

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No. : 130 of 2024****Decided on : 04.08.2026**

Kirpi & Ors.

...Petitioners

Versus

Shiv Ram & Ors.

...Respondents

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.*Whether approved for reporting?*¹For the petitioners : Ms. Seema K. Guleria,
Advocate.For the respondents : Mr. Tek Chand Sharma,
Advocate, for respondents No.
1, 2(a) to 2(d), 3, 5 to 8, as well
as proposed LRs of respondent
No. 4.Name of respondent No. 9
stands deleted.**Virender Singh, Judge (Oral)**

By way of the present petition, filed under Article 227 of the Constitution of India, the petitioners have challenged the order dated 20.02.2024, passed by the Court of learned Civil Judge, Court No. 8 Shimla, District Shimla, H.P. (hereinafter referred to as 'the learned trial Court'), in Civil Suit No. 90083/2010, titled as "Smt. Gulabo Devi (deceased) through LRs & Ors. Versus Shiv Ram & Ors.".

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



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

3. The undisputed facts, in the present case, are that in the above titled case, after the closure of the defendants' evidence, case was listed for rebuttal evidence. After availing number of opportunities, on 20.02.2024, when, PW Ms. Anjali Sharma, Patwari, Record Room, D.C. Office Shimla, was present before the learned trial Court and stated that relevant record is not available in the Record Room, then, the learned trial Court has passed the order that sufficient opportunities have been availed by the plaintiff to lead rebuttal evidence, and therefore, the rebuttal evidence has been closed by the order of the Court.

4. The said order has now been assailed, before this Court, with a prayer that the present petition may be allowed, by permitting the plaintiff to lead evidence in rebuttal.

5. The said prayer has been opposed by Mr. Tek Chand Sharma, Advocate, for the defendants, on the ground that number of opportunities have been granted to



the plaintiffs and as such, the learned trial Court has rightly closed the rebuttal evidence of the plaintiffs.

6. Heard.

7. Once, the opportunity to lead rebuttal evidence had been granted to the plaintiffs, by the learned trial Court, vide order dated 23.06.2018, then, the Court was not justified in closing the evidence as it is for the parties to lead evidence to prove the documents, as relied upon by them.

8. Every litigant ought to be afforded an opportunity to have the issue involved, decided, on merits, that too, on the basis of the evidence, so adduced, and such opportunity should not be scuttled on the mere inability to produce the evidence, unless the delay in leading the evidence overshadows the merits of the case.

9. As stated above, when, opportunity to lead evidence has been given, then, the same cannot be snatched away by closing the evidence. The witness was present on the day, when rebuttal evidence was closed. When, the witness has stated that the relevant record is not available, then, the order passed by the learned trial



Court is nothing, but, snatching the opportunity on technical ground.

10. As such, order dated 20.02.2024, is not sustainable in the eyes of law. Consequently, the petition is allowed and order dated 20.02.2024, is set aside.

11. The learned trial Court is requested to afford reasonable opportunity to the plaintiffs to prove the documents, which were sought to be proved through Ms. Anjali Sharma, Patwari, Record Room, DC Office, Shimla.

12. Parties are directed to appear before the learned trial Court on 18.08.2026, at 10:00 am.

13. Since, the lis is pending before the learned trial Court from the year 2010, as such, it is expected from the learned trial Court, to decide the matter within a period of four months, from today.

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

04th August, 2026
(Pramod Kumar)

(Virender Singh)
Judge