

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.375 of 2026

Decided on: 21.09.2026

Man Singh & another

....Petitioners

Versus

Hukam Chand (deceased) through LRs & others ...Respondents

Coram

Hon'ble Mr. Justice Romesh Verma, Judge

Whether approved for reporting?

For the petitioners: Mr. Jaidev Thakur, Advocate.

For the respondents: Mr. L.N. Mehta, Advocate, for
respondents No.1(a) to 1(e) and 2.

Mr. Santosh Kumar, Advocate, for
respondent No.3.

Romesh Verma, Judge (oral)

The instant petition arises out of the order as passed by the learned Civil Judge, Karsog, District Mandi, H.P., dated 19.12.2025, whereby the application filed by the defendants/petitioners under the provisions of Order VII Rule 11 of the CPC came to be rejected.

2. The facts, as emerge in the present case, are that the plaintiffs/respondents filed a suit for declaration, partition, permanent prohibitory injunction and mandatory injunction against the petitioners/defendants. It has been contended in the suit that the land comprised in Khata/Khatauni No. 6/9 to 14, Kitta 103,

measuring 51-09-04 bighas, situated in Muhal Panyadu/98, VRC Kotlu, Tehsil Karsog, District Mandi, is recorded in the ownership and possession of plaintiff No.1, the father of plaintiff No. 2, late Shri Baria, the defendants, and proforma defendants, as per the revenue records pertaining to jamabandi for the year 2009-2010. It is further averred that the suit land is joint and unpartitioned between the parties, in which plaintiff No. 1 and the father of plaintiff No. 2 hold a 16/64 share. The plaintiffs had earlier filed a suit for declaration and partition vide Civil Suit bearing No. 110/2019, instituted on 31.07.2019, which was dismissed as withdrawn vide the order of the learned trial Court dated 12.08.2022.

3. As per the averments as made in the plaint, the plaintiffs requested the Assistant Collector, 2nd Grade, not to attest the mutation, but on 17.08.2022, the mutation of the suit land was attested in favour of the defendants without the consent of the plaintiffs. It was further averred that the revenue agency did not comply with the guidelines as envisaged in the mode of partition prepared by the Assistant Collector, 2nd Grade, Karsog, and the residential house of plaintiff No.1, namely Hukam Chand in Khasra No. 287, was allotted to Nikka Ram and 'aangan' situated in Khasra No.288 belonging to plaintiff No.1 was allotted to proforma defendant No.15. Various grounds have been urged

to the effect that the guidelines as envisaged were not followed. As per the case as set up by the plaintiffs, the entire partition proceedings were conducted just to give undue advantage to defendant No.1, who was hand-in-glove with the revenue officials. The act of the defendants is alleged to be unlawful, arbitrary, unwarranted and contrary to all canons of justice and are liable to be restrained by passing a decree of injunction.

4. Consequently, the suit was filed for declaration to the effect that the suit land mentioned in paragraph 1 of the plaint, which was partitioned by the Assistant Collector, 2nd Grade, Karsog, vide order dated 22.07.2014 and subsequently upheld by the order of the Financial Commissioner dated 10.05.2019, be declared null and void on the ground that the same was not partitioned in accordance with the provisions of law. Further, decree for permanent prohibitory injunction and mandatory injunction was also sought against the defendants.

5. The defendants No.1 and 2, filed an application under Order VII Rule 11 of the CPC for rejection of the plaint. It was averred therein that the suit is not maintainable in view of the provisions of Order 23 Rule 1(4)(b) of CPC, as the plaintiffs had withdrawn the earlier instituted suit without seeking liberty from the learned trial Court to institute a fresh suit. It was further stated that since the partition proceedings had attained finality before the

Financial Commissioner, the civil suit is specifically barred under the provisions of Section 171(1) (2)(xvii)(xviii) of the H.P. Land Revenue Act, as the jurisdiction of the revenue court has been incorporated in the Act. It was also pleaded in the application that by virtue of Section 11 of the CPC, the suit is barred by the principle of *res judicata*.

6. The said application came to be resisted by the plaintiffs, who denied all the averments made therein.

7. The learned trial Court, vide impugned order dated 19.12.2025, dismissed the application filed by the defendants.

8. Feeling aggrieved and dissatisfied, the defendants have approached this Court by way of the present petition instituted under Article 227 of the Constitution of India.

9. It is contended by Mr. Jaidev Thakur, learned counsel for the petitioners-defendants, that the impugned order passed by the learned trial Court is erroneous and liable to be quashed and set aside. He submits that the order is a non-speaking one and fails to withstand judicial scrutiny. He further contends that after allowing the present petition, the application filed by the defendants under Order VII Rule 11 of CPC deserves to be allowed.

10. On the other hand, learned counsel appearing for the respondents have defended the impugned order.

11. I have heard learned counsel for the parties and have also gone through the material placed on record carefully.

12. This Court, without expressing any opinion on the merits of the case, agrees with the contention raised by learned counsel for the petitioners-defendants that the grounds urged in the application for rejection of the plaint have not been dealt with *or addressed* by the learned trial Court.

13. The defendants-petitioners filed the application under Order VII Rule 11 of the CPC primarily stating that the present suit filed by the plaintiff is barred and not maintainable under the provisions of Order 23 Rule 1(4)(b) of CPC, as the plaintiffs had earlier filed a civil suit on the same and similar cause of action and withdrew the same without obtaining liberty from the trial Court. In addition, by invoking Section 171(1) and (2)(xvii)(xviii) of the H.P. Land Revenue Act, it was asserted that the jurisdiction of the civil court is barred. Further, it was asserted that by virtue of Section 11 of the CPC, the principle of *res judicata* is applicable to the present proceedings.

14. A perusal of the impugned order reveals that the grounds raised by the defendants in their application have not been addressed/touched by the learned trial Court. The learned Court below has passed a non-speaking order, leaving this Court with no option but to quash and set aside the impugned order and

remand the matter back, directing the learned trial Court to decide the application under Order VII Rule 11 of the CPC afresh after affording an opportunity of hearing to both parties.

15. Consequently, in view of the observations made hereinabove, the impugned order dated 19.12.2025, passed by the learned Civil Judge, Karsog, District Mandi, H.P, is quashed and set aside, with a direction to the learned trial Court to decide the application under Order VII Rule 11 of the CPC afresh in accordance with law.

16. The parties are directed to appear before the learned trial Court on **01.10.2026**.

17. Accordingly, the present petition stands disposed of along with pending miscellaneous application(s), if any.

18. The observations made hereinabove are meant only for adjudication of the present proceedings and the same shall have no bearing on the merits of the main case.

(Romesh Verma)
Judge

21st September, 2026
(vt)