

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 50 of 2026
a/w CMPMO No. : 51 of 2026
Decided on : 18.09.2026

(1) CMPMO No. 50 of 2026

Karam Chand & Anr. ...Petitioners.

Versus

Onkar Dass ...Respondent

(2) CMPMO No. 51 of 2026

Karam Chand & Anr. ...Petitioners.

Versus

Onkar Dass ...Respondent

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the petitioners : Mr. Mukul Sood & Mr. Vivek Thakur, Advocates.

For the respondent : Mr. Animesh Pathak, Advocate.

Virender Singh, Judge (Oral)

Both these above titled petitions, which, have been filed under Article 227 of the Constitution of India, are being disposed of by the common order.

2. By way of CMPMO No. 50 of 2026, the petitioners have assailed the order dated 23.09.2025, passed by the Court of learned Additional District Judge, Una, District Una, H.P. (hereinafter referred to as 'the first

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

appellate Court'), in Civil Misc. Appeal No. 29 of 2025, titled as "Karam Chand & Anr. Versus Onkar Dass". By way of order dated 23.09.2025, the learned first appellate Court has affirmed the order dated 18.06.2025, passed by the Court of learned Senior Civil Judge, Una, District Una H.P. (hereinafter referred to as 'the learned trial Court'), in CMA No. 738-VI/2022, by virtue of which, the application under Order 39 Rules 1 and 2 CPC, filed by the petitioners, in the counter claim, has been ordered to be dismissed.

3. By way of CMPMO No. 51 of 2026, the petitioners have assailed the order dated 23.09.2025, passed by the learned first appellate Court, in Civil Misc. Appeal No. 25 of 2025, affirming the order dated 20.05.2025, passed by the learned trial Court, in CMA No. 697-VI/2022, by virtue of which, application under Order 39 Rules 1 and 2 CPC, filed by the respondent, was ordered to be allowed.

4. For the sake of convenience, parties to the present *lis*, are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

5. Brief facts, leading to the filing of the present petition before this Court, as borne out from the record, may be summed up, as under:-

5.1 Plaintiff Onkar Dass, filed a suit for permanent prohibitory injunction restraining the defendants from causing any sort of interference and dig out the foundations, encroachment by way of raising any sort of construction otherwise and ousting the plaintiff from land measuring 583-47 Sq. Decimeters, comprised of Khewat No. 555, Khatauni No. 1222, 1223, bearing Khasra Nos. 1420, 1428, 1429, as entered in the jamabandi for the year 2015-16, situated in Up Mohal Galua (Una), Tehsil and District Una, H.P. (hereinafter referred to as 'the suit land'), and in the alternative, suit for mandatory injunction directing the defendants to remove the malba or any super structure, if so raised, over any portion of the suit land.

6. Along with the suit, application under Order 39 Rules 1 and 2 CPC, has also been filed.

7. When put to notice, the suit has been contested by the defendants, taking preliminary objections that the suit is not maintainable, the plaintiff has not approached the Court with clean hands, suit is barred by the principle

of res judicata in view of earlier judgment and decree dated 01.11.2006, in Civil Suit No. 35/1990 titled “Tarlok Singh Vs Jarnail Singh”, suit is barred under Order 2 Rule 2 CPC, suit is bad for non-joinder of necessary parties and suit is barred by limitation.

8. Along with the written statement, defendants have also filed the counter claim, seeking the decree for declaration, to the effect that land measuring 104-88 Sq.mtrs Hects. comprised of Khasra No. 1428, 1429 and part of Khasra No. 1420, Khewat No. 555, Khatauni No. 1222, 1223, as entered in jamabandi for the year 2015-16, situated in Up Mohal Galua, Tehsil and District Una, H.P. denoted by letters ABCDEFGH, is in possession of the counter claimant for the last more than 30 years and the same has ripened in ownership by way of adverse possession.

9. Along with the counter claim, defendants have also filed an application under Order 39 Rules 1 and 2 CPC, seeking interim relief to restrain the plaintiff to take forcible possession or raise any sort of construction over the land measuring 104-88 Sq.mtrs Hects. Comprised of

Khasra No. 1428, 1429 and part of Khasra No. 1420, as discussed above.

10. Interestingly, the learned trial Court, instead of deciding both the applications, filed by plaintiff, as well as, the counter claimants, under the provisions of Order 39 Rules 1 and 2 CPC, by way of the common order, has decided the same separately, as the application filed by the plaintiff Onkar Dass, was decided on 20.05.2025, and the application filed by the defendants under Order 39 Rules 1 and 2 CPC, in the counter claim, has been decided by the learned trial Court on 18.06.2025.

11. The learned trial Court has allowed the application preferred by the plaintiff, whereby the application moved by the defendants under Order 39 Rules 1 and 2 CPC, in the counter claim, was ordered to be dismissed.

12. The learned first appellate Court has fallen into error by deciding both the appeals, without considering the above facts.

13. In view of the above, when both the applications, which, have been filed under Order 39 Rules 1 and 2 CPC, i.e. one filed by the plaintiff in his suit and

other filed by the defendants, in their counter claim, were required to be decided by the learned trial Court simultaneously, by the common order, discussing the rival contentions of the parties.

14. On this score, the present petitions are allowed, by setting aside the orders passed by learned trial Court dated 18.06.2025 and 20.05.2025, passed in the above applications, as upheld by the learned first appellate Court, and matter is remanded back to the learned trial Court, to decide the above applications, by a common order. The entire exercise be done within a period of ten days, from the date of appearance of the parties, before the learned trial Court.

15. Parties through their counsel are directed to appear before the learned trial Court on 28.09.2026.

16. Record be sent back immediately.

(Virender Singh)
Judge

18th September, 2026
(Pramod Kumar)