

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 463 of 2026

Decided on: 9.9.2026

Kalawati & others

... Petitioners

Versus

Rajinder Kumar & ors.

...Respondents

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

For the Petitioners: Mr. Anuj Bali, Advocate.

For the Respondents : Mr. Mohinder Verma,
Advocate, for respondents
No.1, 2 and 4.

None for respondents No. 3
and 5.

Virender Singh, Judge (oral)

Petitioners Kalawati & others have filed the present petition, under Article 227 of the Constitution of India, against the order dated 25.4.2026, passed by the Court of learned Senior Civil Judge, Court No. 2, Shimla, H.P. (hereinafter referred to as 'the trial Court'), in Civil Suit No. 134 of 2019, titled as, 'Kalawati & others versus Rajender Kumar & others'.

2. By way of order dated 25.4.2026, the learned trial Court, after affording ten effective opportunities to the plaintiffs, has closed the evidence of the plaintiffs.

3. For the sake of convenience, parties to the lis are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. Necessary facts, as borne out from the documents, annexed with the petition, may be summed up, as under:

Plaintiffs Kalawati & others have filed the suit for declaration to the effect that the plaintiffs No. 1 to 6 have inherited the movable and immovable properties left behind by Rattan Dass, to the extent of 5/6th share at Mauja and Mohal Jooni, Tehsil Sunni, District Shimla, and at mauja and Mohal Nalah, Tehsil Sunni, District Shimla, H.P. (hereinafter referred to 'the suit land').

4.1 In addition to this, the plaintiffs have also challenged the power of attorney, dated 20.6.2003, allegedly executed by the plaintiffs in favour of defendant No. 5, in respect of their immovable properties, situated

at Mauja and Mohal Jooni, Mauja and Mohal Khaira and Mauja and Mohal Nalah, Tehsil Sunni, District Shimla, and the subsequent acts done pursuant to the said power of attorney, are null and void.

4.2 On the basis of above facts, a prayer has been made that the suit may kindly be decreed.

5. The suit has been contested by the defendants, by taking preliminary objections, qua maintainability of the suit; the plaintiffs have not approached the Court with clean hands; the plaintiffs have no locus standi to file the present suit; that they themselves relinquished their shares, in favour of Hem Singh, on the basis of relinquishment deed, dated 21.12.2003; and that the suit is barred by limitation.

5.1 On the basis of above facts, a prayer has been made that the suit may kindly be dismissed.

6. After completion of the pleadings, the learned trial Court has framed the issues, way back on 26.7.2022. Thereafter, the learned trial Court has granted ten effective opportunities to the plaintiffs to lead their evidence, including the last one. Despite the

opportunities, when, the plaintiffs have not taken the steps, within the time frame, as fixed by the learned trial Court, nor examined any witness, then, the learned trial Court, vide order dated 25.4.2026, has closed the evidence.

7. The aforesaid order is being assailed before this Court, by the plaintiffs, mainly on the ground that the learned trial Court has closed the evidence of the plaintiffs, without recording the fact that default on the part of the plaintiffs, is not willful.

8. The prayer, so made in the petition, has been opposed by Mr. Mohinder Verma, Advocate, appearing for the defendants on the ground that despite ten opportunities, granted to the plaintiffs, including the last one, as well as, by imposing the cost, they could not take steps for summoning the witnesses. As such, a prayer has been made to dismiss the petition.

9. Although, the plaintiffs have taken more than sufficient opportunities to adduce the evidence, and despite this, they have not led any evidence, but considering the true import of the procedural law,

according to which, the matter should be decided on merit, and not on the basis of default, committed by the parties, until or unless, the default is so pre-dominant that it overshadows the merits of the case.

10. Considering the said fact, the opportunity to lead evidence is required to be given to the plaintiffs, however, subject to payment of costs.

11. With these observations, the present petition is allowed, subject to cost of Rs. 50,000/- to be paid to the defendants. Consequently, order dated 25.4.2026, passed by the learned trial Court is set aside and the plaintiffs are directed to take steps for summoning the witnesses, within a period of five days, from the date of their appearance, before the learned trial Court. Thereafter, the learned trial Court is requested to issue summons to the official witnesses, for the date, which should not be later than 30 days.

12. The learned trial Court is at liberty to take even coercive steps to secure the presence of official witnesses, in case, they fail to put appearance, despite

service of summons upon them. The entire exercise be completed, on or before 31.12.2026.

13. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present application.

14. The pending application(s), if any, are also disposed of.

9.9.2026
Kalpana

(Virender Singh)
Judge