IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. : 76 of 2026
Decided on : 18.11.2026

Shyam Shankar Pandey .....Appellant

Versus

Roop Singh & Others .....Respondents

Coram

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

Whether approved for reporting?

For the appellants : Mr. R.K. Bawa, Senior Advocate with Mr. Ajay Kumar Sharma & Mr. Abhinav Thakur, Advocates.

For the respondent : Mr. Y.P. Sood & Mr. Praveen Chauhan, Advocates, for respondent No.1.

Respondents No.2 and 3 are stated to have expired.

None for respondent No.4.

Virender Singh, Judge (Oral)

Appellant Shyam Shankar Pandey has preferred the Regular Second Appeal against the judgment and decree dated 29.11.2025, passed by the Court of learned District Judge, Shimla, District Shimla, H.P. (hereinafter referred to as the 'learned First Appellate Court') in *Civil Appeal No.15-S/13 of 2022* titled as 'Shyam Shankar Pandey *Vs. Roop Singh & Others*'.

2. During the pendency of appeal, applications, under Order 22 Rules 4 and 9 CPC, read with Section 5 of the Limitation Act, bearing registration No. CMP(M) Nos.1801 & 1829 of 2026, have been moved, for bringing on record the legal representatives of respondent No.2-Rajinder Singh and respondent No.3-Shonkia, who has been sued in the *lis* through General Power of Attorney Smt. Shanti Devi. As per the applications, respondent No.2-Rajinder Singh expired on 30.09.2025 and Smt. Shanti Devi, the General Power of Attorney of respondent No.3-Shonkia, expired 08.05.2024. Shonkia, expired earlier to his General Power of Attorney, Smt. Shanti Devi.

3. Learned counsel appearing for the respondent No.1, has pointed out that death of respondents No.2 and 3, had taken place, when the *lis* was pending, before the learned First Appellate Court. As such, decree passed by the Court for or against a dead person is nullity.

4. Undisputedly, the matter has been decided against dead persons, as, no efforts have been made to delete the names of respondents No.2 and 3, or to bring their legal representatives on record, and the decree passed by the Court for or against a dead person is nullity.

5. The Hon'ble Apex Court in ***'Gurnam Singh (Dead) through Legal Representatives & Ors. Vs. Gurbachan Kaur (Dead) by Legal Representatives' (2017), 13 SCC 414,*** has observed, in para No.21, as under:-

> *"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'."*

6. In view of the above, this Court has left with no option, but, to set aside the judgment and decree passed by the learned First Appellate Court and to remand the matter back to the learned First Appellate Court, for fresh disposal, in accordance with law, after deciding the question of abatement/bringing on record the legal representatives of the above two persons. Since, the *lis* is pending, between the parties, from the year 2008, as such, it is expected from the learned First Appellate Court to decide the matter expeditiously.

7. With these observations, the judgment and decree dated 29.11.2025, passed by the learned First Appellate Court, is set aside.

8. Parties, through their counsel, are directed to appear, before the learned First Appellate Court, on ***2nd December, 2026***.

9. All pending miscellaneous application shall also stand disposed of.

Record be sent back, immediately.

(**Virender Singh**)
Judge

November 18, 2026 (*ps*)