

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP(M) No. 11 of 2026

Date of decision: 14.08.2026.

Yash Pal Abrol

...Applicant.

Versus

Pushpa Devi & others

...Respondents.

*Coram:****The Hon'ble Mr. Justice Romesh Verma, Judge.****Whether approved for reporting?¹*For the applicant : Mr. Ajay Sharma, Sr. Advocate with
Mr. Tarun Brakta, Advocate.For the respondents : Mr. V.S. Rathore, Advocate, for
respondent No.1.

Romesh Verma, Judge (Oral):

The instant appeal has been filed against the judgment and decree as passed by the learned Additional District Judge, Court No. 1, Kangra at Dharmshala, H.P., dated 01.09.2025, whereby the appeal filed by defendant No.1 was dismissed and the judgment and decree as passed by the learned Civil Judge, Court No. 2, Kangra at Dharmshala, dated 31.03.2018, was affirmed, whereby the suit filed by the plaintiffs/respondents was decreed.

2. The facts as emerge in the present case are that the plaintiffs filed a suit against the defendants on the ground that

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

they are owners in possession to equal shares of the land comprised in Khata No.206 min, 166 min, 169 min, Khatauni No. 327 min, Khasra Nos. 822 and 824, kita 2 measuring 238-04 square meters, situated at Mohal Ram Nagar, Mauza Mant, Tehsil Dharmahsla, District Kangra, H.P.

3. As per the case as set up by the plaintiffs, defendant No.1 constructed retaining wall in between Khasra No. 822 and 824 in the month of January, 2004. Defendant No.1 started excavation in his land and also started excavating earth on Khasra No. 822 in the land of the plaintiffs. Further, the defendant No.1 also started making preparation for the extension of the retaining wall in such a way so as to block the entry into the passage of Khasra No. 822 from the passage in Khasra No. 824, thereby threatening to close the passage and ingress and egress to the land of the plaintiffs.

4. It has been stated that though the plaintiffs moved a complaint to the Superintendent of Police, Kangra and due to intervention of the police and understanding between the parties that they will get the boundaries demarcated before doing any construction work, defendant No.1 stopped his construction work. Thereafter, the defendant No.1 again started construction by collecting material over the suit land, threatened to block the passage in the suit land by extending

the retaining wall. Under such circumstances, the plaintiffs filed a suit for permanent and mandatory injunction against the appellants/defendants.

5. The suit came to be resisted by the appellant/defendant No.1 by refuting and specifically denying all the averments as raised in the plaint.

6. The learned trial Court framed the issues in the matter on 07.04.2008 and 27.10.2016, in the following manner:-

- “1. *Whether plaintiffs are entitled to the relief of permanent prohibitory injunction, as prayed for?* OPP
- 1-A *Whether there exist a path on khasra No. 822 and 824 which is used by the plaintiffs to reach their land on Khasra no. 813, as alleged?* OPP
- 1-B *Whether plaintiffs have any right to use such path, as alleged?* OPP
2. *Whether plaintiffs are also entitled for the relief of mandatory injunction, as prayed for?* OPD
3. *Whether plaintiffs have no locus standi and cause of action to file the present suit?* OPD
4. *Whether suit is bad for non-joinder of necessary parties?* OPD
5. *Whether suit is not maintainable?* OPD
6. *Whether suit is not competent?* OPD
7. *Relief.”*

7. After adducing the evidence by the respective parties, the learned trial Court, vide its impugned judgment

and decree dated 31.03.2018, partly decreed the suit as filed by the plaintiffs/respondents by restraining defendant No.1 from causing any kind of interference/encroachment, changing the nature of the suit land, comprised in Khata No. 206 min, 166 min, Khatoni number 327 min, Khasra number 822 and 824, kita 2, area measuring 238.04 square meters situated at Mauza Ramnagar, Kangra, District Kangra, H.P.

8. The defendant No.1, feeling dissatisfied by the judgment and decree, as passed by the learned Civil Judge, Court No. 2, Kangra at Dharmshala, preferred an appeal in the Court of learned Additional District Judge, Court No. 1, Kangra at Dharamshala, on 23.06.2018. The learned First Appellate Court affirmed the findings of the learned trial Court and dismissed the appeal as preferred by the appellant/defendant.

9. Still feeling dissatisfied, the defendant No.1 has approached this Court by filing the instant Regular Second Appeal invoking the provisions of Section 100 of the CPC.

10. The notices were issued in the case in hand on 06.01.2026. After issuance of the notice by the Court, it was reported by the Registry of this Court that respondent No. 2(b) Rekha Devi had expired. Thereafter, time was granted to the learned counsel for the appellant to take appropriate steps for bringing on record the legal representatives of respondent No.

2(b). Pursuant to that, the appellant filed an application bearing CMP (M) No. 1227 of 2026 for bringing on record the legal representatives of deceased respondent number 2(b) Rekha Devi.

11. As per the averments as made in the application, respondent No.2 (b) Rekha Devi had expired on 21.12.2023 and copy of death certificate has been appended as Annexure A-1.

12. Admittedly, it is apparent on the face of record that the impugned judgment was passed by the learned First Appellate Court on 01.09.2025, whereas the death of deceased respondent No. 2(b) Rekha Devi has taken place during the pendency of the appeal before the learned First Appellate Court.

13. As per the exposition of law, as laid down by the Hon'ble Supreme Court, the judgment passed in favour or against a dead person is a nullity. The said proposition of law has been laid down by the Hon'ble Apex Court in **(2017) 13 SCC 414**, titled as, **Gurnam Singh (Dead) through Legal representatives & others vs. Gurbachan Kaur (Dead) by legal representatives**, wherein it has been held as under:-

“21) It is a fundamental principle of law laid down by this Court in Kiran Singh’s case (supra) that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree holder.

The reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a “nullity” (See-N. Jayaram Reddy & Anr. Vs. Revenue Divisional Officer & Land Acquisition Officer, Kurnool, (1979) 3 SCC 578, Ashok Transport Agency vs. Awadhesh Kumar & Anr., (1998) 5 SCC 567 and Amba Bai & Ors. Vs. Gopal & Ors., (2001) 5 SCC 570).”

14. Since the judgment has been passed in favour of a dead person i.e. respondent No.2 (b) Rekha Devi, therefore, in the considered opinion of this Court, the said judgment passed by the learned First Appellate Court is a nullity. Therefore, this Court has no other option but to quash and set aside the impugned judgment by relegating the parties to the Court of learned Additional District Judge, Court No. 1, Kangra at Dharmshala, by directing the learned First Appellate Court to determine the point of abatement on account of death of respondent No. 2(b) Rekha Devi.

15. The learned Senior Counsel for the appellant submits that appropriate application shall be filed before the learned First Appellate Court and in the event of filing of such application, the Court shall proceed in the matter and decide the application strictly in accordance with law and thereafter

take the appeal to its logical end by adjudicating it afresh.

16. The parties are relegated to the Court of Additional District Judge, Court No. 1, Kangra at Dharmshala. They undertake to appear before the said court **07.09.2026**

17. The appeal is accordingly disposed of. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

14th August, 2026.
(kck)