

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**FAO No.97 of 2026****Reserved on: 22.09.2026****Date of decision: 28.09.2026****Date of uploading on Website: 28.09.2026**

Rekha Singh

.....Appellant

Versus

State of Himachal Pradesh and others

.....Respondents

Coram**Hon'ble Mr. Justice Sushil Kukreja, Judge**¹ Whether approved for reporting? Yes

For the appellant:Mr. Aseem Chaudhary and
Mr. Shivendra Singh, Advocates.

For the respondents:

Mr. B.N. Singh, Additional Advocate
General, for respondent No.1.
Mr. Ashok K. Tyagi, Advocate, for
respondents No.2 to 5.
Ms. Kamakshi Tarlokta, Advocate,
for respondent No.6.

Sushil Kukreja, Judge

The instant appeal is maintained by the appellant-applicant under Order 43, Rule 1(r) and Section 104 of CPC against the order dated 15.06.2026, passed by the learned Additional District Judge, Nahan, District Sirmaur, HP, in CMA No.300-N/6 of 2026, whereby the application filed by the

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

appellant-petitioner under Order XXXIX, Rules 1 & 2, read with Section 151 of CPC for an ad interim injunction was dismissed.

2. Perusal of the material available on record reveals that the appellant-applicant filed a suit against the respondents and when the said suit was fixed for the evidence on 04.12.2025, during the course of examination-in-chief of PW-1- Rohit, Patwari from Village Ogli, it was revealed from the revenue records that Late Smt. Sushila Devi had three biswas share in the suit land on the date of her death i.e. 30.07.2022 and the land of Late Smt. Sushila Devi was mutated in the name of Kalpana Bhumbala, D/o Late Hari Krishan, Aditya Chaudhary and Aditi Chaudhary, son and daughter of Late Sh. Rajesh Chaudhary on 20.12.2022, vide mutation No. 1486, during pendency of the suit. On 10.01.2025 when the applicant applied for the certified copy of *Jamabandi* pertaining to Khasra No.287/206, it was revealed that said Kalpna Bhumbala had given information regarding death and names to be mutated in the revenue records. Respondent No.2, who had having knowledge of the registered Will dated 02.09.1993 during the pendency of the suit, along with respondents No.3 to 5, were guilty of suppression/ concealment of facts from the revenue department and was liable for criminal

action for giving wrong information in affidavit to the Government Department. Respondents No.2 to 5 were looking for buyers in the market to sell/transfer and part with possession of the property. Hence, it was prayed that the respondents be restrained from selling/transferring or creating any third party interest over the suit property till final disposal of the main suit.

3. Respondents No.2 to 5 contested the application by filing reply, wherein it was averred that the application, being misleading and false, the same may be dismissed as the property involved in the Will pertaining to inheritance of Late Shri Har Dhyani Singh in favour of his daughter Smt. Sushila Devi and that too which was located at District Faridabad in Haryana. It was further averred that the applicant was also well aware that the legatee, namely, Sh. Dharam Raj Singh, has died, whereas the executant/testator Smt. Sushila Devi was still alive, as such, the Will has become nonest. Thus, the pendency of the suit before the said Court was misleading. It was also averred that the properties, which Smt. Sushila Devi had inherited, pertained to the inheritance of property in her favour in District Faridabad, Haryana and in that Will was, in no way, concerned or connected with her properties and the property was inherited by her from her

husband and respondents No. 2 to 4 have no intention to alienate their property. The applicant has got neither any right on the suit property, nor can legally restrained the respondents, who have inherited the same by way of succession.

4. Learned counsel for the appellant contended that the learned Court below has erred in holding that on the death of legatee on 10.06.2014, the property of the testator became part of the residuary estate under Section 105(1) of the Indian Succession Act, 1925. He further contended that the learned Court below has also erred in holding that the appellant has failed to set up a *prima facie* case in her favour and balance of convenience also does not lie in her favour, as such, the impugned order deserves to be set aside.

5. On the other hand, learned counsel for the respondents supported the impugned order and contended that the impugned order has been passed by the learned Court below after appreciating the material on record in its right and proper perspective.

6. I have heard learned counsel for the appellant as well as learned Additional Advocate General for respondent No.1, learned counsel for respondents No.2 to 5 and learned counsel

for respondent No.5 and also carefully gone through the material available on record.

7. Perusal of the material available on record reveals that the appellant has filed a petition under Section 263 of the Indian Succession Act on the basis of a Will dated 02.07.1993, executed by late Smt. Sushila Devi. In the said Will, the testator Smt. Sushila Devi had stated that the property will be inherited by her brother Dharam Raj Singh and not by her legal heirs. The claim of the appellant is based upon the Will of her husband Dharam Raj Singh dated 29.11.2012, wherein it has been mentioned that the property owned by late Shri Dharam Raj Singh shall devolve upon his wife Rakha Devi after his demise. It is not in dispute that the testator late Smt. Sushila Devi had expired on 30.07.2022, whereas the legatee Shri Dharam Raj Singh had expired on 06.10.2014, i.e. before the death of the testator. There is no recital in the Will dated 02.07.1993, executed by late Smt. Sushila Devi, in order to suggest that in the event of death of legatee before her death, the property will go to the appellant or some other person.

8. At this stage, it would be relevant to reproduce Section 105 of the Indian Succession Act, 1925, which reads as

under:-

“105. In what case legacy lapses.—(1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator’s property, unless it appears by the Will that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.”

9. Thus, Section 105 of the Indian Succession Act in terms lays down that if the legatee is not proved to have survived the testatrix, the legacy lapses and cannot take effect, but shall lapse and form part of the residue of the testator’s property. As discussed earlier, the testator late Smt. Sushila Devi had expired on 30.07.2022, whereas the legatee Shri Dharam Raj Singh had expired on 06.10.2014, i.e. before the death of the testator. Since the legatee, namely, Dharam Raj Singh, had predeceased the testator, on 06.10.2014, the legacy had got lapsed and consequently, no one can claim any right or title over the suit properties, based on the Will, dated 02.07.1993. Therefore, the learned Court below has rightly held that on the death of the legatee on 06.10.2014, the property of the testator became a part of the residuary estate under Section 105(1) of the Indian Succession Act, 1925 and the property has to devolve upon the

surviving representatives of testator Smt. Sushila Devi as per law of succession.

10. Consequently, in view of what has been discussed hereinabove, the learned Court below has not committed any error in observing that the appellant/applicant has failed to set up a *prima facie* in her favour and the balance of convenience also does not lie in her favour. Hence, no interference is required in the impugned order dated 15.06.2026, passed by the learned Court below and the instant appeal, which sans merits, deserves dismissal and is accordingly dismissed.

11. The present appeal is disposed of accordingly, so also the pending applications, if any. Interim directions, if any, are vacated.

Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

(Sushil Kukreja)
Judge

September 28, 2026
(V.Himalvi)