

**IN THE COURT OF R.MIHUL SHARMA, SENIOR CIVIL JUDGE,
COURT NO.2, SOLAN DISTRICT, SOLAN H.P.**

CNR No.	:	HPSO040016252022
CIS Case Type	:	Civil Suit
Civil Suit No.	:	293-A/1 of /2022
Registration No.	:	92/2022
Instituted on	:	21.10.2022
Decided on	:	31.03.2026

Jai Parkash S/o Lt. Sh. Shiv Ram R/o Village Rihun Seri,
P.O.Bohli, Tehsil and District Solan, H.P.

....Plaintiff

Versus

1 Sh. Om Prakash S/o Lt. Sh. Shiv Ram,
2 Sh. Rajender Kumar S/o Sh. Om Prakash,
Both residents of village Rihun Seri, P.O. Bohli, Tehsil and District
Solan, H.P.

...Defendants

SUIT FOR PERMANENT PROHIBITORY INJUNCTION

PRESENT

For the plaintiff	:	Sh. Navesh Badhan, Adv.
For the defendant	:	Sh. Manoj Verma, Adv.

JUDGMENT

This is a suit for permanent prohibitory injunction filed by the plaintiff to restrain the defendants from dispossessing or ousting the plaintiff from the suit land and raising any construction, from selling or alienating and changing the nature of the suit land, installing an electricity meter in the name of defendant No. 2 without the consent of the plaintiff and from indulging in any other illegal acts which may prejudice the rights, title or interest of the plaintiff over the suit land comprised in Khata/Khatauni No. 52/75,

Khasra Nos. 27, 28/2, 32, 33, 39 and 49, total kithas 6, measuring 22-04-00 bighas, and Khata/Khatauni No. 53/76, Khasra Nos. 29, 36, 38 and 50, total kithas 4, measuring 30-00-00 bighas, both situated in Mohal Rihun, Hadbast No. 69/826, Patwar Circle Bohli, Tehsil and District Solan, H.P. (hereinafter referred to as the "suit land").

2. In brief, the case of the plaintiff is that he is co-owner and in possession of the suit land alongwith defendant No. 1 whereas defendant No. 2, being the son of defendant No. 1, is a stranger to the suit land. The entire suit land is joint the co-owners and has not been partitioned. The plaintiff has also averred that the defendants have no legal right to dispossess or oust the plaintiff from suit land, nor to change its nature, raise construction over any specific portion, or alienate the same without partition. It is stated that the defendants are threatening to raise construction over the best and specific portion of the suit land, to dig the land, and to install an electricity meter in the name of defendant No. 2 without the consent of the plaintiff. The plaintiff has further averred that acts of the defendants are illegal and generating threats of interference in the suit land. Despite requests, the defendants have not desisted from their alleged illegal acts, but no avail, the acts of the defendants are illegal and, if not restrained, would cause irreparable loss and injury to the plaintiff, which cannot be compensated in terms of money. Hence, this suit.

3. Apart from above, the plaintiff has also made averments regarding cause of action, jurisdiction and proper valuation of the suit. With this

version, it is prayed that the suit of plaintiff be decreed in her favour.

4. The defendants have resisted and contested the suit by filing a written statement, wherein preliminary objections regarding concealment and suppression of material facts, absence of cause of action, estoppel and maintainability of the suit have been taken. On merits, while admitting that the parties are related and that the plaintiff is one of the co-owners, it is denied that the suit land is joint and unpartitioned in the manner alleged. It is averred that the father of the parties had already partitioned the land during his lifetime and had handed over separate and exclusive possession to the parties at the spot, and since then the defendants have been in exclusive possession of their respective share. However, it is also admitted that the suit land stands recorded as joint in the revenue record. It is specifically denied that defendant No. 1 is threatening to install an electricity meter in the name of defendant No. 2 over any portion of the suit land without the consent of the plaintiff or that he is threatening to raise any permanent construction on the best or specific portion of the suit land. It is also denied that defendant No. 1 has no right to create any charge upon or alienate the suit land. It is averred that the parties are in separate and exclusive possession of their respective portions at the spot and that residential houses already exist thereon, constructed by the defendants from their own resources. It is further pleaded that the electricity connection has been existing since long and, therefore, there is no question of installing any new connection in the name of defendant

No. 2. The allegations regarding threat of dispossession, raising construction, changing the nature of the land or creating any encumbrance have been specifically denied. It is asserted that the defendants are well within their rights to use their share of the property and that the present suit has been filed falsely, with malafide intention, merely to harass the defendants and as a counterblast to earlier proceedings. Rest of the contents of the plaint have been denied. With these assertions, it is prayed that the suit of the plaintiff be dismissed.

5. In response to the written statement filed by the defendants, plaintiff filed replication in which entire averments of the written statement have been controverted and denied and those of the plaint have been reasserted and reaffirmed.

6. From the pleadings of the parties, following issues were framed vide order dated 29.12.2023.

1. **Whether the plaintiff is entitled for the relief of permanent prohibitory injunction against the defendant, as prayed for? ... OPP**
2. **Whether the suit of plaintiff is not maintainable in its present form, as alleged? ... OPD**
3. **Whether the plaintiff has not come to court with clean hands and has concealed and suppressed material facts from this court, as alleged ...OPD**
4. **Whether the plaintiff has no cause of action to file the present suit, as alleged? ..OPD**

5. Whether the plaintiff is estopped by his own act, conduct act and acquiescence, as alleged?
... OPD

6. Relief

7. Ld.counsel for both the parties argued in favour of their respective parties. Submissions of both the parties are carefully heard and the record is perused. For the reasons to be recorded hereinafter, issue wise findings of this Court are as under:-

Issue No.1	=	No
Issue No.2	=	No
Issue No.3	=	No
Issue No.4	=	Yes
Issue No.5	=	No
Relief	=	The suit of plaintiff is dismissed as per the operative part of the judgment.

REASONS FOR FINDINGS

ISSUE NO.1

8. In order to substantiate his claim, the plaintiff Jai Prakash, stepped into the witness box as PW-1 and tendered his affidavit ExPW1/A in his examination-in-chief, wherein he has reiterated and reaffirmed the assertions of the plaint on oath. He has further proved on record the jamabandis Ex. PW1/B and Ex. PW1/C and copy of his Aadhaar card Ex. PW1/D.

9. In his cross-examination, he has stated that he resides in Village Rihun. He has stated that he had constructed one house in the year 1986, another around the year 2000 and the third in the year 2006. He has further stated that the ancestral house is joint in nature, whereas the other two houses are his own. He has deposed that he is in possession of land comprised in Khasra No. 52/75 and 53/76. He has further stated that he is not in possession of any khasra number and that he has ownership rights and possession over the entire land as per his share. He has admitted that the disputed land was partitioned by his father in the year 1982–83 and that one portion was given to him and another to his brother. He has further admitted that they are coming in possession of the land in accordance with such partition and have been using the same as per their convenience. He has further stated that another case is pending between him and his brother regarding a Will allegedly executed in his favour. He has denied the suggestion that he has filed the present suit by taking advantage of wrong entries in the jamabandis. He has admitted that the land had already been partitioned by his father earlier. He has denied the suggestion that he is deposing falsely.

10. In order to rebut the case of the plaintiff, the defendant Om Prakash stepped into the witness box as DW1 and tendered his affidavit Ex.DW1/A in his examination-in-chief, wherein he has also reiterated the averments of the written statement.

11. In his cross-examination, he has stated that he cannot say whether the suit land has been

legally partitioned or not. He has volunteered that the same has already been partitioned by their ancestors. He has further stated that there has been no conversation between him and the plaintiff for many years. He has denied the suggestion that he had applied for installation of an electricity meter in favour of defendant No.2 without the consent of the plaintiff. He has admitted that he has also filed a case against the plaintiff in the Court. He has denied the suggestion that he had ever threatened to dispossess the plaintiff from the suit land. He has further denied that on 18.10.2022, he had extended any threats of dispossession to the plaintiff or that he had stated that he would change the nature of the suit land or raise construction thereon. He also denied the suggestion that he is deposing falsely in the present case.

12. From the perusal of Jamabandis Ext.PW1/B and Ext.PW1/C for the year 2014-15, it has transpired that the suit land is jointly owned and possessed by the parties alongwith other co-sharers. The entry in the copy of Jamabandi carries with it the presumption of truth by virtue of **Section 45** of the **HP Land Revenue Act** but same is rebuttable if something contrary to it is established on record. The Jamabandis placed on record have been prepared by the public servant in discharge of his official duties is a relevant fact **Under Section 35** of the **Indian Evidence Act** unless rebutted in accordance with law. The defendant has pleaded in his written statement that father of the parties to the lis had partitioned the land and since then parties are coming in separate and exclusive possession of the land. Although the parties might be in separate

possession on the spot but that would not amount to partition by metes and bounds. It is well settled proposition of law that every co-sharer has right over every inch of the joint land until and unless the same is partitioned by metes and bounds. A mere family arrangement for residing separately by co-sharers does not amount to partition as is entitled in the law, especially when they are recorded to be joint owners in revenue record(Reliance placed upon the decision of **Hon'ble High Court of HP** in case of **Janku vs Nagnu AIR 1986 HP 10**) Hence, in the light of aforesaid observations, the version of the plaintiff that the suit land is jointly owned and possessed by the parties stands duly proved on record.

13. In the instant case, for claiming the relief of permanent injunction apart from establishing the ownership and possession over the suit land with the defendant, the plaintiff is also required to prove that the defendant has intended or threatened to infringe the plaintiff's right of enjoyment of the suit property. In other words, if a co-owner changes the nature of the joint land, the other co-sharer has right to seek injunction against the one changing the nature of the suit land without the consent of other co-sharers and without getting the same partitioned in accordance with law.

14. In the case of **Brij Lal Vs Puran Chand; 2011(1) Him.L.R. 80**, **Hon'ble High Court of Himachal Pradesh** has held that “..... if the land in question has not been partitioned the defendant cannot be permitted to raise any construction thereon without working any arrangement or with the consent of other co-sharers.....” Thus as per law cited supra the defendants cannot raise

construction over the suit land without working any arrangement with the plaintiff and other co-sharers being the joint land.

15. The plaintiff has alleged that defendant has been threatening to change the nature of suit land and posing threats to raise new construction at the spot on specific and best portion of the suit land, cause damage to the same and to alienate the best and specific portion of suit land but has not established it by adducing cogent, convincing and reliable evidence. In order to substantiate the averments made in the pleadings the parties have to establish their such pleadings with clinching and reliable evidence which the plaintiff has failed to establish. There is nothing on record except the sole testimony of plaintiff to prove the fact that the defendant has posed threats to do the aforesaid acts. Sole self serving statement of the plaintiff is not sufficient to succeed in having equitable relief of permanent injunction against the co-owner. It is inexplicable and beyond comprehension as to what has constrained the plaintiff to examine any other witness of locality if the defendant has started changing the nature of the suit land. Moreso, it is not stated by the plaintiff as to what overt act has been done by the defendant to change the nature of the suit land and raise construction over best and specific portion in pursuance of threats advanced by him.

16. In view of above discussion, plaintiff has not been able to prove his case on scale of preponderance of probability and is thereby not held entitled for the relief of

permanent injunction. Hence, issue No.1 is decided in **negative** and against plaintiff.

ISSUE No.2

17. The onus to prove this issue was on the shoulders of the defendant. However, nothing has been argued nor any evidence has been led by the defendant in support of this issue. The present suit is very well maintainable under provision of Specific Relief Act,1963. Accordingly, issue No.2 is answered in **negative** and decided against the defendant.

ISSUE No.3

18. The onus to prove this issue was cast upon the defendant. The defendant has neither pressed this issue nor he has led any evidence to prove the said issue. Accordingly, this issue is also answered in **negative** and decided against the defendant.

ISSUE NO.4

19. The burden to prove this issue was again on the defendant. The defendant has not led any cogent, convincing and clinching evidence to show as to how the plaintiff has no cause of action to file the present suit. However, in view of my findings on issue No.1, it is clear that plaintiff has failed to prove his cause of action against the defendant. Hence, this issue is answered in affirmative and decided in favour of defendant.

ISSUE NO.5

20. The onus to prove this issue was again on the defendant. Nothing has been argued nor the

defendant has adduced any evidence to show as to how the plaintiff is estopped to file the present suit by his own act and conduct. Accordingly, the said issue is also decided against the defendant and answered in **negative**.

RELIEF

21. In view of my aforesaid findings and discussion on above issues, the plaintiff is not held entitled for the relief of permanent injunction. Hence, suit of the plaintiff is hereby **dismissed**. The parties are left to bear their own costs. Decree sheet be prepared accordingly. File after due completion be consigned to record room.

*Announced and signed in the open Court today
the **31st March, 2026.***

(R.Mihul Sharma)
Sr. Civil Judge Court No.2
Solan, District Solan, HP.

LIST OF WITNESSES

Sr.No	Name of Witness	Whether the Witness is of plaintiff or defendant.
1.	Jai Prakash	Plaintiff's witness
2	Om Prakash	Defendant's witness

LIST OF EXHIBITS

Sr.No	No.Exhibit	Date of Exhibit	Description of Document
	Ext.PW1/A	13.08.2025	Affidavit of Jai Prakash
	Ex. PW1/B	13.08.2025	Jamabandi
	Ext.PW1/D	13.08.2025	Copy of Adhar Card
	Ext.DW1/A	02.03.2026	Affidavit of Om Prakash

(R.Mihul Sharma)
Sr.Civil Judge Court No.2
Solan,District Solan, HP.