

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 4194 of 2013

Reserved on: 28.7.2026

Date of Decision: 06.8.2026

Naresh Bala

...Appellant

Versus

Rama Sharma (deceased) through LRs

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the Appellant : Mr Sumeet Raj Sharma, Senior Advocate, with Ms Ritu Sharma, Advocate.

For the Respondent : Mr Virender Singh Chauhan, Senior Advocate, with M/s Vivek Sharma and Arsh Chauhan, Advocates.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 27.06.2013, passed by the learned District Judge (Forests), Shimla (learned Appellate Court), vide which the judgment and decree dated 26.07.2010, passed by the learned Civil Judge (Junior Division), Court No.5, Shimla, H.P. (learned

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

Trial Court) were upheld. (*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 filed a civil suit before the learned Trial Court for seeking a declaration that she had purchased one single storeyed house mentioned in the head note and para-1 of the plaint by way of registered sale deed, duly executed on 16.05.2002 and registered on 01.06.2002 with Sub-Registrar (Urban), Shimla, vide Registration No. 205, as per the terms of the decree passed in civil suit bearing Registration No.61-1 of 1997, decided on 09.09.1998 by Learned Sub-Judge-I, Shimla, the plaintiff is the absolute owner in possession of the property, especially the galli behind it and the roof above the four rooms, and the change of mutation effected vide order dated 19.09.2003 by Tehsildar (Urban), Shimla and the sale deed executed in favour of the defendant were null and void, a consequential relief of permanent prohibitory injunction for restraining the defendant from using the roof for stacking flower pots and throwing water over it and a mandatory injunction directing the defendant to remove the flower pots from the roof of the

plaintiff's property. It was asserted that the plaintiff is the owner in possession of the house, roof, galli, verandah and courtyard as per the sale deed registered in her favour. The defendant claimed to have purchased one flat vide sale deed dated 27.08.1994. The defendant started using the roof of the plaintiff's house as her passage for ingress and egress to her flat even though she had a separate passage from the common entrance. The defendant also claimed the cemented roof of the plaintiff's property to be her terrace. However, no roof was sold to the defendant. The General Power of Attorney of the previous owner had no right to transfer the terrace to the defendant. The defendant interfered with the plaintiff's ownership and possession. Therefore, a suit was filed seeking the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objections regarding lack of maintainability, the plaintiff having not come to the Court with clean hands, the suit being barred by the provisions of Order II Rule 2 and Order IX Rule 9 of the CPC, the plaintiff being estopped from filing the suit by her act and conduct and the suit having not been properly valued for Court fees and jurisdiction. It was asserted that the

terrace in front of the defendant's residential flat was purchased by her by a registered sale deed dated 27.08.1994 from its previous owner. The terrace was in possession of the defendant as a tenant since 1976, and she used it to the exclusion of everyone, including the plaintiff. The plaintiff had also filed a civil suit against the defendant in the year 1999, which was dismissed in default of appearance in the year 2000. The plaintiff is interfering with the possession of the defendant. The plaintiff had obtained the decree fraudulently, which does not bind the rights of the defendant. The terrace is the only passage for ingress and egress from the defendant's residential flat. The plaintiff is using the passage from the terrace continuously since 1976. Therefore, it was prayed that the present suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. Learned Trial Court framed the following issues on 4.12.2003:

1. Whether the plaintiff is entitled to a decree of declaration, as alleged? OPP.
2. Whether the plaintiff is entitled for a decree of permanent prohibitory injunction, as prayed for? OPP.

3. Whether the plaintiff is entitled for a decree of mandatory injunction? OPP.
4. Whether the suit of the plaintiff is not maintainable? OPD.
5. Whether the suit of the plaintiff is bad for non-compliance of the provisions of Order 7 Rule 3 CPC? OPD.
6. Whether the plaintiff has not approached this Court with clean hands? OPD.
7. Whether the suit of the plaintiff is barred by the provisions of Order 2 Rule 2 CPC as well as provisions of Order 23 Rule 3 of CPC? OPD.
8. Whether the plaintiff is estopped from filing the present suit on account of her own acts, deeds, conduct and omissions? OPD.
9. Whether the suit of the plaintiff is not properly valued for the purpose of Court fees and jurisdiction? OPD.
10. Relief.

6. The parties were called upon to produce the evidence and the plaintiff examined Vijay Kumar (PW1), Attar Singh (PW2), Devinder Singh (PW3), Joshinder (PW4), Nand Lal (PW5), Somesh Kumar (PW6), Gauri Shankar (PW7), Yashpal (PW8), Vinod Kumar (PW9), Bhim Ram (PW10) and herself (PW11). The defendant examined herself (DW1), Aharalia Devi (DW2), Janma Dass (DW3), Vinod Kumar (DW4), Asha Pandit (PW5), Gurmukh Singh (PW6) and Tajender Jeet Singh (PW7).

7. Learned Trial Court held that the plaintiff's claim that the defendant had converted the terrace sold to her into a small room and she was claiming the plaintiff's roof was not proved. The terrace existed on the steel girders which were inserted in the walls of the main building. The claim that the General Power of Attorney had acted in excess of the authority was also not proved. There was an error in the sale deed as the date of agreement was wrongly written as 21.09.1993 instead of 24.09.1993, and this error was not sufficient to cast a doubt on the defendant's version. The sale in favour of the defendant was not in violation of Section 118 of the HP Tenancy and Land Reforms Act. Hence, the learned Trial Court answered issue No. 6 in the affirmative, the rest of the issues in negative and dismissed the plaintiff's suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal which was decided by the learned District Judge (Forests), Shimla (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the terrace was different from the roof of the house purchased by the defendant. The sale deed in favour of the defendant was not

barred under the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act. There was no infirmity in the judgment and decree passed by the learned Trial Court. Hence, the appeal was dismissed.

9. Being aggrieved by the judgment and decree passed by the learned Courts below, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law on 20.8.2014:

1. Whether the transfer of the land in dispute vide sale deed allegedly executed in violation of the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 stands ratified automatically by virtue of amendment in Section 3(vi) of the Act and if not, consequences thereof?
2. Whether on account of misappropriation of the pleadings and misreading of the oral as well as documentary evidence available on record, findings recorded by both Courts below are erroneous and, as such, the judgment and decree impugned in this appeal being perverse and vitiated is not legally sustainable?

10. I have heard Mr Sumeet Raj Sharma, learned Senior Advocate, assisted by Ms Reetu Raj Sharma, learned counsel for the appellant/plaintiff and Mr Virender Singh Chauhan, learned Senior Advocate, assisted by M/s Vivek Sharma and Arsh Chauhan, learned counsel for the respondents.

11. Mr Sumeet Raj Sharma, learned Senior Advocate for the appellant/plaintiff submitted that the sale deed made in favour of the defendant was regarding the constructed portion and the land underneath it. Therefore, the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act automatically applied to the present case and learned Courts below erred in holding that the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act were not attracted to the present case. The defendant had not produced the agreement to sell in her favour, and the reliance could not have been placed on the agreement dated 24.9.1993. The General Power of Attorney was competent to execute the sale deed in respect of the agreement dated 21.9.1993, and the sale deed in favour of the defendant is bad. He relied upon the judgment *Nirmal Singh Vs. Randhir Sharma* (1994) 2 Shim. L.C. 255 and *M.S. Ananthamurthy v. J. Manjula*, (2025) 10 SCC 596 in support of his submission.

12. Mr Virender Singh Chauhan, learned counsel for the respondent submitted that the learned Courts below have concurrently held that the date of agreement mentioned as 21.9.1993 in the sale deed is a clerical error and the agreement was executed on 24.9.1993. The sale in favour of the defendant

was of the constructed area, which is protected and does not fall within the definition of land provided under Section 118 of the H.P. Tenancy and Land Reforms Act. There is no infirmity in the judgment and decree passed by the learned Courts below. Therefore, he prayed that the present appeal be dismissed.

13. 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:

14. The sale deed in favour of the defendant (Ex.PW7/G) was executed on 27.08.1994 regarding a double-storeyed building known as the Belmoral Cottage, Upper Kaithu, Shimla, constructed on Khasra No. 699 and 700, having a built-up lane, passage, built-up land in and around the said building comprised in Khasra No. 696, 697 and 698. Therefore, as per the recitals of the sale deed, a built-up structure was sold to the defendant. It was laid down by this Court in *Nirmal Singh Vs. Randhir Sharma (1994) 2 Shim.LC 255* that as per the definition of the land provided in Section 2(7) and explanation (iii) to Section 118, existing at the time of the execution of the sale deed, all types of lands situated in Himachal Pradesh including sites and

other structures on such land are included within the definition of land but the land or area which is constructed and not subservient to agriculture is excluded. It was observed:

13. On the one hand, Clause (7) of section 2 excludes from the definition of 'land' all categories of land, which are not occupied as the site of any building in a town or a village, except the one which are occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, but in Clause (iii) to Explanation in section 118, it expressly includes the same within the expression land. A site of a building in a town, which is occupied or has been let or even a site of a building in a village which is occupied or has been let for any purpose, is included in the expression 'land'. Reading Clause (iii) to explanation to section 118 alongwith Clause (7) of section 2 of the Act would make the intention of legislature abundantly clear and unambiguous that any site of a building whether in a town or village and occupied or let for any purpose including agricultural purpose or purpose subservient to agriculture is included in the expression 'land' for the purpose of prohibition contained in section 118 of the Act.

14. The property in question is not a site of a building in a town or village, but is only a "Gair-mumkin Makaan", namely, constructed property, which is so recorded in revenue records at least even in 1981-82. Therefore, the same is not covered in Clause (iii) of the explanation.

15. In Clause (i) to the explanation, all lands, the classification of which has been changed or has been caused to be changed to any type of "Gair-mumkin" during the last five years, countable from the date of entry in the revenue records to this effect, are by necessary implication included within the expression of land. In other words, in case it is shown that a particular piece of land was earlier not classified as "Gair-

mumkin", but within the last five years by a change effected in revenue records, its nature has been changed or is caused to be changed to any type of "Gair-mumkin" land, the same would be treated as land.

16. Clause (i) will also not apply to the facts of the present case, since it is not the case of the parties that within the last five years, the nature of the land was changed in revenue records or was allowed to be changed as "Gair-mumkin". The case is that there is a constructed house standing upon the land, which is not subservient to agriculture. In case this is the position, then by virtue of Clause (ii) of the explanation, which says that land recorded as "Gair-mumkin Makaan" or any other "Gair-mumkin land" by whatever name called in revenue records would be included in the expression 'land' except constructed area, which is not subservient to agriculture.

17. Reading of the three clauses collectively along with Clause (7) of section 2 of the Act would make it clear that all types of land situate in Himachal Pradesh including sites and other structures on such lands, whether let for agricultural purposes or for the purpose of subservient to agriculture including orchards; Ghasnis, Banjar lands and private forests are included within the expression 'land', for the purposes of section 118 of the Act. The only category of land, which is excluded from the operation of section 118, is that land or area which is constructed but which is not subservient to agriculture. Even an area, if recorded in revenue records as "Gair-mumkin" or "Gair-mumkin Makaan", the same would be included in the expression of land irrespective of the purpose for which the same is occupied or let out, except a constructed area which is not subservient to agriculture. In other words, the prohibition contained in section 118 of the Act will not apply to a constructed area which is not subservient to agriculture.

18. Since the property in suit is the 'constructed area', which admittedly is not subservient to agriculture, there is no ground to interfere with the findings recorded by the

learned Single Judge that the property is not covered by the definition of land within the ambit of section 118 of the Act.

15. This definition was changed by the subsequent amended Act, but that is not relevant for our purposes.

16. Therefore, the provisions of Section 118 of the H.P. Tenancy and Land Reforms Act did not apply to the constructed area, and since in the present case the constructed area was sold, the provision of Section 118 would not have applied to the present case.

17. Mr Sumeet Raj Sharma, learned Senior Counsel for the plaintiff, referred to the estimated fair value of the site (Ex.PW7/H4) to submit that the land value factor was also taken into consideration, showing that the land was also sold and the cited judgment does not apply to the present case. This submission cannot be accepted. The estimated fair value clearly mentions that a building was constructed on the land. The value of the depreciated structure was assessed since the structure was constructed on the land; therefore, the land value factor was taken. Thus, it cannot be said that the land was sold by virtue of the sale deed. This is also apparent from condition (e), in which it was mentioned that land beneath the flat shall remain

common with the vendors and the vendee or any other purchaser or purchasers to which the upper flat is owned by the vendors, and in case of any natural calamity, the vendee shall have a right to reconstruct or repair the flat after raising pillars and beams, etc. Thus, the land was only meant to support the structure and its ownership vested in the purchaser only to the extent of raising pillars to raise construction. Therefore, the submission that land was also sold by means of the present sale deed in addition to the constructed area is not acceptable.

18. Thus, as per the relevant law applicable on the date of the sale, the provisions of Section 118 of the HP Tenancy and Land Reforms Act did not apply to the present case. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.2:

19. The plaintiff claimed that the defendant was using the roof of the house sold to the plaintiff as the ingress and egress by claiming it to be a terrace sold to her. Learned Trial Court and the learned Appellate Court had found on the facts that the terrace was different from the roof of the structure. The terrace was an integral part of the structure, which was attached

to the main building by means of steel girders. This finding is supported by the evidence on the record. Sumesh Kumar (PW6) admitted in his cross-examination that the steel girders of the terrace rest on the main building. He admitted that these girders were shown by him in the site plan (Ex.PW6/B). Similarly, Jamna Dass (PW3) stated that as per the record of the M.C. Shimla, the terrace was shown over the existing outhouses in front of the main building. Thus, the conclusion drawn by the learned Courts below cannot be faulted that the terrace purchased by the plaintiff was different from the roof of the plaintiff's outhouse.

20. It was submitted that the sale deed (Ex.PW7/G) refers to an agreement of sale dated 21.09.1993. A Special Power of Attorney was executed by the owner (Ex. PW7/J) to execute the sale deed as per the agreement dated 21.09.1993. No agreement dated 21.09.1993 was placed on record, and the defendant relied on the agreement dated 24.09.1993 (Ex.DW1/B). Thus, the sale deed executed by the power of attorney was beyond the authority conferred upon him. This submission cannot be accepted. Learned Courts below have concurrently held that there is an error in the date of the agreement. No agreement dated 21.09.1993 was executed between the parties, and the

agreement dated 24.09.1993 was wrongly mentioned as the agreement dated 21.09.1993. This conclusion is duly supported by the evidence on record. Vinod Kumar Sood (DW4) wrote the agreement dated 24.09.1993. He stated that he had scribed the Power of Attorney dated 10.11.1993 based on the agreement dated 24.09.1993. He stated in his cross-examination that the parties had appeared in person before him. He admitted that the Power of Attorney was competent to execute the sale deed as per the agreement dated 24.09.1993. He did not remember whether any agreement dated 21.09.1993 was prepared or not.

21. He is an Advocate and has no interest to depose falsely; hence, his testimony that he had prepared the Power of Attorney as per the agreement dated 24.09.1993 has to be accepted as correct. Thus, the submission that the sale deed in favour of the defendant is bad because it was not executed as per the agreement dated 21.09.1993 cannot be accepted, and the cited judgment in *M.S. Ananthamurthy* (supra) does not apply to the present case.

22. Therefore, learned Courts below have rightly appreciated the material on record. There is no misappreciation

of the evidence and this substantial question of law is answered accordingly.

Final Order:

23. In view of the above, the present appeal fails, and it is dismissed.

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

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

(Rakesh Kainthla)
Judge

6th August, 2026
(Chander)