

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 345 of 2026
Reserved on: 10.08.2026
Decided on: 21.08.2026

Vishal Singh & others

...Petitioners.

Versus

Rajinder Singh & another

...Respondents.

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

*Whether approved for reporting?*¹

For the petitioners : Mr. N.K. Thakur, Senior Advocate
with Mr. Karan Veer Singh,
Advocate.

For the respondents : Mr. Surender K. Sharma, Advocate.

Romesh Verma, Judge :

The instant petition arises out of the order as passed by the learned Senior Civil Judge, Chamba, dated 10th of June, 2026, whereby the application filed by the plaintiffs/respondents for seeking amendment of the plaint was allowed.

2. The facts as emerge in the present case are that the plaintiffs/respondents filed a suit for declaration to the effect that deceased Dillo Devi, wife of late Lachhmi Nand, had executed a valid and legal Will in favour of the plaintiffs on 06.07.2015 of land measuring 06-11-15 Bighas, comprised in

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

Khata/Khatauni No. 15/21, bearing Khasra Nos. 292, 360, 531, 1016/543, 1018/543/1, 725, 725/1 and 778, Kita 8, situated at Mohal Ohli, Pargana Bhadian, Tehsil and District Chamba, H.P. with a further prayer that the subsequent Will dated 13.07.2015 executed in favour of defendants No. 1 to 6 and plaintiffs of land measuring 06-11-15 Bighas, comprised in Khata/Khatauni No. 15/21, bearing Khasra Nos. 292, 360, 531, 1016/543, 1018/543/1, 725, 725/1, and 778, Kita 8, situated at Mohal Ohli, Pargana Bhadian, Tehsil and District Chamba, is a result of fraud, coercion, and undue influence, and the same being illegal, null and void, is not binding on the rights of the plaintiffs. Further, a decree for permanent prohibitory injunction was sought by the plaintiffs against the defendants.

3. As per the case as set up by the plaintiffs, Smt. Dillo Devi was the grandmother of the plaintiffs and they used to look after and maintain her during her lifetime. Pleased with the services as rendered by the plaintiffs, the deceased executed a valid and legal Will in favour of the plaintiffs on 06.07.2015, registered in the office of Sub-Registrar, Chamba. On the basis of the Will dated 06.07.2015, the plaintiffs are the owners in possession of the land and house comprised in Khata/Khatauni

No. 15/21, bearing Khasra Nos. 292, 360, 531, 1016/543, 1018/543/1, 725, 725/1, and 778, Kita 8, land measuring 06-11-15 Bighas, situated at Mohal Ohli, Pargana Bhadian, Tehsil and District Chamba. After the death of late Smt. Dillo Devi, the plaintiffs succeeded to the properties of late Smt. Dillo Devi.

4. According to the plaintiffs, after the death of Smt. Dillo Devi, defendants No. 1 to 6 presented a Will alleged to have been executed on 13.07.2015 in their favour and plaintiffs before the Patwari for entering the mutation of the deceased. The said Will dated 13.07.2015 in favour of the defendants and plaintiffs is the result of fraud, misrepresentation, coercion, and undue influence, and the same is null and void. On the basis of the alleged Will, the defendants are causing interference and nuisance over the suit land. Therefore, a suit for declaration and permanent prohibitory injunction was filed by the plaintiffs against the defendants.

5. The suit came to be resisted by the defendants by filing the written statement, whereby preliminary objections with respect to maintainability, cause of action, estoppel, locus standi, etc., were raised. On merits, all the averments as made in the plaint were specifically denied. Defendants stated that plaintiffs never looked after and maintained Smt. Dillo Devi,

rather, she was being maintained by the defendants jointly, who were the tenants of late Smt. Dillo Devi. The Will dated 06.07.2015, purported to have been executed by Smt. Dillo Devi in favour of the plaintiffs, had been cancelled vide her subsequent Will dated 13.07.2015. In her Will dated 13.07.2015, Smt. Dillo had given the portion of the suit land to the plaintiff and defendants as per their respective possession to reward the services rendered by them to her.

6. Defendants in their written statement averred that the revenue field staff has found the possession of the parties over the suit land as detailed below:

Plaintiffs:	Land comprised in Khasra No. 778 measuring 00-12-00 Bigha
Defendant No. 1	Land comprised in Khasra No. 1016/543 measuring 02-04-00 Bigha and land comprised in Khasra No. 1018/543 measuring 00-00-15 Bigha
Defendant No. 2	Khasra No. 531 measuring 00-19-00 Bigha, Khasra No. 725 measuring 00-03-00 Bigha and Khasra No. 725/1 measuring 00-05-00 Bigha
Defendant No. 3	Land comprised in Khasra No. 1015/543 measuring 00-11-00 Bigha which has been sold to him by late Smt. Dillo
Defendant No. 4	Land comprised in Khasra No. 360 measuring 02-04-00 Bigha
Defendant No. 6	Khasra No. 292 measuring 00-04-00 Bigha

7. In para 8 of the written statement, the defendants denied the averments as made in para 8 of the plaint, and it has been stated that the suit land is in possession of the

defendants since the lifetime of Smt. Dillo Devi and her husband, and therefore, there is no question of causing any interference over the suit land.

8. During the pendency of the suit, plaintiff filed an application under Order 6 Rule 17 of the CPC for the amendment of the plaint. As per the applicants/plaintiffs, it was stated in the application that defendants No. 1, 2, 4 to 6 have forcibly dispossessed the plaintiffs from the suit land in the month of June 2025, therefore, the plaintiffs are entitled to the possession of the suit land also.

9. It was prayed that the plaintiffs want to add a new paragraph 'C' in the head note to the effect that suit for possession of land measuring 06-11-15 Bighas, comprised in Khata/ Khatauni No. 15/21, bearing Khasra Nos. 292, 360, 531, 1016/543, 1018/543/1, 725, 725/1, and 778, Kita 8, situated at Mohal Ohli, Pargana Bhadian, Tehsil and District Chamba and in the prayer clause as relief 'C' to the effect that decree for possession of land measuring 06-11-15 Bighas, comprised in Khata/Khatauni No. 15/21, bearing Khasra Nos. 292, 360, 531, 1016/543, 1018/543/1, 725, 725/1, and 778, Kita 8, situated at Mohal Ohli, Pargana Bhadian, be passed in favour of the plaintiffs and against the defendants. The

plaintiffs in their application also prayed to add a new paragraph 8-A, stating that defendant Nos. 1, 2, and 4 to 6 have forcibly dispossessed the plaintiffs from the suit land in the month of June 2025, and therefore, the plaintiffs are entitled to the possession of the suit land.

10. The said application for amendment was resisted by the present petitioners/non-applicants by submitting that the plaintiffs are still in possession of the land comprised in Khasra No. 778, measuring 00-12-00 Bighas, and this fact has also been mentioned in para 3 of the written statement filed by the defendants. As per the non-applicants/ defendants, the plaintiffs are adopting delaying tactics to prolong the proceedings. The suit was filed in the year 2016, and the same was fixed for Pws on 24.10.2018, but after the period of more than 8 years, the evidence of the plaintiffs is still to be concluded. As per the defendants, the suit is pending for the last 10 years, but due to the delaying tactics of the plaintiffs, the suit is still at the stage of plaintiffs' evidence. Therefore, the amendment, being highly belated, is liable to be rejected.

11. The learned trial Court, vide its impugned order dated 10th June, 2026, allowed the application as filed by the plaintiffs subject to costs of ₹2,000/-.

12. Feeling dissatisfied, the defendants/petitioners have approached this Court by instituting the present petition under Article 227 of the Constitution of India.

13. It is contended by Mr. N.K.Thakur, Senior Advocate assisted by Mr. Karan Veer Singh, Advocate, for the petitioners that the impugned order as passed by the learned trial Court is erroneous and liable to be set aside. He submits that the learned trial Court has failed to adhere to the provisions of Order 6 Rule 17 of CPC, which categorically stipulates that in case due diligence is not shown by the party intending to make the amendment, in that event, no relief can be granted to the applicant. As per the learned Senior Counsel, the suit was filed in 2016, and for the last 10 years, the plaintiffs on one pretext or the other are delaying the matter in order to harass the defendants. Therefore, after accepting the present petition, the application as filed by the plaintiffs/respondents deserves to be dismissed.

14. On the other hand, Mr. Surender K. Sharma, learned counsel for the respondents has defended the impugned order. He submits that the learned trial Court has passed a well-reasoned order and it does not call for any interference. He further submits that the learned trial Court,

after appreciating the factual matrix of the case, rightly came to the conclusion and passed the order for the amendment of the plaint.

15. I have heard the learned counsel for the parties and gone through the case file.

16. In the present case, the plaintiffs/respondents have approached the learned trial Court for the grant of declaration and permanent prohibitory injunction against the defendants/petitioners. According to the defendants/petitioners, Smt. Dillo Devi was the grandmother of the plaintiffs, and they used to look after and maintain her during her lifetime. Pleased with the services of the plaintiffs, she executed a valid and legal Will in their favour on 06.07.2015, registered in the office of Sub-Registrar, Chamba, HP.

17. As per the Will dated 06.07.2015, the plaintiffs are the owners in possession of the suit land measuring 06-11-15 Bighas, situated at Mohal Ohli, Pargana Badhian, Tehsil and District Chamba, H.P.

18. Plaintiffs have averred that after the death of Dillo Devi, defendants No. 1 to 6 have presented a Will alleged to have been executed on 13.07.2015 in their favour before the Patwari for entering the mutation of the deceased Dillo Devi in

their favour. It is the case of the plaintiffs that the Will dated 13.07.2015 is illegal, null and void, and not binding on the rights of the plaintiffs. Therefore, suit for declaration and permanent prohibitory injunction has been filed by the plaintiffs against the defendants. The said suit came to be filed in the year 2016 by the plaintiffs.

19. The defendants resisted the case filed by the plaintiffs by raising preliminary objections, and it has been stated in Para 3 of the written statement that Khasra No. 778 is in possession of the plaintiffs, and the remaining Khasra Nos. 1016/543, 531, 1015/543, 360, and 292 are in possession of defendants No. 1 to 3, 4 and 6. It has been specifically stated by the defendants in their written statement that the suit land is in possession of the answering defendants since the lifetime of Smt. Dillo Devi and her husband.

20. Perusal of the case file reveals that earlier also, the present respondents/plaintiffs had filed an application under Order 6 Rule 17 of the CPC. The said application has been appended by the petitioners with the present petition, which demonstrates that the said application came to be filed by the plaintiff on 29.11.2022.

21. In the said application, it was stated that defendant No. 3, Tilak Singh, had purchased land measuring 00-11-00 Bighas comprised in Khasra No. 1015/543 from Smt. Dillo Devi through sale deed, and the Mutation No. 1046 dated 04.12.2015 qua the same has been attested and sanctioned in favour of defendant No. 3, Tilak Singh, and that the plaintiffs have wrongly and mistakenly added Khasra No. 1015/543 in the plaint.

22. In the earlier application, it was stated that the mistake occurred due to wrong mentioning of note of purchase in the remarks column of Jamabandies. Therefore, it was prayed that plaintiffs intend to delete Khasra No. 1015/543 from the plaint and also want to correct the description of the land as land measuring 06-11-15 Bighas instead of 07-02-15 Bighas.

23. The said application was duly resisted by the present petitioners. The learned Trial Court, vide its order dated 17.04.2025, allowed the application subject to payment of costs of ₹1,000/-. The plaintiff, immediately, after elapse of about eight months, instituted a fresh application for the amendment of the plaint on the ground that since the plaintiffs have been

dispossessed in the month of June 2025, therefore, plaintiffs are entitled to the possession of the suit land.

24. Surprisingly, immediately after elapse of more than eight months, whereby application for amendment was allowed another application came to be filed on the premise that in the month of June 2025, the plaintiffs have been dispossessed from the suit land, therefore, they are entitled to the possession of the suit land also.

25. The learned Senior Counsel for the petitioners has drawn the attention of this Court to Para 3 of the written statement on page 16 of the paper book, whereby it has been stated by the defendants that the revenue field staff has found the possession of the parties over the suit land by showing the plaintiffs to be owner in possession of Khasra No. 778 measuring 00-12-00 Bighas, and on the remaining Khasra numbers, i.e., 1016/543, 531, 1015/543, 360, and 292, it is defendants No. 1 to 3, 4 and 6 who are in possession of the suit land. There is a categorical averment in the written statement that it is the defendants who are in possession of the suit land. The said stand was taken by the defendants in their written statement way back in the month of January 2017, i.e., about

more than nine years ago from the date of filing of the application for amendment.

26. Learned Senior Counsel has vehemently argued that once a specific stand was taken by the defendants in the written statement that they are in possession of the suit land by giving details of the Khasra numbers which are in possession of the defendants and in possession of the plaintiffs, now after the elapse of nine years, that too, after allowing of their earlier application for amendment, the subsequent application for amendment is not maintainable.

27. This Court is in agreement with the submission of the learned Counsel for the petitioners. The perusal of the case file categorically reveals that a specific defence has been taken by the defendants in their written statement that they are in possession of the suit land, and rather they have also admitted that plaintiffs are in possession of Khasra No. 778, and the remaining Khasra numbers are in their possession.

28. The suit came to be instituted by the plaintiffs in the year 2016, and written statement has been filed in the month of January 2017. The issues were framed by the learned Trial Court on 24.10.2018, and as has been fairly conceded by the

learned Counsel for the parties, till date, the plaintiffs have not concluded their evidence.

29. The case file shows that the endeavour of the plaintiffs is to prolong the matter on one pretext or the other. Shockingly, despite passing of more than ten years, the evidence of the plaintiffs is still to be concluded, and still it is at the stage of the plaintiff's evidence.

30. This Court is in agreement with the contention as raised by the learned Counsel for the petitioners that the instant application, which has been filed for the amendment of the plaint, is an afterthought, and the same is not maintainable in view of the fact that the said plea was not taken by the plaintiffs in the earlier application which came to be filed on 29.11.2022.

31. Though it is the case of the respondents that they have been dispossessed only in the month of June 2025, however, this Court does not find merit in the submission of the learned Counsel for the respondents that since plaintiffs were dispossessed in June 2025, therefore cause of action arose to the plaintiffs only thereafter to amend the present plaint.

32. The learned Counsel for the petitioners has placed on record the copy of the communication as addressed by the

Tehsildar to the SDM, Chamba dated 24.07.2018, which is part of the trial Court record, which clearly shows that the averments as made in Para 3 of the written statement are correct, and defendants No. 1 to 6 have been shown to be in possession of Khasra Nos. 1016/543, 531, 1015/543, 360, and 292. The said document was prepared by the revenue authorities on 24.07.2018 on the basis of the Khasra Girdawari which was prepared in the year 2016.

33. Therefore, this Court is convinced by the submission and the contentions as raised by the learned Senior Counsel for the petitioners that the amendment which has been sought to be incorporated is an afterthought and just to prolong the matter unnecessarily. The perusal of the letter dated 24.07.2018 and Para 3 of the written statement clearly reveals that defendants are in possession of the suit land except Khasra No. 778. Therefore, the story which has been projected by the present respondents/plaintiffs is false and incorrect.

34. The written statement came to be filed by the defendants in January 2017, and the letter dated 24.07.2018 is also part of the Trial Court record. Therefore, now at this stage, after the elapse of more than nine years, the application as filed

is highly belated, which cannot be considered and allowed at this stage.

35. The provision of Order 6 Rule 17 of CPC reads as follows:

“Amendment of pleadings:—*The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

36. The aforesaid provision clearly stipulates that in case a party fails to show due diligence, in that event, the amendment of the pleadings cannot be permitted.

37. In the present case, no due diligence has been shown by the plaintiffs as to why the said amendment was not incorporated at the time when written statement was filed by the defendants and the letter dated 24.07.2018 was placed on record.

38. The conduct of the present respondents is not above board. Though issues were framed in 2018, but till date, the case is at the stage of leading evidence by the plaintiffs. In case the impugned order is sustained, it would virtually amount to

a *denovo trial* and the decision of the suit will take substantial time, relegating the parties back to the stage when the suit was originally filed in year 2016.

39. The plaintiffs cannot be permitted to create multiplicity of allegations or to harass the defendants perpetually. The plaintiffs have been filing repeated applications in order to drag the defendants into litigation and they have miserably failed to plead and prove due diligence in the present case.

40. The learned Court below has erred in law by allowing the application for amendment and has failed to properly appreciate the provisions of Order 6 Rule 17 CPC alongwith the parameters laid down by the Hon'ble Apex Court.

41. The Hon'ble Apex court has interpreted the proviso to be a mandatory requirement to prevent frivolous applications for amendment intended only to delay the trial.

42. In ***Vidyabai and others vs. Padmalatha and another, (2009) 2 SCC 409***, the Hon'ble Supreme Court has observed as follows:

"15. We may notice that in [Ajendraprasadji N. Pandey and Another v. Swami Keshavprakeshdasji N. and Others](#) [(2006) 12 SCC 1], this Court noticed the decision of this Court in [Kailash](#) (supra) to hold:

"35. By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible, although sometimes

effort was made to rely on [Section 148](#) for extension of time for any purpose.

36. Ultimately, to strike a balance the legislature applied its mind and reintroduced Rule 17 by Act 22 of 2002 w.e.f. 1-7-2002. It had a provision permitting amendment in the first part which said that the court may at any stage permit amendment as described therein. But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless the court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is this proviso which falls for consideration."

This Court also noticed [Salem Advocate Bar Assn. v. Union of India](#) [(2005) 6 SCC 344] to hold:

"41. We have carefully considered the submissions made by the respective Senior Counsel appearing for the respective parties. We have also carefully perused the pleadings, annexures, various orders passed by the courts below, the High Court and of this Court. In the counter-affidavit filed by Respondent 1, various dates of hearing with reference to the proceedings taken before the Court has been elaborately spelt out which in our opinion, would show that the appellant is precluded by the proviso to rule in question from seeking relief by asking for amendment of his pleadings.

42. It is to be noted that the provisions of [Order 6 Rule 17 CPC](#) have been substantially amended by the [CPC \(Amendment\) Act, 2002](#).

43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic Rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by the [Civil Procedure Code \(Amendment\) Act, 2002](#), provision has been restored by recognising the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule. The details furnished below will go to show as to how the facts of

the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their court case, and manifests the absence of due diligence on the part of the appellants disentitling them to relief."

The ratio in [Kailash](#) (supra) was reiterated stating that the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence."

43. In **Mohinder Kumar Mehra vs. Roop Rani Mehra and others, (2018) 2 SCC 132**, the Hon'ble Supreme Court has observed as follows:

15. This Court in [Salem Advocate Bar Association, T.N. Vs. Union of India](#), (2005) 6 SCC 344 has noted the object of Rule 17 in Para 26 which is to the following effect:

"26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

17. Although Order VI Rule 17 permits amendment in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of Proviso to the fact that no application for amendment shall be allowed after the trial is commenced. Reserving the Court's jurisdiction to order for permitting the party to amend pleading on being satisfied that in spite of due diligence the parties could not have raised the matter before the commencement of trial. In a suit when trial commences? [Order XVIII of the C.P.C.](#) deal with "Hearing of the Suit and Examination of Witnesses". Issues are framed under Order XIV. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV is to frame issues. Order XV deals with "Disposal of the Suit at the first hearing", when it appears that the parties are not in issue of any question of law or a fact. After issues are framed and case is fixed

for hearing and the party having right to begin is to produce his evidence, the trial of suit commences.

44. The Hon'ble Supreme Court in **Basavaraj vs. Indira and others, (2024) 3 SCC 705**, observed as follows:

10. Proviso to [Order VI Rule 17 CPC](#) provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the case in hand, this is not even the pleaded case of respondents No. 1 and 2 before the Trial Court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of the respondents No. 1 and 2/plaintiffs

12. This Court in [M. Revanna v. Anjanamma \(Dead\)](#) by legal representatives and others¹¹ opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. [Order VI Rule 17 C.P.C.](#) prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No. 7 thereof is extracted below:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to [Order 6 Rule 17 CPC](#) virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are

allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.” (emphasis supplied)”

45. This Court is of the considered opinion that the application filed by the plaintiffs is highly belated, and they have failed to show or establish the basic requirements for grant of relief of amendment. The learned trial Court did not take into consideration the legal parameters laid down by the Hon’ble Apex Court and erred in allowing the said application.

46. Consequently, in view of the observations made herein above, the present petition is accepted, and the application filed by the plaintiffs/respondents for the amendment of the plaint is ordered to be rejected.

47. Before parting, it is made clear that any observation made here-in-above are meant only for adjudication of the present proceedings and the same shall have no bearing on the main suit.

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

(Romesh Verma)
Judge

August 21, 2026.
(Nisha)