

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
CMPMO No.616 of 2022
Decided on 27th November 2025

Parkash Chand

...Petitioner

Versus

Bhagwan Singh and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes.

For the petitioner:	Mr. Mukul Sood, Advocate.
----------------------------	----------------------------------

For the respondents :	Mr. Bhupinder Gupta, Senior Advocate, with Mr. Janesh Gupta, Advocate.
------------------------------	---

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has assailed the impugned order dated 21.07.2022 (Annexure P-5), passed by the learned Trial Court, in terms whereof, an application filed under Order 1 Rule 10(2) of the Code of Civil Procedure by the petitioner herein who is defendant No. 3 in the civil suit, for being transposed as a plaintiff, was dismissed.

2. Brief facts necessary for the adjudication of this petition are that the respondent herein plaintiff had filed a suit for declaration to the effect that he is the owner in possession of the suit land, and that Will, dated 18.10.2005 allegedly

executed in favour of the defendants and the Gift Deed dated 28.05.2007 in favour of defendant No. 1 were result of fraud, misrepresentation, etc., and was liable to be declared null and void. Consequential relief of permanent injunction has also been prayed for.

3. The present petitioner is defendant No. 3 in the civil suit. In terms of the contents of the plaint, which is on record as Annexure P-1, there are specific allegations against the present petitioner regarding the alleged fraud and misrepresentation said to have been exercised by him along with the other defendants vis-à-vis the execution of the Will.

4. The written statement filed by respondents No. 1 to 3 is placed on record as Annexure P-2, and a perusal of the same demonstrates that the suit is being resisted by the defendants, including the present petitioner.

5. In this backdrop, the petitioner filed the application under Order 1 Rule 10(2) of the CPC before the learned Trial Court, in which it was averred that the petitioner was wrongly arrayed as a defendant, whereas his interest was actually

aligned with that of the plaintiff. According to the petitioner, after service of summons upon the parties, he was not properly advised by his counsel that his interest lay with the plaintiff, and when the evidence of the defendants was closed, the petitioner was asked by his counsel to lead evidence, which he refused to do. He thereafter sought advice from another counsel and discovered that the documents alleged as the Will and the Gift Deed were against the interest of the applicant, as the petitioner had not inherited anything on the basis of the alleged false and frivolous Will.

6. It was primarily on this basis that the transposition was sought, with further averments in the application that the suit land was more than 100 Kanals and a false and frivolous Gift Deed had been constructed, thereby jeopardizing the interest of the petitioner.

7. This application, though not opposed by the plaintiff, was opposed by the contesting defendants, i.e., defendants No. 1 and 2. It was mentioned in the reply that defendant No. 3 was one of the beneficiaries along with the other defendants and

that the contentions raised in the application were self-contradictory. It was also the stand of the contesting respondents that the petitioner was exercising undue pressure upon them and demanding 20 Kanals of land, and when they refused to do so, this application had been filed.

8. In terms of the impugned order, the application has been rejected by the learned Trial Court by assigning the following reasons:-

“I have heard Ld.counsels for the parties and perused the case record with care.

It is pertinent to mention here that the present suit has been filed in the year 2014 i.e. 19.02.2014 and written statement in main suit has been filed on behalf of defendants No.1 to 3 on 17.05.2014, meaning thereby the applicant/defendant No.3 was very much aware about the facts of the case. Not only this, even the evidence on behalf of both the parties has been closed their respective evidences and the matter is at the stage of rebuttal evidence. The plea of the applicant/defendant No.3 is that advice even after the service, he was not given proper advice about the case, this plea is not tenable and is not sufficient/ reasonable ground. In considered opinion of the court, such type of applications cannot be considered at this belated stage as the suit trial is at the stage of rebuttal and even if this application is considered, it will not help in comprehensive disposal of the suit. The application deserves dismissal and is accordingly dismissed. No order as to costs. Application stands disposed-of, be registered and tagged with main case file for record.

Now to come up for rebuttal evidence, if any, on 19.09.2022.”

9. Learned counsel for the petitioner submitted that, in light of the fact that the petitioner was wrongly impleaded as a defendant in the civil suit and his interest actually lay with the plaintiff, as soon as this fact came to his notice, he immediately filed an application for his transposition as a plaintiff. He submitted that learned Trial Court erred in rejecting the application and as the impugned order was not sustainable, the petition deserved to be allowed by quashing the same.

10. On the other hand, learned Senior Counsel for the contesting defendants submitted that there is no perversity in the order passed by the learned Trial Court, which rightly rejected the application by assigning cogent reasons. Learned Senior Counsel has drawn the attention of the Court to the plaint as well as the written statement and submitted that it is apparent from the contents of the plaint that the present petitioner was reflected his adversary therein, and even the stand taken in the written statement by the petitioner along with the other defendants was adversarial to that of the plaintiff. In these circumstances, he submitted that there is a somersault and change of heart on the part of the petitioner for extraneous

reasons, which led to the filing of the application and the same was rightly dismissed by the learned Trial Court.

11. I have heard learned counsel for the parties and have also carefully gone through the record of the case.

12. Order 1 Rule 10(2) of the CPC provides that the Court may at any stage of the proceedings, either upon or without the application of either party, on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck off, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, be added.

13. There is an amendment that has been carried out by the State of Himachal Pradesh in Order 1, rule 10 of the CPC, 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.”

14. In the present case, the suit filed by the plaintiffs for declaration as already mentioned hereinabove and in terms of the plaint, allegations were levelled against all the defendants, including the present petitioner. Similarly, as far as the written statement is concerned, a perusal thereof demonstrates that it was filed on behalf of all the defendants, including the present petitioner and therein the contents of the plaint were denied.

15. Now, incidentally, the application that was filed under Order 1 Rule 10(2) of the CPC was not filed immediately after the filing of the written statement but was filed after the evidence had been led by the parties and the case was at the stage of recording the rebuttal evidence of the plaintiff. This is evident from the order passed by the learned Trial Court. This demonstrates that the application was admittedly filed at a belated stage. The date of the application is 15th December, 2021, whereas the written statement was filed in the year 2014. Meaning thereby that the application was filed after seven years from the date the written statement was brought on record.

16. Incidentally, in the application filed under Order 1 Rule 10(2) of the CPC, the stand taken by the petitioner is completely contrary to the one taken by him in the written statement filed to the contentions raised in the plaint.

17. This Court fails to understand that if the defendant was indeed wrongly impleaded as a party defendant in the case and his interest was akin to that of the plaintiff, why at the initial stage, he did not move an appropriate application and why he filed a written statement along with the other defendants contesting the plaint. As observed hereinabove, it is not the case that immediately after filing the written statement, the petitioner moved an application under Order 1 Rule 10(2) of the CPC, stating that the written statement had been filed by him under some wrong impression. It took him seven years to realise that his interest lie with the plaintiffs, and this is slightly difficult to comprehend.

18. This gives merit to the contention of learned Senior Counsel for the respondent that probably there has been a

change of heart on the part of the petitioner due to some reasons or circumstances in the interregnum.

19. In this backdrop, when one peruses the impugned order, one does not find any infirmity therein. The petitioner, being fully aware of the contents of the plaint and the written statement, has not exercised due diligence, and the fact that the application was filed after seven years demonstrates that it was done with some motive other than what has been portrayed in the application.

20. It is also clearly borne out from the record that the application was filed at a belated stage when the case was at the stage of rebuttal evidence of the plaintiff. Therefore, in the backdrop of the above observations, this Court does not find any reason to interfere with the order passed by the learned Trial Court, in terms whereof, and the application under Order 1 Rule 10(2) of the CPC filed by the petitioner has been rightly rejected. The petition is, therefore, dismissed.

21. Parties, through counsel, are directed to appear before the learned Trial Court on **17.12.2025**. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

November 27, 2025
(Shamsh Tabrez)