IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 39 of 2023

Decided on: 27.10.2026

Khushal Singh

... Petitioner

Versus

Asha Devi & others

...Respondents

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Petitioner: Mr. Mukul Sood, Advocate.

For the Respondents : Mr. Sanjay Jaswal, Advocate, for respondents No. 1 to 4.

Virender Singh, Judge (oral)

Petitioners Khushal Singh has filed petition, under Article 227 of the Constitution of India, against the order dated 18.8.2022, passed by the Court of Learned Senior Civil Judge, Nurpur, District Kangra, H.P. (hereinafter referred to as 'the Trial Court').

2. By way of order dated 18.08.2022, the learned Trial Court has allowed the application, under Order 6 Rule 17 CPC, moved by the respondents, for amendment of the written statement, in Civil Suit RBT No.

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36/2011/2021, titled as, 'Khushal Singh versus Asha Devi and others'.

3. Parties to the lis, are hereinafter referred to, in the same manner, in which, they were referred to, by the learned Trial Court.

4. Brief facts, leading to filing of the present petition, before this court, as borne out from the documents, annexed with the petition, may be summed up as under:

Petitioner Khushal Singh has filed a suit for possession of land comprising Khata No. 2, Min, Khata No. 2, min Khasra No. 441, measuring 0-00-55 hectares, situated in Mohal Bhadwar, Mauza Bhadwar, Tehsil Nurpur, District Kangra, H.P. (hereinafter referred to as 'the suit land') as per Jamabandi for the year 2005-2006, by way of demolition of structure of two rooms, illegally raised thereon, and also for vacant possession of the suit land, adjoining to the construction, on account of illegal and wrongful possession.

4.1 The said suit has been filed on the ground that suit land is owned and possessed by the plaintiff along

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with the other co-owners, whereas the defendants have no concern whatsoever with the suit land. However, the defendants encroached upon the suit land in the month of May, 2011 and raised construction of their residential house illegally. Hence, a prayer to decree the suit has been made.

5. When, put to notice, the suit has been contested by filing written statement, by taking preliminary objections, qua maintainability; the plaintiff has no locus standi to file the suit; plaintiff has no cause of action to file the suit; plaintiff is estopped from filing the suit by his own act and conduct; the suit is barred by limitation, the suit is filed on false and frivolous grounds, and that the plaintiff has not approached the Court with clean hands.

5.1 On merit, the suit has been contested on the ground that the defendants are in possession of the suit land, since the time of their ancestors and the names of plaintiff and the other persons have wrongly been incorporated, in the revenue record. The plaintiff has no

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concern, whatsoever with the suit land. Thus, a prayer has been made to dismiss the suit.

6. During the pendency of the lis, the defendants have moved the application, under Order 6 Rule 17 of the CPC to permit them to amend their written statement. The written statement has been sought to be amended on the ground that the wrong revenue record has now been ordered to be corrected, by the Settlement Collector, Kangra at Dharamshala, vide order dated 30.07.2021, in case No. 537/2018/SO, titled as, 'Asha Devi & others versus Khushal Singh and others'.

7. On the basis of above facts, following amendment, by way of preliminary objection, has been sought to be incorporated in the written statement:

> *"That the suit land is a part of the old Khasra no. 152 owned and possessed by the predecessor in interest of the defendants vide Jamabandi for the year 1971- 72. During settlement operation, Khasra no. 441 (suit land) has been carved out of the aforesaid Khasra no. 152 but has been shown wrongly in the ownership of the plaintiff and the other co-sharers. The said revenue record has been ordered to be corrected by the Settlement Officer, Kangra at Dharamshala vide order dated 30.07.2021 in cased no. 537/2018/SO titled as "Smt. Asha Devi and ors. Vs. Khushal Singh and ors." and in paragraph no.1 after the*

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words "as alleged" in the 4th line "The defendants have not encroached upon the suit land, being shown as Khasra No. 441 in the revenue record prepared during the settlement. In fact, the suit land is a part ofThe old Khasra no. 152 owned and possessed by the predecessor in interest of the defendants vide Jamabandi for the year 1971-72. During settlement operation, Khasra no. 441 (suit land) has been carved out of the aforesaid Khasra no. 152. The Khasra no. 441 of the suit land in fact belong to the defendants being part of their land comprised in old Khasra no. 152 but in the recent settlement this Khasra no. 441 has been shown wrongly in the ownership of the plaintiff and the other co-sharers. The said revenue record has been ordered to be corrected by the Settlement Officer, Kangra at Dharamshala vide order dated 30.07.2021 in case no. 537/2018/SO titled as "Smt. Asha Devi & ors. Vs Khushal Singh and ors". The land of the defendants had been reduced during the settlement operation."

8. The said amendment is stated to be necessary for the just adjudication of the case.

9. The application has been contested by the plaintiff by taking preliminary objections that the application is not maintainable, and the application has been moved, at later stage. Other contents of the application have also been denied.

10. The learned Trial Court has allowed the said application, vide order dated 18.08.2021.

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11. The said order has been assailed, before this court, by way of present petition.

12. Heard.

13. According to the plaintiff, when, the order of the Settlement Collector, Kangra at Dharamshala, H.P., which is the very basis of the application, under Order 6 Rule 17 of the CPC, has now been set aside by the Divisional Commissioner, Kangra at Dharamshala, H.P. vide order dated 23.12.2025, then the impugned order is liable to be set aside.

14. The operative portion of the order dated 23.12.2025, passed by the Divisional Commissioner, Kangra at Dharamshala, H.P. is reproduced as under:

> *"On the basis of above narrated facts and pleadings of appellants learned counsel, the appeal has merit and the same is allowed and impugned order of Settlement Collector, Kangra, dated 30.7.2021, in case No. 537/2018/S.O. is set aside and case remanded for fresh decision after giving opportunity of being heard to the parties/persons involved in the correction case, including the present appellants. The stay order dated 20.9.2021 and subsequent such order dated 26.10.2021 are also vacated. The case file be closed and consigned to records after due completion. Lower Court record be sent back."*

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15. In view of the fact that the order of Settlement Collector, Kangra at Dharamshala dated 30.07.2021 has been set aside. As such, the very basis of the application, under Order 6 Rule 17 of the CPC, is not now available to the defenants. As such, there is no occasion for the defendants to get the written statement amended.

16. Consequently, the present petition is allowed by setting aside the order dated 18.08.2022, passed by the Trial Court and the application under Order 6 Rule 17 of the CPC is ordered to be dismissed.

17. The pending application(s), if any, are also disposed of.

18. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present application.

(Virender Singh)
Judge

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