IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 175 of 2023
Reserved on 29.09.2026
Date of Decision: 31.10.2026

Anjali ...Appellant.

Versus

Sawarn Lata (name deleted vide order dated 18.09.2025)& others ...Respondents.

Coram
Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1]

For the appellant: Mr. Suneet Goel, Senior Advocate with Mr. Vishwas Kaushal, Advocate.

For the respondents: Mr. Neeraj Gupta, Senior Advocate with Mr. Ajeet Pal Singh Jaswal and Mr. Pranjal Munjal, Advocate, for respondent No. 4.

Romesh Verma, Judge

The instant appeal arises out of the judgment and decree passed by the learned Additional District Judge-I, Mandi, District Mandi, H.P., dated 29th April 2023, whereby the appeal filed by the plaintiff was ordered to be dismissed, and the judgment and decree passed by the learned Civil Judge (Junior Division), Court No. 3, Mandi, dated 27th September 2014, was

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

affirmed, whereby the suit filed by the plaintiff for declaration and injunction was dismissed.

2. The facts, as alleged in the present case, are that the plaintiff/appellant filed a suit for declaration and injunction in the Court of learned Civil Judge (Junior Division), Court No. 3, Mandi, District Mandi, HP. The said suit was instituted on 5th September 2003 on the ground that the land comprised in Khata/Khatauni No. 121/189, Khasra Nos. 359, 362 and 403, measuring 241.39 sq. meters, situated at Purani Mandi, Tehsil Sadar, District Mandi, H.P., showing the defendants as joint owners in the revenue record, is wrong and incorrect. It was further pleaded that the land comprised in Khata/Khatauni No. 121/189, Khasra No. 402, measuring 164.00 sq. meters, is recorded as house, and showing defendants No. 1 to 4 in the revenue record as joint owners is wrong and incorrect. The land as referred in the plaint was previously owned and possessed by deceased Mohini Devi, who was the grandmother of the plaintiff and mother of defendants No. 1 to 4.

3. After the death of Smt. Mohini Devi, who died on 20th April 2000, defendant No. 5 (respondent No.4 before this Court) entered into the vacant land in the month of January 2003 and

tried to take forcible possession of the suit land on the premise that she had purchased the share of defendant No. 1. Thereafter, this fact was inquired into by the plaintiff, and she found that defendant No. 1, behind the back of the plaintiff and defendants No. 2 to 4, got attested the mutation of inheritance of deceased Mohini Devi and thereafter, on the basis of the same, sold her share in favour of defendant No. 5 in an illegal manner.

4. It has been stated that Sarita Handa asked the plaintiff as to why defendant No. 5 started a dispute, upon which the plaintiff narrated the facts that defendant No. 5 alleges that she has purchased the share of defendant No. 1. It was averred that the alleged Mutation No. 631 dated 31st May 2000 is illegal and wrong, and subsequently, on the basis of the same, defendant No. 1 sold her share in favour of defendant No. 5 vide alleged Sale Deed No. 1620 dated 16th November 2002, and also got attested Mutation bearing No. 706 dated 31st December 2002.

5. It has been averred in the plaint that Sarita Handa told the plaintiff that deceased Mohini Devi, during her lifetime on 17th March 2000, called Sarita Handa and told her that she intended to execute a Will in favour of the plaintiff because the plaintiff, along with her mother, rendered valuable services, and she was

happy with their services. Thereafter, Mohini Devi requested Sarita Handa to make arrangements for the execution of the Will, upon which she called her relative Shri Harbans Lal Handa, document writer, who wrote the Will on the same day on the asking of deceased Mohini Devi. After writing the same, the contents of the Will were read over and explained to Smt. Mohini Devi, who admitted the same to be true and correct, and thereafter, the testatrix appended her signatures on the aforesaid Will. Thereafter, Sarita Handa and the document writer also put their signatures on the Will. The plaintiff found the Will in the book of Gita in the month of February 2003, and the said Will was presented before the learned Tehsildar Sadar, District Mandi, for its registration.

6. It was further stated that the plaintiff requested the defendants time and again to cancel the mutation of inheritance of deceased Mohini Devi bearing No. 631 dated 31st May 2000, and also to cancel the alleged Sale Deed No. 1620 dated 16th November 2002, and requested to cancel Mutation No. 706 dated 31st December 2002 of the alleged sale deed, but the defendants did not accede to the request of the plaintiff. In the alternative, it was prayed that in case defendant No. 5 succeeded in

dispossessing the plaintiff from the suit land, in that event, a decree for mandatory injunction be passed in favour of the plaintiff and against the defendants. Therefore, suit for declaration to the effect that the plaintiff is the absolute owner in possession of the suit land on the basis of the Will, and the Mutation of inheritance dated 31st May 2000 bearing No. 631, Sale Deed No. 1620 dated 16th November 2002, and on the basis of the same the alleged Mutation bearing No. 706 dated 31st December 2002 may be declared null and void, was filed.

7. The said suit was opposed by defendants No. 1 and 5 by filing a comprehensive written statement. The suit was contested by raising preliminary objections with respect to locus standi, limitation, estoppel, cause of action, etc. On merits, all the averments as made in the plaint were specifically refuted and denied. It was contended that the averments as made in the plaint are false and incorrect. After the death of Smt. Mohini Devi, the suit property devolved upon as per the rule of succession upon her three sons and one daughter, and thereafter, the necessary mutation of inheritance was rightly and validly attested in their favour. Defendant No. 1 sold the land of her share to defendant No. 5, and subsequently, the latter was put in actual

physical possession, who is continuing in possession of the same. It was stated that the plaintiff is the daughter of defendant No. 2, Lalit Kumar, who has manipulated the entire factual matrix of the case. It was denied that deceased Smt. Mohini Devi had executed any un-registered Will during her lifetime, and in case it is found that there is any Will, the same is the result of fraud, fabrication, and falsehood, and is not binding on the right, title, and interest of the defendants. The defendants prayed for the dismissal of the suit as filed by the plaintiff.

8. The plaintiff filed replication to the written statement and reiterated all the averments as made in the plaint.

9. The learned Trial Court had framed the issues in the matter on 30th October 2012, in the following manner:-

> "1. Whether the Will dated 17-3-2000 is legal, valid and genuine Will executed by the deceased Mohini Devi, as alleged? OPP.
>
> 2. Whether the plaintiff is entitled to declaration, declaring her as owner-in-possession of the land comprised in para No.1 (a) and (b) of the plaint, as prayed for ?OPP.
>
> 3. Whether the plaintiff is entitled to the declaration declaring mutation of inheritance no.631 dated 31-5-2000 as null and void, as prayed for ?OPP.
>
> 4. Whether the plaintiff is entitled to the declaration declaring sale deed no.1620 dated 16-11-2002 and mutation no.706 dated 31-12-2002 attested on the

basis of said sale deed as null and void, as prayed for? OPP.

5. Whether the plaintiff has no locus-standi to file the present suit, as alleged? OPD.

6. Whether the suit of the plaintiff is barred by limitation, as alleged? OPD.

7. Whether the plaintiff is estopped by her own act and conduct, as alleged OPD.

8. Whether the plaintiff have no enforceable cause of action and right to sue, as alleged? OPD.

9. Whether the suit of the plaintiff is not maintainable? OPD.

10. Relief."

10. The learned Trial Court directed the parties to adduce evidence in support of their contentions, and vide its judgment and decree dated 27th September 2014, the learned Civil Judge (Junior Division), Court No. 3, Mandi, District Mandi, HP dismissed the suit as filed by the plaintiff.

11. Feeling aggrieved, the plaintiff/appellant preferred an appeal under Section 96 of the CPC in the Court of learned Additional District Judge-I, Mandi, on 22nd December 2014. The learned First Appellate Court, vide its impugned judgment and decree dated 29th April 2023, affirmed the findings of the learned Trial Court and dismissed the appeal as filed by the plaintiff.

12. Still feeling dissatisfied, the plaintiff has approached this Court by invoking the provisions of Section 100 of the CPC.

13. It is contended by Mr. Suneet Goel, learned Senior Advocate assisted by Mr. Vishwas Kaushal, Advocate, for the appellant/plaintiff, that the impugned judgments and decrees as passed by the learned Courts below are erroneous and liable to be quashed and set aside. He submits that the learned Courts below have not appreciated the point in controversy in its true perspective and have wrongly dismissed the suit filed by the plaintiff. It has been contended that the plaintiff has been able to make out a case for the grant of a decree of declaration and injunction on the strength of the Will which was executed by late Smt. Mohini Devi in favour of the plaintiff, Smt. Anjali. He further submits that after accepting the present Regular Second Appeal, the suit as filed by the plaintiff deserves to be decreed.

14. On the other hand, Mr. Neeraj Gupta, learned Senior Advocate assisted by Mr. Ajeet Singh Jaswal, Advocate for the respondents has vehemently defended the impugned judgments and decrees as passed by the learned Courts below. He submits that this Court, while exercising the power under Section 100 of the CPC, will not disturb the well-reasoned judgments and

decrees, which are legal, valid, and sustainable, and there is no illegality or perversity in the same. He further submits that the Will which is alleged to have been executed is the result of fraud and mis-representation, and the same has not been established or proved by the plaintiff strictly in consonance with the provisions as laid down in the Indian Succession Act, 1925, and the Indian Evidence Act, 1872. He submits that the present appeal, being devoid of any merit, deserves to be rejected.

15. I have heard the learned counsel for the parties. With the consent of the parties, the present appeal is finally heard on the following substantial question of law:

> *"Whether the Will dated 17.03.2000 of Late Mohini Devi has been duly executed and attested in accordance with section 63 of the Indian Succession Act, 1925 read with section 67 of Indian Evidence Act, 1872."*

16. The plaintiff/appellant had filed the suit for declaration and injunction on the ground that she is the grand-daughter of Smt. Mohini Devi, the original owner of the suit property, and on account of the services which were rendered by the plaintiff and her mother, out of love and affection, Smt. Mohini Devi during her lifetime, on 17th March 2000, executed a Will in her favour. It is the case of the plaintiff that the defendants, in an illegal manner, got attested the mutation of inheritance at her back in favour of

defendants No. 1 to 4, and based upon the mutation of inheritance, defendant No. 1 sold her share in favour of defendant No. 5 vide Sale Deed No. 1620 dated 16th November 2002, and thereafter the mutation was attested on 31st December 2002 on the basis of the sale deed.

17. As per the case set up by the plaintiff, the said mutation of inheritance, Sale Deed and the subsequent mutation are illegal, null, and void. According to the plaintiff, the cause of action arose when defendant No. 5 visited the suit land and alleged that she had purchased the share of defendant No. 1, and the right to sue accrued on 28th August 2003 when the defendants flatly refused to admit the claim of the plaintiff. In the suit, it was prayed that a decree for declaration be passed declaring that the Will executed by Smt. Mohini Devi is legal, valid, and binding on the rights of the parties, and the mutation of inheritance dated 31st May 2000, the Sale Deed dated 16th November 2002 executed on the basis of the said mutation, and further the subsequent mutation dated 31st December 2002 bearing No. 706 of the sale deed, be declared null and void, and the plaintiff be declared as absolute owner in possession of the suit land.

18. Defendants No. 1 and 5 have denied all the averments made in the plaint and prayed for the dismissal of the suit. It was contended in the written statement that after the death of Smt. Mohini Devi, the suit property rightly devolved as per the rules of succession upon her three sons and one daughter, i.e., defendants No. 1 to 4. As per the case set up by the defendants, the mutation of inheritance was rightly and legally attested in their favour. Being the rightful owner, defendant No. 1 sold her share to defendant No. 5 by delivering physical possession to her, and thereafter, defendant No. 5 has been in actual physical possession and continues to be in possession till date. It was specifically stated that no Will of any kind was executed by late Smt. Mohini Devi in favour of the plaintiff, and the story projected by the plaintiff is false, concocted, and incorrect.

19. In order to substantiate her case, the plaintiff examined herself as PW-1. She filed her affidavit (Exhibit PW-1/A), reiterating all the averments made in the plaint.

20. In cross-examination, she stated that she got married in the year 1990 at Hoshiarpur, which was a love marriage. She admitted that her parents were not present on the occasion of the marriage, though they came subsequently. She further admitted

that her parents and grandmother were against the said marriage. After solemnization of the marriage in 1990, she resided for six months at Hoshiarpur, thereafter till 1998 at Ludhiana, and after 1998 at Jammu. Subsequently, from 1999 to 2010, she resided at Palampur. As per this witness, at every station she was posted as a private teacher and taught in school. PW-1 stated that her father, late Shri Lalit Kumar, expired in the year 2004, and she admitted that her mother is still alive. She admitted that her parents and grandmother used to reside together at home. Her grandmother expired on 20th April 2000. As per this witness she was not aware that defendant No. 1 executed a registered sale deed in favour of defendant No. 5 on 16th November 2002. PW-1 admitted that she is having family relations with Sarita Handa, who is her next-door neighbour. She stayed from 2002 to 2003 at Mandi, self stated that every year in the months of December and January, she resides at Mandi.

21. PW-1 admitted that Sarita Handa, from the date of the death of her grandmother till 2003, did not disclose the factum of the execution of the Will to her. She stated that Sarita Handa, after the death of her grandmother, used to meet her occasionally. She stated that she obtained copy of the Will in

January 2003 from the almirah of her grandmother, which was found kept inside the Gita. She stated that her mother also used to reside there, and that her uncles, Jiwan Bihari Lal and Mahesh, reside in Odisha.

22. PW-2 is the statement of Smt. Sarita Handa, and the copy of her affidavit was placed on record as Exhibit PW-2/A. In the affidavit, she stated that on 17th March 2000, during the morning hours, she was called by Mohini Devi, who expressed her desire to execute a Will in favour of the plaintiff because two sons of Mohini Devi had been missing for many years. Thereupon, PW-2 called the document writer, Shri Harbans Lal Handa, who was her relative. Harbans Lal came to the house of PW-2, and thereafter they went to the house of the plaintiff, where the grandmother of the plaintiff was sitting in her room.

23. As per PW-2, Mohini Devi asked the document writer to execute a Will, whereupon the document writer scribed the Will as per the wishes of Mohini Devi. Thereafter, the contents were read over to Mohini Devi, and after admitting the same to be true and correct, she affixed her signatures. Subsequently, Sarita Handa and the document writer affixed their signatures on the Will. She stated that at the time of execution of Will, Mohini Devi

instructed PW-2 not to disclose the execution of the Will to anyone, as it would cause conflict in the family.

24. In cross-examination, PW-2 stated that she had personal relations with the family of Mohini Devi. She stated that on the previous night, Mohini Devi called her and expressed her intention to execute a Will and asked her to call a document writer. On 17th March 2000, at about 9:00 AM, she went to the house of Shri Harbans Lal Handa and informed him accordingly. In the evening, after lunch, the document writer, Harbans Lal Handa, went to the house of Smt. Mohini Devi to scribe the document. At the relevant time, no one was present in the house except the brother (father of Anjali), who was sitting in another room.

25. PW-2 stated that after the death of Mohini Devi till 2003, she did not inform the plaintiff about the execution of the Will, as she had been instructed by Smt. Mohini Devi not to disclose this fact. She admitted that she is a member of the Municipal Council, Mandi. She denied the suggestion that Mohini Devi did not execute any Will during her lifetime. Self stated that the same was executed in her presence.

26. PW-3 is Harbans Lal Handa, who tendered his affidavit as Exhibit PW-3/A. In his deposition, he stated that on 17th March 2000, Sarita Handa, who is his relative, came to his house and stated that Mohini Devi wanted to execute a Will. He went to the house of Mohini Devi after lunch on the same day, where Sarita Handa was present. He scribed the Will at the instance of Mohini Devi in the presence of Sarita Handa. He read over the contents of the Will to Mohini Devi and Sarita Handa, and upon admitting the contents to be correct, Mohini Devi appended her signatures on the Will. Thereafter, Sarita Handa affixed her signatures, and finally, PW-3 appended his signatures to the Will.

27. In cross-examination, PW-3 stated that he signed the affidavit which was already prepared. He stated that he holds a licence as a stamp vendor. He stated that judicial paper of the year 1996 was given to him by Mohini Devi. He admitted that whatever is written by a document writer has to be entered and incorporated into the register. He admitted that the register of a document writer runs from 1st January to 31st December. He stated that he entered the Will (Exhibit PW-3/B) into his register, but did not bring the register to court as he was not directed to

produce it. At that stage, his cross-examination was deferred at the request of learned counsel for the defendants.

28. When cross-examination recommenced on 31st July 2013, PW-3 stated that he had not brought the requisite register. He stated that he tried to trace it, but on account of dismantling of his house, it had been misplaced, and there was minimal possibility of it being traced. He stated that the register from 1990 to 2000 maintained by him was no longer available with him. Self stated that it was lost during dismantling of his house. He admitted that he did not lodge any FIR regarding the loss of the register.

29. In cross-examination, he further stated that he had gone to the house of Mohini Devi all alone to write the Will, and that he did not go to her house along with Sarita Handa. At that time, he did not see anyone in the house except Smt. Mohini Devi. He admitted that at the time of scribing the document, the place is always recorded on the document, but self-stated that he had not written the place thereon. When he visited the house of Mohini Devi, she was lying on the bed. He categorically stated that if it has been deposed by Sarita Handa that she accompanied PW-3 for preparing the Will, then she is deposing

falsely, as he had gone all alone. He further stated that he had not taken any document, including judicial paper, with him and the same was provided by Smt. Mohini Devi. As per this witness, the Will was entered at Serial No. 18 of his register.

30. In order to rebut the case of the plaintiff, defendant No. 1, Smt. Swaran Lata, filed her affidavit (Exhibit DW-1/A), reiterating all the averments made in the written statement.

31. In her cross-examination, she stated that she has three brothers, out of whom two are residing in Odisha and one has expired, who was the father of the plaintiff. She admitted that Uma, mother of the plaintiff, had taken care of the deceased Smt. Mohini Devi and that both of them had served her. She stated that she was not aware whether the plaintiff got married with the consent of her brother Lalit and Smt. Uma. Self stated that the family members had not attended the said marriage and on account thereof, her mother had received a shock.

32. The plaintiff has placed on record Exhibit PW-3/B, the copy of the unregistered Will dated 17th March 2000, allegedly executed by Mohini Devi, witnessed by Smt. Sarita Handa, and scribed/witnessed by Shri Harbans Lal.

33. In order to prove the execution of the Will, the mandatory requirements are incorporated under Section 63 of the Indian Succession Act, 1925, which reads as follows:-

> *"63. Execution of unprivileged Wills.—*
>
> *Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—*
>
> *(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.*
>
> *(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.*
>
> *(c)The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."*

34. Similarly, Section 68 of the Indian Evidence Act, 1872, reads as follows:-

> *"68. Proof of execution of document required by law to be attested.*
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> *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence."*

35. In the present case, a perusal of the oral as well as documentary evidence reveals that the plaintiff has based her case on the execution of the unregistered Will dated 17th March 2000. It has come on record that the plaintiff, Smt. Anjali,

solemnized love marriage at Hoshiarpur in the year 1990 in the absence of her parents, who along with her grandmother were against the marriage. After the marriage, the plaintiff resided for six months at Hoshiarpur, thereafter at Ludhiana till 1998, then at Jammu, and from 1999 to 2010 at Palampur, where she was employed as a private teacher.

36. The plaintiff has tried to project the case that Mohini Devi, who was her grandmother, on account of love and affection and services which were rendered by her along with her mother, Smt. Uma, executed the Will, Ex. PW-3/B, in her favour. The plaintiff has tried to project a case that her two uncles, namely, Shri Jiwan Bihari Lal and Mahesh Kumar, are residing in Odisha, and her aunt, defendant No. 1, has been married at Bilaspur. Since her father was handicapped and she along with her mother used to serve deceased Mohini Devi, therefore, being her only grand-daughter, the deceased Mohini Devi had executed a Will in her favour.

37. It has been contended by the learned Senior Counsel for the respondent No.4 that once there is an admission on the part of the plaintiff herself that her parents along with her grandmother were not happy with her love marriage, and she had

remained mostly at Hoshiarpur, Jammu, and Palampur, therefore, it cannot be inferred that she rendered services to deceased Smt. Mohini Devi.

38. As far as the execution of the Will is concerned, the provision of Section 63 of the Indian Evidence Act stipulates that the testator shall sign or shall affix his mark to the Will, and the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will. It has been stated by the learned Senior Counsel for the respondent No. 4 that when the oral evidence of PW-2 and PW-3 is read in its entirety, it falsifies the case of the plaintiff.

39. PW-2 has been shown to be the marginal witness of the Will, and PW-3 has been shown as the scribe-cum-witness over Ex. PW-3/B. The material contradiction which has arisen in the statement of PW-2, Smt. Sarita Handa, and PW-3 Harbans Lal Handa, is that PW-2, Sarita Handa, in her affidavit, stated that Mohini Devi called PW-2 on 17.03.2000 in the morning hours by stating that she intends to execute a Will in favour of plaintiff because two sons of Mohini Devi were missing for the last many years. On this, PW-2 called the document writer, Harbans Lal Handa. Further, it has been stated that the document writer,

Harbans Lal Handa, came to the house of PW-2, Smt. Sarita Handa.

40. PW-3, Harbans Handa, has a different story when his affidavit, Ex. PW-3/A, is perused. In his affidavit, he stated that Smt. Sarita Handa came to her house on 17.03.2000 in the morning hours and stated that Mohini Devi wants to execute a Will. As such, he went to the house of Mohini Devi after lunch on the same day. Sarita Handa says that Harbans Lal Handa came to her house, and Harbans Handa says that Sarita Handa came to her house. There are material contradictions in the affidavits of PW-2 and PW-3.

41. In the cross-examination, PW-2 has stated that for the execution of the Will, Harbans Lal Handa, after lunch, went to the house of Mohini Devi, and when he went to her house, at that time there was no one in the house, self-stated that the father of Anjali was in the other room. PW-3, Harbans Lal, has a different story in his cross-examination. He stated that when he went to the house of Mohini Devi, at that time he did not see anyone in the house. PW-2, Sarita Handa, in her affidavit, Ex. PW-2/A, has stated that the document writer, Harbans Lal Handa , came to her house, and thereafter she along with PW-3, Harbans Lal Handa,

had gone to the house of the plaintiff, where her grandmother was sitting in her room, and thereafter on the asking of Mohini Devi, the document writer prepared the Will. PW-3, Harbans Lal, in his deposition, has stated that he had gone to prepare the Will all alone, and he had not accompanied Smt. Sarita Handa. He stated that for writing the Will, he had reached the house all alone. He has categorically stated that in case it has been stated by Sarita Handa that she had accompanied PW-3 the same is incorrect because he had gone all alone. These material contradictions and inconsistencies in the statements of PW-2 and PW-3 demolish the case of the plaintiff in its entirety and corroborates the case of defendants/respondents that Will as set up by appellant is surrounded by suspicious circumstances.

42. The propounder is required to prove the execution of the Will beyond reasonable doubt. In the present case, there is material inconsistencies in the statement of PW-3 which makes the case of the plaintiff highly suspicious and improbable. The version of PW-2 that she had gone to the house of Mohini Devi along with the document writer PW-3, and the another version which has been given by PW-3 that he had gone all alone, clearly

shows the non-compliance of the provisions of Indian Succession Act, which are mandatory in order to prove the Will in question.

43. Apart from the material contradictions as observed earlier, it has come on record that the father of the plaintiff, Shri Lalit Kumar, was handicapped. It has also come on record that Mohini Devi was survived by one daughter and three sons. The two sons of Mohini Devi were residing at Odisha, and defendant No.1 was married in District Bilaspur. The plaintiff has failed to establish what arrangements were made by Mohini Devi for the maintenance and upkeep of her handicapped son, Shri Lalit Kumar. Even if, it is presumed that the mother of the plaintiff, Smt. Uma Devi, was looking after the welfare of Mohini Devi, even then it seems to be improbable and unnatural that a mother will not make any arrangement for her handicapped son, and by-passing him, she shall execute the Will in favour of her grand-daughter.

44. As per the dictum of law as laid by the Hon’ble Apex Court, it has been expounded that where the execution of a Will is shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and the defendant. What generally is an adversary proceeding becomes in such cases a matter of the Court’s

conscience, and then the true question which arises for consideration is whether the evidence led by the propounder of the Will is such as to satisfy the conscience of the Court that the Will was duly executed by the testator.

45. The Apex Court in case titled as ***Smt. Jaswant Kaur v. Smt. Amrit Kaur & others, (1977) 1 SCC 369***, has held as follows:

> *"9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such sanctification unless the party which sets up the will offers a 'cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."*

46. In the present case, much emphasis has been laid on behalf of the learned Senior Counsel for the appellant that execution of the Will has been duly proved in accordance with the requirements of Section 63 of the Succession Act and Section 68 of the Evidence Act, and the same has been duly established with the aid of the attesting witnesses.

47. The submissions so made on behalf of the appellant cannot be accepted for the reason that mere proof of the

document in accordance with the requirements of Section 68 of the Evidence Act is not final and conclusive for acceptance of a document as a Will. When suspicious circumstances exist and the suspicions have not been removed, the document in question cannot be accepted as a Will.

48. The said proposition of law has been laid down by the Hon'ble Apex Court in case titled as ***Shiva kumar and Others v. Sharana Basappa and Others, (2021) 11 SCC 277***, wherein it has been held as under:-

> *"20.1 It is sought to be contented on behalf of the appellants that using of blank papers had not been the objection taken by the defendants. The contention remains bereft of substance for the simple reason that the defendants indeed asserted that the document in question was a fabricated one. The likelihood of it being drawn on the available blank papers with signatures of the testator is nothing but a deduction that logically comes out of the examination of the document in question.*
>
> *21. Much emphasis is laid on behalf of the appellants on the submissions that execution of the Will in accordance with the requirements of Section 63 of the Succession Act and Section 68 of the Evidence Act has been duly established on record with the testimony of the attesting witnesses as also the witness with whom the Will along with the handwritten draft of the Will had been deposited by the testator. The submissions so made on behalf of the appellants cannot be accepted for the reason that mere proof of the document in accordance with the requirements of Section 68 of the Evidence Act is not final and conclusive for acceptance of a document as a Will. When suspicious circumstances exist and the suspicions have not been removed, the document in question cannot be accepted as a Will."*

49. The Hon'ble Apex Court in ***Civil Appeal No. 10990 of 2016 case titled as Sardari Lal v. Bishan Dass and Others***,

has held that where there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the Will could be accepted as genuine. Even where there are no such pleas, but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances might be as to: (a) the alleged signature of the testator; (b) the condition of the testator's mind; (c) the dispositions made in the Will, which may appear unnatural, improbable or unfair in the light of the relevant circumstances. The relevant extract of the same reads as under:

> *27. **In Rani Purnima Debi (supra)**, a three-Judge Bench of this Court, after considering another three-Judge Bench decision rendered in **H. Venkatachala Iyengar** (supra), summarized the law as under: The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act, and its mode of proof as prescribed in Section 68 of the Indian Evidence Act, 187222. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the See also: Bhagwan Kaur v. Kartar Kaur & Ors., (1994) 5 SCC 135, paragraph onus. Where, however, there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine. If the caveator alleges undue influence, fraud or coercion, the onus is on him to prove the same. Even where there are no such pleas, but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances might be as to: (a) the alleged signature of the testator; (b) the condition of the testator's mind; (c) the dispositions made in the Will, which may appear unnatural, improbable or unfair in the light of relevant circumstances; or the Will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind; and (d) the propounder taking a prominent part in the execution of the Will which confers substantial benefits upon him. If the propounder succeeds in removing the suspicious circumstances, the court would grant*

probate, even if the will might be unnatural and might cut off, wholly or in part, near relations23.

30. Elaborating upon as to what could be considered 'suspicious circumstance' in the context of a will, in Shivakumar (supra), a three-Judge Bench of this Court held:

> *"12.6. A circumstance is "suspicious" when it is not normal or is "not normally expected in a normal situation or is not expected of a normal person". As put by this Court, the suspicious features must be "real, germane and valid" and not merely the "fantasy of the doubting mind".*
>
> *12.7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependents; an active or leading part in making of the will by the beneficiary thereunder etcetera are some of the circumstances which may give rise to suspicion. These circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to a legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof and sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.*
>
> *12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding nature and effect of the dispositions in the will.*
>
> *12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding will." (Emphasis supplied)*

31. In Lilian Coelho & Ors. v. Myra Philomena Coalho26, while laying stress on the obligation of the propounder to explain the suspicious circumstances so as to satisfy the conscience of the Court, it was observed:

> *"13. At the same time, if it is taken that the learned Single Judge had only recorded that the plaintiff had succeeded in proving the execution in terms of the provisions under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 in the light of well-nigh settled position of law, it would be open to the court to consider, rather, it is the*

> *irrecusable duty of the Court in case the objector raises suspicious circumstances, to call upon the propounder to remove such suspicious circumstances to satisfy its conscience."*

50. The plaintiff has withheld a very material witness, i.e., the wife of Shri Lalit Kumar, Smt. Uma, who is the mother of plaintiff. The defendants in their defence has categorically stated that on account of marriage which the plaintiff had performed against the wishes of her parents and her grandparents, there were strained relations amongst them. The statement of Uma Devi, the mother of the plaintiff, was very crucial and she could have thrown the light on the relation of the parties in the present case. The plaintiff has withheld the said material witness intentionally and willfully so that the truth may not come out.

51. Once it has come on record, that too in the testimony of PW-1, that most of the time she remained at Hoshiarpur, Ludhiana, Jammu and Palampur, therefore, it cannot be believed that she looked after her grandmother, and on that account, out of love and affection, she executed a Will in her favour. PW-2, Sarita Handa, in her statement has stated that when they went to the house of Mohini Devi, there was no one in the house of Mohini Devi, self-stated except brother, the father of Anjali, who was sitting in the another room. She has also stated in her deposition

that Mohini Devi had told her not to disclose the execution of the Will to anyone. It seems to be very unnatural that a mother is executing a Will in favour of her grand-daughter by not disclosing this fact to her own son who is sitting in the another room.

52. The plaintiff has tried to portray that she came to know about the execution of the Will only in 2003 when the said fact was disclosed to her by PW-2, Sarita Handa. As per the record, Mohini Devi expired on 20th April, 2000. The mutation of inheritance in favour of defendants was attested vide Exhibit PW-1/C on 31.05.2000, and thereafter defendant No. 1 had sold her share to defendant No. 5, and in that regard mutation of sale was attested on 31st December, 2002. It is highly improbable and unbelievable that Mohini Devi had expired on 20th April, 2000, and for about more than three years this fact was not disclosed by Sarita Handa (PW-2) to the plaintiff. PW-2 has stated in her cross-examination that she did not tell the plaintiff about the Will because she was not having time. In her statement, PW-2 has stated that from the years 2002 to 2003, she had met Anjali approximately 10 to 20 times. Though, it was tried to be projected by PW-2 that she was asked by Mohini Devi not to disclose the said fact to anyone in the family as the same might cause rivalry

amongst the family members. Though the said fact can be considered during the lifetime of Smt. Mohini Devi, however, after the death of Smt. Mohini Devi, there was no impediment to disclose the said fact to Smt. Anjali, the present plaintiff. The story which is being tried to be projected is imaginary and cooked-up. The another ground which seems to be suspicious is that Harbans Lal Handa (PW-3), in his statement, has stated that he had got the license of being a stamp vendor, but in his deposition he has stated that judicial paper of 1996 was given to him by Smt. Mohini Devi.

53. The testimony of PW-3, Shri Harbans Lal Handa, is also full of contradictions and the same seems to be an afterthought. In the earlier part of his statement, he stated that he is having the license of stamp vendor and judicial paper bearing No. 0319409 of 1996 was given to him by Smt. Mohini Devi. He stated that he had entered Exhibit PW-3/B in his register. He stated that he had not brought the register as he was not asked to do so. His testimony was deferred by the learned counsel for the defendants, and in the further cross-examination on 31.07.2013, he has totally a different tale to tell. He stated that he tried to trace out the required register, but the same was not traceable as

his house got dismantled. Then he stated that the register which was maintained by him from 1990 to 2000 is not available as the same got misplaced on account of the dismantling of the house. Said version of PW-3 does not stand the judicial scrutiny of this Court and it seems that this witness is telling lie on the face of it.

54. It is the case of the defendants that since the plaintiff got married against the wishes of her parents and her grandmother, and thereafter she was residing at Hoshiarpur, Ludhiana, Jammu, and Palampur, and she came back in 2009-2010, and thereafter, in order to grab the property of the defendants, in connivance with Sarita Handa and Harbans Lal Handa, Will Exhibit PW-3/B was prepared in order to deprive the defendants of their lawful claim. The case as set up by the plaintiff is full of suspicious circumstances, and there is no iota of truth in the evidence as led by the plaintiff.

55. The factum of execution and validity of the Will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of the witnesses and disengage the truth from falsehood, the Court is not confined only to their testimony and demeanour. It would be open to the Court to consider circumstances brought out in the

evidence or which appears from the nature and contents of the document itself.

56. A circumstance is suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will by the testator is surrounded by suspicious circumstances. While applying such test, the Court would address itself to the solemn question as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the depositions in the Will.

57. The conscience of the Court has to be satisfied by the propounder of the Will adducing evidence so as to dispel any suspicious or unnatural circumstances attaching to a Will, provided that there is something unnatural or suspicious about the Will. The law of evidence does not permit conjectures or surmises having taken the place of legal proof, nor permit them to demolish a fact otherwise proved by legal and convincing evidence. When there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the Will can be accepted as genuine.

58. The perusal of Section 63 of the Indian Succession Act stipulates that the testator shall sign or affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction. The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. Further, the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will, or has seen some other person sign the Will in the presence and by the direction of the testator.

59. The Hon'ble Supreme Court has defined what is suspicious circumstances in case titled ***Bharpur Singh and others vs. Shamsher Singh***, ***2009(3) SCC 687***, the relevant extract of the same is as under:-

> *"17. Suspicious circumstances like the following may be found to be surrounded in the execution of the Will:*
>
> > *i. The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.*
> >
> > *ii. The condition of the testator's mind may be very feeble and debilitated at the relevant time.*
> >
> > *iii. The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.*
> >
> > *iv. The dispositions may not appear to be the result of the testator's free will and mind.*

v. The propounder takes a prominent part in the execution of the Will.

vi. The testator used to sign blank papers.

vii. The Will did not see the light of the day for long.

viii. Incorrect recitals of essential facts."

60. The Hon'ble Supreme Court has held that the Court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, it was the last Will executed by him or her. It is not required to be proved with mathematical accuracy, but the test of the satisfaction of the prudent mind has to be applied. A Will is required to fulfill all the formalities required under Section 63 of the Succession Act. Further, it has been summarized that for the purpose of proving the execution of the Will, at least one of the attesting witnesses who is alive, subject to the process of the Court and capable of giving evidence, shall be examined. The attesting witness should speak not only about the testator's signature, but also that each of the witnesses had signed the Will in the presence of the testator.

61. In the present case, the entirety of the facts and circumstances of the case indicates that the projectory which has been made by the plaintiff is full of suspicious circumstances, and

the story is highly improbable and unbelievable, which does not stand the judicial scrutiny of this Court.

62. The learned Courts below have concurrently come to the conclusion that the plaintiff has failed to establish and prove her case beyond reasonable doubt. This Court also does not find any infirmity, illegality, or perversity in the judgments of the learned Courts below.

63. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 in ***Hero Vinoth (minor)*** vs. ***Seshammal, (2006) 5 SCC 545*** has held as under:

> *"18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd.*

v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that :

> *"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."*

19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

20. to 22 xx xx xx xx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper

decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

64. The Hon'ble Supreme Court in ***Annamalai*** vs. ***Vasanthi, 2025 INSC 1267***, has held as follows:-

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff-appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction. 18. Once the finding regarding payment of

> *additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfill his obligation and accept performance when the time for performance arrives."*

65. No other point was urged by the learned counsel for the parties. The substantial question of law is answered accordingly.

66. In view of the observations made here-in-above, this Court does not find any infirmity or illegality in the impugned judgments and decrees. Consequently, the present appeal is dismissed.

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

(Romesh Verma)
Judge

October 31, 2026
(Nisha)