2026:HHC:46928

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 37 of 2026
Decided on : 26.10.2026

Chuni Lal ...Petitioner

Versus

Rahul ...Respondent

Coram
The Hon'ble Mr. Justice Virender Singh, Judge.
Whether approved for reporting?[1]

For the petitioner : Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate.

For the respondent : Mr. Vijender Katoch, Advocate.

Virender Singh, Judge (*Oral*)

Petitioner Chuni Lal has filed the present petition, under Article 227 of the Constitution of India, against the order dated 17.12.2025 passed by the Court of Learned Additional District Judge-1, Kangra at Dharamshala (hereinafter referred to as the 'First Appellate Court'), in Civil Miscellaneous Appeal No.6-D/XIV of 2025, titled as 'Chuni Lal versus Rahul.

2. By way of order dated 17.12.2025, the learned First Appellate Court has dismissed the appeal preferred by petitioner. The said appeal was preferred by him against

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

the order dated 15.05.2025, passed by the Court of learned Civil Judge, Court No.1, Dharamshala, District Kangra (hereinafter referred to as 'the trial Court'), in CMA No.329/D of 2023, titled as 'Rahul versus Chuni Lal'.

3. By way of order dated 15.05.2025, the learned trial Court has allowed the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure (hereinafter referred to as 'the CPC') and directed the parties to maintain status quo, qua the alienation of the suit land till the disposal of the suit.

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

5. Brief facts, leading to the filing of the present petition, before this Court, as borne out from the record, may be summed up, as under:-

5.1. Plaintiff Rahul has filed a suit under Section 34 to 39 of the Specific Relief Act, seeking the following relief:

> *" In view of above submissions, the Present civil suit, filed, titled above, by the plaintiff, may very kindly be decreed, as prayed for, in respect of landed property denoted and detailed in paras No. A to V of the head-note of the plaint, by granting a decree of declaration to the effect that the plaintiff is the legal heir of the defendant, to succeed to his*

landed and other property, detailed in paras A to V, in the head-note of the plaint, & to inherit the same, equal to his share, alongwith other co-sharers, after him and also to grant of mandatory prohibitory injunction decree thereby restraining the defendant, his assignees, successors, Agents/Property Dealers, relatives etc. not to alienate any of the portion out of the above detailed landed property, in any manner whatsoever, including not to sell, mortgage or gift out any portion out of the suit land by the defendant, to any person or the legal heir, debaring the plaintiff, in any manner, whatsoever, in the interest of imparting true justice."

5.2. The plaintiff has filed the suit on the ground that the defendant was married to the mother of the plaintiff, Smt. Pawana Kumari, as per Hindu rights, customs, and ceremonies, and out of the said wedlock, the plaintiff was born on 23.10.1987.

5.3. In this regard, the plaintiff has relied upon the birth certificate issued by the authorities, asserting himself to be the legal son of the plaintiff and asserting that he is entitled to succeed him. It is the further case of the plaintiff that when the plaintiff was a toddler, the defendant was working in some renowned company as an officer. Thereafter, the relations between the mother of the plaintiff with the defendant became strained, and it was not possible for them to reside together as husband and wife.

Consequently, their marriage was dissolved by a decree of divorce in the year 1997.

5.4. It is the further case of the plaintiff that his father, without his knowledge, had started the alienation of the suit property with a view to deprive the plaintiff from inheriting the same. After the divorce, the defendant had solemnized marriage with one Baby, and out of the said wedlock, they have been blessed with two sons and a daughter.

5.5. Alleging that the defendant is now trying to alienate/gift the suit land to his second wife, as well as, his three children, from his second wife, he has also sold some portion of the land, however, no share was ever paid to the plaintiff. He has asserted that earlier he had filed Civil Suit No.86 of 2008, before the Court of Senior Civil Judge, Dharamshala, titled as Rahul Kumar versus Chuni Lal, which was later on dismissed as withdrawn, by the plaintiff with permission to file afresh, on the same cause of action. The said suit was dismissed as withdrawn on 04.04.2011, on account of some formal defect.

6. On the basis of the above facts, the plaintiff has sought the relief, as claimed, in the suit.

7. When put to notice, the suit has been contested by the defendant, by taking the preliminary objections that the plaintiff has no locus standi to file the present suit; the plaintiff has no cause of action to file the suit; the suit is not maintainable; the plaintiff is estopped to file the suit on account of his own acts and conduct; the suit is barred by limitation; the suit has not been filed as per the order dated 04.04.2011, passed in Civil Suit No. 86 of 2008 titled as Rahul versus Chuni Lal; the plaintiff has not approached the Court with clean hands; and the suit has not been properly valued for the purpose of Court fee and jurisdiction.

8. On merits, the stand of the plaintiff has been controverted by pleading that he has no share in the suit land because the defendant is absolute owner of the suit land, and during the lifetime of the defendant, the plaintiff has no right, title, or interest in the suit land. He has further contested the suit by pleading that the maintenance was given to the plaintiff, as well as, his

mother. Other contents have also been denied. However, filing of Civil Suit No. 86 of 2008, has not been disputed. It is pleaded that the present suit is barred, under Order 2 Rule 2 of the CPC, as well as, under Section 11 of the CPC. Thus, a prayer has been made to dismiss the application along with the suit.

9. The plaintiff filed the replication, denying the preliminary objections, as well as, the contents of the written statement, by virtue of which, the suit has been contested.

10. Along with the suit, an application under Order 39 Rules 1 and 2 of the CPC has been moved with a prayer to restrain the defendant from alienating the suit property during the pendency of the *lis*.

11. The said suit has also been contested on the same grounds, upon which the suit has been contested.

12. The learned Trial Court, after hearing the parties to the lis, has allowed the application, under Order 39 Rules 1 and 2 of the CPC, by directing the parties to the *lis* to maintain status quo, qua further alienation of the suit land till final disposal of the main suit.

13. Aggrieved from the said order, the plaintiff has filed the appeal before the Court of learned First Appellate Court. However, the appeal filed by defendant Chuni Lal has also been dismissed by the learned First Appellate Court, vide order dated 17.12.2025.

14. Now, the defendant is before this Court, by way of the present petition.

15. In order to succeed in an application, under Order 39 Rules 1 and 2 of the CPC, the plaintiff has to pass a triplicate test of prima facie case, balance of convenience, and irreparable loss and injury, which could not adequately be compensated in terms of money.

16. The relationship of father and son has not been disputed, in the present case, by the parties. However, a peculiar situation has arisen, in the present case, as, admittedly, the plaintiff has earlier filed Civil Suit No.86 of 2008, which, according to the pleadings, was dismissed as withdrawn on 04.04.2011, with the liberty to file afresh, on the same cause of action.

16. Order dated 04.04.2011 passed by the Court of learned Civil Judge (Senior Division), Kangra at

Dharamshala, has been placed on record at page 353, whereby, the Court of learned Civil Judge (Senior Division) Kangra at Dharamshala, has given the liberty to the plaintiff to withdraw the suit, with a further liberty to file afresh, on the same cause of action, subject to payment of cost of Rs.700/-.

17. The present suit has been filed on 01.11.2023. Meaning thereby, the present suit has been filed, after a gap of 12 years and 6 months and 25 days. Although, the question of limitation is a mixed question of law and facts, but, in the present case, from the admitted factual position, at this stage, it can be said that the plaintiff is not entitled to the final relief, on account of the fact, that the earlier suit was dismissed as withdrawn on 04.04.2011 and the present suit has been filed on 01.11.2023. As such, merely, on this ground it can be said that, at this stage, the plaintiff is having no prima facie case, in his favour, nor, he is having any balance of convenience, in his favour.

18. Moreover, injunction is an equitable relief, and a person, who is seeking the equitable relief, must do

equity. However, on account of the fact that the suit has been filed, after a gap of about 12 years, 6 months and 25 days, the equity also goes against the plaintiff, as, the delay defeats equity.

19. Consequently, the learned trial Court has fallen into error by ignoring this material fact, which goes to the root of the case as set up by the plaintiff. Merely, mentioning that the plaintiff is having a prima facie case does not mean that the said condition has been fulfilled by the plaintiff.

20. The admitted position of fact has to be considered by the learned trial Court, while deciding the application under Order 39 Rules 1 and 2 of the CPC, and in the present case, the learned trial Court has failed to exercise the jurisdiction vested in it. As such, the present case falls within the purview of jurisdictional error committed by the learned trial Court.

21. Accordingly, the present petition is allowed and the order dated 15.05.2025, passed by the learned trial Court, as upheld by the learned First Appellate Court, is

set aside. Consequently, the application, under Order 39 Rules 1 and 2 CPC, is dismissed.

22. Pending miscellaneous application(s), if any, shall also stand disposed of.

23. Parties, through the learned counsel, are directed to appear before the learned trial Court on ***30th November, 2026***, at 10.00 a.m.

24. Any of the observations made herein above 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 petition.

Record be sent back immediately.

(Virender Singh)
Judge

October 26, 2026 *(ps)*