2026:HHC:49460

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 524 of 2026
Decided on : 17.11.2026

Harish Chandan ...Petitioner

Versus

Hakam Chand & Anr. ...Respondents

Coram

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

Whether approved for reporting?[1]

For the petitioner	:	Ms. Piyush Agnihotri, Advocate.
For the respondents	:	Mr. Jivesh Sharma, Advocate for respondent No. 2. Respondent No. 1 already deceased.

Virender Singh, Judge (Oral)

Petitioner-Harish Chandan has filed the present petition under Article 227 of the Constitution of India, against the order dated 29.05.2026, passed by the Court of learned Civil Judge, Court No. III Una, District Una, H.P. (hereinafter referred to as 'the learned trial Court'), in CMA No. 1875/2026, filed in Civil Suit No. 52/2015, titled as "Harish Chandan Vs Hakam Chand & Anr.".

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

2. By way of order dated 29.05.2026, the learned trial Court, has dismissed the application, under Order 22 Rule 4(4) read with Section 151 of CPC, moved by the present petitioner.

3. For the sake of convenience, parties to the present *lis,* are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

4. Necessary facts, leading to the filing of the present petition before this Court, as borne out from the documents, annexed with the petition, may be summed up, as under:-

4.1 Plaintiff-Harish Chandan has filed a suit for possession through Specific Performance of Contract dated 20.08.2009, subsequently extended on 04.09.2009, 23.02.2010, 05.09.2010, 30.06.2012, 14.06.2012, 11.08.2013, 29.11.2013, 29.03.2014 and 30.08.2014, executed by defendant No. 1, in favour of the plaintiff qua lnd measuring 1-60-20 Hects., being 1/3rd share out of total land measuring 4-80-59 Hects., comprised of Khewat No. 23, Khatauni No. 23 min, bearing Khasra Nos. 381, 387 and 390, situated in Mohal Ghartholi, Mauza Kharialta, Tehsil Bangana, District Una, H.P. (hereinafter

referred to as 'the suit land'), as entered in jamabandi for the year 2006-2007. In addition to this, he has also challenged the sale deed bearing Basika No. 70/2015, dated 06.02.2015, executed by defendant No. 1 in favour of defendant No. 2, by making a request to set aside the same and relief of permanent prohibitory injunction has also been sought restraining defendant No. 2 from alienating, creating charge, cutting and removing the trees from the suit land. In the alternative, suit for recovery of Rs. 3,60,000/- along with interest at the rate of 18% per annum from 20.08.2013 till its realization including cost of the suit, has been sought.

5. When put to notice, suit has been contested by the defendants.

5.1 Defendant No. 1 has filed the written statement by taking the preliminary objections that the suit is not maintainable; suit is not properly valued for the purpose of Court fees and jurisdiction; plaintiff has not come to the Court with clean hands and suppressed the material facts; plaintiff has no cause of action; suit is barred by limitation; and no prima facie case in his favour.

5.2 On merits, suit has been contested on the ground that the plaintiff is an illiterate person and even does not know Hindi and put his thumb impression on every document. The document relied by the plaintiff, has been signed by the person as witness only known by the plaintiff and there is no witness who knows the answering defendant. The plaintiff procured a false document as agreement to sell without the knowledge of the answering defendant.

5.3 It is his further case that the alleged document relied upon by the plaintiff as agreement to sell, does not bear the signature of plaintiff on the alleged extension of time on 23.02.2010 up to 31.08.2010.

5.4 Defendant No. 2 has also contested the suit by filing the written statement, taking the plea that he has purchased the suit land vide sale deed dated 05.02.2015, for a valuable consideration.

6. During the pendency of the lis, defendant No. 1 has expired on 28.12.2024. As such, an application under Order 22 Rule 4(4) read with Section 151 CPC, for exempting the plaintiff from the requirement of

substituting the legal representatives of defendant No. 1 Hakam Chand, has been filed.

7. The said application has been filed on the ground that defendant No. 1 expired on 28.12.2024, and after filing the written statement, defendant No. 1 has failed to contest the suit and he was proceeded ex-parte by the learned trial Court on 07.06.2018. On the basis of above facts, a prayer has been made to allow the application.

8. This application has been contested by defendant No. 2 by denying the factual position.

9. The learned trial Court vide order dated 29.05.2026, has dismissed the said application.

10. Aggrieved from the said order, now the plaintiff is before this Court by way of the present petition, which has been filed under Article 227 of the Constitution of India.

11. Heard.

12. The learned trial Court in the present case has dismissed the application mainly on the ground that the plaintiff has filed the suit for specific performance of contract, allegedly executed between the plaintiff and

defendant No. 1 and relief is based on contractual obligation, as such, cause of action survive against the legal representatives of defendant No. 1, as the suit land has been inherited by them. According to the learned trial Court, the LRs are required to be impleaded in the present case.

13. Perusal of the written statement filed by defendant No. 1 clearly demonstrates that the suit has been contested by defendant No. 1, in which, the very execution of the agreement has been disputed by him. Mainly defendant No. 1 has proceeded ex-parte does not entitle the plaintiff from seeking the exemption from bringing on record his LRs and from any stretch of imagination, it cannot be said that defendant No. 1 has not contested the suit. He has put forward the stand denying the very execution of the agreement to sell, which governs the relationship between the parties to the lis.

14. Considering all these facts, this Court is of the view that learned trial Court has rightly considered the peculiar facts and circumstances of the case by dismissing the application and the same does not fall within the mischief of “jurisdictional error”, which requires

interference by this Court. Considering the said fact, petition is dismissed.

15. Any of the observations, made hereinabove, 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.

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

(Virender Singh)
Judge

17th November, 2026
(*Pramod Kumar*)