

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CMP(M) No. 957 of 2024 &
RSAST No. 15568 of 2026
Decided on: 07th May, 2026

Roshani Devi & OthersAppellants

Versus

Shashi Kant (deceased) through LRs & Ors.
...Respondents

Coram

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

Whether approved for reporting?

**For the appellants: Mr. Azmat Hayat Khan,
Advocate.**

**For the respondents: Mr. Raju Ram Rahi,
Advocate, for respondents
No. 1(c), 3 and 4.**

**None for respondents No.
1(a), 1(b), 2, 5, 7 to 11, 18(d),
20 to 22, 24, 28(a) and 28(b).**

**Respondents No. 6 and 23
are stated to have expired.**

Virender Singh, Judge (Oral)

CMP(M) No. 957 of 2024

Learned counsel appearing for the applicant has
filed two applications, filed under Order 22 Rule 4 of CPC

(CMPs(M) No. 699 & 701 of 2026) for bringing on record the LRs of respondent No. 6 Nek Ram and respondent No. 23 Rattan Chand. Alongwith these applications, applications under Section 5 of Limitation Act (CMPs(M) No. 700 & 702 of 2026) have also been filed.

2. As per the averments contained in these applications, respondent No. 6, expired on 22.01.2023 and respondent No. 23 expired on 14.04.2021.

3. The applicants have preferred the accompanying appeal against the judgment and decree dated 06.06.2023, passed by the Court of learned District Judge, Hamirpur, H.P. (hereinafter referred to as 'the First Appellate Court'), in Civil Appeal No. 144 of 2019, titled as "Smt. Roshani Devi & Ors. Versus Sh. Shashi Kant & Ors.".

4. As per the applications, both respondents No. 6 and 23, have died, when the lis was pending before the learned First Appellate Court. Meaning thereby, the judgment and decree has been passed against the dead persons, which admittedly *non est* in the eye of law.

5. In such situation, considering the peculiar facts and circumstances of the case and with the consent of the parties, the applications under Section 5 of Limitation Act

are allowed for a limited purpose, as, the question of abatement on account of death of parties, during the pendency of the lis, is to be decided by the Court, before which, the lis was pending.

6. Admittedly, the lis was pending before the learned First Appellate Court, as such, application filed under Section 5 of the Limitation Act, (CMP(M) No. 957 of 2024) is allowed and delay in filing the accompanying appeal, is condoned.

7. The application is accordingly disposed of.

RSAST No. 15568 of 2026

8. Vide order of the even date, passed in CMP(M) No. 957 of 2024, the delay in filing the appeal has been ordered to be condoned, for the reasons as mentioned in the application.

9. Appeal be registered.

10. Considering the fact that death of respondent No. 6 Nek Ram and respondent No. 23 Rattan Chand, had taken place, when, the lis was pending before the learned First Appellate Court.

11. Undisputedly, the matter has been decided against dead persons, as, no efforts have been made to bring

on record LRs of Sh. Nek Ram and Sh. Rattan Chand. Decree passed by the Court for or against a dead person is nullity.

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

13. In view of the above, this Court has left with no option, but to set aside the judgment and decree passed by the learned First Appellate Court and to remand the matter back to the learned First Appellate Court for fresh disposal in accordance with law, after deciding the question of abatement/bringing on record the legal representatives of the above two deceased respondents. Since, the *lis* is

pending, between the parties, from the year 2005, as such, it is expected from the learned First Appellate Court to decide the matter within a period of six months.

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

15. Parties, through their counsel, are directed to appear before the learned First Appellate Court, on 28.05.2026.

16. Record be sent back immediately.

May 7th 2026

(Prmod Kumar)

**(Virender Singh)
Judge**