

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No. 613 of 2025****Decided on: 25.11.2025**

Sh. Harish Chander and another

... Petitioners

Versus

Sh. Daljeet Singh and others

... Respondents

Coram***Hon'ble Mr. Justice Ajay Mohan Goel, Judge.*****Whether approved for reporting?¹**

For the petitioners : Mr. Kulwant Singh Katoch, Advocate.

For the respondents : Mr. P.S. Goverdhan, Senior Advocate
with Mr. Nitin Sood, Advocate for
respondents No. 1 to 5.**Ajay Mohan Goel, Judge** *[Oral]*

By way of this petition, the petitioners have assailed the order dated 30.07.2025, passed by the learned Trial Court, in terms whereof, an application filed by the present petitioners/defendants under Order 7, Rule 11 of the Code of Civil Procedure has been dismissed.

2. Having heard learned Counsel for the parties and having perused the documents appended with the petition as well as the plaint and the impugned order, this Court is of the considered view that the order under challenge calls for no interference. The suit has been filed by the plaintiffs, copy whereof is appended with the petition as Annexure P-2, for declaration that the plaintiffs and

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



defendant No. 3 are co-owners of the suit property in equal shares and that alleged Will dated 11.08.2009, was never executed by their father Vijay Singh nor does the same confer any right, title or interest in favour of the defendants. A decree of permanent prohibitory injunction has also been prayed for against the defendants for restraining them from implementing and incorporating the alleged Will in the revenue records. In the said civil suit, the defendants filed an application under Order 7, Rule 11 of the Code of Civil Procedure praying for rejection of the plaint. The application is on record as Annexure P-7. In terms of the contents of this application, it stands mentioned therein that the dispute involved in the suit is with respect to a registered Will dated 11.08.2009 and that late Vijay Singh had executed the Will, who later on died on 25.12.2013. It was further mentioned in the application that after the death of Vijay Singh, mutation No. 9 dated 03.03.2016 was wrongly and illegally attested at the back of the applicants in favour of the plaintiffs and the same was assailed by way of an appeal and the appeal was allowed by the Appellate Authority on 15.10.2019. Said appeal, as per the applicants, was contested by the plaintiffs. It was further mentioned in the application that the plaintiffs were having full knowledge of the legal and valid Will which was executed by Sh. Vijay Singh and they did



not challenge the same and all these facts stood concealed by them. It was further mentioned in the application that the suit was otherwise barred by limitation and therefore, a prayer was made that the plaint be rejected in terms of the Order 7, Rule 11 of the Code of Civil Procedure. It was also mentioned in the application that no cause of action was there in favour of the plaintiffs to maintain the suit.

3. Learned Trial Court in terms of order dated 30.07.2025 dismissed the application by returning the following findings:-

“5. The plaintiffs in the present case have specifically pleaded that the cause of action arose when the defendants allegedly threatened them in October 2023 and January 2024 to dispossess them and enforce mutation on the basis of the disputed Will. These averments, when taken at face value, disclose a clear cause of action. Whether such threats are true or fabricated is a matter to be determined at trial and not at this stage.

6. As regards limitation, even if the defendants' contention that the plaintiffs were aware of the Will and mutation in 2016 is accepted, Article 106 of the Limitation Act prescribes a 12-year period for suits relating to a legacy or property bequeathed under a Will, commencing from the date when the right becomes payable or deliverable. The present suit, filed in



2024, is well within the 12-year period from 2016. Moreover, the plaint is founded on allegations of recent threats, indicating a fresh or continuing cause of action. Sh. Akshay Katoch, learned counsel for the applicants submits that the suit is barred in view of Article 56 of the Limitation Act. This argument cannot be accepted. In AIR 2006, HP 103, Mohinder Lal Vs. Tule Ram, it was held that limitation is to counted from a day one year after the death of testator. It was held that the limitation for a suit for legacy is 12 years from the date when the legacy becomes deliverable.

7. The applicants' plea of suppression of the 2019 SDC order is also not sufficient to attract Order VII Rule 11 CPC. Whether the plaintiffs have come with clean hands or not is a matter for trial and cannot be conclusively determined at this stage.

8. For these reasons, I find that the plaint discloses a cause of action and is not barred by law. The application under Order VII Rule 11 CPC is accordingly dismissed. No order as to costs. The defendants are at liberty to raise all their pleas, including limitation and estoppel, during trial.

4. Though, learned Counsel for the petitioner has vehemently argued that the impugned order is not sustainable in the eyes of law as the learned Trial Court erred in not appreciating that the suit not only was hit by limitation and otherwise also, there was



no cause of action in favour of the plaintiffs who had concealed material facts in the plaint as was evident from the averments made in the application, however, this Court is of the considered view that the order passed in the application under Order 7, Rule 11 of the Code of Civil Procedure calls for no interference. It is settled law that for the purpose of adjudication of an application under Order 7, Rule 11 of the Code of Civil Procedure, the Court has to take into consideration the plaint and documents appended therewith. The defence of the party is not to be taken into consideration while deciding such an application. A perusal of the plaint demonstrates that the plaintiffs have put forth their case and in terms of the averments made therein, as the threats alleged to have been made therein by the defendants were recent, therefore, the plaint has been mentioned to have been filed within limitation. This Court is of the considered view that whether or not there is any cause of action and whether or not the suit is within limitation and further whether or not the Will in question is a valid Will, these issues cannot be answered by a Court in the course of adjudication of an application filed under Order 7, Rule 11 of the Code of Civil Procedure by the defendants, by taking recourse to the averments made therein. Whatever is mentioned in the application under Order 7, Rule 11 of CPC, may be a very good defence and obviously, if this defence is



taken by the defendants in the written statement and if it finds favour with learned Trial Court, then consequences shall ensue but plaint cannot be rejected on the basis of the same at this stage. In the peculiar facts of this case, even the issue of limitation becomes a mixed question of law and fact which has to be determined by the Court in case an issue is framed with regard to limitation point by giving a chance to the parties to lead evidence. Therefore, as the reasoning which has been assigned by the learned Trial Court, is cogent and valid reasoning for rejecting the application, this Court is not interfering with the impugned order. However, it is clarified that whatever is contained in the impugned order and whatever this Court has observed in this order, is only for the purpose of adjudication of these proceedings. It should not be seen as any ratification of contents of the plaint. The petitioners herein are at liberty to take such defence in the written statement as they may be advised.

With these observations, this petition is dismissed. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 25, 2025
(narender)