

(2025:HHC:36869)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**RSA No.224 of 2025****Date of Decision : 03.11.2025**

Tara Chand and others

..... Appellants

Versus

Pyare Chand

.....Respondent

*Coram:***The Hon'ble Mr. Justice Bipin Chander Negi, Judge***Whether approved for reporting?¹ No*

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

For the respondent : Nemo.

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 16.07.2025, passed by learned Additional District Judge, Kullu, District Kullu, Himachal Pradesh, in Civil Appeal No. 18/2024, whereby the judgment and decree dated 30.09.2021, passed by learned Senior Civil Judge, Lahaul and Spiti at Kullu District Kullu, in Civil Suit No. 125/2012, 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. The facts as pleaded in the plaint are that the plaintiff instituted a suit for a permanent prohibitory injunction to restrain the defendants from interfering with his vacant Abadi land, specifically Khasra

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

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No. 44, which formed part of Khasra No. 54 in village Abadi, measuring 08-07-00 Bighas, situated at Phati Kharihaar, Kothi Maharaja, Tehsil and District Kullu, H.P. The plaintiff claimed to be the absolute owner in possession of the suit land and alleged that the defendants, being strangers without any right, title, or interest, demolished a portion of a boundary wall (danga) on 18.05.2012 with the intention of grabbing the land and had since been threatening to dispossess him and raise construction.

3. The defendants, upon being served with notice, contested the suit by filing a written statement. They admitted the plaintiff's ownership of a part of the Abadi land and a house but denied the other allegations. The defendants claimed that they were also owners in possession of a portion of the suit Abadi land, which was joint with the plaintiff's land, and that they had demolished their old house in April 2012 to construct a new one on the old plinth. They alleged that it was the plaintiff who had demolished the danga on 18.05.2012 to grab their share, leading to a police complaint and a subsequent compromise on 21.05.2012. The plaintiff, in his replication, reiterated his claims and alleged that the defendants started construction after the suit was filed and, despite a stay order, illegally encroached upon his land, prompting a prayer for mandatory injunction as well.

4. The learned trial Court framed issues on 08.04.2013:-

1. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as alleged? OPP.
2. Whether the suit of the plaintiff is not maintainable? OPD.
3. Whether the plaintiff has no cause of action? OPD.
4. Relief.

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5. Both parties led evidence. The plaintiff examined himself and three other witnesses, relying upon Jamabandis (Ext. PW1/B and Ext. PW1/C), a compromise (Ext. PW1/D), and a site plan (Ext. PW3/A). The defendants examined defendant No. 2 and one other witness. The trial Court, after hearing the parties and reviewing the evidence, decreed the suit, granting both permanent prohibitory injunction and mandatory injunction with costs. The defendants, feeling aggrieved, filed an appeal before the First Appellate Court.

6. In the first appeal, the defendants-appellants argued that the impugned judgment and decree were against the facts and the law, being based on surmises and conjectures. They contended that the trial Court had rendered wrong findings, misinterpreted the evidence, and wrongly granted the relief of mandatory injunction, which was never prayed for in the original plaint. They further argued that the respondent-plaintiff was never in possession of the suit property, that the trial Court failed to rely upon the authorities cited by them, wrongly relied upon the plaintiff's evidence, and ignored the compromise document (Ext. PW1/D). The First Appellate Court, however, dismissed the appeal. Aggrieved by the dismissal of their first appeal, the defendants have now preferred the present Regular Second Appeal.

7. Heard Counsel for the Appellant, perused the impugned judgments.

8. The suit land comprises two parcels: vacant Abadi Deh in Khasra No. 54 and land in Khasra No. 44. The plaintiff's ownership of Khasra

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No. 44 is established by Jamabandi Ext. PW1/B, while Khasra No. 54 is admitted to be village Abadi land in which both parties hold proprietary rights. A dispute arose in May 2012 regarding a boundary wall (danga), leading to a compromise (Ext. PW1/D) where the parties agreed to get the land measured and not to interfere with each other's property. The defendants violated this compromise by commencing construction without the agreed-upon measurement. The plaintiff promptly filed the suit to protect his rights.

9. The site plan Ext. PW3/A, proved by its Architect PW-3, reliably identifies the suit land. The testimonies of PW-2 and PW-4, who were witnesses to the compromise, are credible and consistent. They confirm that the defendants encroached upon a specific portion of the plaintiff's land, marked 'ABCD' in the site plan, and raised construction thereupon during the suit's pendency.

10. The defendants' evidence is unreliable. Their witness, DW-1, gave testimony contrary to their own admission in the written statement regarding the plaintiff's ownership. Furthermore, DW-1 and DW-2 provided inconsistent and irreconcilable descriptions of the property's boundaries and the dimensions of the old and new structures.

11. On the issue of relief, while the plaint originally sought only prohibitory injunction, the plaintiff's replication specifically pleaded the subsequent encroachment and construction. In exercise of power under Order VII Rule 7 CPC, the Court can mould the relief to grant a mandatory injunction for the demolition of the unauthorized structure on the plaintiff's land to do complete justice. The defendants cannot claim surprise, as the issue was squarely raised in the pleadings and evidence.

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12. The plaintiff has thus proved his title and possession over the suit land and the defendants' illegal encroachment on portion 'ABCD'. Consequently, the plaintiff is entitled to a decree for permanent prohibitory injunction and a mandatory injunction directing the defendants to demolish the structure on the encroached land and restore it to its original state. The suit was maintainable and based on a valid cause of action.

13. In view of the aforesaid, there arises no question of law, much less a substantial question of law, for the consideration of the Court. Accordingly, the appeal being devoid of merit, is dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

November 03, 2025 (KS/T.B.)

(Bipin Chander Negi)
Judge