

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

**CMPMO No. 719 of 2019.**

**Date of Decision: 31<sup>st</sup> December, 2019.**

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Sat Pal

**.....Petitioner/defendant.**

**Versus**

Baba Dharam Shah

**....Respondent/plaintiff.**

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**Coram**

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting? Yes.

**For the Petitioner:** Mr. B.S. Chuhan, Senior Advocate  
with Mr. Munish Dhatwalia,  
Advocate.

**For the Respondent:** Mr. R.P. Singh, Advocate.

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**Sureshwar Thakur, Judge (Oral).**

The plaintiff/respondent herein, instituted, a, suit, for, declaration, against, the defendant/petitioner herein, seeking, therethrough, the, setting aside, and, quashing, of, the, apposite testamentary disposition, made, on, 4.5.2010, by, the deceased testator concerned, vis-a-vis, the petitioner herein/defendant, and, qua the suit property. In, the, initially instituted plaint, an, averment become cast, that, the, petitioner herein, is, not holding,

any capacity/status, as, an, agriculturist, and, hence, his, being barred to become, a valid legatee, of, the, deceased testator concerned. However, subsequently, through, an application, cast, under, Order 6, Rule 17, of, the, CPC, the plaintiff strived, to, seek leave, of, the, court, to, make, a, challenge, vis-a-vis, the, mutation, as, became attested, hence, in, compliance, with, the, verdict, pronounced, by, this Court, in, CWP No.3572, of, 2014, the, relevant paragraphs whereof, stand extracted hereinafter:-

“3. Accordingly, impugned annexure P-9 dated 23.4.2014 is quashed and set aside. Respondent are directed to attest the mutation within a period of eight weeks from today by treating the petitioner to be an agriculturist.

4. However, before parting with the judgment, this Court deems it fit and proper to direct the State Government to make suitable amendments to Section 118 of the HP Tenancy and Land Reforms Act, 1972, read with HP Tenancy and Land Reforms Rules, 1975 in order to facilitate to purchase any land (agricultural and non agricultural) in the State of Himachal Pradesh by the non agriculturist Himachalis residing in the State for decades together prior to the date of commencement of the HP Tenancy and Land Reforms Act, 1972, within a period of ninety days from today.

5. In view of the above, the present petition is disposed of. Pending applications, if any, are also disposed of."

The afore leave became accorded to the plaintiff, and, the defendant becomes aggrieved therefrom, and, hence, has, constituted, thereagainst, the, extant petition, before, this Court.

2. Even though, at, first glance, the proposed amendment appears to be simplistic, and, innocuous, yet when, viewed, in, the, light, of, the, afore verdict, becoming pronounced, by, this Court in CWP No.3572 of 2014, verdict whereof, also, became affirmed, by, the Hon'ble Apex Court, through, a, verdict rendered, upon, Civil Appeal No. 1654 of 2017, (a) inasmuch, as, a, reading, of, the, opening paragraph, of, the, afore affirming pronouncement, makes, clear echoings, vis-a-vis, the, apposite challenge, as, became, cast, by, the, aggrieved State, of, H.P., vis-a-vis, the, afore pronouncement, made, by, this Court, in, CWP No. 3572, of, 2014, rather, becoming confined, to, the, issuance, of, a, mandamus, by, the, writ court, and, rather no challenge, becoming cast, vis-a-vis, the, setting aside, of, the, impugned apposite Annexure P-9, by, the, writ court, (b) thereupon, the, inference marshable, therefrom, is, qua,

the, State of H.P., acquiescing, vis-a-vis, the validity, of, the afore, unchallenged portion, of, the verdict supra, and, it also becoming concomitantly estopped, to, deny, to, the, defendant, the, relief pronounced, hence, therethrough, qua him.

3. Consequently, since, the, questioned mutation became attested, in, pursuance, to, the afore conclusive, and, binding verdict, recorded, in, CWP No.3572, of, 2014, (i) thereupon, the affirmative pronouncement, as, made, by, the, learned trial Court, upon, an, application, cast theretofore, by, the, plaintiff/respondent herein, under, the, provisions, of, Order 6, Rule 17, of, the, CPC, was, grossly impermissible, (a) thereupon, the learned trial Court, has permitted, an, untenable amendment, despite, hence, its, tacitly, striving, to, question, the, afore conclusive, and, binding verdict, and, has, also, untenably permitted, to, thereafter strike issues thereon, and, also permit adduction, of, evidence(s) thereon.

4. For the foregoing reasons, the, extant petition, is, allowed, and, the, order rendered, by, the, learned trial Court, upon, Application No.2350 of 2019 (in Civil Suit No.12/2014), on 30.10.2019, is, quashed, and, set aside. Accordingly, application No.2350, of, 2019, stands,

dismissed. The parties, are, directed, to, appear, before, the, learned trial Court, on, 25<sup>th</sup> February, 2020. All pending applications also stand disposed of. However, it is made clear, that, the observations, made, hereinabove, shall have no bearings on the merit of the case. Records, if any, received, be sent back forthwith.

**31<sup>st</sup> December, 2019**  
(jai)

**(Sureshwar Thakur)**  
**Judge.**