

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP No. : 191 2026 in
Civil Suit No. : 22 of 2025
Reserved on : 11.08.2026
Decided on : 18.08.2026
Uploaded on : 18.08.2026

Dharam Chand & Another ...Plaintiffs

Versus

Gopal Sood & Others ...Defendants

Coram

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

Whether approved for reporting?¹

For the plaintiffs : Mr. Y.P. Sood, Advocate, for the plaintiff/non-applicants.

For the defendants : Mr. Harshit Sharma, Advocate vice Mr. Janesh Gupta, Advocate for defendants No.1 to 3/non-applicants.

Mr. R.L. Sood, Senior Advocate with Ms. Sanjeevani Sood, Advocate, for defendant No.4/non-applicant.

Mr. Balwant Kukreja, Advocate for the applicant.

Virender Singh, Judge (oral)

Present application has been filed, under Order 1 Rule 10 CPC, by Ms. Sukriti Sood D/o late Shri Om

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

Prakash Sood, as well as her sister Ms. Sonia Sood, for impleadment, as, defendants, in the present *lis*.

2. The above noted application has been filed, in a civil suit, filed by the plaintiffs for partition, rendition of accounts and permanent prohibitory injunction. As per the stand, as taken in the plaint, Ganga Ram, predecessor-in-interest of the parties, was owner-in-possession of the various immovable properties situated at Bazar Ward Lakkar Bazar and Bazar Ward Bara Shimla, Tehsil Shimla (Urban), District Shimla. Said Ganga Ram expired on 29.04.1978 and after his death, he was succeeded by his sons, namely; Dharam Chand, Om Prakash, Karam Chand and two daughters namely Saroj and Bimla Devi, who all succeeded to the estate of Ganga Ram, to the extent of 1/5th share each.

2.1. It is the further case of the plaintiffs that Smt. Bimla Devi daughter of Shri Ganga Ram relinquished her share in the property inherited by her, from her father, in favour of the plaintiffs and late Om Prakash, in equal shares. Mutation No.28 of Mohal Bazar Ward, Lakkar

Bazar Shimla, with respect to relinquishment of the share of Smt. Bimla Devi, was attested in favour of the plaintiffs.

3. On the basis of the said relinquishment deed, it has been pleaded that share of the plaintiffs and late Shri Om Prakash (predecessor-in-interest of defendant No.4), increased from 20% to 26.5%, each, in the suit property, whereas, Shri Karam Chand, predecessor-in-interest of defendants No.1 to 3 continued to be owner to the extent of 20% share in the suit property. Om Prakash, had died and after his death, he has been succeeded by defendant No.4, by virtue of Will executed by late Shri Om Prakash in favour of defendant No.4.

4. As per the plaintiffs, this fact came to the notice of plaintiff No.1, when, during the pendency of Civil Suit No.155 of 2020, titled as Om Prakash versus Dharam Chand, pending in the Court of learned Senior Civil Judge, Shimla, an application was filed to bring on record the legal representatives of Shri Om Prakash, in which defendant No.4, claiming that Shri Om Prakash had executed a Will in his favour, during his lifetime.

5. By way of the application under consideration, the impleadment, as defendant, has been sought, on the ground, that the applicant and Sonia Sood, are daughters of Om Prakash, having their share in the suit property and plaintiffs are trying to deprive them from their legally vested rights, in the subject matter of lis. According to them, on coming to know about the filing of the present suit, without impleading them as party, they obtained the legal advice and the present application has been filed.

6. Asserting the fact that both of the applicants are necessary and proper parties, they have set up a case, according to which, the suit property is ancestral and as such, according to them, they have acquired their title in the suit property, on the basis of the same. Challenging the right of Shri Om Prakash to execute the Will, a prayer has been made to implead the applicant, as party.

7. When put to notice, this application has only been contested by defendant No.4, by taking the preliminary objections that the application is not maintainable, as the daughters of Shri Om Prakash were given more than their share, out of the property, at the

time of their marriage and thereafter also were given precious gifts on every festival, family occasions and celebrations.

8. On merits, the claim of the applicant, by virtue of which, she has asserted her right, in the suit property, has been disputed. The prayer has further been opposed on the ground that the applicant has no nexus with the property and the applicant is not entitled to any property, as Shri Om Prakash had left a detailed Will, bequeathing the property exclusively in the name of Kanav Sood, defendant No.4. As such, a prayer has been made to dismiss the application.

9. No reply to the application has been filed by defendants No.1 to 3, as well as, by the plaintiffs.

10. In the reply filed by defendant No.4, it has not been disputed that the applicant and her sister, are daughters of Shri Om Prakash, who, as per the stand taken by the plaintiffs in their suit, were having 26.5 % share in the subject matter of the lis. As per the plaintiffs, defendant No.4, has been impleaded, on the basis of a Will,

executed by Shri Om Prakash, in his favour. Same stand has been taken by defendant No.4.

11. Considering the rival stand taken by the applicant, as well as, her brother, defendant No.4, this Court is of the view that situation would have been otherwise had the applicant been admitted the Will executed by her father, in favour of her brother (defendant No.4). However, she has asserted her right, putting forward the plea that the suit property was ancestral and as such, Shri Om Prakash could not have bequeathed the same in favour of defendant No.4.

12. The lis is at the initial stage, as, issues have not yet been framed. The provisions of Order 1 Rule 10 CPC, are reproduced, as under:

10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either

party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant

(5) Subject to the provisions of the Indian Limitation Act, 1877 (XV of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

13. The primary object of the above provisions is to ensure that all necessary and proper parties are brought before the Court, so that, the dispute can be adjudicated effectively, completely, and finally.

14. The Hon'ble Supreme Court, in **Razia Begum versus Sahebzadi Anwar Begum & others, AIR 1958**

Supreme Court 886, has laid down the principles for addition of the parties in a suit. Relevant paragraph 13 of the judgment, is reproduced, as under:-

13. As a result of these considerations, we have arrived at the following conclusions:-

(1) That the question of addition of parties under R. 10 of O. 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view. of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contra distinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in s. 115 of the Code;

(2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy ;

(4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of ss. 42 and 43 of the Specific Relief Act ;

(5) In cases covered by those statutory provisions the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has

reasons to insist upon a clear proof apart from the admission;

(6)The result of a declaratory decree on the question of status such as in controversy in the instant case affects not only the parties actually before the court but generations to come, and, in view of that consideration, the rule of 'I present interest' as evolved by case law relating to disputes about property does not apply with full force; and

(7)The rule laid down in s. 43 of the Specific Relief Act is not exactly a rule of res judicata. It is narrower in one sense and wider in another.

15. Applying the above principles to the facts of the present case, the applicant has asserted her direct and substantive interest in the suit property, being daughter of Om Prakash, who, as per the claim, set up by the plaintiffs, was having 26.5% share. Undoubtedly, defendant No.4 has every right to press his claim, on the basis of the alleged Will and to claim the same, however, when, the very competence of Shri Om Prakash to execute the Will and consequently its validity, has been challenged before this Court, to the considered opinion of this Court, the applicant and his sister, are not only proper, but, necessary parties, as, in their absence, the controversy

involved in the main suit i.e., partition, cannot be adjudicated upon effectively.

16. Consequently, the application, under consideration, is allowed and the applicant Mrs. Sukirti Sood and her sister-Ms. Sonia Sood, are ordered to be impleaded as party-defendants No.5 and 6, in the main suit.

17. Needless to say that the impleadment of the applicant and her sister-Sonia Sood, as defendants No.5 and 6, shall not, in any manner, prejudice the rights of the defendant No.4 to assert his claim over the suit property, on the basis of the alleged Will and all the contentious issues, arising between the parties, would be considered by this Court, after giving opportunity to all the parties to the lis, to place their respective stand, before this Court.

Civil Suit No.22 of 2025

Vide order of the even date, the applicant and her sister have been ordered to be impleaded as party-defendants No.5 and 6. Notice. Mr. Balwant Kukreja, Advocate appears and accepts service of notice on behalf of defendant No.5. Let notice be issued to defendant No.6,

through defendant No.5, for 18th September, 2026, on taking steps within a period of seven days.

(Virender Singh)
Judge

August 18, 2026_(ps)