



IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

RFA No. 269 of 2003

Reserved on: 18.07.2026

Date of decision: 24.08.2026

**Date of uploading on website:
24.08.2026**

Hans Raj & others

.....Appellants.

Versus

Shyam Lal & others

.....Respondents.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For the appellants: Mr. Ajay Sharma, Senior Advocate, with Mr. Surya Bhan Singh, Advocate.

Names of respondents No. 1 & 5 stand deleted.

For respondents No. 4 & 6: Mr. Ajay Kumar, Senior Advocate, with Ms. Vanshika Sharma, Advocate.

For respondents No. 9 & 10: Mr. Bhuvnesh Sharma, Senior Advocate, with Mr. Rupesh Kumar & Ms. Sristi Ramesh, Advocates.

Sushil Kukreja, Judge.

The instant appeal has been preferred by the appellants, who were plaintiffs before the learned Trial Court (hereinafter referred to as “the plaintiffs”) under Section 96 of

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



the Code of Civil Procedure (for short “CPC”) against judgment and decree dated 15.07.2003, passed by learned District Judge, Kangra at Dharmshala, H.P. (hereinafter referred to as “the learned Trial Court”) in Civil Suit No. 2-G/I-99, whereby the suit of the plaintiffs for declaration with consequential relief of permanent injunction and possession was dismissed.

2. The facts giving rise to the instant appeal are that plaintiffs, i.e., Shri Hans Raj and Shri Dev Raj preferred a suit for declaration with consequential relief of permanent injunction and possession against the defendants (respondents herein) before the learned Trial Court. The plaintiffs averred in their suit that plaintiff No. 1 was *Mohtmim* and sole owner of the land comprised in khata No. 422 min, khatauni No. 494 min, khasra No. 370, Abadi Deh, measuring 0-07-75 hectares, alongwith two shops and the land comprising khata No. 344, khatauni No. 404, khasra No. 460 min, measuring 0-70-61 hectares, situated in Mohal Garh, Mauza Garli, Tehsil Dehra, District Kangra (hereinafter referred to as “the suit property”). The plaintiffs further averred that defendants No.1 to 7 were not owners of the aforesaid property and sale deed, dated 24.08.1990, qua the



land comprising khata No. 295, khatauni No. 621, khasra No. 460 min, which was executed by Puran Chand (since deceased) and defendant No. 2 Shri Siri Krishan, in favour of defendant No. 8, was wrong, illegal, unauthorized and ineffective.

2(a). The plaintiffs further averred in their plaint that the suit property, which was owned by Shri Duni Chand Shah, was succeeded by his widow Smt. Roop Devi and said Smt. Roop Devi created a Trust on 01.05.1946 qua the suit property. The said trust was known as “Sha Duni Chand Bhardial Trust, Pragpur” (for short referred to as “Trust” and the suit property as “Trust Property”). Smt. Roop Devi appointed herself as President of the Trust and she nominated Pandit Jaishi Ram, Roop Lal, Palu Ram, Khushi Ram, Pohlo Ram and Kanhahya as trustees. Defendants No. 1 to 7 were trustees of the Trust. On 14.11.1998 Shri Puran Chand died in his place and defendant No. 7 was acting as trustee.

2(b). As per the plaintiffs, plaintiff was successor of Smt. Roop Devi, who was the original owner of the trust property, which he succeeded vide mutation No. 672, dated 10.07.1949 to the extent of half share and remaining half



was succeeded by Jagan Nath and Baikunthi Devi. It was averred that after the death of Balak Ram, father of the plaintiffs, plaintiff No. 1 was appointed as *Mohitmim*.

2(c). The plaintiffs pleaded that Khushi Lal etc., trustees, had filed civil suit No. 237 of 1952 against Jagan Nath etc., successors of Roop Devi, which was decreed for possession qua the trust property. However, the trustees, in collusion with revenue staff got transferred the property of the trust though they were only trustees and not owners of its property. As per the plaintiffs, defendant No. 8 was neither inducted as a tenant by Roop Devi and nor defendants No. 1 to 7 trustees had any authority to induct him as tenant over the trust property, as they were not owners and were trustees to maintain the property and keep its accounts. Defendants No. 1 to 7, trustees were not managing the trust property properly and they were not authorized to change its nature. As per the plaintiffs, sale of the trust property by trustee Puran Chand (deceased) and defendant No. 2 Siri Krishan in favour of defendant No. 8, vide sale deed dated 21.08.1990, is illegal, unauthorized and not binding upon the plaintiff, being *Mohitmim*. As per the plaintiffs, the trustees did not discharge their duties properly, resultantly, they were



not entitled to continue as trustees and liable to be removed from the trust. Therefore, defendant No. 8 has no right, title and interest in the trust property, sale being illegal, unauthorized and ineffective. The plaintiffs further averred that defendants No. 8 to 10 are liable to be prohibited from cutting any tree from the trust property or raising any construction thereon. Defendants 1 to 7 are not properly managing the trust property, thus they do not deserve to remain as such and liable to be removed as trustees of the trust.

2(d). Defendants No. 1 to 5 and 7 filed their joint written statement, wherein they took preliminary objections viz. maintainability of the suit, locus standi, cause of action, resjudicata, valuation, not coming to the Court with clean hands, non-joinder of necessary parties, limitation and that the suit was barred under Order 2, Rule 2 CPC. On merits it was denied that plaintiff No. 1 was owner or *Mohitmim* of the trust property. However, it was admitted that Roopa Devi, being owner of the trust property created trust, vide trust deed dated 01.05.1946 and nominated trustees and herself as President of the Trust. It was averred that defendants No. 1 to 7 were trustees of the trust, which was created by Roop



Devi. As per defendants No. 1 to 5 and 7 after creation of the trust by Roop Devi, she ceased to be owner of the trust property and her heirs on death succeeded to her only property not dedicated by her to the trust. Mutation No. 672 never operated qua the trust property. Roop Devi owned about 1011 kanals of land, out of which only 40 kanals and some shops were dedicated to the trust. It was denied that Balak Ram, who was father of the plaintiffs, was ever a trustee or *Mohtmim* of the trust and thereafter plaintiff No. 1 became *Mohtmim*.

2(e). Defendants No. 1 to 5 and 7 admitted that trustees Khushi Ram etc. had filed civil suit No. 237/52 against Jagan Nath and others for possession and the same was decreed. The need to file the above suit arose, as defendants in the suit took illegal possession of the trust property, after the death of Roop Devi. It was denied that the plaintiff was owner of the suit property or *Mohtmim* of the trust. It was averred that defendant No. 8 was never inducted as tenant by defendants No. 1 to 5 and 7 on the trust property, as his father, Shri Kanu Ram, was already a tenant of the land at the time of creation of the trust and tenancy devolved on defendant No. 8. The above



defendants further averred that they were honestly and sincerely running the affairs of the trust and managing its property diligently without deriving personal benefits. As per them, all the accounts of the trust property were regularly and properly maintained. The sale of the land of the trust property to defendant No. 8 was an act of prudence of good management and to avoid unnecessary and unfruitful expenditure by way of litigation qua trust property. Thus, the land was sold to avoid litigation for Rs.42000/- and the sale consideration was deposited with Central Bank of India, Pragpur.

2(f). Defendant No. 6 did not appear before the learned Trial Court, therefore, he was proceeded *ex parte*. Defendants No. 8 to 10 did not choose to file any written statement.

3. The plaintiffs filed replication to the written statement filed by defendants No. 1 to 5 and 7, wherein they reiterated the contents of the plaint and denied the averments made in the written statement.

4. On the basis of the pleadings of the parties, the learned Trial Court on 20.07.2000 framed the following issues:



- “1. Whether plaintiff No. 1 is the Mohtmim and sole owner and successor-in-interest of Smt. Roop Devi wd/o Duni Chand, of the suit property, as per the trust deed dated 01.05.1946? OPP**
- 2. Whether the entries in the revenue record in favour of defendants 1 to 7 as trustees are wrong, illegal, unauthorized, ineffective on the rights of the plaintiffs and are null and void? OPP**
- 3. Whether sale deed dated 24.8.90 by Puran Chand deceased and defendant No. 2, in favour of defendant No. 8 is wrong, illegal and ineffective? OPP**
- 4. Whether the plaintiffs are entitled to the relief of possession and permanent injunction as against defendants 8 to 10? OPP**
- 5. Whether the suit is not maintainable in the present form? OPD**
- 6. Whether the plaintiffs have no locus standing to sue? OPD**
- 7. Whether the plaintiffs have no cause of action to file the present suit? OPD**
- 8. Whether the suit is barred under the principles of resjudicata? OPD**
- 9. Whether the suit is not correctly valued? OPD**
- 10. Whether the suit is bad for non-joinder of necessary parties? OPD**
- 11. Whether the suit is not within time? OPD**
- 12. Whether the suit is barred under Order 2, Rule 2 CPC? OPD**
- 12A. Whether defendants 1 to 7 are liable to be removed as trustees, as they have not managed the trust property, according to the trust deed, as alleged? OPP**
- 13. Relief.”**



5. After hearing the learned counsel for the respective parties, the learned Trial Court dismissed the suit of the plaintiffs, hence the instant appeal preferred by the plaintiffs (appellants).

6. I have heard the learned Senior Counsel for the respective parties and carefully examined the entire record.

7. It may be pertinent to mention here that a co-ordinate Bench of this Court had dismissed the instant appeal, vide judgment dated 31.10.2017, which judgment was assailed by the plaintiffs before the Hon'ble Apex Court and vide order dated November 20, 2023, passed in Civil Appeal No. 7690/2023, the said judgment dated 31.10.2017, was set-aside and the case was remanded back to this Court for a fresh consideration on merits of the case with the observation that the second suit, out of which this appeal arises, is maintainable.

8. The learned Senior Counsel for the appellants (plaintiffs) first contended that plaintiff No. 1 is the *Mohitmim* of the trust property created by Roop Devi, vide trust deed, dated 01.05.1946, and he has been declared as *Mohitmim* by the order of the Deputy Commissioner after the death of his



father Balak Ram, however, the learned Trial Court had totally erred in holding that the plaintiff-Hans Raj cannot be said to be *Mohtamim*.

9. The plaintiffs, in order to prove their case, examined two witnesses, including plaintiff No. 1-Hans Raj himself as PW-1 and one Sushil Kumar as PW-2, whereas, the defendants had also examined two witnesses, i.e., DW-1 Shri Krishan and DW-2 Raseela Ram, who were also amongst the defendants.

10. It is an admitted case of the parties that the suit property at one time was owned by Roop Devi, widow of Duni Chand Shah, who was the real uncle of the plaintiffs and said Roop Devi created trust of the property in question, vide registered trust deed dated 01.05.1946, Ex.P1. After the death of Roop Devi, mutation No. 672, dated 10.07.1949, Ex.P63, was attested in favour of the plaintiffs, as successors of Roop Devi, qua her property, which led to various litigations between the predecessors-in-interest of the plaintiffs and the trustees qua the trust property. The perusal of the record further reveals that the trustees filed Civil Suit No. 237 of 1952, before the learned Senior Sub Judge, Kangra at Dharamshala for possession and vide



judgment and decree dated 08.06.1953, Ex. P12, the trust so created by Roop Devi qua the trust property, was declared to be owner and entitled for possession. The aforesaid judgment and decree was unsuccessfully assailed by the predecessors-in-interest of the plaintiffs upto the High Court of Punjab and Haryana, wherein RSA No. 808/54, was dismissed on 05.01.1959. Consequently, trust was declared owner of the trust property was and also held entitled to possession after it was dedicated by Roop Devi. The perusal of the trust deed, Ex.P-1, dated 01.05.1946 also shows that the trust property was dedicated by Roop Devi to the trust and she appointed herself as its president and nominated other trustees.

11. In view of the above discussion, it cannot be said that plaintiff No. 1, after the death of Roop Devi, is *Mohtmim* and sole owner of the trust property, under trust deed Ex. P1. Plaintiff No. 1, while appearing as PW-1, deposed that he was appointed as *Mohtmim* and he had also tendered a copy of report No. 20, dated 04.02.1997, Ex. P7, which reflects that he was appointed as *Mohtmim* by the order of the Deputy Commissioner after the death of his father Balak Ram. However, in order to prove the aforesaid report Ex.



P7, neither concerned Patwari was examined nor any original record was produced. Since the plaintiffs have failed to prove Ex. P7 in accordance with law, thus, no benefit can be derived by the plaintiffs from Ex. P7, therefore, the plaintiff No. 1 cannot be said to be Mohtim, especially in view of the fact that Smt. Roop Devi created the Trust and appointed herself as President of the Trust and nominated Pandit Jaishi Ram, Roop Lal, Palu Ram, Khushi Ram, Pohlo Ram and Kanahya as trustees. Moreover, Ex.P7 clearly reveals that his alleged appointment, as Mohtim, is qua the water pond and temple as well as Dharamshala only and not the entire property of the trust.

12. Learned Senior Counsel for the appellants next contended that the suit property could not have been sold in favour of defendant No. 2 by Puran Chand (deceased) and defendant No. 2 in favour of defendant No. 8. The learned Senior Counsel further contended that the trustees of the trust were required to manage the trust property, to keep its proper accounts and not to treat it as their personal property and consequently could not have sold the same to defendant No. 8, therefore the trustees are liable to be removed from the trust for selling the trust property illegally and



unauthorizedly.

13. Conversely, learned Senior Counsel for the respondents contended that some of the property per force had been sold to defendant No. 8, who brought the trust to various litigations causing it financial harm and in order to save trust from such harm, the trust had agreed, by way of resolution to sell a part of the trust property to defendant No. 8 to save money of the trust and amount so received was duly invested in fixed deposit in the name of the trust and there was no mismanagement of the trust property.

14. It is not in dispute that Puran Chand (deceased) trustee and defendant No. 2 sold a part of the suit property to defendant No. 8, vide sale-deed, dated 24.08.1990, Ex. DW1/C, for Rs. 42,000/-. It is an admitted fact that this land, being part of the suit property, was owned by the trust and it was under tenancy of defendant No.8 and it was this land which was under tenancy which was sold by two trustees to defendant No.8. It is also clear from the record that the trust resumed the land under tenancy, but defendant No.1 did not permit the trust to take possession of the trust land, leading to various litigation and they were got involved in civil and criminal litigation with defendant No.8 Rasilu Ram.



Therefore, in such circumstances, as substantial income of the trust was unnecessarily spent on litigation and in order to avoid unnecessary expenditure of the trust property, the trustees had acted prudently and a part of the trust property was agreed to be sold to defendant No. 8 in the interest of the trust, vide resolution of the trust, Ex.DW1/B, permitting sale of the trust property to defendant No.8 and subsequently it was sold vide sale deed, Ex.DW1/C, for Rs.42,000/-.

15. The perusal of the record further reveals that the sale consideration amounting to Rs.42,000/- was invested in the name of the trust and renewed from time to time, as such the learned Trial Court had rightly concluded that the trustees cannot be accused of mismanagement or not accounting for funds of the trust and in the absence of any evidence on record, the trustees cannot be construed to have not discharge their duties as trustees. In the absence of any evidence on record regarding the mismanagement of the trust property, the learned Trial Court rightly held that sale in favour of defendant No.8, vide sale deed Ex.DW1/C, dated 24.08.1990, was not illegal or wrong and the trustees need not to be removed from the trust, as they have acted



prudently, wisely and in consultation with each other.

16. No other point was urged before me.

17. In view of what has been discussed hereinabove, the impugned judgment does not need any interference and the instant appeal, which sans merits, deserves dismissal and is accordingly dismissed.

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

(Sushil Kukreja)
Judge

24th August, 2026
(virender)