

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 316 of 2026

Date of decision: 10.08.2026.

Daulat Ram & another

...Petitioners.

Versus

Daleep Chand & another

...Respondents.

Coram:***The Hon'ble Mr. Justice Romesh Verma, Judge.****Whether approved for reporting?*¹

For the petitioners : Mr. Y.P. Sood, Advocate.

For the respondents : Mr. N. K. Thakur, Sr. Advocate with
Mr. Karan Veer Singh, Advocate.

Romesh Verma, Judge (Oral):

This instant petition has arisen out of the order as passed by the learned trial Court, dated 25.03.2026, whereby the application filed by the present petitioners/plaintiffs under the provisions of Order 22 Rule 4A CPC, came to be dismissed.

2. The facts as emerge in the present case are that the petitioners/plaintiffs filed a suit for declaration to the effect that they are joint owners in possession of the land measuring 0.88.51 square meters to the extent of 1/3rd share

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

out of the land measuring 2.65.55 square meters, as detailed below:-

- (i) Land measuring 0-85-99 sq. meters to the extent of 1/3rd share out of land measuring 2-57-99 sq. meters, kita 45, comprised khewat No. 354, khatauni Nos. 612 to 619.
- (ii) Land measuring 0-02-52 sq meters to the extent of 1/3rd share out of land measuring 0-07-56 sq meters, kita7, comprised in khewat No. 355, khatauni Nos. 620 to 624.

3. The plaintiffs have prayed for passing of decree for declaration to the effect that they are joint owners in possession of the suit land and being successors-in-interest of their father Kartara, son of Hako, who succeeded his share from his father and share from his real brother Watna, son of Hako, who died intestate on 02.06.1930 at the age of 5 years. The entries in the Jamabandi for the year 1954-55 and 1959-60 as Watna alias Daleepa or Dilip Chand and in subsequent record of rights are wrong, incorrect, illegal, void abinitio, contrary to the law, made clandestinely without any basis and that the same has no effect on the rights of the plaintiffs. Further, that the alleged sale deed in respect of the wrong entries through sale deed dated 20.01.2010, vide Wasika No. 188, executed by defendant No.1 in favour of defendant No. 2

is illegal, void abinitio and the said document is the result of collusion and the same is a sham transaction without payment of any sale consideration. Further, it was averred that the said sale deed does not confer any title in favour of the defendants and decree for issuance of permanent prohibitory injunction by way of consequential relief, restraining the defendants from interfering in any manner in the rights of the plaintiffs, taking forcible possession, changing nature and character of the suit land, by raising any sort of construction was sought by the plaintiffs before the learned trial Court.

4. The suit came to be resisted by the defendants and all the averments as made in the civil suit have been vehemently and specifically denied.

5. As per the case, as set up by the defendants, the suit as filed by the plaintiffs is frivolous and without any merit. Therefore, it has been prayed that the suit being devoid of any merit, deserves to be dismissed.

6. During the pendency of the suit, the petitioners/plaintiffs filed an application under the provisions of Order 22 Rule 4A CPC on the ground that Watna alias Daleepa had expired on 08.01.2025. This fact was disclosed

by the counsel for the deceased defendant on 24.01.2025. As per the case set up by the plaintiffs, the deceased had already alienated his property to defendant No. 2 and the deceased defendant No.1 was unmarried and had no legal representative to represent him in the proceedings. Therefore, it was prayed that appropriate authority for representing the legal representatives of deceased defendant No.1 be appointed by invoking the provisions of Order 22 Rule 4A read with Section 151 CPC in the interest of justice.

7. The said application came to be resisted by the respondents, whereby the allegations as leveled in the application were refuted and denied.

8. As per the respondents, Watna alias Daleepa was issueless and his estate was succeeded by his nephew and niece, Daulat Ram and Champa Devi, the present petitioners/plaintiffs. The respondents prayed for the dismissal of the application.

9. The learned trial Court vide its impugned order dated 25.03.2026 dismissed the application as filed by the present petitioners under Order 22 Rule 4A of the CPC.

10. It is contended by the learned counsel for the petitioners that the impugned order as passed by the learned

trial Court is erroneous and liable to be quashed and set aside. He submits that the learned trial Court has not understood the spirit of the provisions of Order 22 Rule 4A and has wrongly rejected the said application. He submits that after accepting the present petition, the application as filed by the petitioners for the appointment of appropriate authority for representing the legal representatives of deceased defendant No.1 be allowed.

11. On the other hand, learned counsel for the respondents has defended the impugned order and submitted that the order as passed by the learned trial Court does not suffer from any infirmity and this Court will not interfere in a well reasoned order as passed by the learned trial Court.

12. I have heard the learned counsel for the parties and have also gone through the case file carefully.

13. Admittedly, in the present case, the plaintiffs Daulat Ram and Champa Devi have filed a suit against defendants Daleep Chand and Saroj Kumari. As per the case set up by the plaintiffs, they have sought declaration to the effect that they are joint owners in possession of the land to the extent of 1/3rd share out of the total land measuring

2.65.55 square meters. As per plaintiffs, the sale deed dated 20.01.2010 executed by defendant No.1 in favour of defendant No.2 is illegal, void abinitio and sham transaction as the same is result of collusion as the said document has been executed without payment of any sale consideration and has been made to defeat the rights of the plaintiffs.

The death of defendant No. 1 is admitted by the learned counsel for the parties. The respondents/defendants in their reply to the application which has been filed by the petitioners with the present petition have stated that the defendant No. 1 was succeeded by his nephew and niece Daulat Ram and Champa Devi, the present petitioners.

14. This Court is in agreement with the submission of the learned counsel for the petitioners that the plaintiffs cannot be arrayed as defendants in the present proceedings. It is the case of the petitioners that since defendant No.1 has expired, therefore, appropriate authority for representing the legal representatives of deceased defendant No.1 be appointed for the purpose of continuation of the present proceedings. The learned trial Court, while rejecting the application, came to the conclusion that inherent power under Section 151 CPC cannot be invoked to bypass the

specific procedure prescribed under Order 22 Rule 4A of the CPC.

15. This Court is of considered view that the plaintiffs cannot contest the proceedings by adding themselves as defendants. In case the same is permitted in that event, the suit which has been instituted by the plaintiffs cannot continue. In the interest of justice, this Court is of the opinion that for the continuation of the proceedings which have been instituted by the plaintiffs, certainly the appropriate authority can be appointed for representing the legal representatives of deceased defendant No.1, subject to all just exceptions. As stated earlier, the plaintiffs cannot proceed in both the capacity of plaintiffs and defendants.

16. Therefore, the impugned order which has been passed by the learned trial Court is quashed and set aside and the application as filed by the petitioners under the provisions of Order 22 Rule 4A CPC is allowed. The learned trial Court is directed to take appropriate steps in the matter by appointing appropriate authority for the representation of estate of defendant No.1, so that the suit can continue and can be taken to its logical end.

17. Needless to say that if any person claiming to be

the legal heir or legal representative of defendant No. 1 approaches the court for his or her grievance, then the learned trial court shall take appropriate steps in that event.

18. With these observations, the petition stands disposed of. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

10th August, 2026.
(kck)