

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 79 of 2025

Reserved on: 05.03.2026

Decided on: 24.03.2026

Manu Sharma

...Petitioner

Versus

Om Dutt and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the petitioner: Mr. Atharv Sharma, Advocate.

For the respondents: Mr. Sumit Sharma, Advocate, for respondents No. 1 & 2.

Jiya Lal Bhardwaj, Judge

By way of present petition, the petitioner/plaintiff No. 2 has challenged the common order dated 29.05.2025, passed by Senior Civil Judge, Court No. 1, Amb, District Una, Himachal Pradesh, in Civil Suit No. 178-I/2016, titled, **Shiv Dutt & Ors. vs. Om Dutt & Ors.**, whereby two applications filed by the petitioner/plaintiff along with other plaintiffs, who have been arrayed as proforma-respondents, under Order 26 Rule 9, 10A CPC and under Order 39 Rule 7 CPC, have been dismissed.

2. The petitioner/plaintiff along with the proforma

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

respondents (hereinafter referred as the plaintiffs) has filed a suit seeking decree for declaration to the effect that the parties are coparceners and the property/land in the hands of Sh. Lekh Raj, predecessor-in-interest of parties is an ancestral Joint Hindu family Coparcenary property devolved after the death of common ancestor Sh. Mangru i.e. land measuring 93,732.59 Sq. D.M. as mentioned in the plaint and the plaintiffs have $\frac{1}{4}$ share, respondents No.1 and 2/defendants No.1 & 2 (for short defendants No. 1 & 2) and proforma defendants No. 3 & 4 have $\frac{1}{4}$ share, defendant No. 5 has $\frac{1}{4}$ share, defendant No.6 has $\frac{1}{4}$ share, in the said Joint Hindu family Coparcenary property, and have rights since their birth in the afore said property.

3. The entries in the name of Sh. Lekh Raj alone is contrary to the actual and factual position on the spot and are against the rights of the plaintiffs, defendants and proforma defendants. The entries in the name of defendant No.1 in respect of land measuring 4577.82 Sq. D.M.as detailed in sub head(K) on the basis of decree passed in the Civil Suit No. 174/95 titled as **Om Dutt Vs Lekh Raj**, decided on 25.11.1995 and decree sheet prepared on 04.04.1996, are also wrong and incorrect and the decree of

the Court is collusive and has been obtained by playing fraud, mis-representing the facts and behind the back of the plaintiffs just to infringe the legal valuable rights of the plaintiffs and performa defendants. The same is not binding upon the rights of the plaintiffs and performa defendants. Hence, mutation No. 193 and subsequent entries in the revenue record based upon the aforesaid decree are null and void-ab-initio and have no effect in the eyes of law.

4. Defendant No. 2 has no right, title or interest what-so-ever in the suit land by virtue of alleged sale deeds. The entries in respect of land measuring D.M. 6035.04 i.e. Land measuring 5201.85 Sq. D.M. comprised of Khewat No. 46 Min, Khatoni no. 58 Min, Khasra No. 1332, 1333, 1351, 1353, 1354, 1375 & 1377 Kitta 7 as entered in Jamabandi 2010-11 situated in Up-Mohal Ram Nagar Gagret, Land Measuring 35.69 Sq. D.M. as fully detailed in Sub head(L) above and situated in up-mohal Indira Nagar Gagret, Land measuring 797.50 Sq D.M. i.e. Land measuring 475.00 Sq. D.M. being $\frac{1}{2}$ share out of total 950.00 Sq. D. M. comprised of Khewat No. 52, Khatoni no. 65, 66, Khasra No. 1975, 2290, 1976, 1977, Kitta 4 detailed In Sub Head (B) Situated in Village Gagret as entered in Jamabandi for the year 2012-

13 and Land measuring 322.50 Sq. D. M. being $\frac{1}{4}$ share out of total 1290.00 Sq. D.M. comprised of Khewat No. 58, Khatoni No. 74, Khasra No. 1973, 1974, 2291 Kitta 3.as fully detailed in sub head (F) situated in village Gegret as entered in Jamabandi 2012-13, on the basis of sale deed No.2474, 2475 and 2476 registered in The Office of Sub-registrar Amb on dated 22-08-2015, executed by defendant No. 1, being the General Power Attorney of Sh. Lekh Raj, one wrong, illegal, void, baseless, ineffective, mere paper and conventional entries and against the rights of the plaintiffs and proforma defendants. The aforesaid sale deeds were executed without any legal necessity, and are not binding upon the rights of the plaintiffs and proforma defendants. The deceased Lekh Raj, predecessor-in-interest of parties, never executed the registered Power of Attorney No. 146 dated 12.06.2012, during his life-time and the alleged Power of Attorney, if any, is a result of fraud, undue influence, mis-representation and fabrication in collusion, connivance with and active help of marginal witnesses by defendant No. 1. Defendant No. 1 in collusion and connivance with marginal witnesses, firstly fabricated/manufactured a false and baseless Power of

Attorney and then executed false forged registered sale deed Nos. 2474, 2475 & 2476 dated 22.08.2015, in favour of defendant No. 2, who is wife of defendant No.1, in order to defeat the valuable rights of the plaintiffs and proforma defendants and to grab the best and valuable land of the parties situated in the prime location.

5. The will dated 24-04-2012 registered in the Office of sub-registrar Amb, is also false, fabricated and forged one and is the result of fraud, undue influence, misrepresentation. Though the execution of alleged will is not admitted, but in case the will is proved as executed by the deceased Lekh Raj, even then also the predecessor in interest of Sh. Lekh Raj, had no right to execute a will during his life time more than his actual Share i.e. 1/5 share out of the suit land being Joint Hindu family coparcenary property. A decree for issuance of permanent injunction, as a consequential relief, restraining defendants No.1 & 2 from forcibly ousting the plaintiffs and proforma defendants from their peaceful possession, alienating or encumbering the suit land in any manner, changing the nature, classification of suit land, cutting removing, selling any tree therefrom till partition, may kindly be passed with costs in the interest of

justice. Any other relief to which the plaintiffs are found entitled in the facts and circumstances of the present case, may also be awarded to the plaintiffs, in the interest of justice.

6. During the pendency of the suit, the plaintiffs filed an application under Order 26 Rule 9, 10A & Section 151 CPC for the appointment of Sadar Kanungo/Moharer as an expert for preparing the report of excerpt and history of the property in the hands of deceased Lekh Raj S/o Sh. Mangtu, S/o Ram Dass, S/o Arjun of Gagret, Tehsil at present Ghanari, Distt. Una, HP.

7. It was averred in the application that the property in the hands of predecessor-in-interest of parties, is joint Hindu Coparcenary property, which was previously owned and possessed by the common ancestor Sh. Arjan and after his death the same was devolved upon Sh. Ram Dass. Sh. Ram Dass died on 10.03.1924 and his estate devolved vide mutation No. 484 dated 19.05.1928 upon Sh. Mangtu and Sh. Ralla. The predecessor-in-interest, Sh. Mangtu was expired in the year 1965 in the village and his estate was devolved upon Sh. Lekh Raj vide mutation No. 2029 dated 24.07.1965. After his death, the property is

jointly owned and possessed by the parties, as stated above. Copies of jamabandi for the year 1922-23, 1946-47, 1965-66 along with Hindi version, is attached and copies of Mutation No.484, in respect of the estate of Sh. Ram Dass and Mutation No.2029 in respect of the estate of Sh.Mangtu, are also attached.

8. In the year 1979-80, the village came under consolidation operations and the consolidation authorities carved out new Khasra numbers in lieu of old Khasra numbers. The copy of Missal Hakiyat Ishtemal for the year 1979-80 is attached. In the year 1990-91, the village came under settlement operations and settlement authorities carved out Mohal Gagret, Up-mohals, Indira Nagar, Ram Nagar, Dev Nagar, Krishna Nagar of village Gagret and converted the measurement into metric system and assigned new Khasra numbers in lieu of old Khasra numbers.

9. Defendants No.1 & 2, who are clever and shrewd persons, in order to grab the valuable land of the predecessor-in-interest of parties, in a clandestine manner, taking advantage of the revenue entries in the name of Sh. Lekh Raj, procured some fictitious entries in the name of

defendant No.1, in respect of land measuring 4577.82 Sq. D.M., as detailed in sub head (K), on the basis of collusive decree passed in the Civil Suit No. 174/95, titled, **Om Dutt vs. Lekh Raj**, decided on 25.11.1995. Decree sheet prepared on 04.04.1996 is also wrong and incorrect and the same is collusive one and has been obtained by playing fraud and mis-representing the facts, at the back of the plaintiff, just to infringe the legal valuable rights of the plaintiffs and proforma defendants. The same has no binding effect upon the rights of the plaintiffs and proforma defendants and Mutation No.193 and subsequent entries in the latest revenue record, in respect of the aforesaid decree, are also null and void-ab-initio and have no effect upon the rights of the plaintiffs and proforma defendants in the eyes of law.

10. It was also averred in the application that the plaintiffs had made searches in the revenue record and were astonished to know the entries in the name of defendants No. 1 & 2 in respect of the valuable land of the parties and have started collecting old revenue record from the revenue Department. The aforesaid facts can only be ascertained by appointing some revenue expert to prepare

the history of the suit land, i.e. its Khasra number and ownership, has to be traced up to more than four generations and it cannot be done without the help of the revenue expert. It is the only revenue expert, who will be able to trace out and link the old khasra numbers with new khasra numbers in the revenue record.

11. The respondents/defendants filed reply to the application and submitted that the application is not maintainable and further the same has been made with malafide intent to misuse the process of law and also to collect evidence with the aid of the Court, with respect to the issues, qua which the onus is upon the plaintiff. Further no question of scientific investigation is involved in the present case. The application has been made to use the Court as a tool to create evidence, per contra, it is for the plaintiffs to prove his case. It was further stated that the plaintiff himself has not stepped into the witness box and no evidence has been produced by him despite availing several opportunities. On merits, it was denied that the ancestors are governed by Mitakshra School of law and the property in the hands of Sh.Lekh Raj predecessor in interest of the parties, is joint Hindu family coparcenary property.

12. The learned trial Court has rejected both the applications filed by the plaintiffs under Order 26 Rule 9, 10A CPC and Order 39 Rule 7 CPC. The learned Trial Court while rejecting the application filed under Order 26 Rule 9, 10A CPC has recorded the findings that the plaintiffs have placed on record revenue record qua the suit land beginning from the year 1922-23 onwards. The question whether scientific investigation by way of appointing a revenue expert for preparing of revenue excerpts qua the suit land is required or not can be looked into by the Court at a subsequent stage, if the Court comes to the conclusion that it is expedient in the interest of justice that such investigation is required and the plaintiffs despite best efforts could not have discharged the onus to prove that the suit land was ancestral property in the hands of late Sh. Lekh Ram.

13. It has further been recorded that in case the application is allowed, it will amount to create/collect evidence in favour of the plaintiffs and same shall cause prejudice to the defendants, hence the application was dismissed.

14. The application under Order 39 Rule 7 CPC was

rejected taking note of the fact that the Ld. trial Court vide order dated 16.06.2017, passed in application under Order 39 Rules 1 & 2 CPC had directed the parties to maintain status quo qua the suit land till the disposal of the main petition. However, permission was granted to the defendants to construct cattle shed over portion of suit land comprised in Khasra No. 563. The allegations by the plaintiffs that the defendants have installed gate over portion of suit land abutting roadside, despite status quo order passed by this Court, have not been proved, since the plaintiffs had not placed on record any photograph of the alleged construction and nothing is suggestive of the fact that there is violation of the order passed by the Trial Court and thus, the application was rejected.

15. I have heard Mr. Ajay Sharma, learned senior counsel duly assisted by Mr. Atharv Sharma, learned counsel for the petitioner/plaintiff and Mr. Sumeet Sharma, learned counsel for respondent No.1 and 2 and also gone through the record carefully.

16. Mr. Ajay Sharma, learned senior counsel for the petitioner/plaintiff, duly assisted by Mr. Athrav Sharma, learned counsel vehemently argued that the trial Court has

erred while rejecting the applications, for the purpose of appointment of an expert for preparing the excerpt and history in the hands of deceased Lekh Raj as well as an application under Order 39 Rule 7 of CPC, whereby the prayer was made for the appointment of local commissioner to inspect the spot and report about construction work of gate.

17. Learned senior counsel had also drawn the attention of this Court to the bare provisions of Order 26 Rule 9 and 10A of CPC. He submitted that where a question arises in a suit involving any scientific investigation, which cannot in the opinion of the Court be conveniently conducted, the Court can, if it thinks necessary or expedient in the interest of justice, issue a commission to such person as it thinks fit directing him to inquire into such question and report thereon to the Court. Learned senior counsel submitted that the issue regarding appointment of local commissioner had been considered by this Court in ***Karan Singh and another vs. Malkiat Devi and others, 2010 (3) Shim. LC 543*** and held that when the history of the land and its ownership has to be traced upto more than four or five generations, it cannot be done without the help of a

Revenue Expert. The relevant paras of the judgment are reproduced hereinunder:-

"3. This application has been rejected vide the impugned order only on the ground that the parties have to prove their case by leading their own evidence and cannot seek help of Court in proving their case. This view of the learned trial Court is totally incorrect and against the law laid down by this Court in Shri Gulaba v. Hari Ram, 1982 Shimla Law Cases 85.

4. When the history of certain land, i.e. its Khasra numbers and ownership has to be traced up to more than four or five generations, it cannot be done without the help of a Revenue Expert. It is only a Revenue Expert who will be able to trace out and link the old Khasra numbers with the new Khasra numbers in the revenue record. This is also essential to help the Court in passing an effective decree which can be enforced in accordance with law. In case an excerpt is prepared by a Revenue Expert, recording of unnecessary evidence can also be avoided. In such circumstances, the appointment of a Revenue Expert to prepare an excerpt in accordance with law is, in fact, necessary and proper for adjudication of the case.

5. The powers of a civil Court under Order 26 Rule 9 CPC to appoint a Local Commissioner have been very succinctly explained in Bali Ram v. Mela Ram and another, 2002 (3) Shimla Law Cases 131, wherein a learned Single Judge held as follows:

"Rule 9 of Order 26 of the Code of Civil Procedure (hereafter referred to as 'the Code'), empowers the Court to issue commission to make local investigation which may be required for the purpose of elucidating any matter in dispute. Though the object of the local investigation is not to collect evidence which can be taken in the Court, but the purpose is to obtain such evidence, which from its peculiar nature, can only be had on the spot with a view to elucidate any point which is left doubtful on

the evidence produced before the Court. To issue a commission under Rule 9 of Order 26 of the Code, it is not necessary that either or both the parties must apply for issue of commission. The Court can issue local commission suo motu, if, in the facts and circumstances of the case, it is deemed necessary that a local investigation is required and is proper for the purpose of elucidating any matter in dispute. Though exercise of these powers is discretionary with the Court, but in case the local investigation is requisite and proper in the facts and circumstances of the case, it should be exercised so that a final and just decision is rendered in the case."

6. It has been urged on behalf of the respondents that the suit is the second round of litigation and also that the application was filed at a late stage, hence, the same should be rejected. The fact that the present suit is the second round of litigation is immaterial for deciding such an application and what is the effect of the previous suit is already the subject-matter of the issues framed in the suit, which shall be decided at the final hearing of the case. As far as delay is concerned, on perusal of the record, I find that after issues were framed, only on one date, evidence of the plaintiffs was not present, whereas on other dates, suit was adjourned for reasons beyond the control of the plaintiffs. On the next date, the application for appointment of Revenue Expert to prepare the excerpt was filed."

18. On the other hand, learned counsel for the respondents has supported the order passed by the trial Court, whereby the applications filed by the plaintiff had been rejected. Learned counsel vehemently argued that the Court cannot collect the evidence for the parties and in the

present case, the plaintiffs have not led any evidence and thus, the present petition is not maintainable. In support of his contention, he placed heavy reliance upon the judgments of this Court in ***Ratti Ram vs. Shobha Ram, 2021 (3) Him. L.R. (HC) 1576***, CMPMO No. 465 of 2017, titled, ***Rajinder Singh vs. Ran Singh and others*** and in CMPMO No. 675 of 2023, titled, ***Jaswant Singh vs. Meera Devi***.

19. It is not in dispute that in the civil suit, the plaintiffs have prayed for decree for declaration to the effect that the parties are coparceners and the property/land in the hands of late Shri Lekh Raj, predecessor-in-interest of parties is an ancestral joint Hindu coparcenary property, which was devolved after the death of common ancestors Shri Mangtu and the jamabandis to the said fact have already been placed on record.

20. It is also not in dispute that village had underwent consolidation operations and the suit property was coming in ownership and possession of late Sh. Lekh Raj, as absolute owner. Defendants No.1 and 2 have taken a plea that the land detailed in the plaint has been succeeded by their ancestor Sh. Lekh Raj, being a class one

heir of late Shri Mangtu, under the provisions of Hindu Succession Act and later on, it was acquired by the State Government and the Industries Department and late Shri Lekh Raj, during his lifetime, had also preferred the reference under Section 18 of the Land Acquisition Act, 1894 before the learned District Judge, Una and the learned District Judge, Una had passed the award for enhancing the compensation and the plaintiffs are well aware about the said fact and have deliberately concealed and withheld this true and correct information from the Court. The plea taken in the plaint that defendant No.1 had got procured some fictitious entries in his name in respect of land measuring 4577.82 square D.M. and further a collusive decree was passed in the civil suit.

21. In the application, the plaintiffs have prayed that in the year 1979-80, village underwent consolidation operations and the consolidation authorities have carved out new Khasra numbers in lieu of old Khasra numbers and thereafter in the year 1990-91, the village underwent settlement operations and settlement authorities had carved out Mohal Gagret, Up-mohals Indira Nagar, Ram Nagar, Dev Nagar, Krishan Nagar of village Gagret and

converted the measuring into metric system and carved out new Khasra numbers in lieu of old Khasra numbers and, therefore, it is difficult to ascertain the history of the suit land and to ascertain the same, some revenue expert be appointed to prepare the history of the suit land.

22. Though the defendants have denied the pedigree table prepared by the plaintiffs in the application, but a perusal of the same reveals that the common ancestor of Lekh Raj was Shri Mangtu, son of Shri Ram Dass, son of Arjan. Further, as per the pleadings, the consolidation operation had taken place in the year 1979-80 and thereafter settlement operation in the year 1990-91 and new Khasra numbers have been carved out and thus to trace the history of the land and ownership, the revenue expert is required to be appointed. This very issue had succinctly dealt with by this Court in aforementioned judgment in **Karan Singh's** case (supra), which cannot be done without the help of the revenue expert. It is only the revenue expert, who will be able to trace out and link the old Khasra numbers with new Khasra numbers in the revenue record.

23. Since defendants No.1 and 2 have not disputed

the factum regarding the consolidation as well as the settlement operation, having been carried out and new Khasra numbers having been carved out, the learned trial Court has erred while rejecting the application filed by the plaintiffs for appointment of an expert for preparing the report of excerpts and the history of the property. In case the said prayer is allowed, it will not only save the valuable time of the Court, but also help in reaching on appropriate conclusion regarding the suit land previously held by the predecessor-in-interest of the parties.

24. Learned counsel for defendants No.1 and 2 has vehemently argued that the learned trial court did not commit any error while dismissing the application filed by the plaintiffs to appoint an expert for preparing the report of excerpts and this Court in similar circumstances had upheld the orders passed by the learned trial Court. So far as the judgment having been passed by this Court in **Ratti Ram's** case (supra), upon which heavy reliance has been placed, this Court had upheld the orders passed by the learned trial Court in rejecting the application under Order 26 Rule 9 CPC, on the ground that the application was filed at the stage of arguments for the purpose of appointment of Local

Commissioner and thus the said ruling is not applicable in the facts of the present case.

25. In another judgment relied upon by learned counsel for defendants in **Rajinder Singh's** case (supra), this Court had considered that the Civil Suit was filed in the year 2008 and the issues were framed and thereafter the evidence was led and it was only at the stage of hearing, application under Order 26 Rules 9 and 10-A CPC was filed. In view of the said fact, the Court had not inclined to interfere with the order passed by the learned trial Court. However, in the present case, the plaintiffs have not led any evidence and further the application for appointment of an expert for preparing the excerpts report was filed in the year 2018 and till date no evidence has been led. This Court in the aforementioned judgment itself had held and taken note of the fact that under Order 26 Rule 9 CPC, the Court can order local investigation in a suit, in which the Court deems such investigation to be proper for the purpose of elucidating any matter in dispute etc. Similarly, under the provisions of Rule 10-A of Order 26 of the Civil Procedure Code, the Court, if it thinks it necessary or expedient in the interest of justice, can issue a commission to such person,

as it thinks fit, where a question arising in a suit involves in a scientific investigation, which, in the opinion of the Court, cannot be conveniently conducted before the Court.

26. As already noticed above, the consolidation in the area was conducted in the year 1979-80 and new Khasra numbers were carved out and thereafter the village, where the suit land situate, had underwent settlement operations and, therefore, it is not easy to trace the land, which will consume much time of the Court to arrive at a just conclusion. Further the purpose of engrafting the above provision of Order 26 Rules 9 and 10-A CPC by the legislature is only to enable the Court to appoint a Commissioner to ascertain the factual matrix, which is not going to cause any injustice to the respondents, rather it will be helpful for the respondents too and in case the report submitted by the expert is not in consonance with the revenue record, the respondents can pin point the said fact to the Court and also put questions to the expert.

27. The plea taken by the counsel for the respondents that the Court is not supposed to collect the evidence for the plaintiff is concerned, it is clarified that by way of preparing excerpts by an expert, the Court is not

going to collect the evidence for the plaintiffs, but with a view to save the time of the Court and also to ascertain the factual matrix, the Court is of the considered view that the order rejecting the application to appoint Commissioner as an expert to prepare the excerpts is not sustainable.

28. The learned trial Court while rejecting the application has returned findings that the Court can look into that aspect at a subsequent stage, if the Court comes to the conclusion that it is expedient in the interest of justice that such investigation is required is also not sustainable for the reason that in case the evidence is brought on record by the plaintiffs, then in that case, if the plaintiffs move an application praying therein that the appointment of an expert to prepare the excerpts can be objected to by the respondents taking the plea that the application filed by the plaintiffs had already been rejected and further once the plaintiffs have failed to bring the sufficient material to seek relief prayed for in the suit, the Court cannot collect evidence for the plaintiffs.

29. Since this Court in the judgment passed in Karan Singh' case (supra) had allowed the application, in similar set of facts and circumstances, this Court is of the

considered view that the order passed by the learned trial Court while rejecting the application for appointment of expert to prepare the excerpt, warrants interference.

30. So far as another application, which was filed by the plaintiffs for appointment of Commissioner under Order 39 Rule 7 CPC is concerned, the plaintiffs have neither placed on record the copy of the said application nor reply thereto filed by the respondents. Not only this, even otherwise, a bare perusal of the order passed by the learned trial Court reveals that the interim order was passed on 16.06.2017, when the Court had given directions to the parties to maintain status quo over the suit land till the disposal of the main suit, however, permission was granted to respondents/defendants No.1 and 2 to construct cattle-shed over the portion of the suit land comprised in Khasra No.563 and the plaintiffs had not placed on record any photographs of the alleged construction, qua which they were seeking directions to appoint the Local Commissioner. Since the learned trial Court has returned the findings that the permission was granted to construct the cattle-shed over the portion of the suit land and further there is no material on record to show that the plaintiffs had violated

the said order, the learned trial Court had rightly rejected the application for appointment of Local Commissioner, which does not call for any interference.

31. Consequently, the present petition is partly allowed and the order dated 29.05.2025, passed by the learned trial Court in CMA No.237-VI of 2025 in Civil Suit No.178-I/2016, titled, ***Shiv Dutt and others vs. Om Dutt and others***, rejecting the application under Order 26 Rules 9 and 10-A CPC, is quashed and set aside and the learned trial Court is directed to appoint an appropriate Revenue Officer as an expert to prepare the excerpts of the suit land, in accordance with law and the order rejecting the application under Order 39 Rule 7 CPC passed by the learned trial Court, is upheld.

32. The petition stands disposed of in the aforesaid terms, so also the pending applications, if any.

33. Both the parties through their learned counsel are directed to appear before the learned trial Court on 06.04.2026.

24th March, 2026
(Anurag)

(Jiya Lal Bhardwaj)
Judge