

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.113/2025

Date of Decision: 29th December, 2025.

Anita Gandotra and Anr. Appellants
Versus

Rajrani Puri and Others. Respondents

Coram

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

Whether approved for reporting?¹

For the Appellants: Mr. N.K. Thakur, Sr. Advocate with Mr. Divya Raj Singh, Advocate.

For the Respondents: Mr. Nimish Gupta, Advocate, for respondent No.1.

Mr. Vivek Sharma, Advocate, for respondent No.5.

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 20.12.2024, passed by the learned Additional District Judge, Chamba, District Chamba, HP in Civil Appeal No.51 of 2019, affirming the judgment and decree dated 23.11.2019, passed by the learned Civil Judge, Dalhousie, District Chamba, HP, in Civil Suit No.42 of 2010.

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.

3. Succinctly, the case of the plaintiff was that she, along with defendants No.1 to 4, are the sons and daughters of Smt. Bimla Devi (also referred to as Smt. Bimla Rani) and the late

Sh. Rattan Chand Gandhotra. The plaintiff, residing in the U.K., had appointed a Special Power of Attorney. She and the late Smt. Bimla Rani were recorded as lessees in possession of the suit property, known as Hira Lal Building, purchased by them for ₹48,000/- vide sale deed dated 27.07.1978, each having a half share. The building comprised a basement, flats on the first and second floors, and shops on the top storey.

4. The plaintiff contended that the property was amicably partitioned during Smt. Bimla Rani's lifetime, allocating half to each, though this was not reflected in revenue records. Upon Smt. Bimla Rani's death on 03.11.1993, she left a registered Will dated 25.04.1990, bequeathing her half share to the plaintiff and the defendants in specified portions. The plaintiff claimed entitlement to her share under this Will and also asserted that defendant No.1 had illegally taken possession of one of her shops, made unauthorized constructions, and threatened her. Consequently, she sought a declaration of the Will's validity, a decree of partition, and a permanent injunction.

5. Defendant No.1, in his written statement, contested the suit. He claimed the property was purchased with funds from the family business run by him and his father, and was placed in the names of the mother and plaintiff due to familial respect. He denied the existence of the 1990 Will and asserted that Smt. Bimla Rani had executed a subsequent Will dated 18.06.1992 in favour of defendants No.1 and 2. He further claimed an oral

family settlement in 2000, wherein the plaintiff and other sisters renounced their claims for monetary compensation, which was partly paid. He also raised objections regarding lease expiry, maintainability, and valuation. Defendants No.2 was proceeded ex-parte, defendant No.3's defence was struck off, defendant No.4 admitted the plaintiff's claim, while defendants No.5 (Municipal Committee) and No.6 (State) largely admitted the official records.

6. On the pleadings of the parties, the following issues were framed by the learned trial court on 03.11.2014:-

1 Whether the plaintiff is entitled to relief of declaration to the effect that she is lessee in possession over the suit land to the extent of ½ share on the basis of revenue entries in her favour recorded on the basis of sale deed dated 27.07.1978, as alleged? OPP.

2. Whether plaintiff is entitled to relief of declaration to the effect that she is lessee in possession over one big flat in the second floor of the building situated over the suit land alongwith defendant No.4 in equal share with a right of living in the above said flat to defendant No.3 on the basis of registered Will dated 02.05.1990 executed by Smt. Bimla Devi in favour of plaintiff and defendants, as alleged? OPP.

3. Whether plaintiff is entitled to relief of partition of her above said share in the suit land, as alleged? OPP.

4. Whether plaintiff is entitled to relief of permanent prohibitory injunction restraining the defendant No.1 from raising construction or changing the nature of the suit land, as prayed OPP.

5. Whether Will dated 02.05.1990 executed by Smt. Bimla Devi in favour of plaintiff and defendants is a result of fraud, as alleged? OPD.

6. Whether defendants No.1 and 2 are lessee in possession over the share of late Smt. Bimla Devi on the basis of her last Will dated 18.06.1992, as alleged? OPD.

7. Whether suit is not maintainable in its present form, as alleged? OPD.

8. Whether plaintiff has not come to the Court with clean hands and has suppressed material facts, from the Court, as alleged? OPD.

9. Relief.

7. Upon appreciation of evidence, it decreed the suit partly. It held in favour of the plaintiff on the declaration of her lessee status (Issue 1) and for injunction against defendant No.1 (Issue 4). It decreed partition partly (Issue 3). It held against defendant No.1 on the validity of the 1990 Will (Issue 2), fraud (Issue 5), and his claim based on the 1992 Will (Issue 6). Issues regarding maintainability and suppression of facts (Issues 7 & 8) were also decided against him.

8. Aggrieved, defendant No.1 filed the first appeal. The appellant contended before the first appellate court that the plaintiff was never in possession, the lease period had expired, and the appellant had perfected his title by adverse possession—issues not framed by the Trial Court. He vehemently argued that the Will dated 18.06.1992 was genuine and duly proved by examining its scribe (DW-10), and the Trial Court erred in ignoring it. He asserted that all expenses for the property were borne by him for over 40 years, and the evidence was not appreciated correctly. The respondent/plaintiff supported the impugned judgment, while the proforma respondents supported the appellant.

9. The First Appellate court dismissed the appeal, leading to the filing of the present Regular Second Appeal.

10. Heard counsels for the parties, perused the impugned judgements.

11. The fundamental contest between the parties revolved around the testamentary dispositions of the late Smt. Bimla Rani and the consequent rights in the suit property.

12. Regarding the testamentary documents, the finding that neither the Will dated 25.04.1990 (Mark-F) propounded by the plaintiff nor the subsequent Will dated 18.06.1992 (Ex.AW-2/B) propounded by defendant No.1 was satisfactorily proved, is affirmed. The plaintiff failed to lead any evidence to prove the execution of the 1990 Will. As for the 1992 Will, while defendant No.1 was permitted to adduce secondary evidence, the burden of proving its due execution and removing suspicious circumstances remained on him. The testimony of the scribe, Sh. Rattan Lal Bansal (DW-10), was marred by material contradictions regarding the sequence of signatures. The inexplicable delay of 21 years in delivering a copy of the Will to defendant No.1, despite the scribe's regular professional contact with him and his father, casts serious doubt on its authenticity. In the absence of attesting witnesses and with the scribe's testimony found unreliable, defendant No.1 failed to discharge the heavy onus of proving a valid Will.

13. Consequently, in the absence of any valid testamentary instrument, the estate of Smt. Bimla Rani devolved upon her legal heirs by intestate succession. The plaintiff and defendants No.1 to 4, being her children, are her Class-I heirs under the relevant law. The trial court, therefore, correctly determined the

shares, allocating to the plaintiff a 6/10th share (comprising her own 1/2 share from the 1978 sale deed plus a 1/10th share from her mother's intestate estate) and a 1/10th share each to defendants No.1 to 4 from their mother's estate. The preliminary decree for partition to this effect is upheld.

14. The plea of adverse possession was neither pleaded nor could arise from his own case, which was based on title through a Will and an alleged family settlement, not on hostile possession. The objection regarding the expiry of the lease was not substantiated and, in any event, was not a plea available to defendant No.1, who himself claimed absolute ownership. No fault is found with the trial court's decision not to frame specific issues on these aspects, as they did not arise from the pleadings.

15. The evidence on record, particularly the registered sale deed (Ex. P-2) and the consistent revenue entries, conclusively establishes the plaintiff's status as a co-owner/lessee to the extent of a half share. The defendant's oral assertions of funding the purchase were insufficient to dislodge this documentary title. The grant of a permanent injunction restraining defendant No.1 from altering the nature of the property until final partition was a necessary and proper measure to preserve the estate for equitable division.

16. The learned counsel for the appellant argued that the Trial Court had not dealt properly with the preliminary objection

to the suit as there was noncompliance with the provisions of plaint Order VII Rule 3 CPC and therefore the plaint was liable to be rejected as it did not explicitly described the suit property with specificity sufficient to identify it beyond doubt and no site plan was present, as required under law.

17. The law relating to non-compliance with the provisions of Order VII Rule 3 CPC has been expressly dealt with by the Supreme Court in **Pratibha Singh & Anr. v. Shanti Devi Prasad & Anr. (2003) 2 Supreme Court Cases 330**, relevant paragraph of which is being reproduced hereinunder:-

"15. Order 7 Rule 3 CPC requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the court to draw a proper decree as required by Order 20 Rule 3 CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Having perused the revenue survey map of the entire area of RS Plot No. 595 and having seen the maps annexed with the registered sale deeds of the defendant judgment-debtors we are clearly of the opinion that Sub-plots Nos. 595/I and 595/II were not capable of being identified merely by boundaries nor by numbers as sub-plot numbers do not appear in records of settlement or survey. The plaintiffs ought to have filed the map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to it promptly. The default or carelessness of the parties does not absolve the trial court of its obligation which should have, while scrutinizing the plaint, pointed out the

omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming the subject-matter of the suit being filed. This is the first error.

17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case — which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC.”

18. The plea of defendant No. 1 that the plaint was liable to be rejected for non-compliance with the provisions of Order VII Rule 3 CPC is without merit. The plaint explicitly described the suit property with specificity sufficient to identify it beyond doubt, as required under law. It detailed the Khasra numbers (1683 to 1687, 1697 to 1701), Khata Khatoni

number (168min/281), location (Mouza Moti Tibba, Tehsil Dalhousie, District Chamba, H.P.), and its common name (Hira Lal Building), along with clear boundaries on all four sides. Such a description not only meets but exceeds the minimal requirements of Order VII Rule 3, leaving no ambiguity regarding the identity of the immovable property in question. Consequently, this preliminary objection was rightly rejected by the trial court, and no interference is warranted. Even otherwise this plea can always be raised at the stage of execution by the original defendant.

19. In light of the foregoing, the findings of the learned trial court, as affirmed by the first appellate court, are based on a correct appreciation of evidence and application of law. The impugned judgment and decree do not warrant any interference.

20. 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 appeal is dismissed being devoid of any merit. Pending miscellaneous applications, if any, also stand disposed of.

(Bipin Chander Negi)
Judge

29th December, 2025
(Gaurav Rawat/TB)