IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 401 of 2025
Reserved on: 28.10.2026
Decided on: 03.11.2026

Sunita Shandil ...Petitioner.

Versus

Meera & others ...Respondents.

Coram
Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1]

For the petitioners: Mr. Suneet Goel, Senior Advocate with Mr. Vivek Negi, Advocate.

For the respondents: Mr. Y.P.Sood, Advocate, for respondents No. 1 and 2 (a).

Mr. Anil Chauhan, Advocate, for respondent No.3.

Romesh Verma, Judge

The present petition arises out of the judgment passed by the learned Additional District Judge-I, Shimla, HP dated 02.07.2025, whereby an appeal filed by the present petitioner invoking the provisions of Order 43 Rule 1(r) of the Code of Civil Procedure (CPC) was dismissed and the order passed by the learned Civil Judge, Court No. 6, Shimla, dated 21.05.2025, was affirmed, whereby the application filed by the present

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

High Court of H.P.

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petitioner/plaintiff was allowed, however, it was ordered that the respondents/defendants shall be at liberty to repair the area below their building as visible in the photographs forming part of the trial Court record.

2. The facts as emerge in the present case are that the plaintiff/petitioner filed suit for permanent prohibitory injunction and mandatory injunction in the Court of the learned Civil Judge, Court No. 6, Shimla, District Shimla, H.P. As per the case set up by the plaintiff/petitioner, Shri Jeet Ram, Devi Saran, Smt. Radha, Shri Manmohan, Shri Mohinder, Smt. Asha, Smt. Reena, and Smt. Chandu were co-owners of the land comprised in Khewat No. 19, Khatauni Nos. 61, 62, Khasra Nos. 2, 3, 786/1, and 1, kita 4, measuring 00-15-07 hectares, situated at Mauza Chamiana, Tehsil Shimla, District Shimla, as per the jamabandi for the year 2014–15.

3. As per the plaintiff, the name of Smt. Banti, daughter of Padma, has been shown as one of the co-owners, but she has expired and her share has been mutated in favour of Shri Jeet Ram and Devi Saran. Similarly, Smt. Pimplu relinquished her share, therefore, they are not the owners of the suit land, and it

High Court of H.P.

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is only the aforesaid eight persons who were owners of the suit land along with defendant No. 1.

4. The plaintiff purchased the entire share of the aforesaid persons, i.e., 00-10-12 sq. meters out of 00-15-07 hectares. As per the plaintiff, the co-owners owned almost 68% of the land, which they sold to the plaintiff vide sale deed dated 11.04.2019, registered at Serial No. 596 dated 16.04.2019 with the Sub-Registrar (Rural), Shimla. The necessary mutation has also been attested in favour of the plaintiff vide Mutation No. 477 dated 09.10.2019.

5. It is the case of the plaintiff that defendant No. 1 is owner of 3008 shares out of 20100 shares in the suit land, which comes to approximately about 225 sq. meters out of 1507 sq. meters in the entire suit land. As per the plaintiff, defendant No. 1 has already constructed her house over the land exceeding her share in the suit land. On 30.08.2021/31.08.2021, defendants No. 1 and 2 started collecting construction material for raising fourth storey, and in the next two days raised shuttering for the same, and on the fifth day, they raised the fourth storey of the building which they have constructed, as is

High Court of H.P.

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evident from the photographs placed on record before the learned trial Court.

6. As per the plaintiff, the said construction is in violation of the building bye-laws under the Town and Country Planning Act, as well as the orders passed by the Hon'ble National Green Tribunal, whereby in Shimla, construction up to two and half storeys is only allowed. The suit land is joint *inter se* the parties, and the same has not been partitioned till date. Therefore, it was prayed that the respondents are not entitled to raise any further construction over the suit land exceeding their share, that too, by raising construction on the best and valuable portion of the suit land.

7. Therefore, under such circumstances, the plaintiff filed suit seeking a decree of permanent prohibitory injunction against the defendants, restraining defendants No. 1 and 2 from carrying out any kind of construction on any part and portion of the suit land comprised in Khewat No. 19, Khatauni Nos. 61 and 62, Khasra Nos. 2, 3, 786/1, and 1, kita 4, measuring 00-15-07 hectares, situated at Mauza Chamiana, Tehsil Shimla, District Shimla, H.P.

High Court of H.P.

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8. A decree for mandatory injunction was also sought by seeking a direction of the Court to remove the entire construction raised by the defendants on any part of the suit land comprised in Khewat No. 19, Khatauni Nos. 61 and 62, Khasra Nos. 2, 3, 786/1, and 1, kita 4, measuring 00-15-07 hectares, situated at Mauza Chamiana. Further, it was prayed that direction be issued to defendant No. 3 to remove and demolish the entire fourth storey raised by defendants No. 1 and 2 over the suit land.

9. Along with the suit, the plaintiff filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC for the issuance of ad-interim injunction, praying that defendants No. 1 and 2 be restrained from carrying out any kind of construction on any part and portion of the suit land till the pendency of the main suit.

10. The suit was contested by defendants No. 1 and 2 by filing written statement taking therein preliminary objections with regard to maintainability, estoppel, cause of action, and locus standi. On merits, all the averments as made in the plaint were specifically refuted and denied. As per the defence of the defendants, the plaintiff failed to disclose any identification and

High Court of H.P.

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description of the land falsely alleged to be in possession of the defendants in excess of their share, whereas, the fact of the matter is that defendant No. 1 is enjoying land in her possession to the extent of her share, and the averments made in the plaint are wrong, false, and incorrect.

11. It was denied by the defendants that defendant No. 1 is co-owner of land measuring 225 sq. meters out of 1507 sq. meters in the entire suit land, as stated in the plaint. It was submitted that defendant No. 1 is co-owner of land measuring 225 sq. meters only in Khewat No. 19, Khatauni No. 61, kita 3, measuring 00-12-37 hectares, and is in exclusive possession of the land to the extent of 225 sq. meters in Khasra No. 3 out of the total area of the said land. It was stated that the plaintiff has not approached the Court with clean hands and has suppressed material facts from the Court, therefore, she is not entitled to the grant of discretionary and equitable relief in any manner.

12. It was further submitted by the defendants that the present suit has been filed by the plaintiff with an intention to drag the defendants into uncalled-for litigation after the dismissal of the CMA No. 26-6 of 2019, vide order dated 21.09.2021 for grant of stay filed by the plaintiff's husband in the Civil Suit No.

High Court of H.P.

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34-1 of 2019, titled *Ram Krishan Shandil vs. Chet Ram & others*, therefore, the suit is liable to be dismissed.

13. The defendants also filed reply to the application filed by the plaintiff under Order 39 Rules 1 and 2 CPC for the grant of ad-interim injunction, refuting the averments made in the application and praying for its dismissal. Defendant No. 3 also filed its separate written statement and prayed for the dismissal of the suit filed by the plaintiff.

14. The learned Civil Judge, Court No. 6, Shimla, District Shimla, H.P., vide order dated 21.05.2025, allowed the application filed by the plaintiff under Order 39 Rules 1 and 2 CPC, and the defendants were restrained from carrying out any kind of construction beyond their share in the suit land. It was ordered that no construction shall be carried out beyond 225 sq. meters of the land comprised in Khewat No. 19, Khatauni Nos. 61 and 62, Khasra Nos. 2, 3, 786/1, and 1, kita 4, measuring 00-15-07 hectares, situated at Mauza Chamiana, Tehsil Shimla, District Shimla, H.P. However, in the operative portion of the order passed by the learned trial Court, it was ordered that the defendants/respondents shall be at liberty to repair the area below their building as visible in the photographs appended in

High Court of H.P.

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the record of the trial Court. The learned trial Court allowed the application on 21.05.2025.

15. Since the liberty was granted to the present respondents/defendants for carrying out the repairs over the suit property, therefore, feeling dis-satisfied, the plaintiff/present petitioner preferred an appeal in the Court of the learned Additional District Judge-I, Shimla, on 23.05.2025.

16. Learned First Appellate Court, vide its impugned judgment dated 02.07.2025, dismissed the appeal filed by the plaintiff/petitioner and affirmed the findings returned by the learned trial Court.

17. Still feeling aggrieved, the plaintiff has approached this Court by filing the instant petition under Article 227 of the Constitution of India.

18. It is contended by Mr. Suneet Goel, learned Senior Advocate assisted by Mr. Vivek Negi, Advocate, for the petitioner that the impugned judgment and the order whereby liberty was reserved/granted to the present respondents to carry out the repair below their building is erroneous and liable to be quashed and set aside. He submits that in the garb of the liberty which has been granted to the respondents, they are

High Court of H.P.

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encroaching over the land to which they are not entitled. It is contended that the respondents have already utilized the entire share of their land, and now, in the garb of the liberty/concession granted by the learned Courts below, the respondents are raising the construction of retaining wall by encroaching over the suit land to the detriment of the plaintiff. He further submits that by means of the judgment/order passed by the learned Courts below, a licence has been granted to the respondents to create nuisance and interfere in the suit land by raising illegal construction, which is against the well-settled principles of law. He submits that once the learned trial Court came to the conclusion that the plaintiff has got a prima facie case in her favour, in that event, the natural consequences which should have been followed is that the application should have been allowed and no liberty/concession should have been granted to the respondents, which is creating multiplicity of litigation in the attending facts and circumstances of the case. He submits that after accepting the present petition, the impugned judgment passed by the learned Additional District Judge-I, Shimla deserves to be quashed and set aside, and the order of the learned trial Court whereby liberty has been granted to the

High Court of H.P.

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respondents/defendants to carry out the repairs deserves to be quashed and set aside.

19. On the other hand, Mr. Y.P. Sood, learned Counsel for respondents. No.1 and 2(a), has defended the impugned judgment/order passed by the learned Courts below. He submits that the Courts below, while exercising the discretionary relief in order to preserve the suit property, have rightly granted the liberty to the present respondents so that there is no wastage of material or damage to the property as built by the respondents.

20. Mr. Anil Chauhan, learned Counsel for respondent No.3, has also defended the judgment/order passed by the learned Courts below.

21. I have heard the learned Counsel for the parties and gone through the case file.

22. In the present case, the plaintiff/petitioner filed the suit for the grant of decree of permanent prohibitory injunction on the premise that she has purchased the suit land vide sale deed dated 11.04.2019, registered at Serial No. 596 dated 16.04.2019, which comprises almost 68% of the total suit land. As per the plaintiff, after the purchase of the suit land vide registered sale deed, the necessary mutation No. 477 was

High Court of H.P.

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attested on 09.10.2019. As per the plaintiff, defendant No. 1 is owner of 3008 shares out of 20100 shares in the suit land, which comes to approximately about 225 sq. meters.

23. It is the case of the plaintiff that defendant No. 1 has already raised construction of her house over the land exceeding her share. She has further stated that the defendants have raised a fourth storey of the building, and now they intend to raise construction on the vacant portion behind the building, and for that purpose, they have already kept construction material on the spot. As the suit land is joint between the parties and the defendants have already occupied the share of the land being owned by them, therefore injunction may be granted against the defendants and defendant No. 3 may be directed to remove and demolish the entire fourth floor which has been constructed against the bye-laws and rules of the statutory body.

24. On the other hand, the defendants have refuted all the averments as made in the plaint. It has been stated that the plaintiff has misled the Court by suppressing the true and material facts, and has intentionally filed the present suit when the order of injunction obtained in an earlier suit filed by her husband in respect of the suit land was vacated by the Court. All

High Court of H.P.

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the allegations levelled in the plaint have been refuted and denied.

25. The perusal of the revenue record, the copy of jamabandi, reveals that the defendants/respondents have share of 3008 out of 20100 shares in the suit land. As per the learned Senior Counsel for the petitioner, the share of the present respondents/defendants is to the extent of 225 sq. meters of the land comprised in Khewat No. 19, Khatauni Nos. 61 and 62, Khasra Nos. 2, 3, 786/1, and 1, kita 4, measuring 00-15-07 hectares, situated at Mauza Chamiana, Tehsil Shimla, District Shimla.

26. It has been submitted by the learned Senior Counsel for the petitioner that the learned trial Court was not well within its right to grant any liberty or concession to the present respondents/defendants once the plaintiff/petitioner was able to make out a prima facie case in her favour. As rightly pointed out by the learned Senior Counsel, the revenue record reveals that the share of the present defendant is 3008 out of 20100 shares, which comes to about 225 sq. meters.

High Court of H.P.

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27. The affidavit as filed by respondent No. 1 in compliance to the order passed by this Court on 25.02.2026 reads as follows:

> *"That I am owner-in-possession of the land measuring 225 Sq. Meters in the land comprised in Khewat No.19, Khasra No.3, situated at Mauja Chamyana, Tehsil Shimla (Rural), District Shimla on which I have constructed four storeyed building within the area of land owned and possessed by me."*

28. This Court is in agreement with the contention raised by the learned Counsel for the petitioner that once the learned trial Court came to the conclusion that on the strength of the revenue record, it is the present petitioner who has got a strong prima facie case in her favour, and the petitioner satisfied the triplicate test of prima facie case, balance of convenience, and irreparable loss, in that event, the liberty granted certainly leads to multiplicity of litigation. It has come on record that *inter se* the parties, there are more than 14 litigations which are pending in different forums. Though the learned trial Court had granted permission to the present respondents to carry out the repairs on 21.05.2025, however, despite the passage of time, this Court cannot accept that the said repairs have not been completed or finished by the present defendants/respondents till date.

High Court of H.P.

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29. The allegations and counter-allegations levelled by the respective parties have to be finally adjudicated by the learned trial Court on the strength of the pleadings and the evidence which shall be adduced by the respective parties; but for the adjudication and determination of the application under Order 39 Rules 1 and 2 CPC, this Court is convinced that the liberty/concession granted to the present respondents deserves to be quashed and set aside.

30. The present petitioner has placed on record the photographs in order to demonstrate that in the garb of the liberty granted to the present respondents, they are raising construction exceeding their share. It has been vehemently argued by the learned Counsel for the petitioner that the liberty granted by the learned trial Court leads to multiplicity of litigation, as a result of which, the respondents are taking undue advantage of the said order.

31. The perusal of the judgment passed by the learned District Judge shows that he has not given findings on the merits of the case, rather he has advised the petitioner to avail appropriate alternative remedies in case there is any violation on the part of the present respondents. Though it has been fairly

High Court of H.P.

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admitted by the learned Counsel for the parties that contempt proceedings have also been initiated by the present petitioner. Once the Courts below came to the conclusion that the plaintiff/petitioner has got a prima facie case, and the said findings have not been assailed by the respondents/defendants before the Superior Court, in that event, the only order which could have been passed is to allow the application under Order 39 Rules 1 and 2 CPC without granting any liberty to the respondents, which definitely is leading to multiplicity of litigation between the parties.

32. This Court is of the opinion that by granting liberty, the Courts below have not taken into consideration the material facts and documents placed on record, and have passed an order which has led to the institution/filing of the present petition. In case the defendants intended to modify the order of injunction passed by the learned trial Court, they could have filed an application for modification of the same. But by giving premium to defendants/respondents by allowing them to carry out repairs, the litigation cannot be permitted to continue in perpetuity.

33. The petitioner/plaintiff has been able to make out a prima facie case in her favour, and the balance of convenience

High Court of H.P.

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also lies in her favour. The petitioner shall suffer huge and irreparable loss in case the respondents are permitted to carry out any construction/repair over the suit land for all times to come.

34. Consequently, in view of the observations made here-in-above, the present petition is allowed. After setting aside the impugned judgment passed by the learned Additional District Judge-I, Shimla, H.P. the liberty granted by the learned trial Court is quashed and set aside. The application filed by the plaintiff/petitioner for grant of injunction is allowed, and the defendants are restrained from carrying out any kind of construction beyond their share which comes to 225 Square metres, in the suit land comprised in Khewat No. 19, Khatauni Nos. 61 and 62, Khasra Nos. 2, 3, 786/1, and 1, kita 4, measuring 00-15-07 hectares, situated at Mauza Chamiana, Tehsil Shimla, District Shimla, H.P.

35. Any observation made herein-in-above for the adjudication of present petition shall not be construed as an expression on the merits of the main case.

36. In view of the above, the present petition is allowed. Pending application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

November 03, 2026(Nisha)

High Court of H.P.

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