

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 9 of 2007

Reserved on: 12.5.2026

Date of Decision: 25.6.2026

Bishan (deceased) through LRs

...Appellants

Versus

Karam Chand (deceased) through LRs

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

*Whether approved for reporting?*¹ No.

For the Appellants

: Mr N.K. Thakur, Senior Advocate,
with Mr Divya Raj Singh Advocate.

For the Respondents

: Mr Ajay Sharma, Senior Advocate,
with Mr Atharv Sharma,
Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 30.11.2006, passed by learned Additional District Judge (Fast Track Court), Una, District Una, H.P.

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

(learned Appellate Court) vide which the judgment and decree dated 18.11.1998, passed by learned Sub Judge-II, Una, District Una, H.P. (learned Trial Court) were set aside. *(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 Bakshi Ram filed a civil suit before the learned Trial Court seeking a Permanent Prohibitory Injunction to restrain the defendant from interfering with his possession as owner of 'taur' Marked ABCD in the site plan and described in the head note and para-1 of the plaint. A relief of possession was also sought in the alternative. It was asserted that Shiv Ram, son of Banna Ram, was the owner of the suit land. He had alienated the suit land to Bullu in the year 1946. Bullu exchanged his entire estate situated in Village Dhundla with the plaintiff, and the plaintiff became the owner-in-possession of the suit land. The defendant started interfering with the plaintiff's possession without any right, title or interest. The plaintiff requested the defendants not to do so, but in vain. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objection regarding the suit not being properly valued for Court fees and jurisdiction, and the suit being bad for non-joinder of necessary parties. The contents of the plaint were denied on the merits. It was asserted that the site plan produced by the plaintiff was wrong and incorrect. The defendant was not aware of any transfer or exchange. Hence, it was prayed that the suit be dismissed.

4. Learned Trial Court framed the following issues on 1.12.1987: -

1. Whether the 'taur' marked ABCD as shown in the sitte plan is the part of Khasra No.546 and is in the ownership and possession of the plaintiffs, as alleged? OPP.
2. Whether the suit is bad for the non-joinder of necessary parties? OPD.
3. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.
4. Whether the plaintiff has no cause of action? OPD.
5. Whether the plaintiff is estopped from filing the suit by his act and conduct? OPD.
6. Relief.

5. Bakshi Ram died during the pendency of the suit and was represented by his legal representatives.

6. The parties were called upon to produce the evidence, and the plaintiffs examined plaintiff No.2 Sukh Ram (PW1), S.L. Sharma (PW2), Banarsi Dass (PW3), Jagdish Chand (PW4) (wrongly numbered as PW3), and Jagdish Ram Kalsi (PW5) (wrongly numbered as PW4). The defendant examined Surjeet Singh (DW1), Atma Ram (DW2), and himself (DW3).

7. The learned Trial Court earlier dismissed the suit on 30.10.1992. The plaintiffs preferred an appeal. An application for additional evidence was filed, which was allowed, and the matter was remitted to the learned Trial Court for taking the additional evidence. Plaintiff examined Gian Chand (PW5). The defendant did not produce any additional evidence.

8. The learned Trial Court held that the plaintiffs had failed to prove their ownership and possession of the suit land. The defendant had succeeded in proving his possession of the suit land. The defendant also proved that the land which was given to the plaintiffs in a compromise (Ex.DX) had already been covered by the plaintiffs by raising construction. Therefore, the learned Trial Court answered Issues No.1 to 3 in negative, Issues No.4 and 5 in affirmative and dismissed the suit.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiffs filed an appeal which was decided by the learned Additional District Judge, Fast Track Court, Una District, Una, H.P. (learned Appellate Court). Learned Appellate Court held that the Court had appointed a Local Commissioner who submitted a report mentioning that the land described as ABCD in the site plan is part of Khasra No. 546. The defendant did not object to the report of the Local Commissioner. The documents on record show that Shiv Ram had sold one house measuring 27 *haath* x 9 *haath* along with the *Sehan* measuring 8 *haath* x 8 *haath* to Bullu vide Sale Deed dated 12.11.1946. Bullu had permitted Shiv Ram to reside in that house during his lifetime. Ranu gave some land to Bullu and Bakshi. A mutation to this effect was sanctioned in their favour. Bullu had given his entire land to Bakshi, the plaintiff. A mutation to this effect was sanctioned in their favour. Thus, Bakshi got the land from Ranu and Bullu, and the plea that Shiv Ram had sold the land measuring 27 *haath* x 9 *haath* was wrong because Bakshi had got 27 *haath* x 9 *haath* land from Bullu and some land from Ranu. The compromise produced by the defendant was regarding the adjustment of some land. This document was not

registered and properly stamped. There was no evidence that the compromise was acted upon by the parties, and no advantage could be derived from the compromise set up by the defendant. Learned Trial Court erred in dismissing the suit. Hence, the appeal was allowed, and the judgment and decree passed by the learned Trial Court were set aside.

10. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendant has filed the present appeal on the following substantial questions of law on 9.5.2007: -

1. Whether the learned Lower Appellate Court has committed an error by injecting its own thesis that an area of 8x8 hath was also given in addition to 27x9 hath, and such findings are not based on pleadings of the plaintiffs, and the impugned judgment is erroneous and illegal?
2. Whether the learned Lower Appellate Court has committed an error of law in ignoring the compromise, Ex.DX which has been admitted by the plaintiff while appearing as a witness and being the author of such compromise, when this document was put to him during the cross-examination?

11. I have heard Mr N.K. Thakur, learned Senior Advocate, assisted by Mr Divya Raj Singh, learned counsel for the appellant/defendant and Mr Ajay Sharma, learned Senior

Advocate, assisted by Mr Atharv Sharma, learned counsel for the respondents/plaintiffs.

12. Mr N.K. Thakur, learned Senior Advocate for the appellant/defendant, submitted that the learned Appellate Court erred in reversing the well-reasoned judgment passed by the learned Trial Court. It was duly proved on record that Shiv Ram had sold the house, mentioning 27 haath x 09 haath to Bullu, and Bullu had exchanged this house with Bakshi. Therefore, Bakshi could not have got more than what Bullu possessed. Learned Appellate Court erred in holding that Ranu had also sold part of the abadi to Bakshi. This vitiated the findings recorded by the learned Appellate Court. The plaintiff had acknowledged his possession over 27 haath X 9 haath in a compromise deed (Ex.DX). Learned Appellate Court erred in holding that the compromise was not admissible in evidence. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court below be set aside.

13. Mr Ajay Sharma, learned Senior Advocate for the plaintiffs/respondents, submitted that the learned Appellate Court had rightly noticed that Bakshi had got the property by

way of exchange from Bullu and by way of sale from Ranu. Therefore, the plea taken by the defendant that Bakshi is only the owner of 27 haath X 9 haath of land is fallacious. The compromise had the effect of conveying the ownership in the property and was compulsorily required to be registered. Learned Appellate Court had rightly held that the compromise was not registered and could not be looked into. Learned Appellate Court had recorded the pure finding of fact, and it is impermissible to interfere with the pure findings of fact while deciding a second appeal. Hence, he prayed that the present appeal be dismissed.

14. 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:

15. The record of the learned Trial Court did not have the officially translated copies of the sale deeds, which were in Urdu. Therefore, the official translator of this Court was asked to translate the documents.

16. The translation of the sale deed (Ex.P6) reads that Shiv Ram was the owner of a half share in the house *khadposh*

measuring 27 hand span in length and 9 hand span in breadth, bounded on the East by vacant land belonging to Gangu etc., on the West by inhabited land of Khurana Ram Brahmin, on the North by thoroughfare, and on the South by property of Gangu etc. He had sold it to Bullu. Bullu executed a Deed of Acknowledgement (Ex.P2) stating that half share comprised in single room structure (*Kothari*) measuring 8 x 8 hand span, vacant house (*Khadposh*) measuring 9 x 27 hand span, bounded by open land owned by Gangu in the East, the residence of Khurana Ram Brahmin in the West, thoroughfare in the North, property of Gangu and others in the South, was owned and possessed by Bullu vide sale deed dated 12.11.1946. Shiv Ram, son of Bana, was the priest of Bullu, and Bullu had permitted Shiv Ram to reside in a single-storeyed structure during his lifetime without the payment of rent. It was agreed that Bullu would take possession after the death of Shiv Ram.

17. Therefore, it is apparent from these two documents that Shiv Ram was permitted to reside in the land/house sold by him to Bullu.

18. Bullu executed an Exchange Deed with Bakshi (Ex.PW 2/A) on 10.3.1959 in which one house *Khadposh* measuring 27 x 9 haath span bounded by the courtyard of Bullu and house of Bishna and others in the West, house of Bakshi (second party) in the East, path in the North and land of Bullu in the South, was exchanged. It is apparent from this document that even though it mentions a Khadposh house mentioning 27 x 9 haath span, the boundaries of the house sold by Shiv Ram to Bullu are entirely different from the boundaries of 27 x 9 haath in span described in the Exchange Deed (Ex.PW2/A). A comparison of the boundaries described in the two documents is as follows:

	East	West	North	South
House sold by Shiv Ram	Vacant land belonging to Gangu	Inhabited land of Khurana Ram	Path	Property of Gangu Ram
The house exchanged by Bullu.	House of Bakshi	The courtyard of Bullu and the house of Bishna and others	Path	Land of Bullu

19. Therefore, these two documents do not describe the same property, and the plea that the house sold by Shiv Ram was exchanged with Bakshi is incorrect.

20. Plaintiff asserted in para-2 of the plaint that Shiv Ram was the owner of the suit land who had alienated it to Bullu, and Bullu exchanged the entire land with the plaintiff. Sukh Ram (PW1), son of Balkishan, stated on oath that Bullu Ram had exchanged the land with the plaintiff after the purchase. The land remained in possession of the plaintiff. He stated in his cross-examination that a house measuring 9 haath x 27 haath and a courtyard measuring 8 haath x 8 haath was taken in exchange. The house still existed in the same condition, and only the roof was replaced. The suit land was towards the South of the disputed house. The statement of this witness shows that the disputed land is towards the South of the disputed house, measuring 27 haath x 9 haath.

21. Therefore, the very premise of the plaint that land sold by Shiv Ram was exchanged by him with Bakshi and the suit land is part of the exchanged land, is fallacious. The officially translated documents show that the house purchased from Shiv

Ram, measuring 27 haath x 9 haath, was not exchanged with Bakshi, but Shiv Ram was permitted to reside in that house during his lifetime, and Bulu had exchanged some other land with the plaintiff

22. Learned Appellate Court also relied upon Mutation No. 22, which shows that Rano had orally sold the land comprised in Khewatnos. 22, 24 and 33 to Bullu and Bakshi for ₹1,000/- on 10.10.1951. Copy of jamabandi for the year 1940-41 (Ex. P3) shows that abadi deh is located in Khewat no. 50 min. Thus, the land in Abadi Deh was not sold by Ranu, and the learned Appellate Court erred in relying upon the mutation to hold that Rano had sold the land located in Abadi Deh to Bakshi.

23. Therefore, the learned Trial Court had rightly held that the suit land was not connected to the land sold by Shiv Ram, and the learned Appellate Court erred in holding that the land sold by Shiv Ram was exchanged by Bullu with Bakshi or that the suit land was part of the land orally sold by Ranu to Bakshi. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.2:

24. The compromise (Ex. DX) reads that Bakshi claimed a 27-haath x 9-haath house, whereas the defendant Bishan Dass believed that the house belonged to him. Panchayat decided that Bakshi Ram would construct a house towards the South of the cowshed measuring 10 haath, and Bishan Dass would raise construction inside Paroli (boundary wall). The land located towards the South of 10 haath, being claimed by Bakshi Ram, was relinquished in favour of Bishan Dass. Both parties would abide by the compromise and not raise any claim contrary to it.

25. This compromise had the effect of extinguishing the rights of Bakshi Ram over the land located in the South of 10 haath land. Learned Appellate Court had rightly held that such a compromise would require compulsory registration. It was laid down by the Hon'ble Supreme Court in *Roshan Singh v. Zile Singh*, (2018) 14 SCC 814, that when the instrument of partition is intended to operate a declared volition constituting or severing ownership and changing legal position, it is compulsorily required to be registered, in the absence of which it cannot be looked into. It was observed: -

“9. It is well settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing onwership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under Section 17(1) (b) of the Act, a writing which merely recites that there has *in time past* been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right, and there would be no necessity of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of the bargain, it will be necessary to register it. If it be not registered, Section 49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will not be admissible by reason of Section 91 of the Evidence Act, 1872. (2) Partition lists, which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: see *Mulla's Registration Act*, 8th Edn., pp. 54-57.”

26. Thus, the compromise could not have been looked into even though Sukh Ram had admitted that such a

compromise was entered into, and this substantial question of law is answered accordingly.

Final Order:

27. In view of the above, the present appeal is allowed, and the judgment and decree passed by the learned appellate Court are ordered to be set aside, while those passed by the learned Trial Court are ordered to be restored.

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

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

(Rakesh Kainthla)
Judge

9th June, 2026
(Chander)