

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CMPMO No. 763 of 2024

Decided on: 10.07.2025

Mohinder Singh petitioner

Versus

Bagga Singh and others

.....respondents

Coram:

Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting? ¹

For the petitioner : Mr. Sunny Modgil, Advocate.

For the respondents : Nemo.

Bipin Chander Negi, Judge (oral)

The present petition has been filed by the petitioner/plaintiff being aggrieved by the judgment dated 17.12.2024 in Civil Misc. Appeal No. 28 of 2024 passed by the learned District Judge, Una, H.P., whereby order dated 30.4.2024 passed by the Senior Civil Judge, Court No.1, Una and on application filed under Order 39 Rule 1 & 2 CPC preferred by the petitioner/plaintiff has been quashed and set aside.

2. Heard counsel for the petitioner/plaintiff. Perused the impugned order and documents appended thereto.

3. At the very outset, it would be appropriate to mention that the present petition has been preferred under Article 227 of the Constitution of India.

¹ Whether the reporters of the local papers may be allowed to see the judgment?

4. This Court has a restricted and limited jurisdiction to interfere under the correctional jurisdiction vested in it in terms of Article 227 of the Constitution of India, except to set right a grave dereliction of duty or flagrant abuse or violation of fundamental principle of law or justice, miscarriage of justice, un-reasonable conclusion and perversity. On the other hand, in the supervisory jurisdiction reviewing or re-weighing evidence, substituting conclusions, correcting every error of fact or even a legal flaw when the final finding is justified or can be supported is not permissible. (See **Sadhana Lodh vs. National Insurance Co. Limited and another, (2003) 3 SCC 524** and **Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 181**).\

5. Besides the aforesaid the 1st Appeal in the case at hand was an appeal on principle. In this respect, reference can be made to judgment reported in **1990 (Supp) SCC 727** titled **Wander Ltd. & Anr. Vs. Antox India Pvt. Ltd.**, decided on 26.04.1990, the relevant extract is reproduced as under:-

“.....14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where they had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reasonably possible on the

material. The appellate Court would normally not with justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion. After referring to these principles Gajendragadker, J.in Printers (Mysore) Private Ltd. Vs. Pothan Joseph. (SCR 721). These principles are well established, but as has been observed by Viscount Simon in Charles Oseinton & Co. v. Jhanaton '.... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.'

6. Admittedly in the case at hand, respondent/defendant No. 2 before the Trial Court was raising construction of the bathroom and latrine over the joint land. None of the other respondents/defendants before the trial Court are raising any construction over the suit land. Mere raising of a construction in a common property does not amount to ouster (Ashok Kapoor's vs. Murtu Devi 2016(1) Shim. LC 209). Relevant extracts whereof read as follow:-

46. On consideration of the various judicial pronouncements and on the basis of the dominant view taken in these decisions on the rights and liabilities of the co-sharers and their rights to raise construction to the exclusion of others, the following principles can conveniently be laid down:-

i) a co-owner is not entitled to an injunction restraining another co-owner from exceeding his rights in the common property absolutely and simply because he is a co-owner unless any act of the person in possession of the property amounts to ouster prejudicial or adverse to the interest of the co-owner out of possession.

ii) Mere making of construction or improvement of, in, the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which is detrimental to his interest.

(v) before an injunction is issued, the plaintiff has to establish that he would sustain, by the act he complains of some injury which materially would affect his position or his enjoyment or an accustomed user of the joint property would be inconvenienced or interfered with.

(vi) the question as to what relief should be granted is left to the discretion of the Court in the attending circumstances on the balance of convenience and in exercise of its discretion the Court will be guided by consideration of justice, equity and good conscience.

47. The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff:-

- (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction;
- (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's right or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the Court with clean hands.

7. The 1st Appellate Court by correctly placing reliance in ***Ashok Kapoor vs. Murtu Devi 2016 (1) Shim. LC 209*** has correctly observed that in the application filed for injunction by the present petitioner/plaintiff, nowhere has it been pleaded that on account of construction being raised by respondent/defendant

No.2. The interest of the petitioner in the joint property would be adversely effected or that the same would lead to diminution of the value and utility of the property.

8. Other than the aforesaid, it has been correctly observed by the 1st Appellate Court that balance of convenience in the case at hand lies in favour of respondent No.2 as grant of injunction in favour of the present petitioner/plaintiff would deprive the respondent No.2 of facility of both bathroom and latrine. The first appellate Court has correctly appreciated the pleadings and the law on the subject hence the judgment dated 17.12.2024 calls for no interference.

9. In view of the aforesaid, the present petition is dismissed. Pending miscellaneous applications, if any, also stand disposed of.

(Bipin Chander Negi)
Judge

June 10, 2025
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