in khasra No. 436, measuring 00-01-62 hectares, situated in Muhal Manghech, Post Office Ghanati, Tehsil and District Shimla, till the final disposal of the suit.

12. Feeling dissatisfied, the defendant preferred an appeal in the Court of learned District Judge, Shimla on 02.03.2024. The learned First Appellate Court vide its judgment dated 14.05.2024 partly allowed the appeal, directing both the parties to maintain status quo qua nature, possession



and construction over the suit land, during the pendency of the suit.

13. Still feeling aggrieved, the plaintiff has approached this Court by filing petition under Article 227 of the Constitution of India.

14. It is contended by the learned counsel for the petitioner that the impugned orders, as passed by the learned Courts below are erroneous and are liable to be quashed and set aside. He submits that the plaintiff has chosen to file the suit only qua one khasra number i.e. khasra No. 436, whereas the total land is more than 94 bighas. He submitted that he has raised construction over khasra Nos. 434 and 435 and only a meager portion of the said construction is being raised over khasra No. 436, which is not more than 15 square meters. Learned counsel for the petitioner/defendant further submits that the plaintiff has not approached the Court with clean hands since the plaintiff along with other co-shares had raised construction over the entire joint land and by filing the suit only qua khasra No. 436, the intention of the plaintiff can be gathered. He submits that since the total joint land is more than 94 bighas, no prejudice would be caused to the plaintiff in case the defendant is permitted to raise construction on a very small portion of khasra No. 436 since he is raising the



construction over khasra Nos. 434 and 435 and majority of the construction is on the said khasra numbers.

15. On the other hand, learned counsel for the respondent contended that the land is joint between the parties and therefore, no co-sharers can be permitted to raise construction without partition of the land by metes and bounds. He further submitted that the learned Courts below have rightly passed the impugned orders and do not call for any interference.

16. I have heard learned counsel for the parties and have also gone through the record of the case file.

17. The case as projected by the plaintiff/respondent is that over the joint land i.e. khasra No. 436, plaintiff and defendant had raised construction of house in the year 1975 and the defendant has demolished the portion of the house forcefully on 16.12.2023 and started raising construction by getting the best and valuable portion of the suit land. It is the case of the plaintiff that since as per revenue record, the suit land is joint between the parties, therefore, till the time the suit land is partitioned, the defendant cannot be permitted to raise the construction.

18. Perusal of revenue record reveals that khasra No. 436 is owned by different co-sharers but the same has been



shown to be in exclusive possession of the defendant and classification of the said khasra is being shown as *Gair Mumkin Abadi*. It is the case of the defendant that on the basis of family partition, the parties are residing separately and the said fact was incorporated in the settlement and all the stake holders had made the statement qua that effect and it is only thereafter that khasra No. 436 is being shown in possession of the present defendant exclusively.

19. The learned counsel for the parties are in agreement that the entire joint land including the suit land is more than 94 bighas and being owned and possessed by different co-sharers. It is the case of the petitioner/defendant that by picking one khasra number and excluding the entire joint land, the plaintiff has suppressed material facts and has not disclosed the better particulars with respect to the fact that the plaintiff along with other co-sharers has raised construction over the joint land. It is the case of the defendant that he has raised construction over khasra Nos. 434 and 435 being exclusively possessed by him and majority of the construction is being raised on the said khasra numbers.

20. During the course of the argument, it is pleaded by the learned counsel for the petitioner/defendant that he shall be utilizing a very meager portion of khasra No. 436 i.e. 15



square meters which is within the share of the defendant. He further submits that they are facing hardship since they do not have the house to live and they are forced to even use the washroom of other villager.

21. The principle of seeking injunction against the co-sharers has been well defined by this Court in ***Ashok Kapoor vs. Murtu Devi 2016 (1) Shimla Law Cases 207***, wherein it has been held that a co-sharer cannot be restrained from raising construction on the joint land 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 co-owner 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.”*

22. The present 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 making of construction or improvement in the common property does not amount to ouster, rather, if 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 acts of the co-owner in possession and a 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 construction does not amount to any prejudice as has been held by this Court in ***Ramesh Kumar vs. Sheetal & others 2021 (1) Shimla Law Cases 377.***

23. To the similar extent, this Court has laid down the law in detail wherein, parties are co-owners and the plaintiff claim himself to be a joint owner but has raised the construction over the suit land and seeks injunction against the respondent without disclosing this fact. The injunction being an equitable relief, the person seeking an injunction must come with clean hands. The well known mechanism that applies in such a matter is that person who seeks equity, must do equity. In the present case also, it is the specific case of the petitioner/defendant that the plaintiff along with other co-sharers has admittedly raised the construction on the entire joint land, therefore, now it does not lie in the mouth of the



plaintiff that since the land is joint, the defendant should be restrained from raising construction.

24. This Court in **Smt. Kalawati vs. Netar Singh AIR 2016 HP 85** has held as under:-

“10. It would be evident from the decision, the mere fact that the parties are coowners and joint owners etc. is not the sole criterion for granting or refusing the injunction, the conduct of the parties too plays an important role and in such like cases, the plaintiff conduct has to be free from blame so as to enable the court to conclude that the plaintiff has approached the Court with clean hands. But here is a case where the petitioner though claims herself to be a joint owner with the respondents after having already raised construction over the suit land seeks an injunction against the respondents without even disclosing this fact.”

25. To the similar extent, in **Raj Kumar vs. Rakesh Kumar 2022 (2) Shimla Law Cases 1083**, this Court has held as under:-

“5(a) It is not in dispute that the plaintiff had already raised construction over the suit land alleged by him to be the joint land of the parties along with other cosharers. This fact was not disclosed by the plaintiff in the manner it ought to have been stated in the plaint. The plaintiff in a round about manner averred that the defendant was trying to block the air and light of the house of the plaintiff existing over the suit land. Prima facie observation of both the learned courts below that the plaintiff had himself raised construction on the best and most valuable portion of the suit land also assumes significance. It is well settled that when a person seeks equity, he must come with clean hands.



5(b) *It is admitted fact that Sh. Kartar Chand brother of the petitioner/plaintiff and one of the co-sharer had also raised construction over the suit land in the year 2010. It is not the case of the petitioner/plaintiff that he had objected to the construction work done by his brother over the suit land or that the plaintiff had instituted any civil suit for restraining his brother from raising construction over the suit land. It is apparent that the petitioner/plaintiff has selectively chosen the respondent/defendant for filing the suit for injunction. At this stage, it will be relevant to notice the following references:-*

In (2010) 3 Shimla L.C. 205, titled Payar Singh Vs. Narayan Dass and others, 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 the petitioner had also constructed his house over the land in his possession. The Court upheld the contentions of the respondents. The 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 the 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 in an area which is more than their share. The case of the respondents is that the petitioner has constructed his house on a better portion of the land. The under-construction house of the respondents is away from 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 an under- construction house of the respondents. The photographs indicate the sufficient gap between the already constructed house of the petitioner and the under-construction house of the respondents over which even a slab has been placed. It is the case of the respondents in the written statement that they are in



separate possession of the land in the 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 a prima facie case, balance of convenience, and 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.”

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In a **judgment dated 03.09.2021, delivered in CMPMO No. 555 of 2018, Ajay Kumar Vs. Ishwar Dutt**, it was held that when a co-sharer himself raises a construction over the joint land when a cosharer does not object to the 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 the suit land, 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 along with others and when the plaintiff has not been shown in possession of this specific portion of land.

Placing reliance upon various authorities, defendants in **CMPMO No. 77 of 2021, titled Smt. Vyasa Devi Vs. Harish Kumar** were permitted to undertake



construction inter-alia on the ground 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 along with other cosharers. 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 coowners 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 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 mean 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.”

CMPMO No.522/2017, decided on 29.11.2018 titled Chanchal Kumar Vs. Prem Parkash & Anr. was a case where the plaintiff was one of the co-sharers over the suit land. He raised construction and filed suit for a prohibitory injunction to restrain the respondents from raising construction on the vacant portion of land. The Court held that:-

“.....Once, the plaintiff himself raised construction over one portion of the land, it is not understood, how he could raise an objection, if any, qua the construction on the other portion of land, by the defendants, who are admittedly co-owners of the suit land to the extent of one-half share. Needless to say, the 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.”

26. In **(2010) 3 Shimla L.C. 205**, titled **Payar Singh Vs. Narayan Dass and others**, 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 the petitioner had also constructed his house over the land in his possession. The



Court upheld the contentions of the respondents. The observations made in the judgment are as under:-

“12. The respondents in the written statement have specifically pleaded that parties are in separate possession under the 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 in an area which is more than their share. The case of the respondents is that the petitioner has constructed his house on a better portion of the land. The under-construction house of the respondents is away from 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 an under-construction house of the respondents. The photographs indicate the sufficient gap between the already constructed house of the petitioner and the under-construction house of the respondents over which even a slab has been placed. It is the case of the respondents in the written statement that they are in separate possession of the land in the 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 a prima facie case, balance of convenience, and 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.”



27. Similar legal proposition has been reiterated in **Jai Singh vs. Rajeev Latest HLJ 2023 (HP) (1) 162**, wherein it was observed as under:-

“19. The fact that in past also different coowners including the parties to suit have raised construction also weakens the case of plaintiffs. When plaintiffs had no objection when the co-owners had raised construction on different parts of the joint land in the same khata, they must come out with special reasons to raise objections against construction being raised by the defendant. Another fact, which cannot be ignored is that there is another structure on suit land being used as “Panchayat Ghar.” At the time of its construction again there was no objection. Admittedly, no other co-owners have raised any objection to the construction being raised by the defendant. The conduct of plaintiffs smacks of some ulterior purpose than the assertion of any legal right.”

28. It is well settled principle of law that a co-sharer cannot seek injunction against other co-sharers 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 exceeding his right. The above mentioned exposition of law has laid down the principle that when an injunction can be granted in such like cases.

29. In the present case, the revenue record carries the presumption of truth. Though the land is being shown to be



joint amongst the parties, however, suit land is in the exclusive possession of the defendant. But leaving apart this fact, it has been contended by the learned counsel for the petitioner that the majority of the construction is being raised over khasra Nos. 434 and 435 and only a meager construction of approximately 15 square meters is being constructed over khasra No. 436 i.e. the suit land. It has been stated by the learned counsel for the petitioner that over this khasra number, his share is approximately two biswas. From the pleadings, it reveals that it is not the case of the plaintiff that the defendant is exceeding his share by raising construction. Further, the plaintiff has failed to plead and prove that in case the construction is raised by defendant that shall amount to ouster from the suit land. It is not the case of the plaintiff that in case the defendant is allowed to raise construction then same shall diminish the value of the suit land. Merely on the ground that the suit land is joint amongst the parties, the defendant cannot be injuncted, in view of the observations as made hereinabove.

30. The plaintiff has failed to make out a case for grant of injunction, i.e. prima facie case, balance of convenience and irreparable loss. The revenue record shows that the defendant is in exclusive possession of khasra No. 436 and the majority of the construction is being raised over khasra Nos. 434 and 435,



which are admittedly in ownership and possession of the defendant. Because of the fact that only a meager portion of the construction came to be raised over khasra No. 436 that too within the share of the defendant, no injunction order can be passed for raising construction, as a result of which, it is the defendant, who shall suffer huge and irreparable loss.

31. The defendant has categorically taken a stand in para-5 of the written statement that it is not only the plaintiff but other co-owners, who have raised constructions of their new houses during the last 30-40 years over the joint land, which was in their exclusive possession and nobody has ever raised any objection qua the same. The plaintiff did not file any suit against the other co-sharers while such construction was being raised and it is the case of the defendant that only the defendant has been chosen by instituting the present suit injuncting him from raising the construction. It is the case of the defendant that in order to pressurize him so that he may not raise construction over khasra Nos. 434 and 435, the present suit has been instituted. In the replication, there is no specific denial to para-5 of the written statement, which also draw an adverse inference against the plaintiff. Therefore, merely for the reason that the land is joint amongst the parties, it does not give any right to the plaintiff to injunct the



defendant from raising construction that too on a very small portion of the said khasra number.

32. The learned courts below have not decided the application of the plaintiff in accordance with law, as laid down by this Court, as enumerated hereinabove, as a result of which, the defendant has been able to make out a case for interference in the present petition, which has been preferred under Article 227 of the Constitution of India.

33. Consequently, the present petition is allowed and the orders, as passed by the learned Courts below, are set aside and the application, as filed by the plaintiff, is ordered to be dismissed. It is made clear that the construction, if any, raised over the suit land, shall not be raised by the defendant exceeding his share in khasra No. 436.

34. Any expression of opinion made hereinabove shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.

(Romesh Verma)
Judge

20th April, 2026.
(kck)