**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 74 of 2026**
**Decided on : 23.09.2026**

Jagdish Singh ...Appellant.

Versus

Rama Nand (since deceased)
through LRs & others .....Respondents.

*Coram*
***Hon'ble Mr. Justice Romesh Verma, Judge.***
***Whether approved for reporting?[1]***

For the appellant: Mr. Praveen Chandel, Advocate.

For the respondents: Mr. Rakesh Thakur, Advocate, for respondents No.1(a) and 1(b).

Mr. Sourav Sharma and Mr. Rocky Advocates, for respondent No.2.

Respondent No.3 had expired on 03.10.2025

**Romesh Verma, Judge(oral)**

The instant appeal has been filed against the judgment and decree passed by the learned Additional District Judge, Nahan, District Sirmaur, H.P., dated 03.12.2025, whereby the appeal filed by the appellant/plaintiff was dismissed and the judgment and decree passed by the learned Civil Judge, Rajgarh, District Sirmaur, H.P., dated 26.10.2024, was affirmed, whereby the suit filed by the appellant/plaintiff was dismissed.

[1] Whether reporters of Local Papers may be allowed to see the judgment?

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2. The facts as emerge in the present case are that the appellant was the plaintiff before the learned trial Court and had filed suit for grant of decree of permanent prohibitory injunction against the respondents/defendants.

3. As per the case of the plaintiff, he is co-owner in possession of the land comprised in Khata/Khatauni No. 17/84, Khasra Nos. 648/556, 484, Plot No. 1, total measuring 0-8 Bighas and 0-6 Biswas, situated in revenue Village Kotia Jajar, Post Office Rajgarh, Tehsil Rajgarh, District Sirmaur, H.P.

4. It was further asserted by the plaintiff that defendants No. 2 and 3 are co-owners in the suit land, whereas defendant No. 1 is a stranger to the suit land. It was averred that the defendants have got no right, title, or interest to occupy the best portion of the suit land by dispossessing the plaintiff forcibly, or by changing the nature or user of the suit land by raising any type of construction of a house or extracting stones therefrom. It was further asserted that the suit land continues to be joint between all the co-owners, and the same was not legally partitioned by metes and bounds up to the date of the filing of the suit.

5. Therefore, it was prayed that the defendants be restrained by passing a decree of permanent prohibitory injunction, as they were trying to occupy the best portion of the suit land by forcibly dispossessing the plaintiff and threatening to change the nature of

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the suit land by raising construction of a house and causing damage to the land by digging it manually or with the help of a hydraulic excavator machine.

6. The suit was contested by the defendants by raising preliminary objections with respect to maintainability, cause of action, etc. On merits all the averments as made in the plaint were denied and refuted.

7. The learned trial Court had framed the issues on 06.01.2023, in the following manner:-

> "1. Whether the plaintiff is entitled for relief of permanent prohibitory injunction restraining the defendants from causing any sort of interference in the suit land comprised in Khata Khatauni No. 17/84, Khasra Nos. 648/556/484, plots 1, total measuring 08 Bighas and 06 Biswas situated in revenue village Kotia Jajar, P.O Rajgarh, Tehsil Rajgarh, District Sirmaur, H.P as prayed for? OPP
>
> 2. Whether the plaintiff has not come to the Court with clean hands and suppressed the material facts from the Court, as alleged?OPD
>
> 3. Relief"

8. The learned Civil Judge, Rajgarh, District Sirmaur, H.P., vide judgment and decree dated 26.10.2024, dismissed the suit filed by the appellant/plaintiff.

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9. Feeling dissatisfied, the plaintiff preferred an appeal before the learned Additional District Judge, Nahan, District Sirmaur, H.P., on 18.02.2025. Learned First Appellate Court, vide its judgment and decree dated 03.12.2025, affirmed the findings of the learned trial Court and dismissed the appeal.

10. Feeling aggrieved, the appellant/plaintiff has approached this Court by invoking the provisions of Section 100 of the Code of Civil Procedure, 1908.

11. This Court had issued notices for the service of the respondents on 31.03.2026. A report was received which shows that respondent No. 3 had expired on 03.10.2025. Learned counsel for the respondents had sought time to obtain instructions in the matter in order to verify whether respondent No. 3 had expired prior to the passing of the judgment by the learned First Appellate Court.

12. Today, learned counsel for the respondents has fairly conceded that respondent No. 3 had expired on 03.10.2025, whereas the impugned judgment and decree came to be passed by the learned Additional District Judge, Nahan, on 03.12.2025.

13. It is well settled principle of law that judgment passed in favour or against the dead person is a nullity. As in the present case when the appeal was finally decided on the said date the said respondent No.3 had already died. Therefore, the impugned judgment as passed by the First Appellate Court is not sustainable.

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14. The said exposition of law has been laid down by the Hon'ble Apex Court in ***'Gurnam Singh (Dead) through Legal Representatives & Ors. Vs. Gurbachan Kaur (Dead) by Legal Representatives' (2017), 13 SCC 414*****,** wherein it has been observed, in para No.21, as under:-

> *"It is a fundamental principle of law laid down by this Court in Kiran Singh's case (supra) that a decree passed by the Court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree holder. The reason is that the defect of this nature affects the very authority of the Court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a Court for or against a dead person is a 'nullity'."*

15. In the present case, since the judgment and decree has been passed in favour of a deceased person, namely respondent No. 3 (Prabhi Devi), the same is a nullity in the eyes of law.

16. In view of the aforesaid factual and legal position, this Court is left with no other option, but to quash and set aside the impugned judgment and decree passed by the learned Additional District Judge, Nahan.

17. Accordingly, the impugned judgment and decree dated 03.12.2025 is set aside. The parties are relegated to the learned First Appellate Court, which shall decide the appeal afresh after

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adjudicating upon the issue of abatement on account of the death of respondent No. 3.

18. Learned counsel for the appellant undertakes to file an appropriate application for bringing on record the legal representatives of the deceased respondent No.3 positively within a period of four weeks from today. Both parties undertake to appear before the learned First Appellate Court (learned Additional District Judge, Nahan) on ***03.10.2026.***

19. It is made clear that the learned First Appellate Court shall not issue fresh notices to the parties, as learned counsels have undertaken that the parties shall remain present before the Court on the date fixed.

19. With these observations, appeal stands disposed of, in aforesaid terms, so also the pending miscellaneous application, if any.

20. Record be sent back immediately.

A copy of this judgment be transmitted to the learned First Appellate Court for record.

**(Romesh Verma)**
**Judge**

September 23, 2026
(Nisha)

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