

**IN THE COURT OF VIKASH THAKUR, CIVIL JUDGE,
BANJAR, DISTRICT KULLU, H.P.**

CNR No.	:	HPKU-0070002922023
CIC Case Type	:	Civil Suit
CIS Registration No.	:	176 of 2023
Date of Institution	:	01.09.2022
Date of Registration	:	12.09.2022
Date of Decision	:	23.07.2026

In the matter of :

Man Singh S/o Sh. Sangat Ram R/o Vill. Chipani Phatti
Chipani Kothi Tung, Tehsil Banjar, Distt. Kullu, H.P.

.....Plaintiff

Versus

Noye Ram S/o Sh. Bhimi Ram, R/o Vill. Chipani Phatti
Chipani Kothi Tung, Tehsil Banjar, Distt. Kullu, H.P.

.....Defendant

**Suit for Mandatory Injunction and
Possession**

For the plaintiff : Sh. D.S. Thakur, Advocate

For the defendant : Sh.Thakur Sain, Advocate

JUDGMENT:-

The plaintiff has instituted the present suit against defendant seeking relief of Mandatory injunction and Possession.

2. The brief facts discernible from the pleadings of the plaintiff are that the plaintiff is the exclusive owner in possession of land measuring 00-18-00 bighas, comprised in Khasra No. 1982/1752, Khata/Khatauni No. 15min/16min, situated at Muhal Chipani Kothi Tung, Tehsil Banjar, District Kullu, H.P. It is averred that the defendant is the owner of Khasra No. 1983/1752/3. It is further averred that instead of raising the proposed construction over his own land, i.e., Khasra No. 1983/1752/3, the defendant, in the year 2017, started the construction of his RCC building towards the eastern side of his aforesaid land, thereby occupying 0-2-0 bighas out of Khasra No. 1982/1752/2, belonging to the plaintiff, (which shall hereinafter be referred to as the "suit land.") It is further averred that the aforesaid construction, measuring 0-2-0 bighas (45 feet × 18 feet), was raised by the defendant without the consent or permission of the plaintiff. The defendant completed the construction of the ground floor in the year 2018 and, thereafter, in the year 2021, laid the slab for the first floor, which remained under construction. It is further averred that the defendant is a stranger to the suit land and, instead of raising construction upon his own land, intentionally and deliberately encroached upon and occupied the suit land without the permission or consent of the plaintiff. It is stated that the defendant is a quarrelsome, mischievous and influential person who, taking undue advantage of the simplicity and poverty of the plaintiff, after completing the ground floor of the said building in December, 2018, kept alluring and assuring the

plaintiff that he would transfer suitable land in favour of the plaintiff in lieu of the land occupied and encroached upon by him. It is further averred that, in the year 2021, when the defendant started the construction of the first floor, the plaintiff requested him not to proceed with the further construction unless he either stopped the construction or transferred suitable land, as earlier assured by the defendant after completion of the ground floor. However, the defendant outrightly refused to acknowledge the claim of the plaintiff and continued with the construction of the first floor. It is submitted that the cause of action first arose in favour of the plaintiff and against the defendant in the year 2017, when the defendant commenced construction of his proposed RCC building over the suit land without the consent or permission of the plaintiff and further arose during the third week of August, 2022, when the defendant finally refused to acknowledge the plaintiff's claim. In view of the above, it is prayed that the suit of the plaintiff be decreed.

3. The defendant filed a written statement raising preliminary objections regarding the absence of a cause of action and the suppression of true and material facts. On merits, it is stated that the defendant constructed his house on his own land in the year 2012, much prior to the filing of the present suit and therefore, was under no obligation to obtain the permission of the plaintiff for raising construction on his own land. It is denied that the defendant has raised any construction upon the land of the plaintiff. It is averred that the defendant completed the construction of his house in the year 2012, much before the institution of the suit, and that the plaintiff did not raise any objection at the time of such

construction. It is further submitted that, had the defendant constructed his house upon the plaintiff's land, the plaintiff would have objected at the time of construction. It is reiterated that the defendant has raised the construction entirely on his own land and was not required to obtain the permission of the plaintiff for the same. It is further submitted that, even if this Hon'ble Court were to come to the conclusion that the house of the defendant has been constructed upon the land of the plaintiff, though the same is specifically denied, even then the defendant is in possession of the house, and the appropriate remedy available to the plaintiff would have been to file a suit for possession. It is denied that the defendant ever assured the plaintiff that he would transfer any land in favour of the plaintiff. The remaining contents of the plaint are denied. With these submissions, the defendant has prayed for the dismissal of the suit.

4. The plaintiff has filed a replication, wherein he has reaffirmed and reiterated the averments made in the plaint and denied those made in the written statement.

5. On the basis of the pleadings of the parties, the following issues were framed:—

I.	Whether the plaintiff is entitled to the decree of Mandatory Injunction, as prayed for? OPP
II.	Whether the plaintiff is entitled for a decree of possession, as prayed for? OPP
III.	Whether the plaintiff has cause of action to file the present suit, as alleged? OPP

IV.	Whether the suit is not maintainable, as alleged? OPD
V.	Whether the plaintiff has not come to court with clear hands and has suppressed true and material facts? OPD
VI.	Relief.

6. The plaintiff in support of his case examined one witness and closed the evidence. Defendant examined one witness and closed the evidence.

7. I have heard the Ld. counsel for the parties and have perused the record carefully. For the reasons to be recorded hereinafter, while discussing the above issues, my findings on aforesaid issues are as under:-

Issue No.I	: In affirmative
Issue No.II	: In affirmative
Issue No.III	: In affirmative
Issue No.IV	: In negative
Issue No.V	: In negative
Final Order	: Suit of the plaintiff is decreed as per operative part of the judgment.

EVIDENCE ON RECORD

8. PW-1, Man Singh, entered the witness box and tendered his affidavit, Ex. PW-1/A, wherein the contents of the

plaint were reaffirmed and reiterated. Apart from this, he also tendered a copy of the Jamabandi, Ex. PW-1/B, and the Aks Tatima, Ex. PW-1/C.

In his cross-examination by the learned counsel for the defendant, he admitted that the photographs of the spot had not been placed on record. He further admitted that the defendant's land adjoins his land. He denied the suggestion that the defendant's house was constructed upon Khasra No. 1983/1752/03. He voluntarily stated that the house had been constructed upon the deponent's Khasra number. He denied the suggestion that the house had been constructed 12–13 years earlier. He admitted that the demarcation of the suit land had been conducted; however, he had not filed the demarcation report. He further stated that he had approached the defendant in the year 2022 for a compromise regarding the land in dispute and the defendant had stated that he would give him 2 Biswas of land in exchange for the land over which the defendant had constructed his house.

9. Vide separate statement dated 08.12.2023, the evidence on behalf of the plaintiff was closed.

10. DW-1, Noye Ram, entered the witness box and tendered his affidavit in evidence, Ex. DW-1/A, wherein the contents of the written statement were reaffirmed and reiterated. Apart from this, he also tendered a copy of the Jamabandi, Ex. DW-1/B.

In his cross-examination by the learned counsel for the plaintiff, he stated that the suit land is 00-01-16 bigha comprised in Khasra no. 1983/1752/3. He stated that he had asked Man Singh

for one biswa of the suit land, upon which he is raising construction. He further stated that the sons of Man Singh and Ram Singh are the owners of the suit land. He stated that he had constructed the house in the year 2011–12 and that he had constructed the house on the portion of land that had been given to him by Man Singh. He admitted that, while constructing the house, he had told the plaintiff, Man Singh, that he would give him land at another place in exchange for the land upon which he had constructed the house. He further stated that the plaintiff's land falls under Khasra No. 1982/1752/02, and that his own land lies to the north of the said land. He admitted that he had constructed the house on Khasra No. 1982/1752/02. He denied the suggestion that he had constructed the house in the year 2017. He further denied the suggestion that, despite his promise, he had failed to give the plaintiff land in exchange for the land upon which he had constructed the house. He further admitted that, while constructing the second storey of his house, he had promised the plaintiff that he would provide him land at another place, as he had constructed his house upon the plaintiff's land.

11. Vide separate statement dated 16.01.2025, the evidence on behalf of the defendant was closed.

REASONS FOR THE FINDINGS

Issue Nos. I, II & III

12. The onus to prove these issues was upon the plaintiff. The plaintiff has sought the relief of mandatory injunction directing removal of the unauthorized construction and consequential possession on the plea that the defendant has encroached upon a portion of Khasra No. 1982/1752 by raising his residential house

thereon. The principal controversy between the parties is whether the house constructed by the defendant stands upon his own land, i.e., Khasra No. 1983/1752/3 or upon the land of the plaintiff comprised in Khasra No. 1982/1752/2.

13. The plaintiff has proved his ownership over Khasra No. 1982/1752 by producing the Jamabandi, Ex.PW-1/B. Under Section 45 of the Himachal Pradesh Land Revenue Act, 1954, the entries in the record-of-rights carry a presumption of correctness until the contrary is proved. The defendant has not produced any revenue record to dispute either the plaintiff's title over Khasra No. 1982/1752 or to rebut this presumption. Thus, the ownership of the plaintiff over the said khasra no. stands duly established.

14. It is true that during his cross-examination the plaintiff admitted that a demarcation of the land had been conducted, however the demarcation report has not been placed on record. Ordinarily, where the dispute pertains to the exact location of the boundary between adjoining khasra numbers, a demarcation report assumes significance. However, the non-production of such report is not fatal in the facts of the present case, as the defendant himself has made clear and unequivocal admissions regarding the location of the construction. Once the material fact in issue stands admitted by the opposite party, there arises no necessity of further formal proof.

15. An admission is substantive evidence against its maker and constitutes the best evidence that an opposite party can rely upon, though it is not conclusive. In **Ajodhya Prasad Bhargava vs**

Bhawani Shanker Bhargava And Anr. AIR1957ALL1, it was held that

“17. An admission of the opposite party to the proceeding may be produced for the purpose of proving a party's own case. It is the best evidence which can be produced in proof of the party's case, and although the proof of such admission is not conclusive against the opposite party, nevertheless it is such strong evidence of the facts admitted that the burden of proving the contrary is upon the party making the admission.”

16. In the present case, the defendant, while appearing as DW-1, has made admissions which go to the root of the controversy. He categorically stated that he had asked the plaintiff, Man Singh, for one biswa of land upon which he was raising construction. He further admitted that the plaintiff's land falls under Khasra No. 1982/1752/2 and that his own land is situated towards the north thereof. More importantly, he unequivocally admitted that he had constructed his house upon Khasra No. 1982/1752/2 belonging to the plaintiff. He further admitted that, at the time of raising the construction as well as while constructing the second storey, he had assured the plaintiff that he would provide him land at another place in exchange for the land upon which he had constructed the house. These admissions are wholly inconsistent with the stand taken by the defendant in the written statement that the entire construction exists upon his own land comprised in Khasra No. 1983/1752/3. Consequently, the defence set up in the written statement stands completely demolished by the defendant's own testimony.

17. Though the defendant asserted that he had promised to give the plaintiff alternative land and denied having failed to honour such promise, no documentary evidence whatsoever has been produced to show that any exchange of land ever took place. There is neither any registered deed nor any other revenue record evidencing transfer of title in favour of the defendant with respect to the portion of Khasra No. 1982/1752/2 occupied by him. A mere oral assurance or promise to exchange land does not confer any right, title or interest in immovable property nor does it legalise the defendant's occupation. Consequently, the defendant's possession over the encroached portion remains unauthorized.

18. Thus, while the Jamabandi, Ex. PW-1/B, establishes the plaintiff's ownership over Khasra No. 1982/1752, the factum of encroachment stands independently established by the clear admissions of the defendant himself and his own testimony fully corroborates the case set up by the plaintiff. Consequently, this Court is satisfied that the plaintiff has successfully established, on the touchstone of preponderance of probabilities, that the defendant has unauthorizedly constructed his residential house upon a portion of Khasra No. 1982/1752 belonging to the plaintiff. The plaintiff is, therefore, entitled to a decree of mandatory injunction directing the defendant to remove the unauthorized construction standing over the encroached portion and as a necessary consequence thereof, to restore its vacant possession to the plaintiff. The facts pleaded and proved by the plaintiff clearly constitute a complete cause of action for filing the present suit. Accordingly, Issue Nos. I, II and III are decided in favour of the plaintiff and against the defendant.

ISSUE NO. IV & V:

19. Defendant has neither led any evidence nor any specific arguments whereas onus to prove these issues were upon them so these issue are decided against the defendants and answered in negative.

Relief:-

20. In view of the findings recorded on the aforesaid issues, the suit of the plaintiff succeeds and is hereby decreed with costs. A decree of mandatory injunction is passed directing the defendant to remove the unauthorized construction raised by him over the encroached portion of land comprised in Khasra No. 1982/1752 belonging to the plaintiff. A decree for possession is also passed in favour of the plaintiff directing the defendant to hand over vacant possession of the said encroached portion to the plaintiff after removal of the unauthorized construction. Decree sheet be prepared accordingly. File, after due completion, be consigned to the Record Room.

Announced and signed in the open Court on this 23th day of July, 2026.

**(Vikash Thakur)
Civil Judge
Banjar, Kullu, H.P.**

Form -A

LIST OF WITNESSES:

Sr.No.	Name of witness	Whether the witness of plaintiff or of defendant
PW-1	Man Singh	Witness of Plaintiff
DW-1	Noye Ram	Witness of Defendant

Form-B

LIST OF EXHIBITS:

Name of Exhibit	Date of Exhibit	Description of Exhibit
Ex.PW-1/A	02.05.2024	Affidavit of Man Singh
Ex.PW-1/B	02.05.2024	Parcha Jamabandi
Ex.PW-1/C	02.05.2024	Aks Tatima
Ex.DW-1/A	16.01.2025	Affidavit of Noye Ram
Ex.DW-1/B	16.01.2025	Parcha Jamabandi

(Vikash Thakur)
Civil Judge
Banjar, Kullu, H.P.