



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**CMPMO No. 512 of 2025
Decided on: 27.11.2025**

Thakur Dass

..... Petitioner

Versus

Kali Devi and Ors

.....respondents

Coram:

Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting? ¹

For the petitioner : Mr. G.R. Palsra, Advocate.

For the respondents : Mr. Rupinder S. Minhas,
Advocate, for respondents No. 1
to 5.

Bipin Chander Negi, Judge (oral)

The present petition has been preferred against the impugned order dated 02.08.2025, passed by the learned Civil Judge, Court No. 1, Sunder Nagar, District Mandi, H.P. in Civil Suit No. 26/2018, titled Godaver Ram vs. Kali Devi and others, whereby an application filed under Order 1 Rule 10, read with Section 151 of CPC for transposition of the present petitioner/proforma defendant No. 6 before the Trial Court as a plaintiff in the original suit filed by the plaintiff one Sh. Godaver Ram, who had expired, has been dismissed.

2. Heard learned counsel for the parties. Perused the pleadings, impugned order, documents placed on record and a

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



copy of the plaint filed before the Trial Court, furnished by the counsels appearing on behalf of the parties.

3. From a perusal of the suit filed before the Trial Court, it is evident that one Sh. Godaver Ram (plaintiff) had laid a challenge to two Wills, dated 16.08.2011 and 02.03.2012 in favour of defendants No. 1 to 5/present respondents No. 1 to 5. Based on the aforesaid Wills, mutations attested had also been challenged. In the suit so filed, it had been categorically averred that the aforesaid two Wills and mutations made in pursuance thereto were not binding on Godaver Ram (original plaintiff) and proforma defendants No. 6 and 7 in the suit, i.e., present petitioner and present proforma respondent No. 6.

4. The original plaintiff (Godaver Ram) is stated to have died on 03.08.2022. The factum of death was brought to the notice of the Trial Court on 21.09.2022. The application under Order 1 Rule 10, read with Section 151 of CPC, seeking transposition of the present petitioner from the status of a proforma defendant to that of a plaintiff before the Trial Court, was filed on 06.07.2023.

5. In the aforesaid backdrop, the Trial Court was of the view that since no application had been made for setting aside of abatement on account of the death of the sole original plaintiff (Godaver Ram), hence the suit stood abated automatically. However, it was further observed that on account of the application filed seeking transposition proceedings continued, but



the Trial Court was of the view that in the application so filed seeking transposition, no prayer for setting aside abatement had been made. Besides the aforesaid, the Trial Court was of the view that once a suit abated, then the same cannot be revived by filing the present application.

6. From the plaint, it is evident that the interest of the original plaintiff (Godaver Ram), present petitioner and proforma respondent No. 6 are one and the same. The same is affirmed on a perusal of the written statement filed by the present petitioner and present proforma respondent No. 6 before the Trial Court, wherein they have admitted the claim in toto of the original plaintiff (Godaver Ram). By way of the transposition if permitted in the case at hand, the nature of the suit will not be altered. The petitioner in the case at hand does not have a conflicting claim with the deceased original petitioner (Godaver Ram). In this respect, it would be appropriate to refer to case titled ***Thakur Chaudhary and others vs. Brahmdeo Chaudhary and others reported in 1978 SCC OnLine Pat 39***, wherein following has been observed:-

"7..... It is, however, well settled that such a transposition is generally not allowed if the nature of the suit is likely to be altered. A person can be added as a co-plaintiff with another only when he can adopt the plaintiff's case. Persons having conflicting cases cannot be made co-plaintiffs and if the plaintiff and the defendant have conflicting case, the question of



making the defendant a plaintiff and the plaintiff's defendants does not arise until such a contingency occurs when, for instance, the plaintiff is withdrawing from the suit. It is not necessary to cite authorities on these propositions, for they are so obvious. I would however, mention them, for counsel for the petitioners has placed reliance thereon."

7. Godaver Ram (original plaintiff) had died on 03.08.2022. It is well settled that if within the period prescribed, legal heirs of the plaintiff are not brought on record, the suit stands abated, abatement is automatic, however, an order of the Court which has entertained the suit is necessary to have it removed from the file. In this respect reference can be made to a decision of the Full Bench of **Travancore-Cochin High Court in Alyappan v. Kesavaru, AIR 1953 T.C. 545**, relevant extract whereof reads as under:-

"Thus, it will not be correct to say that in the case of abatement of an appeal it is unnecessary or superfluous for the appellate Court to pass final orders disposing of the appeal. On the other hand it appears that even in cases of abatement an order of the Court which has entertained the Appeal is necessary to have it removed from the file,"

8. These observations equally apply to a suit because in the case of a suit also it may happen that though a party died the fact of the death may not have been brought to the notice of the Court for quite some time and even after the said fact is



brought to the notice of the Court some time has to be given for the applications to be made under Rule 3, 4 or 9 of Order 22.

9. Procedure for bringing on record the legal representatives of the deceased plaintiff have been provided for under Order 22 Rule 3, Sub-Rule (1) of CPC thereof. In terms of Sub-Rule (2) contained in Order 22 Rule 3 of CPC, if no application is made under Sub-Rule (1), then the suit stands abated. Order 22 Rule 9, Sub-Rule (2) of CPC thereof provides the remedy for setting aside of abatement. The same is provided only to the plaintiff or a person claiming to be the legal representative of the deceased plaintiff. In the aforesaid circumstance, the only recourse available to the present petitioner/proforma respondent No. 6 before the Trial Court for continuing the suit was to apply for transposition as a plaintiff.

10. Other than the aforesaid, learned counsel appearing on behalf of the present petitioner/proforma defendant No. 6 before the Trial Court has drawn the attention of this Court to a State amendment made to Order 1 Rule 10 of CPC. The same reads as follows:-

Himachal Pradesh. - In O 1, r. 10, add the following as sub-rule (6):-

“(6) 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. The aforesaid provision it appears was never brought to the notice of the Trial Court. The same permits filing of an application for transposition "at any stage" by a defendant to be transposed as a plaintiff.

12. In view of the above stated reasons, the present petition is allowed. The impugned order dated 02.08.2025 is quashed and set-aside. Petitioner is transposed as a plaintiff and permitted to continue with the suit.

13. The parties are directed to appear before the Trial Court on **05.12.2025**.

14. Pending applications, if any, also stand disposed of

(Bipin Chander Negi)
Judge

November 27th, 2025
Susheel