IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 535 of 2024
Reserved on : 27.02.2026
Date of Decision: 24.03.2026

Charan Dass ...Petitioner.

Versus

Preeto Devi & others ...Respondents.

Coram
Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr. Mohit Jaitak, Advocate, (through video conferencing)

For the respondents: Ms. Devyani Sharma, Senior Advocate with Ms. Srishti Negi, Advocate, for respondents No.2 and 3.

Romesh Verma, Judge

The present petition arises out of the order as passed by the learned Senior Civil Judge, Court No.1, Una, District Una, H.P dated 13.08.2024, whereby application filed by the plaintiff/petitioner under Order 7 Rule 14 of CPC read with Section 65(a) of the Indian Evidence Act and another application under Order 45 of the Indian Evidence Act have been order to be dismissed.

2. The facts of the case are that the plaintiff /petitioner filed a suit for declaration before the learned

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

Senior Civil Judge, Court No.1, Una, District Una, H.P. with the prayer that Waryam Singh, predecessor-in-interest, of the parties had died on 01.09.1998. He was succeeded by his widow, defendant No.1 Smt. Preeto Devi, six sons, plaintiff and defendants no. 2 to 5 and two daughters defendants No. 6 and 7. The parties succeeded to the estate of Waryam Singh as the class one heirs. The parties are in joint possession of the suit land. It was alleged that defendants No.1 to 3 in conspiracy with each other and at the back of the plaintiffs and proforma defendants, got mutation No. 212 attested in favour of defendant No.1 on the basis of the alleged forged Will dated 02.02.1997. The deceased Waryam Singh had not executed any Will in favour of defendant No.1. The alleged Will is wrong, illegal, null and void and an outcome of fraud, undue influence and importunity. Defendant No.1 on 27.08.2010 executed a fictitious sale deed in favour of defendants No.2 and 3 regarding the suit land and the said sale deed is void, ab initio. Therefore, decree for declaration was prayed to the effect that the suit land is in joint ownership and possession of the parties and the Will dated 02.02.1997 executed by

late Sh. Waryam Singh is null and void and further sale deed executed by defendant No.1 dated 27.08.2010 in favour of defendants No. 2 and 3 is void, ab initio.

3. The suit was contested by the defendants. The defendant No.1 filed comprehensive written statement denying all the averments as made in the plaint and it was averred that the plaintiffs have not approached the Court with clean hands since the mutation No. 212 was got entered by plaintiff No.1 himself and further the same has been got attested by the plaintiff No.2 before the revenue authorities. It was submitted in the written statement that the deceased Waryam Singh had great love and affection with defendant No.1 and out of his free will and consent he executed a Will in her favour. It was further submitted that plaintiff never looked after the defendants, therefore, she being an exclusive owner in possession of the suit property has every right to enjoy the property in the manner of her choice.

4. Defendants No.2 and 3 had filed separate written statement and contested the suit filed by the plaintiff. They submitted that they are the bonafide purchaser for valuable

consideration, therefore, plaintiffs have no cause of action against them. They stated that mutation No.212 has been got entered by plaintiff No.1 himself and further the same was got attested by plaintiff No.2 before the revenue authorities. It will be pertinent to mention here that the suit was filed on 04.09.2010 by the plaintiff before the learned Trial Court. The case file reveals that the issues were framed by the trial Court on 19.5.2017. The plaintiff led their evidence and thereafter, the defendants closed their evidence. The case was fixed for rebuttal evidence and at this stage, two applications were filed by the plaintiffs/petitioners under Order 7 rule 14 CPC read with Section 65(a) of the Evidence Act and Section 45 of the Indian Evidence Act. Vide impugned order dated 13.08.2024, the learned trial Court dismissed the applications filed by the plaintiffs/petitioner.

5. Feeling dissatisfied, the petitioner has approached this Court.

6. I have heard Sh. Mohit Jaitik, Advocate, for the petitioner and Ms. Devyani Sharma, learned Senior

Advocate, assisted by Ms. Srishti Negi, Advocate, for the respondents.

7. The fact in dispute is that the suit for declaration has been filed by the plaintiffs against the defendants seeking declaration to the effect that the Will dated 02.02.1997, which was executed by the Waryam Singh in faovur of defendant No.1, is null and void. Further, the sale deed dated 27.08.2010 as executed by defendant No.1 in faovur of defendants No. 2 and 3 has been challenged on the ground that same is void, ab initio. The petitioner/plaintiff filed two applications, firstly, under Section 45 of the Indian Evidence Act and, secondly, under Order 7 Rule 14 of CPC read with Section 65(a) of the Indian Evidence Act. Vide composite order the learned trial Court had dismissed the applications filed by the petitioner/ plaintiff.

8. From perusal of the contents of the application, it reveals that the petitioner has stated in the application that the deceased Waryam Singh, vide sale deed dated 17.01.1978 had purchased agricultural land from Sh. Durga Dass, S/O Bishamber, R/O Village Barnoh and the original sale deed is in possession of defendant No.3 Krishan Kumar

@ Palwinder Singh. The defendant No.3 while appearing as witness admitted the possession of the sale deed but when he was required to produce the original he refused to produce the same on the ground that it has been misplaced. Therefore, in order to ascertain whether the Will was thumb marked by deceased Waryam Singh or not is required to be sent to the expert for comparison of thumb impression of the deceased on the Will and sale deed and, thereafter, call for the report whether these two documents bear the thumb impression of the one and the same person. Similarly, it has been averred in the separate application that the sale deed is a registered document of which two copies are prepared and out of these two copies, the original containing the stamp duty are returned to Vendee and one copy is pasted in the register of the Sub-Registrar. Therefore, it was prayed to produce the copy of the sale deed and he may be permitted to lead secondary evidence to prove the thumb impression of late Sh. Waryam Singh. Therefore, by means of these application, the applicant/petitioner intends to produce on record the copy of the sale deed and to get the

signatures on the Will and the sale deed to be sent for comparison.

9. The provision of Order 7 Rule 14 of the Code of Civil Procedure, 1908 (CPC) reads as follows:

> ***"Order VII Rule 14 – Production of document on which plaintiff sues or relies***
>
> ***(1)*** *Where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof to be filed with the plaint.*
>
> ***(2)*** *Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*
>
> ***(3)*** *A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*
>
> ***(4)*** *Nothing in this rule shall apply to documents produced for the cross-examination of the plaintiff's witnesses, or handed over to a witness merely to refresh his memory."*

10. Similarly, the provisions of Section 65(a) of the Indian Evidence Act reads as follows:

> ***"Section 65(a) –*** *When the original is shown or appears to be in the possession or power-*

> *of the person against whom the document is sought to be proved,*
>
> *or of any person out of reach of, or not subject to, the process of the Court,*
>
> *or of any person legally bound to produce it,*
>
> *and when, after the notice mentioned in section 66, such person does not produce it;"*

11. Before coming to the factual matrix of the case, the legal proposition under Order 7 Rule 14 of CPC as laid down vide various decisions as rendered by co-ordinate benches of this Court is as follows:

> "1. In CMPMO No. 259 of 2017, decided on 09.07.2019, titled Rakesh Kumar Kaundal vs. Smt. Sarswati Devi & others, held as under:
>
> > *"9. It is not in dispute that the application was filed at the stage when the matter was taken up for arguments. It is also not in dispute that earlier on two occasions, the file of the said Criminal case was requisitioned by the learned Trial Court, however, no endeavour was made by the petitioner to place on record the copy of report of the Finger Print Bureau, Phillaur, though the said copy was on record of the said file. In these circumstances, in my considered view, learned trial Court has rightly rejected the application filed by the present petitioner under Order 7, Rule 14(3) of the Code because said provision cannot be permitted to be invoked by the petitioner to fill up the lacunae in his case. Though, the statement of Sub Inspector Darshan Singh was recorded in February, 2017, yet it is not only the statement of SI Darshan Singh which the petitioner intends to place on record by way of the application in issue. In the guise of placing on record the statement of SI Darshan Singh, an endeavour is being made to place on record the report of the Finger Print Bureau, Phillaur. During the course of arguments,*

learned Counsel for the petitioner could not put forth any cogent explanation as to why report of Finger Print Bureau could not be placed on record earlier despite the fact that record of the case in which report was there stood requisitioned on the request of the petitioner himself before the learned Trial Court on two occasions. In these circumstances, this Court finds no perversity in order dated 28.04.2017 passed by the learned trial Court, because it is evident from the record that due diligence was not exercised by the petitioner in the present case and in the garb of application filed later on, the petitioner could not be permitted to fill up the lacunae left in his case. Accordingly, this petition being devoid of any merit is dismissed. Pending miscellaneous application(s), if any, also stand disposed of. No orders as to costs."

2. In CMPMO No.853 of 2019 dated 05.12.2019, Rajesh Kumar and another vs. State Bank of India, it was held as under:-

"5. In my considered view, there is no infirmity with the order which has been passed by the learned trial Court. It is not the case of the present petitioners that the documents which were intended to be placed on record vide application under Order 7, Rule 14(3) of the Code of Civil Procedure came into existence only after the judgment was reserved in the civil suit. This demonstrates that the petitioners did not act diligently before the learned trial Court and in fact were trying to fill up the lacunae.

6. The provisions of Order 7, Rule 14(3) of the Code of Civil Procedure cannot be permitted to be abused by a litigant to be fill up lacunae as that is not intent of the said statutory provision.

7. This Court concurs with the findings returned by the learned trial Court that though procedural law is the hand maiden of justice, however, the procedure cannot be permitted

to be manipulated by a party to the prejudice of other."

3. In CMPMO No. 568 of 2023 dated 17.10.2023, titled as Madan Lal vs. Nanak Chand & others, it was held as under:-

"7. The provision of under Order 7, Rule 14 of the Civil Procedure cannot be allowed to be used to fill up the lacunae. Besides this in the course of exercise of its power under Article 227 of the Constitution of India, this Court is not to sit over as an Appellate Court upon the findings returned by the learned Court below, whose order is under challenge and if the view taken by the said Court is plausible on the basis of the facts before it, then this Court need not interfere."

4. In CM(M) No.231/2009 in CM No. 3959/09 dated 08.04.2009, titled Haldiram (India) Pvt. Ltd. & others vs. M/s Haldiram Bhujiawala & another, it was held as under:-

"21. In any event, both under the old Order 7 Rule 18 sub-rule (1) and new Order 7 Rule 14 sub-rule (3) CPC a new document can certainly be produced on behalf of plaintiff at the final hearing of suit, but the same has to be done with leave of the Court. It is not that the plaintiff has a legal vested right to file a document at a belated stage i.e. at the final hearing of the suit. The said provision gives a discretionary power to the Court, which needless to say has to be exercised in a reasonable and legal manner. In fact, this power has to be exercised sparingly and for some overpowering reason and not as a matter of routine. If petitioners" interpretation of Sub Rule 3 is accepted, it would make it impossible for the trial court to conclude the hearing of any suit.

22. Moreover, in the present case on perusal of applications filed by petitioners-plaintiffs

> *under Order 7 Rule 14 CPC, I am of the view that discretionary power with the trial Court to file additional documentary evidence has been rightly refused. I may mention that in the said applications filed by petitioners- plaintiffs, the only reason given for filing of these documents at a belated stage was, "on account of human error and inadvertence and oversight that the said documents escaped the notice of the Advocate." Consequently, it is not open to the petitioners-plaintiffs to now contend in the present proceedings that the documents could not be filed initially as they were not in their power and possession. In fact, from perusal of documents sought to be filed by the petitioners-plaintiffs, it is apparent that majority of these documents were all throughout in power and possession of petitioners-plaintiffs.*
>
> *24. Further, in my view, the impugned order neither suffers from any material irregularity nor the same is in excess of jurisdiction and, consequently, it calls for no interference in Article 227 jurisdiction."*

12. The legal principles as laid down by this Court clearly stipulate that the provision of Order 7 Rule 14 of CPC cannot be permitted to be invoked by a litigant or an accused to fill up the lacunae in the case as that is not intent of the said provisions. The provisions of Order 7 Rule 14 of CPC cannot be allowed to be used to fill up the lacuna.

13. Further, it has been held that in the course of exercise of its power under Article 227 of the Constitution of India, this Court is not to sit over as an Appellate Court upon

the findings returned by the learned Trial Court below whose order is under challenge and if view taken by the said Court is plausible on the basis of the facts before it, then this Court need not interfere.

14. The legal principle laid down by this Court clearly stipulate that the provisions of **Order 7 Rule 14 of the Code of Civil Procedure, 1908 (CPC)** cannot be permitted to be invoked by a litigant to fill up lacunae in the case.

15. Further, it has been held that while exercising powers under **Article 227 of the Constitution of India**, this Court will not sit over as an Appellate Court over the findings recorded by the learned Trial Court whose order is under challenge. If the view taken by the learned Trial Court is a plausible one based on the material and facts placed before it, this Court would ordinarily refrain from interfering with the same.

16. The perusal of plaint reveals that in paras 4 and 5 of the plaint, the Will and the sale deed, which are under challenge, have been mentioned which clearly shows that the plaintiff knew his case on which ground he intends to proceed in the matter. He had specifically mentioned that

the Will dated 02.02.1997 is forged and pursuant to that sale deed dated 27.08.2010, as executed by defendant No.1 in favour of defendants No. 2 & 3, is void ab initio. Therefore, the averments as made in applications are factually incorrect. The plaintiff has failed to show plausible reasons what prevented him to place on record the documents which he intends to do now in these proceedings that too at a belated stage. The suit has been filed in the year 2010 and the issues have been framed in 2017. Now at the fag end of the trial that too at the stage of rebuttal evidence, the applications have been filed in order to fill up the lacunae. The Hon'ble Apex Court as well as this Court has repeatedly held that a person who alleges has to prove. The onus to prove, that the Will dated 02.02.1997 and the sale deed 27.08.2010 are null and void, is on the plaintiff. Now, by means of the applications he intends to produce the copy of the sale deed dated 17.01.1978 and it is not the case of the plaintiff/petitioner that he was not knowing about the said Will prior to the institution of suit. Now after elapse of more than 16 years in order to have denovo trial the present

applications have been filed intentionally to drag the defendants in an uncalled for litigation.

17. The Hon'ble Apex Court while dealing with the provisions of Section 65(a) has laid down the law under what circumstances the provisions of Section 65(a) of the Indian Evidence Act has to be governed.

18. The Hon'ble Apex Court in ***Civil Appeal No. 4910 of 2023***, titled ***Vijay vs. Union of India and others (2023) 17 SCC 455*** held as under:-

> *"32. Section 63 of the Evidence Act gives an exhaustive definition declaring that secondary evidence "means and includes" the five kinds of evidence mentioned therein. Section 65 of the Evidence Act allows secondary evidence to be given of the existence, condition, or contents of documents under the circumstances therein mentioned. It provides for the circumstances in which secondary evidence can be used when the original document is unavailable or inaccessible. It is imperative to adhere to the principles outlined in these sections, including the proper documentation and authentication, to successfully produce secondary evidence in legal proceedings.*
>
> *36. We may now consider Section 35 of the Stamp Act which forbids the letting of secondary evidence in proof of its contents. The section excludes both the original instrument and secondary evidence of its contents if it needs to be stamped or sufficiently stamped. This bar as to the admissibility of documents is absolute. Where a document cannot be received in evidence on the ground that it is not duly stamped, the*

secondary evidence thereof is equally inadmissible in evidence."

19. A Co-ordinate Bench of this Court in ***CMPMO No. 235 of 2018,*** titled ***Sh. Amar Nath vs. Sh. Bhagat Chand***, ***2019 (2) SLC 972*** held as under:-

"4. Relying upon the judgments rendered by the Hon'ble Supreme Court in cases of J. Yashoda Vs. K. Shobha Rani, (2007) 5 Supreme Court Cases, 730, M.Chandra Vs. M. Thangamuthu, (2010) 9 Supreme Court Cases 712, H. Siddiqui Vs. A. Ramalingam (2011) 4 Supreme Court Cases 240 & U. Sree Vs. U. Srinivas, (2013) 2 Supreme Court Cases 114, it can be concluded that secondary evidence in respect of an ordinary document can be allowed in case following requirements inter-alia amongst others are met :-

i) For leading secondary evidence, non production of the document in question has to be properly accounted for by giving cogent reasons inspiring confidence.

ii) The party should be genuinely unable to produce the original of the document and it should satisfy the Court that it has done whatever was required at its end. It cannot for any other reason, not arising from its own default or neglect produce it.

iii) Party has proved before the Court that document was not in his possession and control, further that he has done, what could be done to procure the production of it.

iv) The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original.

5. The record of the case clearly indicates that in the written statement, even the date of the agreement is not mentioned. The written statement was filed on 18.06.2012. The matter was fixed for defendant's witnesses w.e.f. 22.11.2014. The application for leading secondary evidence was moved on 10.07.2017, five years after the filing of written statement. The reason for delay advanced by the petitioner/defendant that he came to know about the existence of only photocopy of the agreement in the court file, at the time of examination of defendant's witnesses, does not inspire confidence. From 22.11.2014, the matter was fixed for defendant's witnesses. The record of learned Court below demonstrates that statements of DW No.1, DW No.2,DW 7 No.3 had already been recorded on 20.12.2016. There is no reason forthcoming in the application, which sufficiently and cogently explains the delay in moving the application.

6. The requirements laid down under Sections 63 and 65 of the Indian Evidence Act for permission to lead secondary evidence are not met in the instant case. There is no averment made in the application that the photocopy of the agreement on the record is made from the original, when it was made and who compared it. The loss of the original agreement has not been accounted for in accordance with the provisions of Section 65 of the Indian Evidence Act. The application is bereft of the particulars, which are required for discharging the proof, required under Section 65 of the Indian Evidence Act.

7. Merely, a vague averment made in the application that the document has not been traced, is not sufficient to allow the application for leading secondary evidence. Therefore, no illegality can be found in the order passed by the learned Trial Court."

20. A Co-ordinate Bench of this Court in ***CMPMO No. 322 of 2017***, titled ***Sh. Raj Kumar and another vs. Sh. Milap Chand 2025 (2) HLJ 929*** held as under:-

> *"7. Coming back to the facts of the present case, a perusal of the application filed by the petitioners under Section 65 of the Indian Evidence Act demonstrates that the prayer therein was that the petitioners/plaintiffs may be allowed to lead secondary evidence by placing on record a Photostat copy of the agreement executed between the plaintiffs and the defendant dated 07.09.1992. It was averred in the application, which is appended with the petition as Annexure P-5 that at the time of the execution of agreement between the plaintiffs and the defendant on 07.09.1992, in respect of the sale of the suit land vis-à-vis which the suit for specific performance was filed by the plaintiffs, one photocopy of the agreement was made from the judicial paper i.e., carbon copy of the agreement as well as from the stamp paper copy. The photocopies were prepared for the petitioners and non-applicant was in possession of the original copy of agreement. The original copy of agreement dated 07.09.1992 was handed over to the defendant in the presence of the witnesses. Subsequently, defendant manipulated and with an intention to defraud the plaintiffs, he took possession of the carbon copy of the agreement by handing over the photocopy of the agreement to the plaintiffs. It was in this backdrop, that a prayer was made to lead additional evidence.*
>
> *8. Thus, it is evident from the averments made in the application itself that the payer therein was to place a photocopy of the carbon copy on record and, as nothing was on record to suggest that the 'Copy' of which Mark-AX itself was a photocopy was compared with the*

> *original document at any time, therefore, no perversity can be attributed to the order under challenge and the learned Court below rightly dismissed the application. Learned Court rightly held that in the given circumstances, permission as was being prayed by the petitioners to lead secondary evidence, could not have been granted, as grant of permission would have been in violation of the permission of Section 65 of the Evidence Act."*

21. The applications, as filed by the plaintiff/ petitioner, do not meet the requirement of Section 65(a) of the Indian Evidence Act as no case has been made out for leading the secondary evidence.

22. The petitioner has tried to make out a case by invoking the provisions of Section 65 of the Indian Evidence Act and provisions of Section 65(a) reads that when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved, then notice under Section 66 is required to be issued. Thereafter, learned counsel for the petitioner has tried to make out the case that his case falls under the provisions of Section 65 since the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is sought to be proved or by his representatives in interest.

23. Learned counsel for the petitioner has tried to make out a case and by taking help from the statement of Palvinder Singh which has been placed on record as Annexure P-7, it is contended that the deceased vide sale deed dated 17.01.1978 purchased the agriculture land from Durga Dass. The original sale deed is in possession of defendant No.3-Krishan Kumar alias Palvinder Singh. That defendant No.3 while appearing as a witness admitted the possession of the sale deed, but when was required to bring the original, he refused to produce the same on the ground that it has been misplaced.

24. This Court has gone through the contents of Annexure P-7, the copy of the statement as made by Palvinder Singh and in view of this Court, there is no such averment with regard to execution of the sale deed and that the original sale deed is in his possession. In the statement nowhere has he stated that original copy of the sale deed dated 17.01.1978 is in his possession. Further, it has not been clarified by the learned counsel for the petitioner that when this witness namely Shri Krishan Kumar alias

Palvinder Singh refused to produce the same on the ground that it has been misplaced.

25. The perusal of the statement of Palvinder Singh reveals that in the year 2019 at the time of making statement, he was aged about 40 years old. Meaning thereby, he must have born in the year 1979. It is highly improbable that how the original copy of the sale deed had been handed over to Krishan Lal alias Palvinder Singh, when he was one year old, this is beyond reasoning. The ingredients and provisions of Section 65 are not attracted in the present case at all and the statement on which the petitioner is relying is of no help and nowhere in his deposition has he stated that the original sale deed was in his possession and that he has refused to produce the same on the ground that it has been misplaced. Therefore, his case is not attracted under the provisions of the Indian Evidence Act. Thus, the Court below has rightly rejected the application filed by the petitioner for leading secondary evidence.

26. This Court is of the opinion that the said statement does not satisfy the requirements of Section 65 of

the Indian Evidence Act, 1872. Therefore, no case is made out for the grant of relief to the petitioner.

27. The provision of Section 45 of Indian Evidence Act reads as under: -

> "*45. Opinions of experts-When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting [or finger impressions] the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger-impressions] are relevant facts. Such persons are called experts."*

28. That no case is made out for invoking the provisions of Section 45 of the Indian Evidence Act. The learned trial Court has rightly come to the conclusion that issues were framed on 19.05.2017 and the present applications have been preferred after the closer of the evidence by the defendants. The suit is hanging fire for the last more than 17 years, however, till date the evidence has not been concluded by the plaintiff and the litigation cannot be taken for perpetuity. Therefore, no error or infirmity has been committed by the Court below while dismissing the applications under order 7 Rule 14 of CPC read with Section 65 (a) of Indian Evidence Act and application under Section 45 of the Indian Evidence Act. The plaintiffs are proceeding

with the case very well knowing their case and it is not the case of the plaintiff that some new facts have come to his knowledge and that requires the said fact to be placed on record. The issues are very clear and unambiguous and the parties are contesting the case well knowing their case.

29. From the perusal of the entire attending facts and circumstances of the case, this court is of the opinion that the learned trial Court has rightly passed the order by rejecting the applications which are highly belated and without any merit. Therefore, this Court does not find any illegality or infirmity in the impugned order. Consequently, the present petition deserves to be dismissed and is accordingly dismissed.

All the pending miscellaneous application(s) if any, shall also stands disposed off.

(Romesh Verma)
Judge

March 24, 2026
(Nisha)