

(2025) 07 SHI CK 1035
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 289 Of 2024

Gopal Singh (Deceased) Through His Lrs Karam Singh And Others APPELLANT

Vs

Gian Singh RESPONDENT

Date of Decision : 02-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173
Sale of Goods Act 1979 — Section 18, 19
Motor Vehicles Act, 1988 — Section 39, 147, 163A, 166, 167, 192
Evidence Act, 1872 — Section 58

Citation : (2025) 07 SHI CK 1035

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Manohar Lal Sharma, Sneha Bhimta, Jagdish Thakur

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. Aggrieved against order dated 20.01.2024 passed by learned Senior Civil Judge, Kinnaur at Reckong Peo, District Kinnaur, H.P. in CMA No. 27/2024, whereby the application of the petitioners under Order 7 Rule 11 of the Code of Civil Procedure (for short, "the Code"), has been dismissed, the instant petition has been filed.

2. Respondent Gian Singh S/o Tanzin is the plaintiff in Civil Suit No. 47/1 of 2014 pending on the files of learned Senior Civil Judge, Kinnaur at Reckong Peo. He has prayed for following reliefs in the suit:

" It is, therefore, prayed that the entries in the column of possession of the record of rights i.e. jamabandi from 1954-55, onwards till now be declared as null and void and instead of such entries the defendant No.1 be declared to be in joint possession with the plaintiff and proforma defendants by passing a decree

of declaration and consequence thereof the plaintiff and proforma defendants be also declared to be entitled to separate their share out of the suit property comprised in Khasra Nos. 49, 110, 111, 115, 116, 117, 118, 119, 120, 156 and 159 total Kita 11, measuring 16-16 bigha, mauza Dubling of Tehsil Chini of District Mahasu as per old jamabandi 1954-55 and per new revenue record in Khata/Khatauni No. 17/32 to 34, bearing Khasra Nos. 86, 311, 312, 315, 337, 338, 339, 340, 341, 342, 344, 345, 346, 347, 351, 355, 357, 358, 471, 472, 473, 474, 475, 476, 477, 462, 309, 310, total Kita 28, measuring 01-23-17 situated in Mohal Dabbling of Tehsil Pooah as per jamabandi for the year 2008-09. And in consequence of such declaration the plaintiff and proforma defendants be put in Khas possession of their share in the abovesaid property after partitioning the same by metes and bounds after appointing the revenue official to be the commission for the same by passing an appropriate decree of partition and for separate possession of the share of the plaintiff and proforma defendants.

Any other decree and order, the court considers just and proper, keeping the nature and circumstance of the case in view kindly be also passed and suit be decreed with cost."

3. The above noted suit was initially filed against Gopal Singh (predecessor in interest of petitioners herein) as D-1 and Sangya Ram as D-2. S/Shri Karam Chand and Parkash Chand both sons of Tanzin were impleaded as proforma defendants.

4. The petitioners herein are successors of original defendant No.1 Gopal Singh.

5. The suit land originally belonged to Chungtav. After death of Chungtav the suit land was inherited by two sons of Chungtav namely Tanzin and Sangya Ram. After Tanzin his share in the suit land was inherited by plaintiff Gian Singh and proforma defendants Karam Chand and Parkash Chand.

6. As per plaintiff, since, he alongwith defendant No.2 Sangya Ram were residing in Village Khabo, they were not able to personally look after the suit land which was situated in Village Dubling and for such reasons, one Sonam Dorje was kept as caretaker of the suit property. The plaintiff and Sangya Ram used to visit the suit property frequently to keep vigil over the working of Sonam Dorje.

7. It is the case of plaintiff that in the year 1952 Sangya Ram sold his share in the suit property to Sonam Dorje and in the process said Sonam Dorje was recorded in exclusive possession of entire suit land.

8. The plaintiff has alleged that the revenue entries recording Sonam Dorje in exclusive possession of suit land are wrong, void and nullity as Sonam Dorje being purchaser of share only could not have been recorded in possession of entire property. The share of Tanzin could not have been sold by Sangya Ram. The alleged wrong revenue entries are casting a cloud over the title of the plaintiff.

9. It is also the case of the plaintiff that he along with proforma defendants is

interested to separate their share out of the suit property and have requested defendant No.1 Gopal Singh, but despite assurance he did not oblige and lastly, defendant No.1 had openly claimed that he would not allow the plaintiff and proforma defendants to get the property partitioned. In the backdrop of aforesaid factual narration, the reliefs as noticed above, have been prayed

10. Defendant Gopal Singh, filed application under Order 7 Rule 11 of CPC with a prayer to reject the plaint on the ground firstly that the suit was time barred and, secondly, there was no cause of action available to the plaintiff to file the suit. The main plank in the application was that challenge to the transaction having taken place in 1952 could not be said to be within limitation more particularly when the mutation was attested in the year 1955 and the challenge to revenue entries by plaintiff before revenue authorities stood rejected as far back as on 30.6.1988.

11. The plaintiff contested the application. Learned trial Court vide impugned order has dismissed the application on the grounds that the share of Tanzin cannot be assumed to have been sold by Sangya Ram in the suit land by implication of Section 44 of the Transfer of Property Act. It has also been held that since the right claimed in the suit arises from the title of the plaintiff, for determining the limitation to file suit for declaration, would depend on the date when the plaintiff felt aggrieved. Learned trial Court has further held that since the plaintiff was a co-sharer he had liberty to assume himself as in joint possession over every inch of the joint land, even if, he is not in actual physical possession and in such circumstances, Section 46 of the H.P. Land Revenue Act came to resume his cause. In this manner, learned trial Court has held that the issue of limitation was a mixed question of law and fact and could not be decided at this stage so as to reject the plaint.

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

13. Learned senior counsel for the petitioner has contended that the suit was ex-facie time barred and there was no impediment for trial Court to allow the prayer made in the application for rejection of plaint. He further submitted that the plaint had not disclosed any cause of action and in fact, the plaint was cleverly drafted to give semblance of a cause of action and the suit being within limitation. He has placed reliance on the judgments passed by Hon'ble Supreme Court in Nikhila Divyang Mehta and another vs. Hitesh P. Sanghvi and Ors. 2025 SCC Online 779, Shri Mukund Bhavan Trust and ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another 2024 SCC Online SC 3844, Ramisetty Venkatanna and another vs. Nasyam Jamal Saheb and ors. 2023 SCC Online SC 521 and Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) Thr LRs & Ors. 2020 SCC Online SC 1108, to assert his arguments that when the suit is ex-facie barred by limitation the plaint is to be necessarily rejected as also that since, the plaint was cleverly drafted to create illusory cause of action, learned trial court has erred in not piercing the veil.

14. On the other hand, learned counsel for the respondent has defended the impugned order by urging that the same is in strict compliance of the provisions of law. Learned trial Court was not required to look into anything over and above the contents of plaint and documents filed therewith. The defence of the defendants could not be considered for rejection of plaint.

15. Having considered rival submissions and records, I am of the view that the impugned order does not require any interference for the reasons detailed hereafter.

16. The claim of the plaintiff is that he is a co-owner of the suit land. It is also claimed that the plaintiff or his predecessor had never sold his share in the suit land either to Sonam Dorje or to any other person. In fact, the plaintiff has specifically pleaded that Sangya Ram had sold only his share in the suit land. Thus, the claim of the plaintiff in the suit has its basis in his subsisting title in the suit land as co-owner.

17. The claim of rights on the suit land on the basis of title is different than the dispute, if any, with respect to the record of suit land maintained under the H.P. Land Revenue Act. The determination of dispute as to title is not the domain of revenue Courts. The recording of exclusive possession of the defendant cannot over-ride the claim of plaintiff on the basis of title.

18. The plaintiff has pleaded that he was not interested to keep his share joint in the suit land and for such purpose had requested the defendant to get the partition on mutual basis, but since the defendant allegedly had refused, the plaintiff had to file the suit. The suit as such cannot be said to be time barred. The question as to limitation, if any, in the facts of the case will require adjudication which cannot be made at this stage. Similarly, for the reasons detailed above, it also cannot be said that the plaintiff has no cause of action to file the suit.

19. The prayers made in the suit may not be appropriately worded, but this will not entail the rejection of plaint for the reason that the suit is to be decided on the substantive rights pleaded and the law permits not only amendments at the option of parties, but the Courts can also alter or mould the relief according to the facts proved on record.

20. Order VII Rule 7 of the Code reads as under:

"7. Relief to be specifically stated— Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

21. The powers of the Court to alter or mould the relief has recently been discussed and upheld by the Hon'ble Supreme Court in the matter of J.

GANAPATHA AND OTHERS vs. M/S. N. SELVARAJALOU CHETTY TRUST REP. BY ITS TRUSTEES AND OTHERS, 2025 SCC Online SC 633 as under:

"20. The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and the facts established after a full-fledged trial. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court or changed circumstances have rendered the relief obsolete. The court aims that justice is served while taking into account the evolving nature of a case. The above road map is pursued by a court based on the notion of flexibility in relief, equitable jurisdiction, and is tempered by judicial discretion. When moulding the relief, the court considers the issues and circumstances established during the full-fledged trial, looks at shortening the litigation, and then in its perspective, renders complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a matter of course."

22. There is no dispute as to legal proposition. It is more than settled that for adjudication on application under Order VII Rule 11 of the Code only the plaint and documents relied upon by the plaintiff are relevant. The defence raised by the defendant cannot be looked into. The only exception is that the plaintiff cannot be allowed to draft the plaint with the object to project a purely illusory cause of action and in case the suit is found to be manifestly vexatious and meritless the Court can exercise the power to reject the plaint. However, since in the facts of the case, it cannot be said that the cause of action is illusory or the suit is manifestly vexatious or meritless, no fault can be found with the impugned order.

23. In above background, the defendant cannot draw any benefit from the judgments cited in his behalf because from none of said judgments any contrary inference can be drawn.

24. In light of above discussion, there is no merit in the petition and the same is accordingly dismissed, so also the pending application(s), if any.