

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****RSA No. 237 of 2025****Date of Decision: 07.11.2025.**

Kala Devi

.....Appellant.

Versus

Singhu Ram and others

.....Respondents

*Coram****The Hon'ble Mr. Justice Bipin Chander Negi, Judge.******Whether approved for reporting?¹***

For the Appellant : Mr. Mohinder Verma, Advocate
with Mr. Sumit Sharma,
Advocate.

For the respondents: Nemo

Bipin Chander Negi, Judge (oral).

The present appellant has filed this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), assailing the judgment and decree dated 20.08.2025 passed by the learned District Judge, Shimla, H.P. in Civil Appeal No. 12-S/13 of 2024, titled Kala Devi vs. Singhu Ram and others, whereby the judgment and decree dated 23.08.2024 passed by the



learned Civil Judge Court No. 5, Shimla, H.P. in Civil Suit No. 11 of 2021, titled Kala Devi vs. Singhu Ram and others, has been affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred to in the same manner in which they were referred before learned Trial Court. The facts of the present case are that the plaintiff, Smt. Kala Devi, initiated a civil suit before the Trial Court concerning land situated at Mauza Gumma, Tehsil and District Shimla. The suit land was recorded as being in the joint ownership and possession of the plaintiff and the defendants. The parties had previously filed a joint application for partition of this land before the Assistant Collector Ist Grade (Rural), Shimla on 20.03.2019. The plaintiff alleged that she was under the bonafide belief that the Field Kanungo would explore the possibility of a private partition with the consent of all parties. The plaintiff contended that the defendants, taking advantage of her helpless state following the death of her husband, conspired with the Halqua Patwari to manipulate the preparation of revenue documents for a private



partition without her knowledge or consent. She claimed she was made to sign documents before the Assistant Collector on 29.05.2019 without understanding their contents or implications, and was not given a copy of the agreement.

3. Upon obtaining information under the Right to Information Act, the plaintiff discovered that an agreement for private partition had been attested by the Executive Magistrate-cum-Tehsildar on 29.05.2019, and mutation No. 162 was subsequently attested on 25.06.2019 based on this agreement. The plaintiff asserted she only became aware of the specific plots allotted to her after applying for demarcation in August 2020. She alleged the land allotted to her was inferior, uneven, and unsuitable, while the defendants received the best portions. She claimed fraud was played upon her, as the contents of the partition documents were not read or explained to her, and one of the attesting witnesses was related to a defendant. The plaintiff sought a declaration that the suit land remained jointly owned and possessed, that the partition was unlawful, and for permanent injunctions restraining the



defendants from acting on the basis of the mutated partition.

4. The defendants contested the suit, admitting the joint application for partition but denying any fraud or manipulation. They asserted that the parties had mutually agreed to a private partition, instructed the Halqua Patwari to prepare the necessary documents, and had the agreement of Khangri Takseem explained, read over, and attested before the Executive Magistrate. They denied the plaintiff was pressured or that the allotted land was inferior, stating the plaintiff herself had chosen the plots abutting the road and that the division was fair, with compensation in other Khasra numbers for small, un-partitionable plots.

5. Out of the pleadings of the parties, following issues were framed by the learned Trial Court on 19.03.2022:-

1. **Whether the plaintiff is entitled for the decree of declaration to the effect that the land as entered against Khata/Khatauni No. 92/218 kitta 5, measuring 00.53.25 hectares and Khata Khatauni No. 91/217 Kitta 3 measuring 00.25.15 hectares at Mauja Gumma, Tehsil and District Shimla is in the joint ownership and possession of the parties and that same has not been lawfully partitioned hence the plaintiff be declared as joint owner in possession of suit land to the extent of her half share, as prayed for ?OPP.**



2. **Whether the plaintiff is entitled for a consequential relief of restraining the defendant from interfering with joint ownership and possession of plaintiff over the suit land and defendant be restrained from enforcing and acting upon order in mutation No. 162 of Mauja Gumma, Tehsil and District Shimla, H.P. as prayed for? ...OPP**
3. **Whether the plaintiff is entitled for decree of permanent prohibitory injunction, as prayed for? ...OPP.**
4. **Whether the suit of the plaintiff is liable to be dismissed on the ground of maintainability, as alleged? ... OPD**
5. **Whether the suit of the plaintiff is liable to be dismissed for suppression of material facts, as alleged? ...OPD.**
6. **Whether the suit of the plaintiff is liable to be dismissed on the ground of other efficacious remedy available with the plaintiff under H.P. Land Revenue Act, as alleged ? ...OPD.**
7. **Whether the suit of the plaintiff is barred by Order 7 Rule 11 of CPC, as alleged ? ...OPD.**
8. **Whether the suit of the plaintiff is not properly valued for the court fees, as alleged? ...OPD.**
9. **Whether the suit of the plaintiff is bad for nonjoinder of necessary parties, as alleged? ...OPD.**
10. **Relief.**

6. Upon conclusion of the trial, the Court decided issues concerning the declaration and injunction (Issues No. 1-3) against the plaintiff, issues on maintainability and alternative remedy (Issues No. 4 & 6) in favour of the defendants, and the remaining issues (5, 7, 8, 9) against the defendants, thereby dismissing the suit.

7. The plaintiff, feeling aggrieved, filed a first appeal. In the first appeal, the appellant argued that the Trial Court's judgment and decree were illegal,



wrong, and contrary to the evidence on record. It was contended that the Trial Court failed to properly frame and determine material issues, misread the pleadings and evidence, and ignored material admissions made by the defendants. The appellant asserted that the Trial Court erroneously relied on the plaintiff's admission of filing the partition application while ignoring her specific plea of fraud in the preparation of the partition deed.

8. The findings were argued to be perverse as there was no discussion of the fraud allegations or the manner in which the document was prepared, and the Court merely referred to case laws unrelated to the facts of the present case. It was further argued that the Trial Court illegally decided issues of maintainability and alternative remedy against the plaintiff despite the defendants leading no evidence on these points. The appellant maintained that the suit was maintainable as the controversy involving fraud and the legality of the partition fell within the Civil Court's jurisdiction. The evidence of the plaintiff was argued to be independent, reliable, and cogent,



proving her case, while the defendants' evidence was weak and manipulated. The First Appellate Court, however, dismissed the appeal, leading to the filing of the present Regular Second Appeal.

9. Heard Counsel for the appellant and perused the impugned judgments.

10. The only argument put forth by the counsel for the appellant in the present case is that in the given facts and circumstances at the most the plaint should have been ordered to be returned to the plaintiff for presentation before the competent Court having jurisdiction to adjudicate the dispute between the parties. This is the short question which has been sought to be adjudicated in the present appeal.

11. At the very outset attention of this Court has been drawn to Rules and Orders of Hon'ble Himachal Pradesh High Court Volume-1 Chapter 13 which deals with Jurisdiction of Civil and Revenue Courts. The relevant portion of which is being reproduced as under:

"2. Jurisdiction of Civil and Revenue Courts. (a) If it is found that the suit relates to a matter of which only Revenue Court can take cognizance, the plaint



should be returned for presentation to the competent Revenue Court. (b) In view of Section 46 of the Himachal Pradesh Land Revenue Act, 1954 a person considering himself aggrieved by an entry in a Record of Rights or Annual Record, as to any right of which he is in possession, may institute a suit for a declaration of his right under Chapter VI of Specific Relief Act, 1963, but Civil Court has no jurisdiction to order correction of such an entry in view of Section 171 (2)(xvii) & 171 (2) (xviii) of the H.P. Land Revenue Act. Civil Courts shall only grant a declaration of the right after which the entry shall be corrected by the revenue authorities themselves.”

12. Other than the aforesaid, in support of the submissions so made the counsel has placed reliance on the judgments of the Apex Court in **R.S.D.V. Finance Co. Pvt. Ltd., v. Shree Vallabh Glass Works Ltd., AIR 1993 Supreme Court 2094, Athmanathaswami Devasthanam v. K. Gopalaswami Ayyangar, AIR 1965 Supreme Court 338** and that of the High Court of Allahabad in **Governing Council of Kayastha Pathshala, Prayag and others v. Ram Chandra Srivastava and others, AIR 1992 Allahabad 158**. The law laid down in these judgments amply demonstrate that where the Court arrives at a conclusion that it has no



jurisdiction to try a suit, the appropriate order to be passed should not be dismissal of the suit but qua the return of the plaint for presentation before the appropriate forum.

13. Admittedly, the jurisdiction of a Civil Court is specifically barred by Section 171(2)(xvii) and (xviii) of the H.P. Land Revenue Act concerning any claim for the partition of an estate or any question connected with or arising out of the proceedings for partition, not being a question of title. The plaintiff's allegations, even if taken at face value, do not raise a substantial question of title but rather fall squarely within the ambit of the statutory bar. The plea of fraud, being a mere pleading unsupported by convincing evidence, is insufficient to vitiate the proceedings or oust this bar. The remedy for any grievance regarding the partition lay in filing an appeal or revision before the higher revenue authorities.

14. Therefore, an order to return the plaint in this case may not serve any purpose. To serve the ends of justice the judgment and decree under challenge in this appeal is ordered to be quashed and



set aside and the plaintiff is permitted to withdraw the suit with liberty reserved to resort to the remedy available to her to challenge the order of partition before appropriate forum having jurisdiction to entertain and decide the controversy between the parties in accordance with law.

15. The present appeal is disposed of accordingly with no order as to costs. Pending application(s), if any, also stands disposed of.

(Bipin Chander Negi)
Judge

7th November, 2025
(*Susheel/T.B.*)