

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

RSA No. : 349 of 2022

Decided on : 08.05.2026

Jaiwanti(deceased) through LRs and others

....Appellants.

Versus

Kamla Devi (deceased) through LRs & Ors.

....Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma. Judge.

Whether approved for reporting?¹

For the appellants : Mr. Neeraj Gupta, Sr. Advocate
with Mr. Pranjal Munjal, Advocate.

For the respondents : Mr. Sanjeev Kuthiala, Sr.
Advocate with Ms. Tamanna
Sharma, Advocate.

Romesh Verma, Judge(oral)

The present Regular Second Appeal arises out of the judgment and decree as passed by the learned Additional District Judge, (II), Mandi, District Mandi, H.P. dated 22.09.2017, whereby the appeal preferred by the plaintiffs/ respondents has been allowed and the judgment and decree as passed by the learned Sub Judge 1st Class, Court No.1 Mandi H.P. dated

¹Whether reporters of Local Papers may be allowed to see the judgment?

08.03.1999, was set set aside, whereby the suit filed by the plaintiff, was dismissed.

2. As per claim of the plaintiff, the defendants under the garb of the wrong revenue entries were causing unlawful interference in the joint possession of the plaintiffs over the suit land. Suit for declaration and in alternative seeking decree for joint possession against the defendants was filed by the plaintiffs/respondents.

3. The suit was contested by the defendants on various grounds.

4. The learned trial Court framed the issues on 06.02.1997 in the following manner:

1 Whether the plaintiffs are joint owners in joint possession alongwith the defendants as alleged?OPP

2. Whether the revenue entries contrary to this are wrong and illegal, as alleged?OPP

3. Whether the suit is not maintainable?OPD

4. Whether the defendants are entitled to special cost under section 35A CPC?OPD

5. Whether the plaintiffs have no cause of action? OPD

6. Whether the suit is barred by limitation?OPD

7. Whether the suit is bad for non joinder and misjoinder of necessary parties?OPD.

8. Relief

5. The learned trial Court directed the learned counsel for the respective parties to adduce evidence in support of their contentions and finally the suit filed by the plaintiffs/respondents was ordered to be dismissed.

6. Feeling dissatisfied, the plaintiffs filed an appeal under Section 96 C.P.C read with Section 21 of the H.P. Courts Act before the Court of learned Additional District Judge, Mandi, District Mandi, H.P. on 01.12.2016. The learned Appellate Court vide its judgment and decree dated 22.09.2017, accepted the appeal as filed by the plaintiffs and they were declared to be the joint owners in possession of the suit land to the extent of share of Saji in the suit land along with defendants and the entries in the revenue record to the contrary were declared to be wrong, illegal and further the defendants were restrained from causing any interference in the joint possession of the plaintiffs over suit land.

7. Feeling dissatisfied, defendants /appellants have approached this Court by filing the instant appeal.

8. Since there was delay in refiling the appeal, therefore the application bearing CMP No.1699 of 2022

was filed by the present appellants. The said application was allowed on 19.03.2026 subject to the payment of the cost. As per learned Senior counsel said cost stands deposited in the account of non-applicants. Learned Senior counsel has drawn the attention of this Court to CMP No. 1699 of 2022 which reveals that during the pendency of the appeal before the First Appellate Court, one of the defendant i.e defendant No. 3 namely Bhinder Singh had expired on 08.08.2017. The impugned judgment and decree passed by the learned First Appellate Court was passed on 22.09.017. Therefore, the said defendant No.3 died before the passing of the impugned judgment.

9. The Hon'ble Apex Court in '***Gurnam Singh (Dead) through Legal Representatives & Ors. Vs. Gurbachan Kaur (Dead) by Legal Representatives'*** (2017), 13 SCC 414, wherein it has been 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'."

10. It has been held that a judgment and decree as passed in favour or against a dead person is a nullity. In the present case also, the impugned judgment was passed after defendant No.3 had expired during the pendency of the appeal before the learned first appellate Court.

11. Consequently, this Court has no other option but to quash and set aside the judgment and decree as passed by the learned Additional District Judge (II) Mandi, District Mandi, H.P. Parties are relegated to the First Appellate Court, Mandi, District Mandi by directing the said Court to restore the appeal to its original number and take the appeal to its logical end.

12. The plaintiffs/respondents to file an appropriate application for bringing on record the legal representatives of the deceased defendant No.3 in accordance with law. After examining the question of abatement, the First Appellate Court is directed to adjudicate appeal afresh by hearing the respective parties in accordance with law.

13. Parties are directed to appear before the learned Appellate Court on **01.06.2026**.

14. The learned counsel for the parties undertake to produce the parties before the learned First Appellate Court on the next date and no fresh notices shall be issued by the Court.

15. The appeal stands disposed off in the aforesaid terms. Pending application(s), if any, also stands disposed of.

**(Romesh Verma),
Judge**

8th May, 2026 (veena)