

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CMPMO No. 658 of 2024

Reserved on: 28th June, 2025.

Decided on : 10th July, 2025.

Dharam Chand & Ors. **.. Petitioners.**
Versus

Roshan Lal & Ors. **....Respondents.**

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ No.

For the Petitioner: Mr. Romesh Verma, Sr.
Advocate with Mr. Digvijay
Singh Bisht, Advocate.

For the Respondents: Mr. Ajay Sharma, Sr. Advocate
with Mr. Atharv Sharma,
Advocate.

Satyen Vaidya, Judge.

Petitioners herein are defendants No. 2, 3
and 14 in Civil Suit No. 311 of 2009 pending on the
files of learned Civil Judge, Court No. II, Amb, District
Una. Respondent No.1 herein is the plaintiff. The

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

parties, hereafter shall be referred to by the same status as they hold before the original Court.

2. Plaintiff has filed a suit for declaration that he is owner in possession of 3/4th share of the entire suit land as detailed in the plaint on the basis of Will dated 03.02.1984 executed by Rirku and Sale deed dated 17.10.2012 executed by Dhani Ram s/o Rulia Ram.

3. Learned Trial Court has framed the following issues in the suit:-

1. Whether the plaintiff is entitled for decree of declaration, as prayed for?OPP.
2. Whether the plaintiff is entitled for consequential relief of permanent injunction?OPP.
3. Whether the suit is not maintainable?OPD.
4. Whether the suit is barred by limitation?OPD.
5. Whether the plaintiff is estopped by his act and conduct to file the suit?OPD.
6. Whether the plaintiff has no cause of action to file the suit?OPD.
7. Whether the plaintiff has suppressed material facts from this Court?OPD.
8. Whether the suit is bad for non joinder of necessary parties?OPD.
9. Relief.

4. Parties have already led their respective evidence.

5. At the final stages of the suit, the plaintiff filed an application under Order 14 Rule 5 read with Order 8 Rule 1 of the Code of Civil Procedure (for short “the Code”) with a prayer to frame the additional issue to the following effect:-

“Whether the registered Gift Deed vasika No. 399 dated 26.06.1974 executed by Rirku son of Tidu and mutation 2356 of village Nakroh Sanctioned in favour of plaintiff (now deceased) Roshan Lal is valid or not as alleged? OPP.”

6. The application was filed on the supposition that the relief in the suit had its basis in the registered gift deed dated 26.06.1974 executed by Rirku.

7. In addition, the plaintiff also sought the leave to file the attested copy of the gift deed.

8. The defendants contested the application.

9. Learned trial Court *vide* impugned order dated 38.09.2024 has allowed both the prayers. Two

additional issues have been framed which read as under:-

“1A. Whether Rirku Ram s/o Tidu executed the gift deed Vasika No.399 dated 26.06.1974 in favour of deceased Roshan Lal qua $\frac{1}{2}$ share in the suit land is valid or not, as alleged? OPP.

1B. Whether the mutation No.2356 on the basis of alleged Gift Deed Vasika No.399 dated 26.06.1974 is valid or not, as alleged? OPP”

10. Aggrieved against the aforesaid order dated 28.09.2024, defendants No. 2, 3 and 14 (petitioners herein) have approached this Court under Article 227 of the Constitution of India.

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

12. The impugned order reveals that the learned trial Court has allowed the prayer for framing the additional issues by taking into consideration the averments made in para-1 of the plaint. It also appears to have been perceived that the plaintiff has

sought declaration of title over the suit land on the basis of gift deed.

13. Having perused the records, I find that the impugned order has been passed by the learned trial Court on wrong supposition. Scrutiny of plaint reveals that the plaintiff has sought the declaration of title over the suit land on the basis of Will dated 03.02.1984 executed by Rirku and the sale deed dated 17.10.2012 executed by Dhani Ram. Neither in the head note of the plaint nor in relief clause any relief has been sought on the basis of gift deed.

14. Though there a mention in para-1 of the plaint with respect to the gift deed but since the plaintiff has chosen not to seek any relief on the basis of said document, no triable issue would arise on the basis of execution of gift deed or as to the legality of validity thereof.

15. The Court is vested with jurisdiction to frame an issue, where the material proposition of fact or law is affirmed by one party and denied by the

another. In the instant case, such material proposition would have arisen only if the plaintiff had claimed the declaration of his title on the suit land on the basis of gift deed. Since, the plaintiff has not based his claim/relief on the basis of gift, the adjudication on validity or legality and effect of any such transaction was not required to be adjudicated upon by learned trial Court and for such reason there was no requirement to frame additional issues at this stage of the suit.

16. Further, to allow the plaintiff to place on record the attested copy of the gift deed will be a futile exercise in light of what has been observed hereinabove. The document unrelated with existing issues will be of no relevance and it will not be capable of being read in evidence. Thus, the approach adopted by learned trial court in allowing the prayer of plaintiff to place on record the gift deed that too on the presupposition that the parties will get chance to prove and rebut the document by

additional evidence was not called for in the facts and circumstances of the case.

17. Noticeably, the learned trial Court has not only allowed the plaintiff to place on record additional documents, but has also opened the doors for additional evidence without adjudicating upon the permissibility to lead additional evidence at this stage of the suit.

18. In result, the instant petition is allowed and the impugned order dated 28.09.2024 is set aside. The application of the plaintiff under Order 14 Rule 5 read with Order 8 Rule 1 of the Code is ordered to be dismissed.

(Satyen Vaidya)
Judge

10th July, 2025.
(jai)