



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.295 of 2022

Date of Decision : 27.11.2025

Kheera Ram (deceased) through LR. and others

..... Appellants

Versus

Randhir Dhadwal and another

.....Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellants : Mr. Bhupinder Singh Ahuja, Advocate.

For the respondents : Mr. Y.P. Sood, Advocate, for respondent No.1.

Mr. Virender, Advocate, vice Mr. Mukul Sood,
Advocate, for respondent No.2.

Bipin Chander Negi, Judge (oral)

The Appellants, by filing this appeal under section 100 of the Code of Civil Procedure (for short, CPC), has assailed the judgment and decree dated 18.06.2022, passed by learned Additional District Judge (II), Kangra at Dharamshala, District Kangra, Himachal Pradesh, in Civil Appeal (Registration) No. 206 of 2019, whereby the judgment and decree dated 25.06.2019, passed by learned Senior Civil Judge, Dharamshala, District Kangra. in Civil Suit No. 02/2010, were affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.



3. Succinctly stated, the facts giving rise to the present second appeal are that the plaintiff, a permanent resident of Shyam Nagar, Tehsil Dharamshala, District Kangra, H.P., was running a vegetable shop on a small portion of land measuring 2.25 x 10 feet for over thirty years, paying municipal tax (Teh-Bazaari) to the Municipal Corporation, Dharamshala. The suit land, as per revenue record, is owned by certain people but possessed by the Municipal Corporation. The plaintiff pleaded that his possession was peaceful, sanctioned by the Municipal Corporation through a resolution permitting him to pay a monthly rent of Rs. 300/- and to cover the 'Thara' with tin-sheets. The defendants, particularly defendant no.1, a stranger from Una, started interfering with the plaintiff's possession, threatening to demolish the shop and throw away his articles. The plaintiff therefore filed a suit for permanent prohibitory injunction to restrain the defendants from such interference.

4. The defendants contested the suit, with defendant No.1 asserting that the plaintiff's shop was on a public street/path, causing a hindrance and nuisance to the free movement of vehicles and pedestrians. Defendant No.2, the Municipal Corporation admitted that the plaintiff was paying rent but denied any threat or intention to dispossess him.

5. On the basis of the pleadings of the parties, following issues were framed on 01.06.2013:

“1. Whether plaintiff is entitled for the relief of permanent prohibitory injunction as alleged? OPP

2. Whether plaintiff is entitled for relief of mandatory injunction as alleged? OPP

3. Whether suit is not maintainable in the present form? OPP



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

5. Whether suit is bad for want of notice under section 80 of CPC? OPD-2

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

7. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD

8. Whether suit is barred by provision of limitation? -OPD.

9. Relief.”

8. After trial, the Court dismissed the suit, holding that the plaintiff failed to prove his case for injunction.

9. Aggrieved by the said decision, the plaintiff preferred a first appeal, contending *inter alia* that the Trial Court's findings on issues No.1, 2, and 6 were against the weight of evidence; that the Court failed to appreciate documents like the 'Aks Tatima' and the Municipal Corporation's resolution (Ex. PW2/A) which proved the allotment; that the Court travelled beyond the pleadings by questioning the exact location of the allotted site when defendant No.1 had not disputed it; that the statement of PW2, the Municipal Corporation Officer corroborated the plaintiff's lawful possession; that the finding that the plaintiff did not approach the Court with clean hands was erroneous; and that the judgment was not a reasoned one. The First Appellate Court, however, after considering the submissions, dismissed the appeal, affirming the Trial Court's decree. Hence, the present second appeal.

10. Heard Counsel for the parties and perused the impugned judgments.



11. The foundational claim of the plaintiff is that he is in settled, peaceful possession of a specifically demarcated vegetable shop, a 'Thara' measuring $2\frac{1}{4}$ x 10 feet, situated on land falling within Khasra No. 1232 at Kadheri Adda, Dharamshala. His possession is purportedly legitimized by an allotment and subsequent permission from defendant No. 2, the Municipal Corporation, Dharamshala, which collects a monthly rent of Rs. 300/- from him. The suit was instituted seeking a permanent prohibitory injunction against defendant No. 1, a stranger, who is alleged to have threatened interference and forcible dispossession.

12. Upon a meticulous scrutiny of the record, this Court finds that the plaintiff, while establishing a longstanding vending activity and a financial relationship with the Municipal Corporation, has failed to discharge the critical burden of conclusively identifying and correlating his physical possession with the specific legal location of the suit property. The revenue record (Jamabandi) indicates Khasra No. 1232 is recorded as '*Gair Mumkin Sadak*' (public street) and is owned by private individuals, though possessed by the Municipal Corporation.

13. The documentary evidence presented by the plaintiff, including the resolution of the Municipal Corporation (Ext. PW-2/A) and the subsequent letter (Ext. PW-2/B), merely authorizes him to place a tin-sheet over an area of $2\frac{1}{4}$ x 10 feet in a '*gali*' (street) near the petrol pump. These documents are conspicuously silent on the specific Khasra number. Crucially, the plaintiff's own exhibited site plan, the *Aks Tatima* (Mark 'C'), depicts the location of his shop at point 'D', which, upon perusal, appears to be situated beyond the boundaries of Khasra No. 1232 as shown on the same plan. This creates a



fatal variance between the plaintiff's pleadings and his documentary proof, leading to an irreconcilable ambiguity regarding the very identity and location of the suit land. For a decree of injunction, which operates in *personam* and pertains to a specific *res*, such precise identification is a *sine qua non*.

14. The plaintiff's evidence falls short of this fundamental requirement. Regarding the alleged cause of action against defendant No.1, the evidence is found to be speculative and insufficient. The plaintiff's testimony about threats on specific dates in December 2009 is not corroborated by any contemporaneous complaint to the police or independent witnesses from the locality. The evidence of PW-6, who supports the plaintiff's version, does not materially advance the case as it remains uncorroborated. In stark contrast, the record substantiates that defendant No. 1, along with other residents, initiated legitimate legal proceedings by lodging complaints before the Sub-Divisional Magistrate (S.D.M.). The plaintiff himself admits that the S.D.M. passed orders against him, which were subject to revision. This judicial acknowledgment of proceedings before a competent authority fundamentally undermines the plaintiff's narrative of lawless, high-handed threats from defendant No. 1. It demonstrates that the grievance, if any, pertained to the plaintiff's alleged encroachment upon and obstruction of a public street which is a matter of public nuisance and not a targeted attempt to dispossess him from the core 2¼ x 10 feet area he claims. The failure of the plaintiff to place the S.D.M.'s orders on record, despite admitting their existence, further vitiates his claim of approaching the Court with clean hands.



15. The plaintiff's reliance on demarcation reports (Ext. PW-4/A) showing no encroachment on Khasra No. 1232 is, in this context, of no avail. These reports may negate the defendant's counter-allegation of encroachment, but they do not, by themselves, establish the plaintiff's cause of action for injunction against interference. A suit for injunction requires proof of a tangible threat to the plaintiff's specific possession. The evidence reveals a dispute over the use of adjacent public space, not an invasion of the plaintiff's conceded shop area. The legal recourse adopted by defendant No.1 cannot be construed as the unlawful interference contemplated under law for granting an injunction.

16. Consequently, the concurrent findings of the Courts below are upheld. The learned Trial Court and the First Appellate Court correctly held that the plaintiff failed to: (i) clearly identify and prove his possession over a definitively located portion of Khasra No. 1232 and (ii) establish a *bona fide*, actionable cause of action against defendant No. 1 warranting the extraordinary relief of a perpetual injunction.

17. In the aforesaid facts and attending circumstances, there arises no question of law, much-less a substantial question of law for consideration of the Court, therefore, the present appeal is dismissed being devoid of merit. Pending miscellaneous applications, if any, shall also stand disposed of.

November 27, 2025 (KS)

(Bipin Chander Negi)
Judge