

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No.89 of 2006

Reserved on : 24.6.2025

Decided on : 11.11.2025

Smt. Jwala Devi & othersAppellants
Versus

Smt. Prabha Bhagra & othersRespondents

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes

For the Appellants : Mr. Bhupinder Gupta, Senior Advocate, with Ms Rinki Kashmiri and Mr. Harshit Sharma, Advocates.

For the respondents : Mr. Sumit Sood, Advocate, for respondents No.1 to 3.

Ms Meera Devi and Mr. Rahul Sharma, Advocates, vice Mr. Deepak Gupta, Advocate, for respondents No.4 to 8.

Respondent No.9 ex-parte.

Vivek Singh Thakur, Judge

This Regular Second Appeal has been preferred against judgment and decree dated 28.11.2005, passed by Additional District Judge, Fast Track Court, Shimla, Himachal Pradesh, in Civil Appeal No.143-S/13 of 04/2000, titled **Smt. Prabha Bhagra & others v. Smt. Jawala Devi & others**, whereby judgment and decree dated 26.11.1999, passed by Sub Judge First Class (II),

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Shimla, in Suit No.34/1 of 97/91, titled **Smt. Prabha Bhagra & others v. Smt. Jawala Devi & others**, has been reversed and the suit filed by the plaintiffs has been decreed for mandatory injunction, directing the defendants to demolish two storeys raised by them on the part of tenanted premises, situate in Ayercliff Estate Shimla-3.

2. Respondents No.1 to 3, in present appeal, are plaintiffs; respondent No.9 Rajesh Kumar Bhagra was co-owner with the plaintiffs and was arrayed as proforma-defendant No.12 in the Civil Suit, who did not contest the proceedings either way at any point of time and was proceeded ex-parte; Appellant No.1 Jawala Devi wife of Dalip Chand Goel, who was original tenant in the suit premises, is defendant No.1; Appellants No.2 to 9 are defendants No.3 and 5 to 11; Defendant No.4 Bhagwan Dass Goel was deleted during pendency of appeal before Additional District Judge vide order dated 22.5.2001; Defendant No.2 Amrit Lal Goel son of Dalip Chand Goel was substituted through his Legal Heirs, who are respondents No.4 to 8 in present appeal are defendants No.2-A to 2-E respectively.

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3. For convenience, parties shall be referred as plaintiffs and defendants, as per their status in the Civil Suit, however, Rajesh Kumar Bhagra shall be referred as co-owner defendant.

4. Case of the plaintiffs, in nutshell, is that Dalip Chand Goel was tenant of portion of vacant land/property purchased by Kulbhushan Bhagra (predecessor of plaintiffs) and Rajesh Kumar Bhagra, both sons of Kishori Lal Bhagra from one Anil Kumar Goel son of Hans Raj. Property in reference, initially, was owned by one Dr. Kedar Nath, who sold it to M/s Tulsi Ram Hans Raj (HUF), vide Sale Deed dated 12.12.1949. In partition of HUF, M/s Tulsi Ram Hans Raj, vide Partition Deed dated 28.3.1977 (Ex. PW-5/A), property in reference fell in share of Anil Kumar Goel, who sold it to Kulbhushan Bhagra and Rajesh Kumar Goel, vide Sale Deed Ex. PW-5/D dated 17.10.1979.

5. Further that, there was a garage on the land, which was partitioned in two portions, one portion was lying vacant and in the other portion Atta Chakki was installed and the said portion alongwith Atta Chakki was on lease with Dalip Chand Aggarwal (Dalip Chand Goel),

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Proprietor of M/s Amrit Lal Mohan Lal, on monthly rent of ₹200/-.

6. It is further case of the plaintiffs that after death of Dalip Chand Aggarwal (Dalip Chand Goel), whose survivor wife defendant No.1 Jawala Devi inherited the tenancy and rest of the defendants, except co-owner defendant Rajesh Kumar, who are defendants No.2 to 11, had no right, title or interest in their individual capacity to continue in possession, muchless as tenant, and it was stated that they had been impleaded as party to avoid future legal objection that they were not heard before passing any order/judgment with respect to the suit property.

7. It is further case of the plaintiffs that the tenanted premises was consisting of single-storeyed garage. In 1989, vide Award dated 1.7.1989, property was acquired by the State for widening the road, but lateron only a part of property was utilized by the State and remaining property was de-notified on 24.7.1991. After 1990, defendant No.1 Jawala Devi, in connivance with other defendants, raised two storeys upon the tenanted premises above the ground floor, without

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permission of the plaintiffs/co-owner defendant as well as sanction from the Municipal Corporation.

8. It is further case of the plaintiffs that Municipal Corporation took cognizance of the unauthorized construction and started proceedings under Section 268 of the H.P. Municipal Corporation Act, 1979. One of the defendants, Mohan Lal, had challenged the demolition order before Divisional Commissioner, but his appeal was dismissed and, thereafter, he preferred a Suit against Municipal Corporation Shimla, by filing Plaint Ex. PW-6/A, which suit was dismissed vide judgment and decree dated 12.5.1999 (Ex. PW-6/B), passed by Sub Judge First Class, Court No.1, Shimla.

9. In aforesaid background, plaintiffs preferred Suit for mandatory injunction, directing the defendants to demolish unauthorized construction and also for restraining them from raising any further construction on the suit property.

10. Defendants, except defendants No.2-A to 2-E, who are Legal Heirs of Amrit Lal as well as co-owner defendant No.12, filed joint Written Statement, whereas, defendants No.2-A to 2-E preferred separate joint Written

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Statement and defendant No.12 did not contest the suit either way.

11. Main ground taken for repelling the claim of the plaintiffs was that plaintiffs had no locus-standi to file and maintain the suit, as the suit land had been acquired by the Himachal Pradesh Public Works Department for widening the road and plaintiffs had received compensation on account of said acquisition; that the plaintiffs had failed to mention the specific portion of the suit land which was acquired and put to use for widening the road and the portion which was not used and for widening and allegedly de-acquisitioned. It was also contended that the plaintiffs had alternative efficacious remedy. It was further contended that the original tenant was a contractual tenant under M/s Tulsi Ram Hans Raj, a HUF Firm, and after selling of the property by the said Firm, predecessor-in-interest of defendants attorned M/s Kulbhusan Rajesh Kumar, a HUF Firm, as his landlord.

12. It was claimed that no unauthorized construction was raised by the defendants during any period of time when plaintiffs allegedly remained owners of the suit land and after acquisition of the land, they had no title in the

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suit property and after de-notifying the acquisition, they did not become owners for the intervening period.

13. As per Written Statement filed by defendants, other than defendants No.2-A to 2-E, after death of Dalip Chand, who was Proprietor of M/s Amrit Lal Mohan Lal, tenancy devolved upon all defendants and it was denied that tenancy devolved upon only defendant No.1 Jawala Devi. It was claimed that building in reference was three-storeyed even at the time when property was owned and possessed by M/s Tulsi Ram Hans Raj, a HUF Firm. It was also contended that plaintiffs had already filed an Eviction Petition on the same ground, and that the suit was not maintainable in present form.

14. In Written Statement filed on behalf of Legal Heirs of defendant No.2 Amrit Lal, i.e. defendants No.2-A to 2-E, it was also claimed that actually M/s Amrit Lal Mohan Lal was tenant of the tenanted premises and the business was being run by Amrit Lal and after death of Dalip Chand Goel, the tenancy devolved upon Amrit Lal only and after his death defendants No.2-A to 2-E are entitled to continue the tenancy rights inherited from

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Amrit Lal and it was denied that tenancy was inherited by all defendants.

15. In replication to the Written Statement, pleadings of the Plaintiff have been reiterated.

16. Plaintiffs had examined six witnesses, whereas defendants, other than Legal Heirs of Amrit Lal, had examined two witnesses; whereas, defendants No.2-A to 2-E examined one witness.

17. Plaintiffs have placed reliance on demolition order dated 24.1.1992 (Ex. PW-2/A), passed by Municipal Corporation, for demolition of unauthorized two storeys constructed on the tenanted premises; Technical Report (Ex PW-4/A) and Map (Ex.PW-4/B) attached therewith prepared by PW-4 R.B. Saxena, a retired Executive Engineer; Partition deed between family members of Hans Raj (Ex.PW-5/A) and Valuation Reports attached therewith (Ex.PW-5/B and Ex. PW-5/C); Sale Deed dated 17.10.1979 (Ex. PW-5/D) and Jamabandi and Tatima attached therewith (Ex. PW-5/E and Ex. PW-5/F); copy of Plaintiff (Ex. PW-6/A) filed by M/s Amrit Lal Mohan Lal is the suit against Municipal Corporation; copy of Judgment and

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Decree (Ex. PW-6/B) passed in the said suit; and copy of Jamabandi (Ex. P-6).

18. Defendants have not produced any document in evidence to substantiate their plea.

19. On the basis of pleadings, following issues were framed by the Trial Court:

- “1. Whether the defendants have raised unauthorised construction as alleged? OPP
2. Whether the plaintiffs are entitled to the relief of mandatory injunction? OPP
3. Whether there is no privity of contract between the parties, if so to what effect? OPD
4. Whether the plaintiffs are stopped from filing this suit? OPD
5. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
6. Relief.”

20. Trial Court dismissed the Suit by deciding all the issues against the plaintiffs, on the grounds that plaintiffs had failed to show their locus standi to file the suit when the alleged cause of action accrued in their favour, and the suit for mandatory injunction was not maintainable without seeking relief for possession and plaintiffs had not impleaded State of Himachal Pradesh as party, with observation that alleged construction was raised in the

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year 1990 and at that time State was owner of the property and the construction might have been raised with the consent of State of Himachal Pradesh which was owner of the suit land at that time and has not been arrayed as party in the suit.

21. Plaintiffs had preferred appeal, in which following points were framed by the Additional District Judge, for determination:

- “1. Whether appellants and proforma respondent No.12 have title to the suit property?
2. Whether there exists relationship of landlord and tenant?
3. Whether construction of two storeys was raised illegally?
4. Relief.”

22. After considering material on record, the Additional District Judge allowed the appeal, as recorded supra.

23. Present appeal was admitted on 7.8.2009, but without indicating or formulating Substantial Questions of Law upon which appeal was admitted, however, vide order dated 19.6.2025 appeal has been deemed to have been admitted on all Substantial Questions of Law, as

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proposed at Pages 9 and 10 of the Paper-Book, which read as under:

- “1. Whether the suit filed by the plaintiffs-respondents for mandatory injunction was incompetent on account of having not been properly valued for the purposes of Court fee and jurisdiction? When the plaintiffs claim the demolition of the two storeys of the disputed building, was not it incumbent for the plaintiffs to have affixed appropriate valuation of the plaint and pay the requisite court fee on the market value of the said structure on the day of the institution of the suit?
2. Whether the Lower Appellate Court has committed grave illegality and irregularity in granting the decree of mandatory injunction to the plaintiffs-respondents directing the demolition of the offending structure, which relief was discretionary and according to the claim made by the plaintiffs-respondents, the said construction was raised when the plaintiffs-respondents were not the owners of the said property, which was acquired by the state of Himachal Pradesh under the provisions of Land Acquisition Act? Could the plaintiffs’ claim of cause of action have arisen after de-notifying the part of the said property from acquisition?
3. In absence of any cogent evidence led by the plaintiffs-respondents regarding the attornment of defendants-appellants in favour of the plaintiffs, the suit was maintainable for seeking relief which materially affected the rights of the defendants-appellants in the disputed property, especially when the plaintiffs-respondents admittedly having pursued the more efficacious remedy by invoking the provisions of H.P. Urban Rent Control Act, 1987 seeking the eviction of the defendants-appellants from the disputed premises alleging the material impairment of the same?
4. Whether the findings of the Lower Appellate Court that there is privity of contract and there exists relationship of land lord and tenant

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between the parties on account of misreading of material evidence and raising such inferences which are extraneous to the record vitiating the impugned judgment and decree?

5. Was not the suit of the plaintiffs-respondents incumbent and was bad for non joinder of necessary parties as State of Himachal Pradesh and the Municipal Corporation Shimla were necessary parties to the suit?
6. Whether the Lower Appellate Court has exceeded its jurisdiction in raising adverse inferences against the defendants-appellants for not producing the previous owners, when the initial onus to prove such facts was heavily on the shoulders of the plaintiffs-respondents which they miserably failed to discharge.?"

24. All the Substantial Questions of Law are inter-related and are being decided with common discussion hereinafter.

25. In Regular Second Appeal, this Court is not supposed to re-appreciate the evidence for re-determining the findings of facts unless those are perverse, but the appeal is to be adjudicated for answering Substantial Questions of Law.

26. Perusal of demolition order Ex. PW-2/A clearly depicts that there was a single storeyed structure in occupation of tenant of Kulbhushan and Rajesh Kumar, whereupon two unauthorised floors were constructed by

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the occupants, which were ordered to be demolished by the Commissioner, M.C. Shimla and the suit preferred against the said order was dismissed by the Civil Court. Partition deed Ex.PW-1/A reflects that property owned by M/s Tulsi Ram Hans Raj, was partitioned between Hans Raj S/o Tulsi Ram, Kuldeep Kumar S/o Hans Raj and Anil Kumar son of Hans Raj on 28th March, 1977. The property in reference was given to Anil Kumar son of Hans Raj. Alongwith partition deed valuation reports Ex. PW-5/B and Ex.PW-5/C were enclosed. In valuation reports Ex.PW-5/B dated 28.2.1977 and Ex.PW-5/C dated 28.2.1977, brief description of the property has been given as single storey. One room having Chakki was on the spot in the premises in reference. Sale deed dated 17.10.1979 (Ex.PW-5/D) depicts that Anil Kumar Goel son of Hans Raj sold the premises in reference to Kulbhusan and Rajesh Kumar both sons of Kishori Lal with clear averments therein that there was a garage alongwith land which was purchased by the Firm M/s Tulsi Ram and Hans Raj from one Dr. Kedar Nath vide sale deed dated 12.12.1949 and the said garage had been partitioned into two portions. One portion was lying vacant and other

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portion was having atta ckakki installed therein and the said portion alongwith chakki was on lease with Dalip Chand Aggarwal proprietor of M/s Amrit Lal Mohan Lal on monthly rent basis at the rate of ₹200/- per month. The sale deed clearly depicts that there was a garage having atta chakki and the same was leased/rented to Dalip Chand Aggarwal, but not to the firm and from all these documents it is apparent that there was only a single storey structure rented to Dalip Chand Aggarwal predecessor of the respondent/tenant. From jamabandi Ex. PX-1 it is also apparent that there is one storey kachi shop on the suit premises. From the judgment PX-2, it is apparent that construction was raised by the occupants after 1990. Therefore, Technical Report and Map attached therewith (Ex. PW-4/A) have been proved to be genuine.

27. It is also admitted fact, as apparent from the oral evidence as well as reply filed by the respondents/defendants that rent was being paid till March, 1990. It is admitted case that acquisition took place in the year 1989 and thereafter it was de-acquisitioned in the year 1991. After acquisition

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tenant(s) continued to pay rent to the landlords, therefore, there is acquiescence to the status of the landlords in the act, conduct and deposition of the respondents/tenants/defendants. Thus plea of the respondents that after acquisition status of landlords and tenant was not in existence is not sustainable. Even otherwise after de-acquisition of the land the status of parties including the owners/landlords and the tenants was to be maintained status quo ante as it was existing prior to the acquisition. Therefore, also plea of the respondents is not sustainable that there was no relationship of landlords and tenant between the parties.

28. From the material placed on record including technical report Ex. PW-4/A, it has been established on record that defendants have raised unauthorised construction and the said construction is not only without permission of Municipal Corporation, but also dangerous for existing single storey structure whereupon two storeys have been constructed without getting the map and plan sanctioned and strengthening the foundation of single storey structure.

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29. It is well settled that if there are co-owners or co-landlords of the suit premises, then any co-owner or co-landlord can file a suit for eviction against the tenant and it is not necessary that all owners/landlords should join in filing the eviction suit against the tenant. (See **Kanaklata Das & others Vs. Naba Kumar Das & others, 2018 (2) SCC 352**; and **Kasthuri Radhakrishnan & Ors. Vs. M. Chinniyar & Another, 2016 (3) SCC 296**).

30. During pendency of the appeal, defendants-appellants have preferred applications under Order 41 Rule 27 of CPC for leading additional evidence. First application CMP No.8245 of 2018 was filed for placing on record additional evidence, Annexure A-1 Mutation No.35 dated 20.4.2001 for proving the private partition of the suit premises between the plaintiffs and co-owner defendant Rajesh Kumar and selling of his share by Rajesh Kumar, through Sale Deed dated 27.12.2017 (Annexure A-2), to one of the defendants, Mohan Lal, with submission that prior to 2017, when Rajesh Kumar, proforma-defendant expressed his intention to sell his share of the property in dispute to defendants-appellants, they were not aware about the partition taken place

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between the plaintiffs and proforma-defendant Rajesh Kumar and, therefore, they could not place on record the documents prior to filing the application on 11.7.2018.

31. Second application, CMP No.5150 of 2021, has been filed on 20.4.2021 by the defendants-appellants for placing on record three Sale Deeds (Annexure A-3 to A-5) executed by plaintiffs, with claim that these Sale Deeds would reflect that plaintiffs had sold the property considering the entire building to be authorized and legal and, therefore, plaintiffs had no subsisting right, title and interest over the suit property, dis-entitling them from decree of mandatory injunction for demolition of such structure, particularly for the reason that they ceased to be owner of the same.

32. The aforesaid applications have been opposed by the plaintiffs, on the ground that the aforesaid documents proposed to be placed on record, as additional evidence, are not necessary for complete and final adjudication of the issue involved, rather these documents have no bearing on the lis being adjudicated in present litigation. Further that there is nothing on record to connect the Sale Deeds Annexure A-3 to A-5 with the tenanted

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premises and selling of his share by Rajesh Kumar to one of the defendants, Mohan Lal, has no bearing on the claim of the plaintiffs, who are asserting their right in the property independent of the right of Rajesh Kumar, whereas Rajesh Kumar has not contested the litigation at any point of time either way.

33. Plaintiffs have filed suit for mandatory injunction with their own right of ownership in the tenanted premises, and, therefore, selling of his share by Rajesh Kumar in the suit property does not extinguish the right of the plaintiffs to prefer the suit with their independent right in the remaining share in the suit property.

34. Mutation and Jamabandi, placed on record alongwith CMP No.8245 of 2018, in additional evidence, clearly indicate that property comprised in Khasra No.574/8 and 574/5 was assigned Khasra No.137, 138 and 139 and after partition Khasra Nos.137/2, 137/3, 138/2, 138/3 and 139/1 were allotted to the plaintiffs, whereas Khasra Nos.137/1, 137/4, 138/1, 138/4 and 139/2 were allotted to Rajesh Kumar, and Rajesh Kumar sold his share to Mohan Lal.

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35. In three Sale Deeds Annexure A-3 to A-5, placed on record alongwith CMP No.5150 of 2021, the plaintiffs sold plinth area of ground floor, comprised in some of Khasra numbers allotted to them, but not the entire land. The Sale Deeds nowhere indicate that unauthorized construction in reference in present suit, has been sold by the plaintiffs to anybody and even there is nothing on record to link the property sold vide Sale Deed Annexure A-3 to A-5 with the suit property whereupon tenants had raised construction without permission of the owner as well as without sanction by the Municipal Corporation. Therefore, the documents proposed to be placed on record alongwith application are neither relevant nor necessary for complete and final adjudication of the lis involved in the present matter and, accordingly, these applications are liable to be dismissed.

36. Supreme Court in **Pasupuleti Venkateswarlu vs the Motor & General Traders, (1975) 1 SCC 770**, has held as under:-

6 "... ..It is basic to our processual jurisprudence that the right to relief must be judged to exist as on date a suitor institutes the legal proceeding... .."

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37. Supreme Court in **Rajeshwar and others vs. Jot Ram and another, (1976) 1 SCC 194: AIR 1976 SC 49**, referring Pasupuleti Venkateswarlu's case; and **Bhajan Lal vs. State of Punjab, (1971) 1 SCC 34**; has held as under:-

“6. The philosophy of the approach which commends itself to us is that a litigant who seeks justice in a perfect legal system gets it when he asks for it. But because human institutions of legal justice function slowly, and in quest of perfection, appeals and reviews at higher levels are provided for, the end product comes considerably late. But these higher Courts pronounce upon the rights of parties as the facts stood when the first Court was first approached. The delay of years flows from the infirmity of the judicial institution and this protraction of the Court machinery shall prejudice no one. Actus curiae neminem gravabit(1). Precedential support invoked by the appellant's counsel also lets him down provided we scan the fact situation in each of those cases and the legal propositions therein laid down.

7. The realism of our processual justice bends our jurisprudence to mould, negate or regulate reliefs in the light of exceptional developments having a material and equitable import, occurring during the pendency of the litigation so that the Court may not stultify itself by granting what has become meaningless or does not, by a myopic view, miss decisive alterations in fact-situations or legal positions and drive parties to fresh litigation whereas relief can be given right here. The broad principle, so stated, strikes a chord of sympathy in a court of good conscience. But a seeming virtue may prove a treacherous vice unless judicial perspicacity, founded on well-grounded- rules, studies the plan of the statute, its provisions regarding subsequent changes and the possible damage to the social programme of the measure if later events are allowed to unsettle

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speedy accomplishment of a re-structuring of the land system which is the soul of this which enactment. No processual equity can be permitted to sabotage a cherished reform, nor individual hardship thwart social justice. This wider perspective explains the rulings cited on both sides and the law of subsequent events on pending actions.

8. In *P. Venkateswarlu v. Motor & General Traders* (2) this Court dealt with the adjectival activism relating to post institution circumstances Two propositions were laid down. Firstly, it was held that 'it is basic to our processual jurisprudence that the right to relief -must be judged to exist as on the date a suitor institutes the legal proceeding'. This is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, as explained earlier, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or rights crystallized in the initial cause of action. This position finds support in *Bhajan Lal v. State of Punjab*, (1971) 1 SCC 34."

38. In ***Shantilal Thakordas vs. Chimanlal Maganlal Telwala***, reported in **1976 4 SCC 417**, a larger Bench of the Supreme Court overruling its earlier decision rendered in ***Phul Rani vs. Naubat Rai Ahluwalia***, reported in **(1973)1 SCC 688**, has held that after death of original landlord, senior member of his family takes his place and is well competent to continue the suit for eviction in his occupation and occupation of other members of the

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family. A similar view was taken by the Apex Court in **Shakuntla Bai and others vs Narayan Dass and others** reported in (2004)1 RCR (Rent) 580.

39. In **State of U.P. and others vs. Harish Chandra and others, (1996) 9 SCC 309**, Supreme Court has observed as under:-

“... ..Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition... ..”

40. In the light of aforesaid pronouncements it is more than settled that rights of parties are to be adjudicated on the basis of date on which action is instituted.

41. Even otherwise, for the definition of “tenant” provided under Section 2(j) of H.P. Urban Rent Control Act and expression “landlord” defined in Section 2 of the H.P. Urban Rent Act, the document proposed to be placed on record by way of additional evidence are not going to have any impact on the real controversy between the parties as well as status of landlord and tenant between the petitioners/landlords and Dalip Chand and thereafter

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his wife Jawala Devi, because after death of Jawala Devi all others are strangers occupying the premises in reference unauthorisedly who are liable to be evicted.

42. The expression "landlord" in Section 2 of the H.P. Urban Rent Control Act includes persons receiving rent for the time being. It is admitted case of the respondents that they were paying rent till 31.3.1990 to the petitioners/landlords or to their predecessors. It is not in dispute that petitioners are legal heirs and successors-in-interest of Kulbhushan, who was admittedly one of the landlords.

43. Plea of respondents, that after death of Dalip Chand, original tenant, his all Class-1 heirs have inherited the tenancy in succession and were entitled to be treated as tenants collectively and proceedings for eviction should have been initiated against all legal heirs/representatives of deceased Dalip Chand, is not sustainable because of specific provisions contained in Explanation-I of Section 2(j) of H.P. Urban Rent Control Act, 1987 wherein definition of "tenant" along with Explanation(s) has been provided as under:-

"2(j) "tenant" means any person by whom or on whose account rent is payable for a residential or

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non-residential building or rented land and includes a tenant continuing in possession after termination of the tenancy, a deserted wife of a tenant who has been or is entitled to be in occupation of the matrimonial home or tenanted premises of husband, a divorced wife of a tenant who has a decree of divorce in which the right of residence in the matrimonial home or tenanted premises has been incorporated as one of the conditions of the decree of divorce and in the event of the death of such person such of his heirs as are mentioned in Schedule-I to this Act and who were ordinarily residing with him or carrying on business in the premises at the time of his death, subject to the order of succession and conditions specified, respectively in Explanation-I and Explanation-II to this clause, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or a person to whom the collection of rent or fees in a public market, cart stand or slaughter house or of rents for shops has been farmed out or leased by a Municipal Corporation or a Municipal Council or a Nagar Panchayat or a Cantonment Board;

Explanation-I.- The order of succession in the event of death of the person continuing in possession after the termination of his tenancy shall be as follows:—

- (a) firstly, his surviving spouse;
- (b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased persons as a member of his family upto the date of his death;
- (c) thirdly, his parent(s), if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son, daughter or any of them, did not ordinarily

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live in the premises as a member of the family of the deceased person upto the date of his death; and

- (d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parent(s) of the deceased person or if such surviving spouse, son, daughter or parent(s), or any of them, did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death:

Provided that the successor has ordinarily been living or carrying on business in the premises with the deceased tenant as a member of his family upto the date of his death and was dependent on the deceased tenant:

Provided further that a right to tenancy shall not devolve upon a successor in case he or his spouse or any of his dependent son or daughter is owning or occupying a premises in the urban area in relation to the premises let.

Explanation-II.- The right of every successor, referred to in Explanation-I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs; and.]”

44. From aforesaid provisions, it is quite clear that in the event of death of a person/tenant continuing in possession his tenancy shall firstly devolve upon his surviving spouse, and in absence of first, secondly upon his son and daughter or both if there is no surviving

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spouse or if the surviving spouse did not ordinarily live with the deceased person as a member of his family upto the date of his death; thirdly in absence of first and second, on parents and in absence of first, second and third, fourthly on daughter-in-law etc. Explanations clearly provide order of succession of tenancy. In the present case, Jawala Devi was alive and living with her husband upto the date of his death and therefore, she was only entitled for succession of tenancy and others legal heirs, mentioned in Clauses (b) (c) and (d) of Explanation-I, were not entitled for succession of tenancy of Dalip Chand. As per Explanation-II, right of every successor referred to in Explanation-I, shall be personal to him and on the death of said successor tenancy will not devolve upon his any legal heirs. In view of unambiguous provisions of Rent Act plea regarding necessity of issuing notice to all legal heirs of Dalip Chand and claim of them that they all are tenants, is not sustainable. Therefore, objection of defendant disputing the locus of plaintiff to file the suit is not sustainable.

45. Above referred explanation-II, clearly mandates that right to succeed tenancy shall be personal to the

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successor and on death of successor, it shall not devolve on any of his legal heirs. In present matter, Jawala Devi expired during pendency of present petition and thereafter she was deleted vide order dated 5.1.2016. After her death, other respondents have no justifiable claim for continuing in possession of the property under the garb of tenancy created in favour of Dalip Chand, which was succeeded by his wife Jawala Devi after his death. However, as settled by the Apex Court, present appeal is to be adjudicated with reference to right and liabilities of parties as existing on the date of institution. For above discussion, the plaintiffs had and have right to file and maintain the suit in reference.

46. In view of nature of lis, evidence on record and discussion supra as well as plea taken in the reply, it is apparent that additional evidence proposed to be placed on record is not relevant for adjudication of present appeal, and, accordingly, the same are dismissed.

47. It is also relevant to observe that legal proceedings initiated by original owner can be continued even after selling the property in reference, either by original previous owner or subsequent owner. On selling

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of the suit property, particularly when there was no injunction against selling the property, does not disentitle the original owner or subsequent owner from continuing legal proceedings based on right, title and interest in the suit property.

48. Availing of remedy under Himachal Pradesh Urban Rent Control Act, 1985, does not debar or disentitle the plaintiff from filing suit for removal of unauthorized construction against the person in unauthorized occupation after determination/termination of tenancy.

49. In present case, though it has been alleged that suit property has been sold by the plaintiffs, but defendants have failed to connect the Sale Deeds with the tenanted premises, whereupon construction has been unauthorisedly raised by the defendants.

50. In present case, claim of the defendants that the unauthorised construction was alleged to have been raised during the period when plaintiffs were not owner but the State of Himachal Pradesh was the owner because of acquisition of the suit premises and, therefore, even after de-notification of acquisition,

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plaintiffs are not entitled for not having any locus to file the suit. It is a common sense that before acquisition of the land, the suit premises was owned by the plaintiffs alongwith co-plaintiff Rajesh Kumar Bhagra and after acquisition, State became the owner. However, on de-notification of acquisition, the ownership right of original owners revived and they became owners of the de-notified portion of the land. There was an eclipse on their ownership due to acquisition, but after de-notification of acquisition, the eclipse ended and, thereafter, the original owners are to be considered to be owners of the suit property for all times, including the intervening period for which State had acquired the title for acquisition of the suit land. Therefore, defendants have no right to justify their unauthorised and illegal act on the ground that during the period 1989 to 1991, plaintiffs had lost their title on the suit premises for acquisition thereof by the State.

51. For doing substantive justice, impediments, which are purely technical in nature, shall not come in the way and issues of controversy between the parties

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should be decided by keeping in view that conclusion of the lis shall in consonance with common sense.

52. There is no illegality, irregularity or perversity in the impugned judgments passed by the first Appellate Court.

53. Substantial Questions of Law are answered in aforesaid terms.

The appeal is dismissed and disposed of, so also pending application, if any.

November 11, 2025_(sd)

(Vivek Singh Thakur)
Judge.