IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 72 of 2026

Decided on: 3.11.2026

Sant Ram Verma & others

... Petitioners

Versus

Neelam Verma & others

...Respondents

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting? yes

For the Petitioner: Mr. Sudhir Thakur, Senior Advocate, assisted by Mr. Somesh Sharma, Advocate.

For the Respondents *:* Ms. Madhurika Sekhon Verma, Advocate, for respondents No. 1 and 2.

Mr. H.S. Rawat, Addl. Advocate General with Ms. Ranjana Patial, Dy. A.G., for respondent No.3.

Virender Singh, Judge (oral)

Petitioners have filed the present petition, under Article 227 of the Constitution of India, against the award dated 29.8.2025, passed by the Court of Ld. Additional District Judge, Court No. II, Shimla, District Shimla, HP, (hereinafter referred to as 'the trial Court'),

in Civil Suit No. 44 of 2021, titled as, 'Neelam Verma vs. Sant Ram Verma & others'.

2. By way of order dated 29.8.2025, the learned trial Court has dismissed the application, under Order 7 Rule 11 of the CPC, filed by the petitioners, in the above titled suit.

3. Parties to the lis, are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. Initially, the suit titled, as 'Neelam Verma vs. Sant Ram Verma and others' was filed, before this Court, however, in view of the change, in the pecuniary jurisdiction of the Courts, the same was transferred to the learned trial Court, vide order dated 9.8.2023, passed by this court.

5. The suit has been filed on the ground that the plaintiff is adopted daughter of Shri Krishan Chand. She was adopted by Shri Krishan Chand, vide adoption deed dated 9.8.1989. The biological father of plaintiff Neelam Verma was the real brother of Shri Krishan Chand, the adoptive father of the plaintiff.

6. When, the deed was executed, plaintiff was minor, aged about four years, however, her adoptive father died, just after five days of execution of the adoption deed, and the biological father of plaintiff also died on 17th April 1994. At that time, plaintiff was only 9 years old. Her mother had made hard time to bring up her children. All these facts have been pleaded to demonstrate that due to the above reasons, the property of her adoptive father was not mutated in her name, however, plaintiff received the pensionary benefits of her adoptive father, till she attained the majority. Since the property has not been succeeded by the plaintiff, as such, the same was mutated in the name of Smt. Durga Devi, mother of adoptive father of the plaintiff. After the death of Durga Devi, the same was inherited by defendants. The said inheritance has been challenged by way of the present suit.

7. It is also the case of the plaintiff that the relationship between the plaintiff and defendants was so cordial, that the plaintiff bonafidely remained, under the impression that she is the rightful owner of the property.

The plaintiff earlier filed the suit, which was dismissed, with liberty to file a fresh one.

8. In the suit, when, put to notice, the defendants filed an application, under Order 7 Rule 11 CPC, for rejection of the plaint, on the ground, that the suit land is situated within the jurisdiction of the Civil Court, at Kandaghat, as the suit property is situated in Mauja Kahala, P.O. Kandaghat, Tehsil Kandaghat, District Solan. Rejection of the plaint has also been sought on the ground that the plaint does not disclose any cause of action, as Krishan Chand expired on 14.8.1989, and mutation has been sanctioned, in the year 1991. The suit is also stated to be barred by limitation, as Krishan Chand expired on 14.8.1989 and the suit has been filed in the year 2021.

9. On the basis of above facts, a prayer has been made to reject the plaint.

10. The application has been dismissed by learned trial Court, vide order dated 29.8.2025.

11. The provisions of Order 7 Rule 11 CPC are reproduced as under:

"Order 7……

" R. 11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9:]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

12. In order to decide the said application, only the averments, as made in the plaint, are required to be taken into consideration, as held by Hon'ble Supreme

Court in **'Saleem Bhai and others versus State of Maharashtra & others',** reported in AIR 2003 SC 759. Relevant paragraph-9 of the judgment is reproduced, as under:

> *"9. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any state of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects."*

13. In this case, rejection of the plaint has been admitted that the suit of the plaintiff is barred by limitation. The plaintiff is seeking declaration of the title, as she is claiming title, on the basis of adopted daughter of Krishan Chand. Alongwith the plaint, she has

annexed the copy of deed of adoption, executed on 9.8.1989.

14. In such situation, the plea of limitation, which is mixed question of law and facts, cannot be the base to reject the plaint.

15. While holding so, the view of this Court is being guided by the Hon'ble Supreme Court in "**Babasaheb Ramdas Shirole and others versus Rohit Enterprises and others,**" a decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 13656 of 2025, arising out of SLP(C) No. 16809 of 2025. Relevant paragraphs 7 to 9 of the judgment are reproduced as under:

> *"7. As regards the first aspect, it is well settled that limitation is a mixed question of law and fact and unless the same is patently and unequivocally clear, it cannot form a ground under Order VII Rule 11 of the CPC for non-suiting a plaintiff. In the case on hand, perusal of the plaint indicates that the plaintiffs claimed that the cause of action arose in October 2023, when defendant No. 1 started quarrelling with them for the first time, showing his true colors by trying to grab the suit properties and interfering with their peaceful possession over the same.*
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> *8. In the light of this averment, the High Court clearly erred in jumping to the conclusion that there was a delay of 10 years on the part of the plaintiffs in assailing the sale deed executed in the year 2013. The High Court lost*

sight of the fact that it was the plaintiffs' case that the said sale deed was only a sham and was coupled with a development agreement executed on the same day.

9. These were issues that required to be examined on evidence and could not have been summarily rejected by the High Court in exercise of jurisdiction under Order VII Rule 11 of the CPC."

16. Even otherwise, when, a person is seeking declaration on the basis of title, law does not prescribe any limitation for such suit, unless or until, the said plea is being opposed by taking the plea of adverse possession. In this regard, it is apt for this court to rely upon the judgment of Hon'ble Supreme Court in a case titled as **"Karam Singh versus Amarjit Singh & others."** reported as 2025 (4) Recent Civil Reports 747. Relevant paragraphs 15, 16, 17 and 18 of the judgment is reproduced as under:

"15. Before we assess the correctness of the impugned orders, we must remind ourselves of the basic principles governing rejection of a plaint under Order 7 Rule 11 (7) of CPC. Here, the defendants seek rejection of plaint under clause (d) of Rule 11 (i.e., suit barred by law). Clause (d) makes it clear that while considering rejection of the plaint thereunder only the averments made in the Plaint and nothing else is to be considered to find out whether the suit is barred by law. At this stage, the defense is not to be considered. Thus, whether the suit is

barred by any law or not is to be determined on the basis of averments made in the plaint.

> *"11. Rejection of plaint.— The plaint shall be rejected in the following cases:—*
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> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
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> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
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> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *[(e) where it is not filed in duplicate;]*
>
> *[(f) where the plaintiff fails to comply with the provisions of rule 9:]*
>
> *[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."*

16. In the instant case, the plaintiff instituted the suit by claiming title through succession to the estate of late Kartar Kaur. On the other hand, the defendants had set up a will alleged to have been executed by Kartar Kaur in

their favour. Neither the plaint nor any document brought on record indicated that the will was probated or its validity was tested and upheld in regular civil proceedings inter se parties. As far as mutation proceedings are concerned, it is well settled that mutation entries do not confer title. They serve a fiscal purpose, that is, to realize tax from the person whose name is recorded in the revenue records (8), Besides above, the plaint averments indicated that the mutation proceedings culminated in the year 2017 and the suit in question was instituted within three years thereafter.

17. Apart from above, the suit was not for a mere declaration of the will being null and void but for possession as well. The plaintiff claimed title over the suit land by natural succession and sought possession based on title. Where a suit is for possession of immovable property or any interest therein, based on title, the limitation period is 12 years when the possession of the defendants becomes adverse to the plaintiff (vide Article 65 of the Schedule to the Limitation Act).

18. In Indira v. Arumugam & Anr., (1998) 1 SCC 614 this court held that when the suit is based on true for possession, once the title is established based on relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. Consequently, when a suit is instituted for possession, based on title, to defeat the suit on the ground of adverse possession, the burden is on the defendant to prove adverse possession for the prescriptive period. This, therefore, in our view, cannot be an issue on which the plaint could be rejected at the threshold. Moreover, the plaintiffs herein, had clearly disclosed that they had been contesting the will in the

mutation proceedings which culminated in the year 2017. The suit was instituted within three years thereafter to declare the mutation entry illegal. Thus, considering that mutation proceedings are summary in nature, the institution of the regular suit questioning the same is not ex facie barred by law."

17. In this case, suit has been sought to be rejected on the ground that the plaintiffs have no cause of action. The term 'cause of action' has not been defined in the CPC, however it is a bundle of essential facts, which, the plaintiff is required to prove in order to succeed in the suit, filed before the Court.

18. Even otherwise, considering the stand of the plaintiff that she is claiming the share in the suit property on the basis of her title, which, she has derived from her adoptive father, on the basis of the adoption deed, it can be said that a triable issue is involved in the suit, which cannot be rejected, under Order 7 Rule 11 of the CPC.

19. While holding so, view of this court is being guided by the decision of Hon'ble Supreme Court in a case titled as, **"Om Prakash & anr. versus Jagdish (died) and Gyarsi Devi & others,**" in Civil Appeal No. 9798 of

2025 (arising out of SLP(C) No. 18862 of 2023. Relevant paragraphs 3 to 7 of the judgment are reproduced as under:

> *"3. The present appeal is directed against the impugned judgment dated 24.07.2023 passed by the High Court of Rajasthan at Jaipur by which the order dated 01.06.2018 dismissing the plaint of the appellants, who were the plaintiffs, under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short, the "CPC") passed by the Additional District & Session Judge No. 1, Jaipur, District Jaipur, has been upheld.*
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> *4. The short point canvassed before us by learned senior counsel for the appellants is that on some out of context reading with regard to the ownership of the suit property, the orders have been passed by the courts below. It was submitted that the so-called inconsistent plea in the plaint is also an erroneous presumption for the reason that the same is based only on paragraph no.3 of the plaint whereas, everywhere else in the suit, the consistent stand of the plaintiffs was that it was the ancestral property and further, if the entire pleading in the plaint is gone through, it will indicate that the plaint had a cause of action and the averments indicate that it was a triable issue and the property was indicated to be ancestral in nature.*
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> *5. Learned counsel for the respondents tried to persuade us not to interfere and relied upon another judgment of the High Court with regard to a petition filed by the appellants seeking amendment of the plaint, which was dismissed. On a specific query of the Court as to what was the relevance and how it could have a bearing on the present lis, we are not satisfied with the reply.*

> *6. Be that as it may, having gone through the impugned judgment and the pleadings, we find that a triable case was made out and the suit had to proceed, in accordance with law without being dismissed summarily, on the limited grounds available under Order 7, Rule 11 of the CPC, as has been done by the High Court in its impugned judgment.*
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> *7. Accordingly, the appeal stands allowed. The impugned judgment dated 24.07.2023 passed by the High Court is set aside. The suit is held maintainable and the same shall proceed in accordance with law. As the suit is old, it is expected that the Trial Court would decide the same expeditiously, subject to cooperation from both the sides."*

20. Considering all these facts, there is no occasion for this court to interfere with the well reasoned order passed by the trial court, dated 29.8.2025.

21. In view of above, the present petition is dismissed. The pending application(s), if any, are also disposed of.

22. Record be sent back.

(Virender Singh)
Judge

3.11.2026
Kalpana