

**IN THE COURT OF SURYA PRAKASH, SENIOR CIVIL JUDGE,
HAMIRPUR, DISTRICT HAMIRPUR, H.P.**

CNR No. : HPHA03-002676-2020
Civil Suit No. : 176 of 2020
Case Type : Civil Suit
Registration No : 871 of 2020
Registration date : 02.12.2020
Decided on : 27.08.2026

In the matter of:

Ajay Kumar son of late Sh. Banta Ram, resident of Village Usli, P.O.
Mohin, Mauza Swahal, Tehsil and District Hamirpur, H.P.
....Plaintiff.

Versus

1. Dinesh Kumar son of Sh. Dharam Chand
 2. Anita Sharma wife of Sh. Dinesh Kumar
 3. Dharam Chand son of late Sh. Sodha (**deleted vide order dated 13.1.2026**)
- All residents of Village Usli, P.O. Mohin, Mauza Swahal, Tehsil
and District Hamirpur, H.P.

....Defendants.

**Suit for permanent prohibitory injunction and
mandatory injunction.**

P R E S E N T

For the plaintiff : Sh. Ashan K. Kaushal, Advocate.
For the defendants : Sh. Sandeep Thakur, Advocate.

J U D G M E N T

The plaintiff has filed suit for seeking decree for permanent prohibitory injunction restraining the defendants, their family members, servants and agents and assignees from

interfering in any manner whatsoever, digging the land, changing the nature, raising any construction forcibly over the land comprised in Khata/Khatoni No.39 min/39 min, Khasra No.306, area measuring 0-02-32 sq. mtrs., Khata/Khatoni No. 40 min/40 min, Khasra No.307 measuring 0-00-48 sq. mtrs, as per Jamabandi for the year 2017-2018, situated in Village Usli, P.O Mohin, Mouza Sawahal, Tehsil and District Hamirpur,H.P. (hereinafter to be referred as “**Suit land**”) and if during the pendency of the suit defendants succeed in encroaching and raising construction over the suit land, then the suit for mandatory injunction directing the defendants to restore the suit land to its original nature and also suit for possession and damages.

2. Briefly stated, the facts of the case are that the suit land comprised in Khasra No.306 is exclusively owned by the plaintiff ; Khasra No.307 is owned and possessed by the plaintiff alongwith other co-sharers. It is submitted that defendants are utter strangers to the suit land and with malafide intention to cause an irreparable loss and damage to the plaintiff have started digging the suit land for laying concrete by uprooting boundary marks, without any right,title and authority. It is submitted that the defendants have already encroached upon the suit land and further intend to cause irreparable loss to the plaintiff and even local Panchayat has failed to do needful in this context despite repeated requests of the plaintiff. It is submitted that the plaintiff asked the defendants to stop the digging of the suit land, uprooting the boundary marks, then they openly threatened to occupy all the suit land and forcibly trying to raise construction over the suit land.

3. It is submitted that the cause of action arose to the plaintiff in year 2018, when firstly the defendants forcibly started

digging over the suit land and now lateron in December, 2020, when the defendants forcibly tried to raise construction over the suit land and since then the same is continued one.

4. It is prayed that the suit of the plaintiff may kindly be decreed against the defendants in the interest of justice.

5. In pursuant to notice of the suit to defendants, defendants contested the present suit by filing written statement in which preliminary objections that the plaintiff has no cause of action to file the suit as the defendants have done nothing over the suit land, the defendants have raised their construction over their own land comprising Khasra No.311 in the year 2014 and the construction was completed in the year 2016 and now the defendants have started construction of upper storey in the month of November, 2020 and no construction is being raised by the defendants over the suit land, the plaintiff is estopped to file the suit by his own act and conduct, the plaintiff has no locus-standi to file the suit, the suit is bad for non-joinder of necessary parties, the plaintiff has not approached with clean hands and has suppressed the material facts from this Court and the defendants are entitled to special costs .under Section 35-A of CPC were taken. On merits, it is admitted that the defendants are adjoining owners and are not strangers as alleged. It is submitted that the defendants are not raising any construction over the suit land. The defendants have raised the construction over their own land in khasra No.311 in the year 2014 and was completed in the year 2016 and now, the defendants are raising the construction of upper storey and no construction is being raised or has been raised by them over the suit land as alleged. It is submitted that allegations are false and

frivolous and have been made to harass the defendants. It is denied that the defendants have already encroached upon the suit land as alleged. The Panchayat has no right to intervene in the controversy among the parties. It is submitted that the defendants are not digging the suit land and no boundary has been uprooted. The defendants never threatened to occupy the suit land by raising construction or otherwise as alleged. The defendants have not raised any construction. The defendants have raised the construction over their own land in Khasra No.311 and construction was started in the year 2014 and was completed in the year 2016 and now, they are constructing upper storey and work was started in November, 2020.

6. It is prayed that suit of the plaintiff may kindly be dismissed with costs and the defendants be awarded special cost under Section 35-A of CPC for the frivolous and vexatious suit of the plaintiff.

7. In replication, the stand taken by the plaintiff in the plaint and the averments made therein were re-agitated and re-affirmed and the contrary averments made in the written statement by the defendants were refuted and re-controverted.

9. From the pleadings of the plaintiff, following issues were framed on 6.1.2022 as under :-

1. Whether in the month of December, 2020, the defendants started causing interference by digging the suit land and raising construction upon the same, as alleged?

OPP

2. If Issue No.1 is proved in affirmative, whether the plaintiff is entitled for the decree of permanent prohibitory injunction restraining the defendants from raising any construction and causing any interference or digging the suit land, as alleged? OPP

3. Whether the plaintiff has no cause of action to file the present suit? OPD

4. Whether the plaintiff has no locus-standi to file the present suit? OPD

5. Whether the suit is bad for non-joinder of necessary parties? OPD

6. Whether the plaintiff has not come to the court with clean hands and is estopped from filing the present suit? OPD

7. Whether the defendants are entitled for special costs? OPD

8. Whether the defendants have completed their construction on Khasra No.311 in the year 2016 and now are raising construction of second storey, as alleged, if yes, its effects? OPD

9. Relief.

10. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the same are as under:-

Issue No. 1	:	No.
Issue No.2	:	No.
Issue No.3	:	No.
Issue No.4	:	No.
Issue No.5	:	No.
Issue No.6	:	No.
Issue No.7	:	No.
Issue No.8	:	No.
Relief	:	The suit of the plaintiffs is <u>Dismissed</u> as per operative part of the judgment.

APPRECIATION OF EVIDENCE.

11. In order to prove this case, plaintiff Ajay Kumar appeared in the witness box as PW-1 and tendered his evidence by way of an affidavit Ext.PW1/A in which he pleaded his case.

12. In his cross-examination, he stated that he is posted as Superintendent Grade-II in Education Department. He stated that area of the suit land is 12 Marlas and Khasra number is 306. He stated that khasra No.311 is of defendants and he has no knowledge about the area of the land of the defendants. He stated that there is land of defendants to the Northern side of khasra No.306 and there is his land around three directions. He stated that defendants started construction work of house in the year 2020 and work was started in the month of December 2020. He stated that

only he is the owner of suit land. He denied that the defendants had done the work of lower storey in the year 2014 ; self stated that only digging was done in the year 2014. He denied that the defendants had completed construction of house in the year 2016. He stated that he sought the demarcation of the suit land in the year 2013 and 2018. He stated that he had made defendants who are adjoining owners as a party in the demarcation. He admitted that boundary marks were fixed at the time of demarcation ; self stated that defendants uprooted the same. He stated that he has not enclosed copy of demarcation with the case file. He stated that soon after the demarcation defendants uprooted the boundary marks. He admitted that complaint was not made to this effect to Police or Tehsil ; self stated that complaint was made in the Panchayat. He stated that he does not remember that on which date complaint was filed in the Panchayat. He stated that he does not remember as to whether application was filed written or verbal in the Panchayat and copy of application has not been enclosed with the court case file. He admitted that there is fencing of bamboo between the suit land and land of defendants. He stated that he has put the fencing ; self stated that, that land belongs to him and fencing has been put for the wild animals. He admitted that the defendants started construction work of second storey in the month of November, 2020. He admitted that they sought the stay order from the court at the time of construction of second storey of the defendants. He admitted that he did not seek stay order from the court in the year 2018 ; self stated that at that time matter for compromise was taken in the Panchayat and when they did not admit it, on this he approached the court. He denied that boundary is the spot where the fencing of

bamboo has been done ; self stated that he had put fencing over his own land, but they uprooted the same. He stated that the house of the defendants is about 1 ½ metres back step from the point where bamboo fencing has been uprooted by the defendants. He stated that photographs were clicked when defendants started construction work of the house. He admitted that photographs are not enclosed with the court case file. He admitted that they have neither talking terms with the defendants nor visiting terms as well. He denied that the defendants have not done construction work of house in the year 2020. He denied that the defendants have done construction work of house before the filing of the case. He denied that the defendants did not work after passing of the stay order. He stated that neither the contempt of court case was filed in the court for carrying the work after the stay order nor L.C. was got appointed. He denied that he has no terms with the defendants, it is, therefore, false case has been filed in order to harass them. He denied that the defendants did not forcibly possess on his land.

13. PW-2 Pritam Chand tendered his evidence by way of an affidavit Ext.PW2/A in which he reiterated pleaded case of the plaintiff.

14. In his cross-examination, he stated that he is not a summoned witness and has come on the asking of the plaintiff. He stated that his house is about three quarters of a kilometers from the house of the plaintiff. He stated that khasra number of the suit land is 306 area measuring 231 sq. mtrs/12 Marlas. He stated that house of Ajay is also situated in Khasra No.306. He stated that he has no knowledge about the khasra number of the defendants. He denied that there is bamboo fencing between the land of the plaintiff

and defendants. He stated that he is not adjoining owner with the suit land. He stated that demarcation of land of Ajay did not take place in his presence. He stated that he has no knowledge about the demarcation sought by plaintiff and defendants. He admitted that Dinesh serves in the Army. He denied that defendants have done construction work of lower storey in the year 2014 ; self stated that work might have done in the year 2017-2018. He denied that defendants had completed construction work of lower storey in the year 2016. He stated that no complaint was made in the court when defendants started construction work of lower storey ; self stated that the plaintiff had stopped them. He stated that he was also present on the spot and defendants were stopped on 5.4.2018 and Panchayat had stopped them. He admitted that Dinesh has started construction work of upper storey in the month of November, 2020 ; self stated that at that time he was also stopped. He stated that he has knowledge about the boundary of the suit land. He stated that the defendants have constructed house about three metres far away from the boundary marks. He denied that the defendants have done work on their own land. He denied that the defendants have not done any work after passing of the stay order. He stated that the defendants have started construction work in the month of November, 2018 and December, 2020. He stated that Panchayat Pradhan and Panch visited the spot in the month of November, 2018. He denied that he has no talking terms and visiting terms in the marriages with the defendants. He admitted that the defendants did not uproot boundary marks in his presence ; self stated that, but they have uprooted the boundary marks. The plaintiff did not make complaint to Patwari, Police and Tehsildar for uprooting the

boundary marks. He denied that the defendants did not uproot the boundary marks. He denied that Dinesh did not quarrel with Ajay. He denied that he cannot state as to that whether the defendants had made possession or not ; self stated that forcible possession has been made by putting grit about 03 metres in width and 17 metres in length.

15. This is the entire evidence which has been led by the plaintiff in the present case and the plaintiff has tendered in evidence Ext.P1 on record and closed his evidence.

16. In order to rebut the case of the plaintiff, defendant Anita Kumari appeared in the witness box as DW-1 and tendered her evidence by way of an affidavit Ext.DW1/A in which she reiterated their pleaded defence.

17. In her cross-examination, she stated that she did not seek demarcation before starting construction work of her house ; self stated that house was constructed by her father-in-law. She stated that their Panchayat served notice Ext.PA upon her and her husband Dinesh on 5.4.2018 that a correction case of settlement of their adjoining owner Ajay Kumar was pending adjudication and they were asked not to carry any construction work to the backside of his house ; self stated that Panchayat has wrongly Ext.PA. She stated that after this notice they have not done any construction work over the suit land ; self stated that plaintiff has put fencing. She admitted that plaintiff filed Calandra against them in the SDM Court, which was qua quarrel ; self stated that, that Calandra has falsely been filed. She admitted that police also visited the spot and has stated no to carry any work till the decision of the case ; self stated that plaintiff himself takes stay order and himself cultivates the field. She

admitted that the field she is talking about is bearing khasra No.259, out of which wife of plaintiff purchased 10 Marlas of land and she purchased 06 Marlas of land ; self stated that she had purchased from the owner towards the house ; reiterated that owner has given the land. She admitted that wife of plaintiff has also filed case for that land in which learned Court has passed status-quo order for both the parties. She admitted that in that case police visited the spot. She stated that construction work of floor of her house was done by Man Chand contractor from Baru. She stated that construction work of her house continued from years 2014 to 2016. She stated that her house is under red encircled A in photograph Ext.PY. She denied that land in which construction work is visible under red encircled B is of plaintiff. She stated that land of plaintiff is under red encircled C which is behind the fencing. She denied that they put the grit under red encircled D in the photo during pendency of the suit ; self stated that grit has been put in the own land before filing of the case. She denied that in the correction land of the plaintiff comes inside their house. She admitted that demarcation application filed by the plaintiff is pending. She denied that she will not vacate the possession if the possession of the plaintiff is found in the demarcation ; self stated that demarcation has taken place and fixed points are fixed. She denied that they continued construction work on the land of the plaintiff during the pendency of the suit and have made illegal possession over the land of the plaintiff under red encircled D&E as per photograph Ext.PY.

18. DW-2 Seema Kumari tendered her evidence by way of an affidavit Ext.DW2/A, however, she was given up by the defendants.

19. DW-3 Nirmla Devi tendered her evidence by way of an affidavit Ext.DW3/A in which she reiterated pleaded case of the defendants.

20. In her cross-examination, she stated that defendant Dinesh is her son who is posted in ITBP and now a days he is posted at Amar Nath. She stated that she cannot state as to whether there is her house in photograph Ext.PY or not. She admitted that they had put grit under red encircled D in years 2020-2021 ; self stated that the same has been put after leaving about 5-6 feet area. She denied that they had dug foundation under red encircled B ; self stated that this house is Beeh and field also belongs to them. She denied that police visited the spot when they put this Beeh in year 2025. She denied that she has no knowledge as to what has been written in Ext.DW3/A.

21. This is the entire evidence which has been led by the defendants in the present case and learned counsel for the defendants has closed the evidence on behalf of the defendants.

**REASONS FOR FINDINGS WITH THE HELP
OF APPRECIATION OF EVIDENCE.**

Issue Nos.1 & 2

22. Both these issues are inter-linked and inter-connected with each other, therefore, these issues are taken up together for reasoning and discussion so as to avoid repetition of evidence while discussing the evidence so produced on record.

23. The bone contentions of the plaintiff in this case are that the suit land comprised in Khasra No.306 is exclusively owned by the plaintiff ; Khasra No.307 is owned and possessed by the

plaintiff alongwith other co-sharers. It is submitted that defendants are utter strangers to the suit land and with malafide intention to cause an irreparable loss and damage to the plaintiff have started digging the suit land for laying concrete by uprooting boundary marks, without any right,title and authority. It is submitted that the defendants have already encroached upon the suit land and further intend to cause irreparable loss to the plaintiff and even local Panchayat has failed to do needful in this context despite repeated requests of the plaintiff. It is submitted that the plaintiff asked the defendants to stop the digging of the suit land, uprooting the boundary marks, then they openly threatened to occupy all the suit land and forcibly trying to raise construction over the suit land.

24. On the other hand, defendants have denied all the allegations of the plaintiff.

25. Now, so far as the relief of injunction as prayed by plaintiff in the present case is concerned, to this effect there is fairly well settled jurisprudence that there must be evidence of interference, encroachment or dispossession by the defendants of the person in possession of the subject matter of this lis and that some infringement has been caused by defendants of the rights of the plaintiff in the enjoyment of his property. In the absence of any such evidence on record the relief of injunction can not be extended in favour of the person who has come forward before the court seeking relief of injunction against the defendants.

26. Plaintiff has not led any reliable and cogent evidence that the defendants have uprooted the boundary marks and forcibly raised construction over the suit land thereby made the encroachment over the suit land. Plaintiff did not examine any other

person from the vicinity or any representative of his Panchayat and revenue expert who had demarcated the suit land and had fixed the fixed points on the spot in order to substantiate his contention that the defendants have caused interference with his ownership and possession by raising forcible construction over the suit land. It is specific admission of the plaintiff that there is bamboo fencing between the suit land and land of the defendants put by him and he filed the present suit and sought the stay order only when defendants started construction work of the second storey. There is nothing suggestive and proved on record from the evidence led by the plaintiff and in the cross-examination of the defendant and defendants witnesses that the defendants have caused the alleged interference with the suit land. Hence, in the light of the above facts it cannot be stated convincingly that the defendants are causing interference with the suit land, hence relief sought by the plaintiff cannot be extended in his favour. Accordingly, Issue nos.1 & 2 are answered in negative and are decided against the plaintiff.

Issue No.3

27. The burden to prove this issue was upon the defendants, but nothing has been argued on this issue and there is nothing on record to substantiate this issue. Hence, Issue No.3 is answered in negative and is decided against the defendants.

Issue No.4

28. The burden to prove this issue was upon the defendants, but nothing has been argued on this issue and there is nothing on record to substantiate this issue. Hence, Issue No.4 is answered in negative and is decided against the defendants.

Issue No.5

29. The burden to prove this issue was upon the defendants, but nothing has been argued on this issue and there is nothing on record to substantiate this issue. Hence, Issue No.5 is answered in negative and is decided against the defendants.

Issue No.6

29. The burden to prove this issue was upon the defendants, but nothing has been argued on this issue and there is nothing on record to substantiate this issue. Hence, Issue No.6 is answered in negative and is decided against the defendants.

Issue No.7

30. The burden to prove this issue was upon the defendants, but nothing has been argued on this issue and there is nothing on record to substantiate this issue. Hence, Issue No.7 is answered in negative and is decided against the defendants.

Issue No.8

31. The burden to prove this issue was upon the defendants, but nothing has been argued on this issue and there is nothing on record to substantiate this issue. Hence, Issue No.8 is answered in negative and is decided against the defendants.

Relief :

32. In view of the above discussion on issue Nos.1 & 2 supra, the suit of the plaintiff fails and the same is **dismissed** with no order as to costs Decree sheet be prepared accordingly. File after due completion be consigned to the record room.

Announced in the open court on this 27th day for August, 2026.

(SURYA PRAKASH)
Senior Civil Judge,
Hamirpur (H.P.)

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Form-A

Serial No.	Name of witnesses	Whether the witness of plaintiff or defendants
PW-1	Ajay Kumar	Plaintiff
PW-2	Pritam Chand	Plaintiff's witness
DW-1	Anita Kumari	Defendant No.2
DW-2	Seema Kumari	Defendants witness
DW-3	Nirmla Devi	- do -

Form-B

Exhibit/ Mark	Date of exhibits	Descriptions of exhibits
PW1/A	23.5.2023	Affidavit of Ajay Kumar
PW2/A	23.5.2023	Affidavit of Pritam Chand
DW1/A	15.5.2026	Affidavit of Anita Kumari
DW2/A	15.5.2026	Affidavit of Seema Kumari
DW3/A	15.5.2026	Affidavit of Nirmla Devi
P-1	11.4.2025	Jamabandi 2017-2018
PA	5.8.2026	Copy of notice
PY	5.8.2026	Photograph

(SURYA PRAKASH)
Senior Civil Judge,
Hamirpur (H.P.)