

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**RSA No. 111 of 2025  
Decided on: 30.06.2025**

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Shivani Sharma ..... appellant  
Versus  
State of H.P. and others ..... respondents

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Coram:  
**Hon'ble Mr. Justice Bipin Chander Negi, Judge**  
Whether approved for reporting? <sup>1</sup>

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**For the appellant** : Mr. H.S. Rana, Advocate.  
**For the respondents** : Mr. Raj Kumar Negi, Additional Advocate General, for respondents No. 1 and 2/State.  
: Mr. Virender Kumar, Advocate, for respondents no. 3, 4 & 5/MC  
: Mr. Mukesh Sharma, Advocate, for the proposed respondent.

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**Bipin Chander Negi, Judge (oral)**

The appellant, by filing this appeal under section 100 of the Code of Civil Procedure (for short, CPC), has assailed the judgment and decree dated 27.03.2025 passed by the learned District Judge, Shimla District Shimla H.P. in Civil Appeal No. 5-S/13 of 2024, whereby the appeal has been dismissed and the judgment dated 1.5.2024 by the learned Civil Judge, Senior Division, Shimla (Court No.1), District Shimla H.P. in Civil Suit No. 16 of 2018 has been affirmed.

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<sup>1</sup> *Whether the reporters of the local papers may be allowed to see the judgment?*

2. For brevity, the parties will hereinafter be referred to in the same manner as before the learned trial court

3. The plaintiff had initially filed a civil suit before the trial court seeking a declaration that she is the owner in possession of the suit land comprised in Khasra Nos. 432, 433, 434 & 435, with an existing building predating 2008. She also sought a permanent prohibitory injunction restraining the defendants from interfering with her ownership and possession or demolishing any structure on the land measuring 119 sq. meters situated in village Shiv Nagar, Mauza Majeth, Totu, District Shimla, H.P. The plaintiff claimed ownership through a sale deed dated 24.04.2015 from Sh. Virender Kaushal, with mutation No. 823 of 2015 sanctioned in her name. She contended that the construction on the land existed prior to the area's inclusion under the Municipal Corporation, Shimla, and alleged tampering in the revenue records, particularly regarding a path shown in Khasra Nos. 812, 420, and 421, which she claimed was fraudulently inserted.

4. The plaintiff further alleged that despite her complaint dated 21.02.2017 to the Deputy Commissioner regarding the tampering, no action was taken. Meanwhile, defendant No. 2 initiated proceedings under Sections 242 and 253 of the Municipal Corporation Act, leading to a demolition order dated 06.03.2017, which she claimed was passed without proper inquiry

into the age of the building or demarcation of the land. Her appeal before the District Judge, Shimla was dismissed on 23.10.2017. She argued that the demolition order was passed without considering the regularization policy under which she had applied, along with over 8000 other applicants.

5. The defendants contested the suit, raising preliminary objections regarding maintainability, estoppel, non-compliance with Section 80 CPC, and lack of locus standi. They asserted that the demolition order was passed after due opportunity provided to the plaintiff, on which she failed to produce any sanctioned plan for the disputed construction. The defendants also highlighted that the District Judge had upheld the Commissioner's order, observing that the plaintiff had encroached upon a public path as per the revenue records.

6. During the pendency of the suit, defendants' No. 6 to 16 applied for impleadment under Order 1, Rule 10 CPC, which was initially dismissed but later allowed by the High Court on 19.06.2023. They also filed an application under Order 7, Rule 11 CPC on 20.11.2023, contending that the suit was barred under Section 253 of the Himachal Pradesh Municipal Corporation Act, 1994, as it challenged an order already upheld by the District Judge. They further stated that the plaintiff's unauthorized construction obstructed a public path, leading to complaints and subsequent demolition orders, which were not appealed further.

The plaintiff resisted the application, arguing that the suit was maintainable as it sought a declaration regarding the age of the building and injunctive relief, not a challenge to the demolition order. She contended that the issues of tampering in revenue records and the building's age required evidence and could not be adjudicated summarily.

7. The trial court, after hearing the parties, allowed the application under Order 7, Rule 11 CPC and rejected the plaint on 01.05.2024. Aggrieved, the plaintiff filed a first appeal, contending that the trial court had fundamentally erred in appreciating the nature of the suit which was essentially for declaration of title and permanent injunction, not merely challenging the demolition order. It was argued that the trial court failed to consider that the issues of alleged tampering in revenue records and determination of the building's age required proper adjudication through evidence, which could not be summarily decided at the threshold stage of plaint rejection. The appellant emphasized that the applications filed under Order VII Rule 14 and Order I Rule 10 CPC were dismissed perfunctorily without proper consideration, thereby prejudicing her case. The first appellate court however dismissed the appeal by upholding the trial court's order, therefore grieved by the same; the appellant now approaches this Court in second appeal.

8. Heard counsel for the parties. Perused the impugned judgements.

9. The appellant had filed the present suit seeking declaration of ownership and permanent injunction against interference in her possession over the suit land, as well as restraint against demolition of structures, after receiving a notice dated 20.12.2017 from the Municipal Corporation. The genesis of the dispute lies in a complaint filed by defendants' No. 6 to 16 regarding unauthorized construction, which led to directions from the High Court for examination by the Municipal Corporation. Pursuant thereto, proceedings under Section 253(2) of the H.P. Municipal Corporation Act were initiated, culminating in the demolition order dated 06.03.2017. The appellant's appeal before the District Judge was dismissed on 23.10.2017, upholding the Corporation's order. Instead of complying, the appellant filed the present suit, ostensibly for declaration and injunction, but in substance seeking to nullify the demolition order.

10. Section 253 of the H.P. Municipal Corporation Act provides a comprehensive mechanism for demolition orders and appeals, with sub-section (4) explicitly barring any suit or proceeding for injunction against the Commissioner's actions under this provision. The appellant's attempt to circumvent this statutory bar by framing the suit as one for declaration and injunction amounts to clever drafting, creating an illusion of a create a cause of action where none exists. The averments in the plaint, when scrutinized holistically, reveal that the real intent is to

create a cause of action where none exists. The averments in the plaint, when scrutinized holistically, reveal that the real intent is to challenge the demolition order, which stands conclusively determined by the appellate authority under the Act. The same has attained finality. The claim that the construction predates 2008 is belied by the Commissioner's findings, supported by spot inspections and revenue records, which confirm unauthorized additions. The alleged tampering in Musabi was duly considered in the earlier proceedings, and the existence of a public path was affirmed.

11. The trial court rightly rejected the plaint under Order VII Rule 11 CPC, as the suit is barred under Section 253(4) of the Act. The appellant, having exhausted the statutory remedy of appeal, cannot resurrect the same dispute through a civil suit. The findings of the trial court & 1<sup>st</sup> Appellate Court are based on a proper appreciation of the pleadings and the law, leaving no room for interference. The second appeal, therefore, lacks merit.

12. In the aforesaid facts and attending circumstances, there arises no question of law, much-less a substantial question of law for consideration of the Court, therefore, the present appeal is dismissed being devoid of merit. Pending miscellaneous applications, if any, also stand disposed of.

**(Bipin Chander Negi)**  
**Judge**

**June 30, 2025**  
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