IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 112 of 2008

Reserved on: 24.3.2026

Date of Decision: 15.5.2026

Karmo & ors. ...Appellants

Versus

State of HP & ors. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *Yes.*

For the Appellants	:	Mr C.N. Singh, Advocate.
For Respondent No.1	:	Mr Lokender Kutlehria, Additional Advocate General.
For Respondents No.3, 5 to 12, 14, 16 to 23, 25 to 28 and 30.	:	Mr Nimish Gupta, Advocate.

Respondent No. 24 is stated to have expired.

For Respondents No.13(a), 29(b) to 29(g)	:	None

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 29.11.2007, passed by learned District Judge, Chamba, H.P. (learned Appellate court), vide which the

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

judgment and decree dated 28.2.2006, passed by learned Civil Judge (Junior Division), Chamba, HP (learned Trial Court), were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience.*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court for seeking a declaration that the plaintiff is the owner-in-possession of the suit land described in the head note of the plaint by virtue of the Will executed by Molam in their favour and the order dated 4.5.1987, passed by Collector as affirmed by the Divisional Commissioner on 28.6.1988 and mutation No. 226 dated 24.8.1989 are illegal, null and void which do not affect the rights of the parties. A consequential relief of permanent prohibitory injunction for restraining the defendants from interfering with the ownership and possession of the plaintiff was also sought. A relief in the alternative for possession was claimed in case the defendants succeed in taking possession of the suit land during the pendency of the suit. It was asserted that the suit land was allotted to Molam. He executed a Will in favour of the plaintiffs on 22.10.1981 in lieu of

the services rendered by them to him. A mutation of inheritance was sanctioned in favour of the plaintiff on 24.8.1986. An appeal was preferred, which was allowed on 4.5.1987. The plaintiffs filed an appeal before the Divisional Commissioner, which was dismissed on 28.6.1988. The defendants started interference with the possession of the plaintiff based on the mutation; hence, a suit was filed to seek the relief mentioned above.

3. The suit was opposed by defendants No. 1 and 2 by filing a written statement taking preliminary objections regarding the suit being barred by limitation, lack of cause of action and jurisdiction, Molam not being competent to bequeath the land granted to him under the Nautor Scheme, 1975, Molam having violated the conditions of the grant made in his favour, the suit having not been properly valued for court fees and jurisdiction, and no legal and valid notice having been served upon the defendants. The contents of the plaint were admitted to the extent that the suit land was allotted to Molam as a Nautor land. It was admitted that a Will dated 22.10.1981 was produced by the plaintiff before learned AC 2nd Grade for mutation on 11.4.1984. The defendants objected to the mutation but learned AC 2nd Grade sanctioned the mutation. This order was set aside

by the Sub Divisional Collector, Chamba, HP. The order of the Sub Divisional Collector was upheld by the learned Divisional Commissioner, Kangra. The suit land could not have been transferred to any person for a period of 15 years from the date of allotment. Molam had failed to break up the land within the period of two years from the date of taking over the possession of the land. There is no infirmity in the orders passed by the learned Collector and the Divisional Commissioner; hence, it was prayed that the suit be dismissed.

4. A separate written statement was filed by defendants No. 3, 4, 10, 13 to 16 and 19 to 21, taking preliminary objections regarding the lack of cause of action and the suit being barred by limitation. It was admitted on merits that the suit land was allotted to Molam as Nautor. It was asserted that the suit land was allotted to Molam with the active connivance of the plaintiff, who wanted the Nautor for himself, but his application and appeal were dismissed. The mutation was challenged by the defendants and was set aside by the learned Collector, whose decision was upheld by the learned Divisional Commissioner. The defendants are in possession of the suit land as *Bartandaran*,

having grazing and other rights recorded in *Naksha Hak Bartan*. Therefore, it was prayed that the suit be dismissed.

5. A replication denying the contents of the written statement and affirming those of the plaint was filed.

6. Learned Trial Court framed the following issues on 27.5.1999: -

1. Whether late Sh. Molam was the owner in possession of the suit land, as alleged? OPP.
2. Whether Sh. Molam executed a valid Will on 21.10.1981 in favour of the plaintiffs, as alleged? OPP.
3. Whether the order dated 4.5.1987 passed by the Collector, Chamba, and the order dated 28.6.1988 passed by the Divisional Commissioner are wrong and illegal as alleged? OPP.
4. Whether the plaintiffs are entitled to a decree for possession of the suit land in the alternative as claimed? OPP.
5. Whether the suit is time-barred? OPD.
6. Whether the plaintiffs have a cause of action? OPP.
7. Whether no legal and valid notice under Section 80 CPC has been served by the plaintiffs, if so, its effect? OPD.
8. Whether the suit has not been properly valued for the purpose of the court fee and jurisdiction? OPD.
9. Whether this Court has no jurisdiction to entertain and dispose of the present suit? OPD.
10. Whether the suit land is reverted to the State of H.P. as alleged in preliminary objection No.4 of the written statement filed by defendants No.1 and 2? OPD.
11. Relief.

7. The parties were called upon to produce the evidence, and plaintiffs examined plaintiff No.2 Prabh Dyal (PW1), Deena Nath (PW2), Riju (PW3), Nudu (PW4) and Bajari Ram (PW5). The defendants examined Basant Ram (DW1), M.P. Puri (DW2) and Budhia Ram (DW3). Reeju Ram was re-examined as Court witness (CW1).

8. The learned Trial Court held that Molam had not executed a valid Will, and the order passed by the learned Collector and Divisional Commissioner was valid. Hence, it dismissed the suit on 29.11.2000.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal, which was dismissed by the learned District Judge, Chamba, HP vide judgment and decree dated 2.12.2003.

10. Being aggrieved by the judgment and decree passed by the learned Courts below, the plaintiff filed an appeal before this Court, which was registered as RSA No. 46 of 2004. This Court found that Ramkishan had died during the pendency of the first appeal, and his legal representatives were not brought on record. Hence, the judgment and decree passed by the learned

Appellate Court were null and void, and the matter was remitted to the learned Appellate Court to decide the question of abatement.

11. An application for the recall of Reeju Ram (DW3) for further examination was filed before the learned Appellate Court, which allowed the application and remitted the matter to the learned Trial Court for a fresh decision as per the law after recording the statement of Reeju Ram.

12. Learned Trial Court recorded the statement of Reeju Ram (DW3) and held that the suit land was granted as a Nautor to Molam. The plea taken by the defendants that Molam had not cultivated the land after the allotment was probable. Molam was not competent to execute the Will in view of the bar of transfer by the grantee within 15 years of the grant. The land was rightly resumed by the State, and the orders passed by the Collector and Divisional Commissioner did not suffer from any infirmity. Hence, the learned Trial Court answered Issues No.1 and 10 in the affirmative, Issues No.2 to 7 in the negative, Issues No.8 and 9 as not pressed and dismissed the suit.

13. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiffs filed an appeal, which was decided by the learned Additional District Judge, Chamba (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that the land was allotted to Molam as a Nautor land. The scheme of allotment restricted the transfer within 15 years from the date of the allotment. Molam could not have executed a Will in favour of the plaintiffs. Molam had not cultivated the land within two years from the date of taking over possession. The State was entitled to resume the land for violation of the conditions of the allotment. The orders passed by the learned Collector and Divisional Commissioner were valid. There was no infirmity in the judgment and decree passed by the learned Trial Court. Hence, the appeal filed by the plaintiff was dismissed.

14. Being aggrieved by the judgment and decree passed by the learned Courts below, the plaintiffs have filed the present appeal, which was admitted on the following substantial questions of law on 7.5.2009: -

a. Whether the Court below have not discussed the entire oral as well as documentary evidence on record in view of

the law laid down by the Apex Court reported in 2006 Vol. IX SCC 633.

b. Whether the judgment/decree dated 29.11.2007 passed by the Court below is perverse as the Courts below were not right in interpreting the Nautor Land Scheme, 1975, in the context of the allottee's right and competency to execute the will concerning the Nautor land, ignoring the provisions of law?

d. Whether executing a Will amounts to a transfer, in terms of the Nautor Land Scheme, which bars "transfer" of the Nautor land by the grantee, or his successor's interest, for any purpose, within a period of twenty years?

e. Whether the judgment/decree dated 29.11.2007 passed by the Court below is perverse and contradictory, as on the one hand it held that the Will, i.e. Ex.PW3/A was duly executed, whereas on the other hand, it is holding the Will was not a valid Will?

15. I have heard Mr C.N. Singh, learned counsel for the appellants, Mr Lokender Kutlehria, learned Additional Advocate General for respondent No.1/State and Mr Nimish Gupta, learned counsel for respondents No.3, 5 to 12, 14, 16 to 23, 25 to 28 & 30.

16. Mr C.N. Singh, learned counsel for the appellants, submitted that the learned Courts below erred in holding that the Will amounts to a transfer. Section 5 of the Transfer of Property Act defines the term 'transfer' as a transfer inter vivos, meaning that it can be amongst living persons. A Will takes place after the death of a person and does not amount to a transfer.

The learned courts below failed to give meaning to the plain language of the transfer and erred in holding that the Will executed by Molam fell within the prohibition of transfer. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Courts below be set aside.

17. Mr Lokender Kutlehria, learned Additional Advocate General, for respondent No.1-State, submitted that H.P. Grant of Nautor Land to Landless Person and Other Eligible Persons Scheme, 1975, specifically prohibits the transfer for a period of 20 years from the date of taking over of the possession. Learned Courts below had rightly held that the transfer under the scheme could not be interpreted with reference to the provision of the Transfer of Property Act and had to be given a purposive interpretation to achieve the purpose of the scheme. Molam had not cultivated the land within two years of the allotment, and the land was rightly resumed by the State. There is no infirmity in the judgments and decrees passed by learned Courts below. Therefore, he prayed that the present appeal be dismissed.

18. Mr Nimish Gupta, learned counsel for respondents No. 3, 5 to 12, 14, 16 to 23, 25 to 28 and 30, adopted the submissions of Mr Lokender Kutlehria, learned Additional Advocate General for respondent No.1-State and prayed that the appeal be dismissed.

19. I have given a considerable thought to the submissions made to the bar and have gone through the records carefully.

Substantial Question of Law (d).

20. It is an admitted case of the parties that the land was allotted as Nautor to Molam. Prabh Dyal (DW1) admitted in his cross-examination that the land was allotted to Molam as Nautor, and it was earlier owned by the State. The State Government has framed the Himachal Pradesh Grant of Nautor Land to Landless Persons and other Eligible Persons Scheme, 1975. Clause 11 of the scheme provides the restriction on transfer and reads as under: -

> 11. Restriction on transfer. - The grantee shall not transfer the land granted under this scheme to any person within a period of 20 years from the date of taking over possession of the land by him. In the event of contravention of the provisions of this para, the grant

> shall be liable to be resumed by the State Government, and no further allotment of land should be made to him thereafter. Similarly, if he fails to break up the land within a period of two years from the date of taking over the possession, the grant shall be liable to be resumed.

21. It is apparent from the perusal of the Section that the grantee cannot transfer the land granted under the scheme to any person within a period of 20 years from the date of taking possession, and in case of the violation, the grant shall be liable to be resumed by the State Government. In the present case, Molam had executed a Will in favour of the plaintiffs. The validity of the Will was concurrently upheld by both the learned Courts below, but they held that the execution of the Will amounts to a transfer, and Molam violated the conditions laid down in clause 11 by executing a Will.

22. The world transfer has not been defined in the definition clause of the scheme. Therefore, its definition contained in the Transfer of Property Act has to be seen to determine its meaning. It has been stated in the ***Principles of Statutory Interpretation by G P Singh, 15th Edition, LexisNexis India,*** that the use of the same words in a later statute gives rise to a presumption that they are intended to convey the same meaning

as in an earlier statute. It has been observed at page 237 in para 4.4.2:

> "...[U]se of the same words in a similar connection in a later statute gives rise to a presumption that they are intended to convey the same meaning as in the earlier statute.481 On the same logic, when words in an earlier statute have received an authoritative exposition by a superior court, use of the same words in a similar context in a later Act will give rise to a presumption that Parliament intends that the same interpretation should also be followed for the construction of those words in the later statute. The rule, as stated by Griffith, CJ and approved by the Privy Council (Lord Halsbury), is:
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> > When a particular form of legislative enactment, which has received authoritative interpretation, whether by judicial decision or by a long course of practice, is adopted in the framing of a later statute, it is a sound rule of construction to hold that the words so adopted were intended by the Legislature to bear the meaning which has been so put upon them.
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> The rule in the form stated by James, LJ and approved by Lord Buckmaster is as follows:
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> > When once certain words in an Act of Parliament have received a judicial construction in one of the superior courts, and the Legislature has repeated them without alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a court of competent jurisdiction has given to them.
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> James, LJ himself reiterated the rule in slightly different words and, according to Lord Macmillan, in a better form, in a later case, thus:

> If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the same subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the Legislature when using well-known words upon which there have been well known decisions uses those words in the sense which the decisions have attached to them." (footnotes omitted)

23. It was laid down by the Hon'ble Supreme Court in ***Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer, (2004) 1 SCC 755: 2004 SCC OnLine SC 64,*** that reference to an earlier statute, is permissible while construing a subsequent statute. It was observed at page 760:

> "**12.** We have critically examined the definition clause in the light of the arguments advanced on either side and have compared it with the definitions given in other labour enactments. On the doctrine of "*pari materia*", reference to other statutes dealing with the same subject or forming part of the same system is a permissible aid to the construction of provisions in a statute. See the following observations contained in Principles *of Statutory Interpretation* by G.P. Singh (8th Edn.), Syn. 4, at pp. 235 to 239:
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> "*Statutes in pari materia*
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>> It has already been seen that a statute must be read as a whole, as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia, i.e. statutes dealing with the same subject-matter or forming part of the same system. Viscount Simonds, in a passage already noticed, conceived it to be a right and duty to construe every word of a

> statute in its context, and he used the word context in its widest sense, including 'other statutes in pari materia'. As stated by Lord Mansfield 'where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other'.
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> ***
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> The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject; it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context; it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes; and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute."

24. It was held in ***A v. Hoare, [2008] 2 WLR 311*** that 'there is a good deal of authority for having regard, in the construction of a statute, to the way in which a word or phrase has been construed by the courts in earlier statutes.' Therefore, the meaning of the term transfer has to be construed with reference to the meaning assigned to it in the Transfer of Property Act, 1882 as interpreted by the Courts.

25. Section 5 of the Transfer of Property Act defines the transfer of property as an act by which a living person conveys property in present or in future to one or more other living persons or himself or to himself and one or more other living persons, and to transfer property means to perform such an act. Thus, as per the meaning of the term 'transfer of the property', the transfer can be between two living persons. The Will does not operate between two persons as it comes into effect after the death of a person, and does not fall within the definition of the transfer. It was laid down in ***Mahboob Sirfraz Vanth v. Raja Venkatadri Appa Rao, 1922 SCC OnLine Mad 83*** (FB) that the Transfer of Property Act applies only to alienations *inter vivos* and has no application to the disposal of property by will. It was held in ***Raja Surendra Vikram Singh v. Rani Munia Kunwar, 1943 SCC OnLine Oudh CC 78: AIR 1944 Oudh 65*** that a will is not a transfer, but the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. It was held in ***Lala Devi Dass v Panna Lal, AIR 1959 J & K 62 (FB),*** that the disposal of the property by will does not fall within the meaning of the word "transfer" as defined in the Transfer of Property Act. A similar view was taken

in ***N. Ramaiah v. Nagaraj S., 2001 SCC OnLine Kar 191: ILR 2001 Kar 3466,*** wherein it was observed at page 3473:

> **11.** The Transfer of Property Act, 1882 ('TP Act' for short) deals with transfers *inter vivos*, that is, the act of a living person, conveying a property in present or in future, to one or more living persons. The provisions of the TP Act are inapplicable to testamentary successions, which are governed by the Indian Succession Act, 1925. Section 2(h) of the Indian Succession Act defines 'Will' as the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.
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> **12.** The differences between a transfer and a Will are well recognised. A transfer is a conveyance of an existing property by one living person to another (that is, a transfer *inter vivos*). On the other hand, a Will does not involve any transfer, nor effect any transfer *inter vivos*, but is a legal expression of the wishes and intention of a person in regard to his properties which he desires to be carried into effect after his death. In other words, a Will regulates succession and provides for succession as declared by it (testamentary Succession) instead of succession as per personal law (non-testamentary Succession). The concept of transfer by a living person is wholly alien to a Will. When a person makes a Will, he provides for testamentary succession and does not transfer any property. While a transfer is irrevocable and comes into effect either immediately or on the happening of a specified contingency, a Will is revocable and comes into operation only after the death of the testator. Thus, to treat a devise under a Will as a transfer of an existing property in future is contrary to all known principles relating to the transfer of property and testamentary succession.

26. It was held by this Court in ***Col R S Kashyap vs Sumena Sood 2006 (2) Shim. LC 351*** that will does not constitute transfer within the meaning of expression "transfer" contemplated under Section 113 of HP Tenancy and Land Reforms Act. It was observed:-

> 8. Coming to the next point. A bare reading of Section 113 of the H.P. Tenancy and Land Reforms Act shows that what is prohibited by the provision is a transfer inter-vivos. The Will takes effect after the death of the testator. Learned counsel has relied upon the provisions of Section 118 of the Act, which bars the transfer of land by sale, gift, will, exchange, lease, mortgage with possession etc. in favour of a person, who is a non-agriculturist. Section 118 specifically bars the transfer even by a will. As a matter of fact, will as such does not create any right, title or interest nor does it operate transfer the property immediately to the beneficiary. The testator may at any time during his life time revoke the will. It becomes effective only on the death of the testator and that too if the remains un-revoked. Therefore, a will cannot be said to be a mode of transfer in the sense the term 'transfer' has been used in Section 113 of the H.P. Tenancy and Land Reforms Act, which puts moratorium on the transfer of the property vested in the tenant, under Section 104 of the H.P. Tenancy and Land Reforms Act.

27. Learned Courts below held that the world transfer defined in the Transfer of Property Act cannot be applied to the scheme because a purposive interpretation has to be given to

fulfill its objects. This conclusion is not sustainable. Once the legislature defines a term in a statute and uses it in a subsequent statute without any definition, the legislature is deemed to have used the word in the sense in which it was defined in the earlier statute unless it expresses an intention to the contrary. Therefore, in the absence of any definition, the words defined in an earlier statute can be used to interpret the same words used in subsequent statutes. In the present case, the legislature had defined the term transfer in the Transfer of Property Act, 1882. This term was so prevalent that the framers of the scheme would have been aware of its meaning. Still, they did not define the term transfer to include Will, which shows that they wanted to adopt the meaning assigned to the world transfer in the Transfer of Property Act.

28. The State Legislature has specifically including Will in Section 118 of the HP Tenancy and Land Reforms Act, which shows the conscious decision of the Legislature to include the Will in the transfer. No such decision was expressed in the case of Nautor Scheme, and the transfer cannot be interpreted to include the execution of the Will. The words of the scheme were plain, and no rule of interpretation was required to interpret

them. Therefore, learned Courts below erred in holding that the transfer would include the transfer by way of a Will, and this substantial question of law is answered accordingly.

Substantial Question of Law (c):

29. Learned Courts below also held that Molam had failed to cultivate the land within two years, and the State had rightly resumed the land. This conclusion cannot be sustained. A mutation of inheritance was sanctioned in favour of the plaintiffs based on a Will executed by Molam in their favour. The attestation of the mutation was challenged before the Collector, and the Collector set aside the order. The order of the Collector has not been placed on record; the order of the Divisional Commissioner dismissing the appeal filed by the plaintiffs was placed on record (Ex.DA), which mentions that the mutation was not properly attested because it was attested in a different village, preventing the objectors from being present on the site, the attested copy of the Will was not placed on record, and the suit land was a Nautor land and should have vested in the State Government after the death of Molam.

30. Thus, only the validity of the mutation was determined by the learned Divisional Commissioner. The State Government had not resumed the land because Molam had failed to cultivate it within two years of the allotment. The defendants did not mention in their written statement that they had initiated any proceeding for resumption of land during the lifetime of Molam because of the violation of the conditions of the allotment. Therefore, in these circumstances, the learned Courts below could not have determined the question whether Molam had cultivated the land within two years of the allotment or not. This option has been given to the State and cannot be exercised by the Civil Courts. Therefore, both the learned Courts below erred in holding that the suit land could be resumed by the State because of the non-cultivation of the land within two years, and this substantial question of law is answered accordingly.

Substantial Question of law (b):

31. The judgment in ***Orissa Hydro Power Corpn. Vs. Satwant Singh Gill (2006) 9 SCC 663*** deals with the omission of the High Court to consider the relevant factor in the appeal and

turns on its own facts. In the present case, the learned Appellate Court had discussed the pleas raised before it and had affirmed the judgment of the learned Trial Court. Therefore, it cannot be said that the learned Appellate Court had failed to exercise the jurisdiction vested in it. Hence, this substantial question of law is answered accordingly

Substantial Question of law (e):

32. The State had contended before the learned Courts below that the execution of the Will amounts to a transfer of the land. This question would only have arisen after the validity of the Will was established because if the Will was invalid, it would have no effect, and the question of transfer would not arise. Therefore, there was no perversity in the judgments and decrees passed by learned Courts below discussing whether the execution of the Will amounts to a transfer after upholding the validity of the Will. Hence, this substantial question of law is answered accordingly.

Final order:

33. In view of the above, the present appeal is allowed, and the judgments and decrees passed by the learned Courts

below are ordered to be set aside, and the suit of the plaintiff is decreed, as prayed.

34. Pending application(s), if any, also stand(s) disposed of.

35. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

15th May, 2026
(Chander)