

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 369 of 2025.

Reserved on: 15th May, 2026.

Decided on : 20th May, 2026.

Dandu Ram & Anr.

.....**Petitioners.**

Versus

Krishan Chand alias Krishan Lal & Ors.

....**Respondents.**

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the Petitioners:

Mr. Shrawan Dogra, Senior Advocate with Mr. Tejasvi Dogra, Advocate.

For the Respondents:

Mr. Sanjeev Kuthiala, Senior Advocate with Ms. Tamanna Sharma, Advocate.

Romesh Verma, Judge.

The present petition arises out of the judgment as passed by learned District Judge, Bilaspur in Civil Misc. Appeal No. 22/14 of 2022 dated 20.06.2025, whereby the appeal preferred by the present respondents/plaintiffs was decided by directing the trial Court to appoint a commission to see whether the defendants

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

exceeded their right by making railing, in such a manner so as to obstruct the passage made to the house of the plaintiffs.

2. The facts of the case are that the plaintiffs filed a suit for declaration to the effect that they are entitled to get their half share partitioned from the defendants in the suit land which is in totality measures 13 bighas situated in Village Panyala, Tehsil Ghumarwin, District Bilaspur. In addition, a decree of permanent prohibitory injunction has also been prayed for by restraining the defendants from raising construction of any kind over any part of the suit land and particularly from installing gate over the road which leads from the house of the plaintiffs to the main road through courtyard of defendants. In alternative, decree for mandatory injunction has been prayed for, seeking directions against the defendants to remove the obstruction or gate if installed on the aforesaid road. It is the case of the plaintiff that they have constructed a road to their house on the suit land which connects the house to main road. The said road was constructed by the plaintiffs with the consent of the defendants. That a compromise was effected between the parties before the Lok

Adalat and the same was exhibited as Ex. PX. The case of the plaintiffs is that the defendants despite entering into the compromise obstructed the right of user of road of the plaintiffs through the suit land and threatened to construct a gate in such a manner so as to deny the plaintiffs' right to ply vehicles upto their house.

3. Along with the suit, an application under Order 39, Rules 1 and 2 of the CPC was also preferred by the plaintiffs/respondents.

4. The suit was contested by the defendants/petitioners by filing written statement raising various preliminary objections. On merits, the averments made in the plaint have been refuted and denied. The allegations of obstruction to the user of path available to the house of the plaintiff was specifically denied. It is the case of the defendant that the plaintiffs have got no right or title to claim passage through the court yard of the house of the defendants. The defendants have prayed for dismissal of the suit as filed by the plaintiff.

5. The defendants contested the the application filed by the plaintiffs under the provisions of Order 39, Rules 1 and 2 of the CPC. The defendants also filed an application under Order 39, Rule 4 of the CPC for the vacation of the interim injunction as passed by the learned trial Court.

6. Learned trial Court vide its order dated 5.8.2022, decided the both the aforesaid applications. The relevant portion thereof reads as under:-

"In view of the aforesaid discussion and considering the fact that the suit land is jointly owned by the parties, the application is only partly allowed to the extent that the respondents may install a gate to protect their property but with a condition not to obstruct in any way the access to the house of the applicants. Regarding the remainder of the suit land, the parties are directed to maintain status quo qua nature, possession and construction. It is further clarified that the gate, if installed, shall not be locked without the consent of the applicants and if the respondents wish to lock the gate then they shall provide a duplicate key of the same to the applicants."

7. It was ordered by the learned trial Court vide order dated 5.8.2022 that the defendants may install a gate to protect their property but with a condition not to obstruct in any way the

access to the house of the applicants/plaintiffs. As per the findings rendered by the learned trial Court, regarding remainder of the suit land, the parties were directed to maintain status quo qua nature, possession and construction. It was further ordered that the gate, if installed, shall not be locked without consent of the plaintiffs and if the defendants wish to lock the gate then they shall provide a duplicate key of the same to the plaintiffs.

8. Against the said order, as passed by the learned Trial Court on 05.08.2022, the plaintiffs/respondents preferred an appeal under Order 43, Rule1(r) of the CPC before the learned District Judge, Bilaspur. During the pendency of the appeal, the plaintiffs/respondents filed an application under Section 151 of the CPC for removal of the railing on the spot affixed by the defendants/petitioners, in addition to the gate allowed by the learned trial Court vide its order dated 05.08.2022. Learned trial Court vide its order dated 28.09.2022 allowed the said application subject to payment of costs of Rs.2000/- and the defendants were directed to remove the railing installed over the suit land. The

SHO Police Station Ghumarwin was directed to see to it personally that the said railing is removed as directed.

9. Against the said order dated 28.09.2022, the defendants/petitioners preferred Civil Revision No. 156 of 2022 before this Court. This Court vide its judgment dated 26.03.2024, allowed the civil revision filed by the defendant and the order as passed by the learned trial Court on 28.09.2022, whereby, the defendants were directed to remove the railing installed over the suit land was quashed and set aside.

10. The appeal which was preferred by the plaintiffs under Order 43, Rule 1(r) of the CPC against the order as passed by the learned trial Court on dated 05.08.2022 came to be decided by the learned District Judge, Bilaspur on 20.06.2025. The learned District Judge affirmed the findings as rendered by the learned trial Court but subject to modification by passing direction in the appeal. Learned District Judge directed the trial Court to appoint commission to see whether the defendants exceeded their right by making railing, in such a manner so as to obstruct the passage made to the house of the plaintiffs. Further, direction has been

given that commissioner concerned, shall view the width of the entire road leading from the house of the plaintiffs till the metalled road and take corrective measures forthwith under the directions of the learned trial Court.

11. Feeling dissatisfied, the defendants/petitioners have approached this Court by filing the instant petition under Article 227 of the Constitution of India.

12. It is contended by Shri Shrawan Dogra, learned Senior Advocate assisted by Mr. Tejasvi Dogra, learned counsel for the petitioners/defendants that the findings/observations as returned by the learned appellate court are erroneous and are liable to be set aside. He would submit that learned District Judge has gone astray in the matter and while ignoring the findings as rendered by this Court in Civil Revision No. 156 of 2022, he has passed the impugned judgment. He submits that after accepting the present petition, the observations and findings as rendered by the learned District Judge are required to be quashed and set aside.

13. On the other hand, Mr. Sanjeev Kuthiala, learned Senior Advocate assisted by Ms. Tamanna Sharma, learned

counsel for the respondents/plaintiffs has defended the impugned judgment as passed by the learned appellate court. He submits that there is no error or perversity in the impugned judgment as passed by the learned District Judge. The order which has been passed by the learned appellate Court with respect to the appointment of the local commissioner is legal, valid and sustainable. He submits that the impugned judgment does not warrant any interference and the present petition deserves to be dismissed.

14. I have heard learned counsel for the parties and have also gone through the material placed on record carefully.

15. The plaintiffs/respondents filed a suit for declaration to the effect that they are entitled to get their half share partitioned from the defendants in the suit land and in addition they have also sought a decree for permanent prohibitory injunction restraining the defendant from raising construction of any kind over the part of the suit land and from installing gate over the road which leads from the house of the plaintiff to the main road through the courtyard of the defendants.

The learned trial Court vide its order dated 05.08.2022, whereby the application filed by the plaintiff under Order 39, Rules 1 and 2 of the CPC and the application filed by the defendants under Order 39, Rule 4 of the CPC has held that the suit land is jointly owned by the parties and the petitioners/defendants have been permitted to install a gate to protect their property but with a condition not to obstruct in any way the access to the house of the plaintiffs/respondents. With respect to the remainder of the suit land, the parties have been directed to maintain status quo qua nature, possession and construction. There is positive direction by the learned trial Court that the gate, if installed, shall not be locked without the consent of the plaintiffs/respondents and if the defendants/petitioners wish to lock the gate then they shall provide a duplicate key of the same to the plaintiffs/respondents.

16. The defendants/petitioners accepted the said order and they did not assail the said order. On the other hand, the plaintiffs/respondents preferred an appeal under the provisions of Order 43, Rule 1(r) of the CPC before the learned District Judge. During the pendency of the said appeal before the first appellate

Court, an application came to be filed before the learned trial Court under the provisions of Section 151 of the CPC by the plaintiffs/respondents for removal of the railing affixed by the defendants/petitioner, in addition to the gate allowed by the learned trial Court vide order dated 5.8.2022. Though, the said application was allowed on 28.09.2022, however, the order as passed by the learned trial court for removal of the railing installed over the suit land was quashed and set aside by this Court in C.R. No. 156 of 2022 vide order dated 26.03.2024.

17. The main dispute between the parties pertains to the user of the passage by the plaintiffs from one side of the courtyard of the house of the defendants which leads to the main road. The plaintiffs claim user of passage from the land of the defendant on the basis of a compromise which was effected between the parties before the National Lok Adalat. In the said compromise, there is mention of the path, though, there are no details of the dimensions of the path/road, but the fact remains that the case was compromised between the parties. This Court while deciding the Civil Revision No. 156 of 2022 has already held

that the passage exist on the spot to the house of the plaintiffs. This fact has also been observed by the learned trial Court while passing the interim injunction.

18. The perusal of the judgment passed by this Court in C.R. No. 156 of 2022 reveals that this Court has already adjudicated upon the point in controversy by holding that the installation of the railings by the defendants, in addition to the gate cannot per se said to be violation of the order passed by the learned trial Court. This court further came to the conclusion in para-19 that the order which was passed by the learned trial Court on dated 28.09.2022 virtually amounts to decreeing the suit of the plaintiffs. Therefore, the dispute narrows down to a very limited extent, whereby it can be inferred from the record that there is a passage over the suit land which leads to the house of the plaintiffs from the public road. Though, it is a disputed fact, which is yet to be adjudicated upon by the learned trial Court on the strength of independent evidence that what is dimensions of the said road. One party alleges that there is four feet passage over the suit land and in counter the other alleges that the same is

about 8 feet motorable road. The said fact has to be proved by the respective parties by adducing evidence in the trial. The learned appellate court though has upheld the order as passed by the learned trial Court dated 05.08.2022, however, in the operative portion of the judgment, he has directed the learned trial Court to appoint a commission to see whether the defendants exceeded their right by making railing, in such a manner so as to obstruct the passage made to the house of the plaintiffs. In the considered view of this Court, such observations and findings are contrary to the findings as rendered by this Court in Civil Revision No. 156 of 2022, whereby this Court has categorically held that the installation of the railing by the defendants in addition to the gate cannot be per se said to be violation of the orders dated 05.08.2022 passed by the learned trial Court. It has been held in para-18 of the judgment that it cannot be said in generality that in every case the installation of gate on an immovable property will serve its purpose by its installation with the help of supporting pillars. It will depend in fact situation of each case. The purpose of installation of a gate is to secure some premises. In case the

premises are exposed and open from all other sides, the installation of a gate merely on one side is for no purpose. Whether the railing as installed along with the gate is in violation or not has been determined by this very Court. Therefore, now the observations and findings as returned by the learned District Judge by holding that a commission be appointed to see whether the defendants exceeded their right by making railing, in such a manner so as to obstruct the passage made to the house of the plaintiffs, are erroneous.

19. Admittedly, the suit is at its initial stage and the extent and dimensions of the passage has to be determined by the learned trial Court with the help and aid of the evidence which will be adduced by the respective parties. The learned appellate Court has virtually ordered the collection of evidence in support of the plaintiffs. The onus to prove the interference is upon the plaintiffs at the first instance. Whether there is any obstruction or interference over the suit land has to be specifically pleaded and proved by the plaintiffs. By returning the impugned findings, the learned appellate court has gone astray in the matter and it

virtually amounts to collection of evidence in favour of the plaintiffs. Such procedure as adopted by the learned appellate court is uncalled for. The learned appellate Court has not taken into consideration the judgment/findings passed by this Court with respect to the installation of railing, whereby this Court has categorically come to conclusion that mere installation of railing does not amount to violation by the defendants. As far as the dispute with respect to length and breadth of the passage is concerned, there is contentions and rival contentions of both the parties. The same cannot be adjudicated upon in a slip shod manner by direction the commission to adduce evidence in support of a particular party. The said fact has to be ascertained in the main trial by the respective parties. The learned District Judge while deciding the appeal against the order passed under the provisions of Order 39, Rules 1 and 2 could not have passed such order.

20. The learned first appellate court had erred by passing the aforesaid findings and observations despite the fact that he has upheld the order of the learned trial Court dated 05.08.2022.

The only question for the determination of the first appellate Court was that whether the impugned order dated 05.08.2022 is good or bad in the eyes of law. The appeal, which was preferred before him was with respect to the legality of the impugned order by the learned trial Court. On one hand, the learned appellate Court upheld the order and on the other, it passed the order which is totally alien and contrary to the order passed by the learned trial Court. In the proceedings under Order 39, Rules 1 and 2 of the CPC , the court cannot direct the appointment of commission in order to collect evidence in favour of a particular party. It is well settled principle of law that the court will not come to the aid of the parties and will not collect evidence for them. In the judgment, which was passed by this Court in Civil Revision No. 156 of 2022, the issue pertaining to the railing has been put to rest. Therefore, now it is within the domain of learned trial Court to adjudicate the controversy between the parties on the basis of independent evidence which will be adduced by them during the course of the trial.

21. Moreover, it is contended by the learned senior counsel for the petitioners/defendants that in appeal, which was preferred by the plaintiffs/respondents, this was never the case of the plaintiffs for the appointment of a commission. The learned District Judge, on its own and without appreciation of facts placed on record directed the appointment of a commission, which in the opinion of this court, for the aforesaid reasons, is erroneous and is liable to be set aside.

22. The afore noted observations and findings as returned by the learned District Judge are dehors the material placed on record and cannot be sustained in the present proceedings.

23. Consequently, after accepting the present petition, the observations and findings as returned by learned appellate court by directing the trial Court to appoint a commission to see whether the defendants exceeded their right by making railing, in such a manner so as to obstruct the passage made to the house of the plaintiffs and with further direction that the commissioner concerned, shall view the width of the entire road leading from the house of the plaintiffs till the metalled road and take corrective

measures forthwith under the directions of the learned trial Court are quashed and set aside.

24. In view of above discussions, the instant petition is allowed with the aforesaid observations. Pending applications, if any, also stand disposed of.

25. Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here- in-above, which are only for the purpose of the instant petition. Records be sent back henceforth.

(Romesh Verma)
Judge

20th May, 2026.
(jai)