

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.49 of 2024

Date of Decision : 31.12.2025

Netar Singh

..... Appellant

Versus

Ramki Devi and another

..... Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellant : Mr. Vinay Mehta, Advocate.

For the respondents : Mr. Sumit Sharma and Mr. Digvijay Singh Bisht, Advocates.

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 30.09.2023, passed by learned Additional District Judge, Sundernagar, District Mandi, Himachal Pradesh, in Civil Appeal No.53/2022, titled *Netar Singh vs. Ramki Devi and another*, whereby the judgment and decree dated 21.07.2022, passed by learned Senior Civil, Court No.1, Sundernagar, District Mandi, Himachal Pradesh, in Civil Suit No.383-1/2013, have been affirmed

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.

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

3. The facts giving rise to the present second appeal are that the plaintiffs-respondents instituted a suit seeking a declaration with the consequential relief of confirmation of joint possession over the suit land pertaining to the share of one deceased Jai Ram son of Budhu. The plaintiffs' case was that Jai Ram died issueless, and upon his death, his share in the suit land specifically, a $\frac{1}{3}$ rd share in one parcel, a $\frac{1}{9}$ th share in a second parcel, and a $\frac{4}{18}$ share in a third parcel, all situated in District Mandi, Himachal Pradesh was rightfully to be mutated in the name of his brother, Prem Sagar. However, one Hirdu Ram, son of Ram, through misrepresentation of facts, secured the mutation of Jai Ram's share in his own name.

4. Relying on these erroneous revenue entries, Hirdu Ram filed Civil Suit No. 65 of 1980 for a declaration and partition. This suit was contested by the predecessors of the plaintiffs and was ultimately dismissed on 07.02.1986. Hirdu Ram's first appeal (Civil Appeal No. 67 of 1986) was dismissed by the learned District Judge, Mandi, on 10.03.1989, after remittal for recording evidence on additional issues framed regarding his relationship to Jai Ram and possession. Hirdu Ram's second appeal (RSA No. 249 of 1989) was also dismissed by the High Court on 27.06.1997, thereby conclusively affirming that the mutation of Jai Ram's share should be in favor of Prem Sagar and, upon his death, his legal heirs, the plaintiffs.

5. Despite this final adjudication, the defendant-appellant, Netar Singh (son of Hirdu Ram), in alleged connivance with the revenue officials, got a *rapat rojnamcha* No. 172 dated 13.02.2013 recorded, leading to the sanction of Mutation Nos. 266 and 427 regarding the inheritance of Hirdu

Ram in his favor. The plaintiffs, having filed objections and their own application for mutation on 23.01.2013 and 20.03.2013 respectively, filed the present suit claiming that the defendant had no right, title, or interest in Jai Ram's share, as the revenue entries in Hirdu Ram's name had been declared wrong and illegal by the civil courts. The cause of action was pleaded to have arisen on 23.01.2013, 13.02.2013, and finally on 30.09.2013 when the defendant allegedly turned down the plaintiffs' claim.

6. The defendant contested the suit by filing a written statement, raising preliminary objections that the suit was barred by limitation; that the plaintiffs were estopped from filing the suit; that the suit was bad for want of better particulars, suppression of material facts, and non-joinder or mis-joinder of parties; that no cause of action arose; and that the defendant had perfected his title by way of adverse possession. On merits, the defendant asserted the correctness of the mutation in favor of Hirdu Ram.

7. Upon pleadings of the parties, the learned trial court framed the following issues on 18.06.2015:

1. *Whether the plaintiffs are sole legal heirs of deceased Jai Ram, as alleged? OPP.*
2. *Whether mutation Nos.266 and 427 have been wrongly sanctioned in favour of the defendant with respect to the suit property? OPP*
3. *Whether the plaintiffs are entitled to the relief of declaration qua joint ownership and possession with respect to the suit land? OPP*
4. *Whether the suit is time barred? OPD*
5. *Whether the plaintiffs are estopped from filing the present suit? OPD*
6. *Whether the plaintiffs have suppressed material facts from the Court? OPD*
7. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
8. *Whether the plaintiffs have got no cause of action? OPD*

9. *Whether the defendant has become owner of the suit land by way of adverse possession? OPD*

10. *Relief.*

8. Both parties led evidence. The plaintiffs examined four witnesses, including a clerk from the revenue office, while the defendant examined himself and one other witness. After hearing the parties, the learned trial court vide its judgment and decree dated 21.07.2022 decided all the substantive issues (1 to 3) in favor of the plaintiffs and all the preliminary objections (issues 4 to 9) against the defendant, thereby decreeing the suit. Aggrieved by this decree, the defendant preferred a first appeal. In the first appeal, the appellant-defendant challenged the findings of the trial court on multiple grounds. It was contended that the finding on Issue No.1, declaring the plaintiffs as sole legal heirs of Jai Ram, was wholly without any evidence on record and was based on mere surmises. Regarding Issues No.2 & 3, it was argued that the conclusions that the mutations were wrongly sanctioned and that the plaintiffs were entitled to declaration and joint possession were contrary to the evidence, as the plaintiffs had utterly failed to prove their title or possession over the suit land. A principal contention advanced was on Issue No.4 (limitation). The appellant urged that since Jai Ram died as far back as approximately 1955 and Hirdu Ram had been in possession of the share thereafter, the suit filed in 2013 was grossly barred by time, and the trial court's finding to the contrary was unsustainable.

9. The findings on Issues No.5 to 9 were also assailed as erroneous and perverse. A further legal plea was raised that the suit was liable to be rejected under Order VII Rule 11 of the CPC, which the trial court

ignored. It was strenuously argued that the impugned judgment was against the weight of evidence, suffered from jurisdictional errors, and was liable to be set aside. The respondents-plaintiffs, in opposition, supported the trial court's judgment and submitted that no interference was warranted. The first appellate court, after hearing the learned counsel for the parties and carefully perusing the record, however, found no merit in the appellant's contentions and dismissed the appeal, affirming the judgment and decree of the trial court. It is against this dismissal of the first appeal that the appellant has now filed the present second appeal.

10. Heard Counsels for the parties and perused the impugned judgments.

11. The core of the plaintiffs' case rests upon the documentary evidence, particularly the judgments from the earlier rounds of litigation. The judgment in Civil Suit No.65 of 1980, its affirmation in first appeal, and the final dismissal of the second appeal by the High Court have conclusively settled the dispute regarding the parentage of Hirdu Ram. The first appellate court, in its judgment Ex.PW1/F, specifically reversed the trial court's finding on remittal and held that Hirdu Ram was not proved to be the son of the deceased Jai Ram and was not in joint possession of the suit land. These findings were upheld by the High Court. The principle of res judicata thus squarely applies, preventing the defendant from reagitating the issue of Hirdu Ram's relationship to Jai Ram. Consequently, the foundational basis for the defendant's claim to the share of Jai Ram stands legally extinguished.

12. Despite this final adjudication declaring the revenue entries in favor of Hirdu Ram as wrong and rebutted, the subsequent jamabandis

continued to reflect his name. The plaintiffs' suit is a direct consequence of the attempted mutation in favor of the defendant based on these very entries, as evidenced by the rapat rojnamcha Ex.PW1/J. The testimony of PW2, corroborated by the legal findings in the previous suit, indicates that the possession of the land remained with the predecessors of the plaintiffs, and the defendant's claim of possession is demolished. Since Hirdu Ram was found not to be the son of Jai Ram and not in possession, the defendant cannot derive any valid title or right to possession from him.

13. On the issue of limitation, the cause of action for the present suit arose distinctly when the rapat rojnamcha No.172 was recorded on 13.02.2013, proposing mutation in the defendant's favor, and when the defendant allegedly turned down the plaintiffs' claim on 30.09.2013. The suit, filed on 18.11.2013, is therefore well within the prescribed period. The defendant's contention relating to the execution of the 1997 decree is inapplicable and has been rightly rejected by the Trial Court, as that decree did not grant possession but only affirmed the dismissal of Hirdu Ram's claim; the plaintiffs were already in possession as co-sharers.

14. Regarding the plea of adverse possession, the defendant's claim is vague and unsubstantiated. The essential ingredients for establishing adverse possession clear, hostile, open, continuous, and exclusive possession for the statutory period were not proved. The written statement lacked specific particulars, and the oral evidence led was insufficient to establish when the possession allegedly became adverse, its nature, or its continuity. The defendant's claim is further contradicted by the

finding in the previous litigation that his predecessor was not in possession. Therefore, this plea also fails.

15. In light of the foregoing, the findings of the trial court on all issues are affirmed. The plaintiffs have successfully established that they are the sole legal heirs entitled to the share of the deceased Jai Ram, that the mutations in favor of the defendant were wrongly sanctioned, and that they are entitled to the declaration and confirmation of joint possession as sought.

16. In view of the aforesaid, no question of law much-less a substantial question of law arises for consideration of the Court, therefore, the appeal is dismissed being devoid of any merit. Pending miscellaneous applications, if any, also stand disposed of.

December 31, 2025 (KS)

(Bipin Chander Negi)
Judge