



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(123)

CR-2168-2026 (O&M)
Date of Decision: **10.03.2026**

ANIL KUMAR AND ANOTHER

... Petitioners

Versus

JASMER SINGH AND OTHERS

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Deepak Girotra, Advocate
for the petitioners.

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VIRINDER AGGARWAL, J. (Oral)

1. The present revision petition has been instituted under Article 227 of the Constitution of India, invoking the supervisory jurisdiction of this Court, to assail the order dated 20.01.2026 (Annexure P-18) passed by the learned District Judge, whereby the applications dated 03.07.2024 (Annexure P-7) and 10.07.2025 (Annexure P-16) have been allowed in the pending appeal (Annexure P-3).

2. Succinctly stated, the petitioners instituted a suit for declaration along with consequential reliefs of permanent and mandatory injunction against the respondents. The said suit came to be decreed in favour of the plaintiffs, whereby sale deed No.9073 executed by defendant No.4 in favour of defendants No.1 to 3 was declared illegal, null and void, and the plaintiffs were declared owners of the suit property on the basis of



sale deeds Ex.P-6 and Ex.P-7. The defendants were further restrained from alienating the suit property, and defendant No.5 was directed to rectify the entry in the house-tax assessment register accordingly.

2.1. Aggrieved by the said judgment and decree, defendants No.1, 3 and 4 preferred separate appeals. However, respondent No.1 (defendant No.2 in the original suit) did not file any appeal against the decree. The appeal preferred by defendant No.3 was dismissed in default. Defendant No.1 also preferred an appeal wherein respondent No.1/defendant No.2 was proceeded against *ex-parte*, and the said appeal was ultimately withdrawn by the appellant Randeep Mann vide order dated 08.08.2022. Consequently, the only surviving appeal remained the one filed by defendant No.4, who figures as respondent No.2 in the present revision petition.

2.2. In the said appeal as well, respondent No.1 was proceeded against *ex-parte* owing to his non-appearance. During the pendency of the appeal, the appellant Arun Goswami passed away during the COVID period, and initially none of his legal representatives came forward for impleadment.

2.3. Thereafter, respondent No.1 filed an application seeking permission to contest the appeal along with a prayer for setting aside the *ex-parte* order, which application was allowed vide order dated 16.01.2024, thereby permitting him to participate in the appellate proceedings.

2.4. Subsequently, after the petitioners had filed their written arguments, respondent No.1 moved another application dated 03.07.2024



under Order I Rule 10 of the Code of Civil Procedure, 1908 ('CPC' for short), seeking his transposition as appellant in the pending appeal, primarily on the ground that the original appellant had died and his legal representatives had not come forward to prosecute the appeal. The petitioners opposed the said application by filing a written reply.

2.5. In the meantime, the legal representatives of the deceased appellant Arun Goswami filed two separate applications, one seeking their impleadment as legal representatives, and the other seeking withdrawal of the appeal. The application for impleadment was allowed. The said legal representatives thereafter filed their reply contesting the application filed by respondent No.1 seeking his transposition as appellant.

2.6. Respondent No.1 subsequently moved an application for recall of the order allowing impleadment, alleging that all the legal representatives of the deceased appellant had not been brought on record. Thereafter, the daughters of Arun Goswami filed another application seeking impleadment along with withdrawal of the appeal. The application for impleadment was allowed, and the said applicants made a joint statement dated 27.11.2024 expressing their intention to withdraw the appeal.

2.7. At this stage, respondent No.1 filed another application dated 10.07.2025 under Order XXIII Rule 1-A read with Sections 151 and 107 CPC, praying that the appeal be decided on merits, along with a separate application under Order I Rule 10 read with Section 151 CPC seeking his transposition as appellant. The petitioners opposed these applications by filing a written reply.



2.8. The learned District Judge, by way of the impugned order, allowed the aforesaid applications. Aggrieved thereby, the petitioners have instituted the present revision petition.

3. I have heard the learned counsel for the petitioners and have carefully perused the paper-book and the material placed on record.

4. Learned counsel for the petitioners contended that the learned District Judge has committed a patent illegality in allowing the applications, as the provisions of Order XXIII Rule 1-A CPC are wholly inapplicable to the facts and circumstances of the present case. It was submitted that the said provision applies only where the plaintiff withdraws or abandons the suit, in which event a defendant may seek transposition as plaintiff if he has any grievance against the other defendants. In the present case, however, respondent No.1 was himself a defendant in the original suit, and the appellant in the appeal was also a defendant. Therefore, respondent No.1 could not invoke the said provision without demonstrating any grievance against the co-defendants, much less against the plaintiffs.

4.1. It was further contended that the learned District Judge failed to appreciate that the defence of respondent No.1 (defendant No.1) had been struck off during the trial, that he had neither led any evidence nor contested the suit, and that he never preferred any appeal against the judgment and decree. It was also pointed out that respondent No.1 failed to contest the appellate proceedings for a considerable period, despite having been duly served, and remained *ex-parte* for nearly six years without participating in the proceedings.



4.2. On these premises, learned counsel submitted that the impugned order is legally unsustainable, and prayed that the same be set aside, the applications filed by respondent No.1 be dismissed, and the appeal filed by respondent No.4 be treated as withdrawn in terms of the statement made by the legal representatives (LRs) of the deceased-appellant.

5. The learned District Judge, while passing the impugned order, has recorded his findings in para No.10 thereof, the relevant extract whereof is reproduced hereunder:-

10. xxxxx

“I have carefully gone through the cited cases which is clearly distinguishable on facts. In the cited case, it has been held that Court would not permit transposition just to give a chance to litigant to avoid filing a suit, or permit him to take advantage of the suit filed by his adversary against him claiming a relief against by becoming a plaintiff and trying to bring out the averments and reliefs which are contrary to those claimed by the original plaintiff. However, as discussed above, in the case in hand, the relief which by way of transposition, applicant is seeking is the same relief which was sought by appellant-Arun Goswami by filing the appeal. Further, in cited case, it has been held that transposition is permissible normally in case of suits between partners for accounts, possession of partnership property or for partition, transposition of plaintiff as defendant or defendant as plaintiff but it does not bar transposition in other cases where facts and circumstances justify such transposition.”



6. In the facts and circumstances of the present case, the provisions of Order XXIII Rule 1-A CPC as well as Order I Rule 10 CPC are required to be applied *mutatis mutandis* in the appellate proceedings. Consequently, wherever the expression “*plaintiff*” occurs in the said provisions, the same is to be read as “**appellant**”, and the expression “*defendant/defendants*” is to be construed as “**respondents**”. The interpretation of these expressions must be undertaken in the context of the appellate proceedings, and ought not to be confused with the original status of the parties in the suit, particularly when the question under consideration pertains to the transposition of one of the respondents as an appellant in the pending appeal.

6.1. In the present matter, the original appellant, Arun Goswami, was the vendor who had executed the sale deed in favour of the respondents, including respondent No.1. Following the demise of Arun Goswami, and in view of the fact that his legal representatives have unequivocally expressed their intention to withdraw the appeal, respondent No.1 moved an application seeking his transposition as appellant in place of the deceased-appellant, so as to enable him to effectively prosecute the appeal and safeguard his interest in the suit property.

6.2. The interest of respondent No.1 stands in clear conflict with that of the present petitioners, who are also respondents in the appeal. It is pertinent to note that the petitioners were the plaintiffs in the original suit, which has been decreed in their favour, and the sale deed executed by Arun Goswami in favour of respondent No.1 has been declared illegal, null-&-void. Consequently, if the appeal filed by Arun Goswami were to



be dismissed as withdrawn, the same would adversely and directly affect the rights and interests of respondent No.1, who claims title through the said vendor.

6.3. In these circumstances, respondent No.1, whose interest in the subject matter of the litigation is both real and substantial, sought his transposition as appellant so as to contest the appeal and protect his proprietary interest. The position of respondent No.1 is substantially aligned with that of the original appellant, inasmuch as he claims title through Arun Goswami, the deceased-appellant.

6.4. In view of the foregoing considerations, this Court is satisfied that the learned District Judge has exercised the jurisdiction vested in him in a proper and judicious manner, and that the impugned order does not suffer from any illegality, infirmity, or jurisdictional error warranting interference in the exercise of supervisory jurisdiction. Accordingly, the present revision petition, being devoid of merit, stands **dismissed**.

7. It is, however, clarified that the observations recorded here-in-above are confined solely to the adjudication of the present revision petition and shall not be construed as an expression of opinion on the merits of the underlying dispute. The observations are limited strictly to the controversy examined for the purposes of the present order, and nothing contained herein shall prejudice, influence, or affect the rights, claims, or contentions of the parties in the main proceedings, nor shall the same be treated as a final determination of any substantive issue of fact or law arising therein.



8. In view of the fact that the principal matter stands finally disposed of, all pending miscellaneous application(s), if any, shall also stand disposed of accordingly, and no further orders are required to be passed in that regard.

10.03.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No