

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. : 144 of 2024

Decided on : 05.08.2026

Ajay Kumar

...Petitioner

Versus

Chhering Dolma & Anr.

...Respondents

Coram

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

Whether approved for reporting?¹

For the petitioner : Ms. Anjali Soni Verma,
Advocate.

For the respondents : Mr. Maan Singh, Advocate.

Virender Singh, Judge (Oral)

Petitioner-Ajay Kumar has filed the present revision, under Section 115 of CPC, against the order dated 06.08.2024, passed by the Court of learned Civil Judge, Manali, District Kullu, H.P. (hereinafter referred to as 'the trial Court'), in Execution Petition No. 11/2023, titled as "Ajay Kumar Versus Chhering Dolma & Anr.".

2. Vide order dated 06.08.2024, the learned trial Court has dismissed the execution petition, filed by the petitioner.

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

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

4. Brief facts, leading to the filing of the present petition, as borne out from the documents, annexed with the petition, are that plaintiff-Ajay Kumar, has filed a suit for permanent prohibitory injunction, against the defendants, which was dismissed by the learned trial Court, vide judgment and decree dated 09.05.2016.

5. The said judgment and decree has been assailed by the plaintiff before the learned Additional District Judge, Kullu, District Kullu, H.P. (hereinafter referred to as 'the learned First Appellate Court'), by way of Civil Appeal No. 9 of 2016, titled as 'Ajay Kumar Versus Chhering Dolma & Anr.'. The said appeal was allowed by the learned First Appellate Court, by granting the following relief:

"37. Judged, in the light of my findings on point No. 1 above, the appeal filed by the appellant/plaintiff is hereby allowed. The impugned judgment and decree dated 09.05.2016 passed by learned trial Court in Civil Suit No. 47 of 2012 is hereby set aside. The defendants are hereby permanently restrained through a decree of prohibitory injunction from changing the nature of the suit land and from raising any sort of construction over the suit land till the suit land is not lawfully partitioned

amongst the co-sharers. The parties are left to bear their own costs. Decree be prepared accordingly. Copy of this judgment be sent to learned trial Court with the requisitioned record. File after due completion be consigned to record room."

6. The judgment passed by the learned First Appellate Court, admittedly, has attained finality. Thereafter, the plaintiff has filed the execution petition before the learned trial Court.

7. The said execution petition has been dismissed by the learned trial Court, vide order dated 06.08.2024, holding that the suit land has now been partitioned amongst the parties. As such, execution is held to be not maintainable and same has been dismissed by accepting the objections filed by the JDs.

8. Said order has been assailed by way of the present petition. The plaintiff has filed the execution before the learned trial Court, with a prayer that the defendants/JDs may be restrained from raising construction over the suit land and the construction, so raised, may be ordered to be dismantled and removed, at the costs and expenses of JDs and the property i.e. movable and immovable property, of JDs may be attached and sold, as per law.

9. The defendants/JDs contested the execution petition, by taking preliminary objections that the execution petition is not maintainable, as the land has already been partitioned and they are in possession of their respective share. Reasserting the fact that the suit land has been partitioned by Assistant Collector 1st Grade Manali and mutation No. 363 dated 28.07.2021 has been sanctioned, it has further been pleaded that as per the partition, defendants/JDs are in possession of Khasra No. 498/1/1, whereas plaintiff has settled in Khasra No. 498/1/2. Both of them have raised boundary wall in their settled possession and as such, prayer has been made to dismiss the execution petition.

10. Heard.

11. The learned counsel appearing for the plaintiff has drawn the attention of this Court towards the order dated 12.01.2024, in Revenue Appeal No. 15/2023, passed by Collector, Sub Division Manali, District Kullu, H.P. The said order is reproduced as under:

“Case called

Sh. R.K. Sharma, Ld. Counsel for appellant present.

None for respondents.

Respondents are proceeded ex-parte and case is remanded to AC 1st Grade to decide it afresh.”

12. This order has been relied upon by the plaintiff to demonstrate that the partition proceedings have been set aside and matter has been remanded back to AC 1st Grade, to decide it afresh.

13. The said order has been passed by the Collector, Sub Division, Manali (H.P.) in Revenue Appeal under Section 14 of Himachal Pradesh Land Revenue Act, by virtue of which, the order of mutation No. 363, dated 28.07.2021, passed by AC 1st Grade has been assailed.

14. The learned counsel for the defendants, has also placed on record the order dated 12.01.2024, on the record. As per the detailed order, passed by the Collector, Sub Division, Manali, District Kullu, H.P., the appeal preferred by the plaintiff was allowed and matter has been remanded back to AC 1st Grade, to decide the mutation proceedings afresh, after affording due opportunity of being heard. Relevant paragraph 3 of the said order, is reproduced, as under:

“3. Both the parties were summoned to adduce their arguments. Sh. R.K. Sharma Ld. Counsel for the appellant present. None for respondents. Respondents are proceeded ex-parte due to repeated absence. Ld. Counsel for the appellant argued that A.C. 1st Grade had not afforded any opportunity to the appellant before attesting mutation which is against the principles of natural justice.”

15. From the record, nothing has been pointed out by learned counsel for the petitioner, as to how the order dated 12.01.2024, passed by the Collector, Sub Division, Manali (H.P.), can be said to be an order by virtue of which partition proceedings have been set aside, resulting into restoration of the status of the parties being co-sharer. The main grievance of the plaintiff in the appeal before the Collector, Sub Division, Manali, is that the opportunity of being heard has not been given, while sanctioning the mutation. It has rightly been held by learned trial Court that mutation does not confer any title.

16. Considering all these facts, there is no occasion for this Court to interfere with the well reasoned findings, recorded by the learned trial Court. Consequently, the present petition is dismissed, so also the pending application(s), if any.

17. Record be returned back.

05th August, 2026
(Pramod Kumar)

(Virender Singh)
Judge