

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No.309 of 2025**
Decided on: 24.11.2025

Hema Surin Alias Guddan Surin & another ... Petitioners**Versus**

Balbir Singh Bindra & others ... Respondents**Coram****Hon'ble Mr. Justice Ajay Mohan Goel, Judge.****Whether approved for reporting?¹Yes**

For the petitioners	:	Mr. Alok Ranjan, Advocate.
For the respondents	:	Mr. Y.P. Sood, Advocate, for respondents No.1, 3 and 4. Respondent No.2 <i>ex parte</i> .

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have assailed order 21.02.2025 (Annexure P-5), in terms whereof, an application filed by defendants No.4 and 5 therein for being transposed as plaintiffs has been allowed.

2. Brief facts necessary for the adjudication of this petition are that plaintiff, namely Balbir Bindra has filed a suit for declaration that the plaintiff and defendants except defendant No.2 be declared joint owners of the suit property and the alleged Will dated 01.07.2020, registered in the Office of Sub-Registrar is illegal, wrong and void.

¹ Whether reporters of the local papers may be allowed to see the judgment?



Other reliefs have also been prayed for in the Civil Suit.

3. The plaintiff has impleaded five defendants in the suit including defendants No.4 and 4, namely, Dinesh Kumar and Poonam. Though, the suit is being contested by other defendants, however, defendants No.4 and 5 have not filed any written statement to the Civil Suit. During the pendency of these proceedings an application was filed by defendants No.4 and 5 for their transposition as plaintiffs on the ground that as they were having common interest as the plaintiff, therefore, they may transposed as plaintiff. The application was not opposed by the plaintiff.

4. In terms of order dated 21.02.2025, the application was allowed by the learned Court below. This order reads as under:-

“Heard and gone through the case file. Defendants No. 4 and 5 have not filed written statement. They filed the present application for transposing them as plaintiffs. The plaintiff has not opposed the application. Though, the defendants No. 1 to 3 have contested the application, but the plaintiff, who is the dominus litis has no objection in transposition of the defendants. Therefore, keeping in view the averments of the application which are supported with an affidavit, the application is hereby allowed in the interest of justice. Application stands disposed of. It be registered and tagged with the main case file.

Matter be now listed for filing amended plaint, to come up



on 08.04.2025.”

5. Feeling aggrieved, the present petitioners/ contesting defendants have filed this petition.

6. Learned Counsel for the petitioners argued that the impugned order is *per se* not sustainable in the eyes of law as the same has been passed by ignoring the provisions of Order 23, Rule 1A of the Civil Procedure Code, which deals with the transposition of defendants as plaintiffs as the application filed by defendants No.4 and 5 was not fulfilling the criteria laid down in Order 23, Rule 1A of the Civil Procedure Code. He further argued that in terms of provisions of Order 1, Rule 10 (2) of the Civil Procedure Code, said transposition was not permissible and thus he prayed that as the impugned order was *per se* perverse, the same be set aside.

7. On the other hand, learned Counsel for the respondents submitted that there was not infirmity in the order, for the reason that as the application filed by defendants No.4 and 5 was not opposed by the plaintiff and as there was no dispute that the interest of the said defendants was common with the plaintiff, the application was correctly allowed by the learned Trial Court to avoid multiplicity of litigation.

8. When this case was heard on 26.08.2025, the following



order was passed:-

“Learned counsel for the respondents has pointed out that an amendment has been carried out by the State of Himachal Pradesh in Order 1 Rule 10 and sub-rule 6 has been added, which reads as under:-

“The Court may, at any stage of the proceedings, on the application of any party and after notice to the other party affected by the application and on such terms as may appear to the Court to be just transpose a plaintiff to the position of a defendant, or subject to the provisions of sub-rule (3), a defendant to the position of a plaintiff.”

Mr. Alok Ranjan, learned counsel for the petitioner submits that he may be granted some time to ascertain this fact.

List on 22.09.2025.”

9. Today, after hearing learned Counsel for the parties at length and having perused the impugned order as well as other documents on record as also the Statutory Provisions of the Civil Procedure Code relevant for the purpose of adjudication of this case, this Court is of the considered view that there is no merit in the present petition.

10. It is a matter of record that the State of Himachal Pradesh has carried out an amendment in Order 1, Rule 10 of the Civil Procedure Code and sub-rule (6) has been added thereto, which reads as under:-



“The Court may, at any stage of the proceedings, on the application of any party and after notice to the other party affected by the application and on such terms as may appear to the Court to be just transpose a plaintiff to the position of a defendant, or subject to the provisions of sub-rule (3), a defendant to the position of a plaintiff.”

11. Therefore, it is evident from the said sub-rule that in terms of the local amendment, the Court at any stage of the proceedings on the application of any party transposed a plaintiff to the position of the defendant or a defendant to the position of the plaintiff.

12. In this backdrop, if one reads the provisions of Order 23, Rule 1A of the Civil Procedure Code, one finds that this provision exists in Order 23 of the Civil Procedure Code, which Order deals with Withdrawal and Adjustment of Suits.

13. Therefore, as per this Court, Order 23, Rule 1A of the Civil Procedure Code is an enabling provision which comes into picture only in the case of Withdrawal and Adjustment of Suits and it has got nothing to do with the transposition of a plaintiff or defendant as plaintiff, otherwise then in the case of Withdrawal and Adjustment of Suits.

14. In other circumstances, the Court has is to be guided by the provisions of Order 1 of the Civil Procedure Code and as in the



case in hand it cannot be said that the Court has exercised jurisdiction which was not vested in it or has exercised jurisdiction with material irregularity, this Court does not see any reason to interfere with the Order under challenge.

14. A perusal of the application filed by the defendants under Order 1, Rule 10 of the Civil Procedure demonstrates that cogent reasons were spelled out therein for their transposition as plaintiff and the plaintiff did not oppose the application. In these circumstances, the learned Trial Court correctly allowed the application, which it was empowered to do, to avoid multiplicity of litigation.

15. Therefore, as this Court does not find any merit in the present petition, the same is dismissed. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 24, 2025
(Rishi)