

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 623 of 2023

Date of decision : 07.07.2025.

Surya & others ...Petitioners.

Versus

Abhinav ...Respondent.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

*Whether approved for reporting?*¹

For the petitioners : Mr. G.R. Palsra, Advocate.

For the respondent : Mr. K.D. Sood, Sr. Advocate with
Mr. Rahul Gathania, Advocate.

Satyen Vaidya, Judge (Oral)

The instant petition has been filed against the order dated 26.9.2023, passed by the learned Additional District Judge, Sundernagar in Civil Misc. Appeal No. 48 of 2022.

2. By the impugned order, learned Additional District Judge, Sundernagar, District Mandi has dismissed the appeal of the petitioners filed under Order 43 Rule 1 (r) of the CPC and has affirmed the order of interim injunction passed by the learned trial Court.

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

3. At the very outset, learned counsel for the petitioners has submitted that the impugned order was passed on 26.9.2023 and before that date partition order in respect of the suit land had already passed by the Assistant Collector, 1st Grade, Sundernagar on 5.6.2023. He further submitted that even instrument of partition was prepared on 5.7.2023. All these facts were brought to the notice of the learned Additional District Judge, Sundernagar but he had not taken cognizance. He points out towards the contents of para-15 of the impugned order, wherein an observation has been made that partition proceedings have not attained finality.

4. In support of his contention, learned counsel for the petitioners has placed on record a copy of order of partition dated 5.6.2023, and copy of order dated 5.7.2023 passed by the Assistant Collector, 1st Grade.

5. Learned counsel for the respondent has not disputed the fact that the Assistant Collector, 1st Grade, Sundernagar has passed the partition order dated 5.6.2023 and subsequent order dated 5.7.2023 finalizing

the instrument of partition. He submits that the order of partition is under challenge by the respondent by way of appeal which is pending adjudication. He further disputes the contention that the factum of partition was brought to the notice of learned Additional District Judge, Sundernagar before passing of the impugned order.

6. Be that as it may, the fact remains that the learned Additional District Judge, Sundernagar while passing the impugned order dated 26.9.2023 has not taken into consideration the factum of partition order dated 5.6.2023 as also the order dated 5.7.2023, whereby the instrument of partition was finalized.

7. Keeping in view the controversy between the parties, which relates to their respective rights in the suit land, which at one point of time was joint, the factum of partition order would have its relevance. Since the learned Additional District Judge, Sundernagar has not considered the aforesaid fact, the impugned order is set aside with direction to decide the appeal of the petitioners afresh by taking into consideration the result of partition

proceedings inter-se the parties. The parties are directed to appear before the learned Additional District Judge, Sundernagar on 25.7.2025.

8. The petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

(Satyen Vaidya)
Judge

7th July, 2025.
(kck)