IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 327 of 2008
Reserved on: 5.3.2026
Date of Decision: 23.04.2026

Ravinder Panwar and others. ...Appellants

Versus

Varinder and others ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the Appellants : Mr Suneet Goel, Senior Advocate, with M/s Vivek Negi and Vishwas Kaushal, Advocates.

For Respondents No.1 and 2 : Mr Mohinder Verma, Advocate.

For Respondents No.3(a) to 3(c), 3(d)(i), 3(d)(ii), 3(e) and 3(g). : Proceeded against ex parte.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 4.4.2008, passed by learned District Judge, Solan, H.P. (learned Appellate Court) vide which the judgment

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

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and decree dated 11.9.2006, passed by learned Civil Judge (Senior Division), Kasauli, District Solan, H.P. (learned Trial Court) were upheld. (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court for seeking permanent prohibitory injunction for restraining the defendants from raising construction in the land comprised in Khata/Khatauni No. 22/27, kita-28, measuring 36.2 bighas, situated at village Shillar, Pargna Lachdang, Tehsil Kasauli, District Solan, H.P. (hereinafter referred to as the suit land) as per the Jamabandi for the year 1992-93. It was asserted that the plaintiff and the pro forma defendant are joint owners in possession of the suit land. The predecessor-in-interest of the defendant, namely Sh. Musaddi became the owner of the Khasra No. 107/1 measuring 06 biswa, described as *toda* in the revenue record after the commencement of the H.P. Tenancy and Land Reforms Act Mutation to this effect was attested on 13.7.1976. The defendants started raising construction without obtaining demarcation. The plaintiff asked the defendants not to

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raise any construction without taking the demarcation. He also served a notice upon defendant No.1 to this effect. However, the defendant continued with the construction and constructed a kitchen in Khasra No. 195/107, taking advantage of the plaintiff's absence. Hence, a civil suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement. It was admitted that Musaddi alias Musaddi Lal was the owner-in-possession of Khasra No. 107/1 measuring 06 biswa. It was asserted that a residential house existed on the suit land, and no threats were advanced. The suit was frivolous and not maintainable. Hence, it was prayed that the suit be dismissed.

4. The plaintiff amended his plaint to incorporate that the defendants had raised the construction of a kitchen in October 1998.

5. The defendant filed a written statement to the amended plaint, taking preliminary objections regarding lack of maintainability and cause of action, the plaintiff being estopped by his act and conduct from filing the present suit, the plaintiff having not come to the Court with clean hands, and the suit

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being bad for non-joinder and mis-joinder of the necessary parties. It was admitted that the plaintiff and proforma defendants are the co-owners of the suit land. Musaddi Lal was inducted as a tenant upon Khasra No. 107/1 measuring 06 biswas, and he became the owner after the commencement of the H.P. Tenancy and Land Reforms Act. The defendants raised a construction over the land given to them in a written family arrangement between the plaintiff and the defendants. The kitchen was constructed about 12-13 years before the institution of the suit. The land was demarcated six months before filing the written statement. Hence, it was prayed that the suit be dismissed.

6. No replication was filed.

7. Learned Trial Court framed the following issues on 8.6.2004:-

1. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction, as prayed for? OPP.
2. Whether the plaintiff is entitled for the alternative relief of restoration of the land in its original position after demolition in case defendants have encroached the land and during the pendency of the suit, and to get the vacant possession qua the suit land, as alleged? OPP.
3. Whether the suit is not maintainable? OPD.
4. Whether plaintiff is estopped by his own act, conduct and acquiescence, as alleged? OPD.

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5. Whether the plaintiff has no cause of action, as alleged? OPD.
6. Whether the suit is bad for non-joinder and mis-joinder of necessary party, as alleged? OPD.
7. Relief.

8. The plaintiff was called upon to produce the evidence, and the plaintiff examined himself (PW1) and Atma Ram (PW2). The defendant No.1, examined himself (DW1) and Chet Ram (DW2).

9. Learned Trial Court held that the plaintiff had issued a notice to the defendants on 1.11.1994 in which it was specifically asserted that construction was being raised. This is contrary to the pleaded case of the plaintiff that the construction was completed in the year 1998. A demarcation was conducted on the spot on 6.11.2003, which was affirmed on 19.4.2004. The defendants were found to be in possession of Khasra No. 195/107/2 and 195/107/3, which are small fragments of Khasra No. 195/107. The plaintiff had sought a mandatory injunction, but the possession was old, and the plaintiff was not entitled to the discretionary relief of an injunction. Hence, the learned Trial Court answered Issue No.1 in the affirmative, the rest of the issues in the negative and granted a permanent prohibitory

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injunction for restraining the defendants from interfering with the land of the plaintiff except Khasra No. 195/107/2 and 195/107/3 as per tatima (Ex. 2/F).

10. Being aggrieved from the judgment and decree passed by the learned Trial Court, the legal heirs of the plaintiff filed an appeal, which was decided by the learned District Judge, Solan, HP (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the demarcation was properly conducted. Both parties were not the original owner of the land, but the tenants who had become owners after the commencement of the H.P. Tenancy and Land Reforms Act. The defendants were in possession for a long time, and this fact was corroborated by a compromise effected between the parties. The plaintiff had not specified the specific portion that was sought to be demolished. The plaintiff pleaded that the construction was raised in the year 1998, but he had written a letter in the year 1994 complaining about the construction. This showed that the construction was old. There was no infirmity in the findings recorded by the learned Trial Court. Hence, the appeal was dismissed.

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11. Being aggrieved by the judgments and decrees passed by the learned Trial Court, the legal heirs of the plaintiff have filed the present appeal, which was admitted on the following substantial questions of law on 10.7.2008:-

1. Whether the impugned judgment and decree can be sustained in view of Ext.PW2/C, the demarcation report showing encroachments by the respondents, submitted by PW2 and having been accepted by the parties?
2. Whether the impugned judgment and decree is the result of misreading and misappreciation of evidence, oral and documentary, on record?

12. I have heard Mr Suneet Goel, learned Senior Advocate, assisted by M/s Vivek Negi and Vishwas Kaushal, learned counsel for the appellants and Mr Mohinder Verma, learned counsel for respondents No.1 and 2.

13. Mr Suneet Goel, learned Senior advocate for the appellant, submitted that both the learned Courts below held that the demarcation was conducted as per the law. The report of the demarcation shows that the defendants had encroached upon the suit land. The defendants had no right to retain possession, and the learned Courts below erred in rejecting the relief of mandatory injunction. Learned Appellate Court had not independently appreciated the evidence. Therefore, he prayed

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that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside. He relied upon the judgment of this Court in ***Sunder Singh vs. Roop Singh, RSA No. 9 of 2019, decided on 26.4.2019,*** in support of his submissions.

14. Mr Mohinder Verma, learned counsel for the respondents, submitted that both the learned Courts below had rightly held that the possession of the defendants was old. The plaintiff failed to file a suit for possession and instead chose to file a suit for mandatory injunction, which is a discretionary relief. The learned Courts below had rightly declined to exercise the discretion after finding out that the plaintiff had not come to the Court with clean hands and had pleaded false facts before the Court. Hence, he prayed that the present appeal be dismissed.

15. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

16. Both the learned Courts below have concurrently found that the demarcation conducted by Atma Ram (PW2) was as per the law. The defendants did not assail this finding by

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filing a cross objection. They failed to show any infirmity in the procedure adopted during the demarcation, and this pure findings of fact recorded by the learned Courts below cannot be disturbed in the present second appeal.

17. Plaintiff Het Ram (PW1) admitted in his cross-examination that he had served a notice (Ex. DX) upon the defendant on 1.11.1994 regarding the construction of the house in Khasra No. 107/1. A perusal of the notice (Ex. DX) shows that the plaintiff had specifically asserted in it that Varinder Kumar had unauthoritatively constructed a house on the plaintiff's land without the approval and consent of the plaintiff, which amounted to encroachment and was punishable under law. Hence, the plaintiff demanded the compensation at the rate of ₹10,000/- per biswa or to face legal action.

18. The plaintiff also admitted in his cross-examination that the defendant had completed the construction in the year 1994, and he had issued the notice after the completion of the construction. This admission supports the conclusions drawn by learned Courts below that the construction was completed in the year 1994.

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19. The plaintiff asserted in para 6A of the plaint that the defendants forcibly constructed a kitchen in October 1998 over Khasra No. 195/107 without any right, title or interest. This averment is patently false because of the admission made by the plaintiff that construction was completed in the year 1994. The learned courts below had rightly held that the injunction is a discretionary relief. Section 36 of the Specific Relief Act provides that preventive relief is granted at the discretion of the Court by injunction, temporarily or perpetually. Section 39 of the Specific Relief Act also provides that the Court may, in its discretion, grant an injunction to prevent the breach of the contract and also to compel performance of the requisite act. Section 41(i) of the Specific Relief Act provides that an injunction cannot be granted when the conduct of the plaintiff or his agent has been such as to disentitle him to the assistance of the Court. Therefore, no party can claim a relief of injunction as a matter of right, and the court has a discretion to refuse the grant of an injunction in suitable cases.

20. It was laid down by the Hon'ble Supreme Court in ***Dalip Singh v. State of U.P. 2010 (2) SCC 114,*** that a new creed of litigants has cropped up who do not have any respect for truth

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and shamelessly resort to falsehood and unethical means for achieving their goals. The Courts should evolve new rules to deal with such litigants and should not permit a premium on fraud. It was observed: -

> "**1.** For many centuries, Indian society cherished two basic values of life, i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily lives. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era, and the people used to feel proud to tell the truth in the courts irrespective of the consequences. However, the post-Independence period has seen drastic changes in our value system. Materialism has overshadowed the old ethos, and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter in falsehood, misrepresentation and suppression of facts in the court proceedings.
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> **2.** In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules, and it is now well established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final."

21. It was laid down in ***Rekha Sharad Ushir v. Saptashrungi Mahila Nagari Sahkari Patsansta Ltd., 2025 SCC OnLine SC 641,*** that a litigant who suppresses material facts or makes a false

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statement cannot seek justice from the Court. His petition is liable to be thrown at the threshold. It was observed: -

> **11.** It is settled law that a litigant who, while filing proceedings in the court, suppresses material facts or makes a false statement, cannot seek justice from the court. The facts suppressed must be material and relevant to the controversy, which may have a bearing on the decision-making. Cases of those litigants who have no regard for the truth and those who indulge in suppressing material facts need to be thrown out of the court. In paragraph 5 of the decision of this Court in the case of ***S.P. Chengalvaraya Naidu v. Jagannath(1994) 1 SCC 1***, it is held thus:
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> > "**5.** The High Court, in our view, fell into patent error. The short question before the High Court was whether, in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court must come with clean hands. We are constrained to say that more often than not, the process of the court is being abused. Property-grabbers, tax evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood has no

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> right to approach the court. He can be summarily thrown out at any stage of the litigation."

22. Delhi High Court also held in A***waneesh Chandra Jha v. Anil Prasad Nanda, 2022 SCC OnLine Del 1866*** that dishonesty must not be permitted to bear fruit, and once fraud is proved, on advantage derived by a person has to be withdrawn. It was observed: -

> "**60.** The unquestioned legal position is that dishonesty must not be permitted to bear fruit; that collusion or conspiracy with a view to deprive others of their rights would render a transaction void ab initio; that suppression of material documents would amount to fraud upon the court; that once fraud is proved, all advantages gained by the fraud can be taken away; and that every court has inherent powers to recall its orders obtained by fraud since such order is non est. This necessarily implies that at any stage of a proceedings, if it appears to a court that fraud is being played upon it, the court must not permit a litigant to obtain any benefit and must nip any such effort in the bud."

23. Therefore, the learned Courts below had rightly declined the discretionary relief of mandatory injunction after finding that the conduct of the plaintiff was not fair and he had resorted to falsehood. The Courts were not bound to grant the relief even if the demarcation report proved the encroachment made by the defendants. Hence, this substantial question of law is answered accordingly.

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Substantial Question of Law No.2:

24. Mr Suneet Goel, learned Senior Counsel for the appellants, submitted that the learned appellate Court was required to come into close quarters with the reasoning assigned by the learned Trial Court and then assign its own reasoning to reverse the judgment. There can be no dispute with this proposition of law. However, in the present case, the learned appellate Court had not reversed the judgment of the Trial Court but had affirmed it and it was sufficient to indicate the broad agreement with the reasoning of the judgment of the learned Trial Court. It was laid down in ***Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179: 2001 SCC OnLine SC 375*** that the first appellate court need not write a detailed judgment when it is affirming the findings of the court and a mere general agreement is sufficient. It was observed on page 188:

> "The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties, and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. *The task of an appellate court affirming the findings of the trial court is an easier one. The*

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> *appellate court, agreeing with the view of the trial court, need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, the decision of which is under appeal, would ordinarily suffice* (See ***Girijanandini Devi*** **v.** ***Bijendra Narain*** *Choudhary* ***[AIR 1967 SC 1124]***). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it." (Emphasis supplied)

25. A perusal of the judgment of the learned Appellate Court shows that the learned Appellate Court had discussed the oral and documentary evidence, and assigned its independent reasons while affirming the judgment of the learned Trial Court. Hence, it cannot be said that there is any misreading of the judgment, and the substantial question of law is answered accordingly.

Final Order:

26. Therefore, there is no infirmity in the judgments and decree passed by the learned Courts below.

27. Hence, the present appeal fails, and it is dismissed.

28. Pending application(s), if any, also stand(s) disposed of.

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29. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

23rd April, 2026
(Chander)

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