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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 297/2025

MAYANK RANA

S/o late Sh. Bhagwan Das
R/o C-1/10, Tibbia College,
Desh Bandhu Gupta Road,
Karol Bagh, New Delhi-110005.

.....Appellant

Through: Mr. Rahul Sagar Sahay, Mr. Pratham
Arora and Mr. Raghav Rajmalani,
Advocates

versus

PAWAN MITTAL

S/o Mr. Mittal
R/o A-96/A-1, Near Metro Station
and Shiv Mandir, Shastri Nagar, Delhi.

....Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

17.02.2026

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1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) has been filed to challenge the Judgment dated 22.11.2024 whereby the Suit of the Plaintiff/Appellant has been rejected solely on the ground of *locus standi*.

2. The Plaintiff/Appellant who was a minor, filed the Suit on 11.12.2019, through his biological mother/guardian Devi Rani. The averments in the Plaint, was that Smt. Vidya Devi, sister of Devi Rani, was the adopted mother of the Plaintiff. She had also executed a Will in the year



2017, in favor of the Plaintiff bequeathing all her movable, immovable properties in favor of the Plaintiff/Appellant.

3. The Defendant, a jeweller by profession, was a family friend of Smt. Vidya Devi (deceased adoptive mother). Smt. Vidya Devi, during her lifetime, sometime in November 2016, gave financial help of Rs. 4,00,000/-. In order to repay this amount, Defendant issued a cheque dated 25.03.2017 in the sum of Rs. 4,00,000/-. Smt. Vidya Devi expired on 21.03.2019.

4. Despite repeated requests, the Defendant failed to discharge the liability and withheld the payment due to the Plaintiff. The Plaintiff, therefore, filed a *Suit for recovery of Rs. 4,00,000/- along with interest @ 18% p.a.*

5. The Summons were served upon the Defendant/Respondent, but he neither appeared nor filed his Written Statement. He was proceeded *ex parte* vide Order dated 24.02.2024, by the Learned District Judge.

6. *Smt. Devi Rani, on behalf of the Plaintiff, examined herself as PW-1* and tendered for evidence and proved the requisite documents.

7. The Learned District Judge on appreciation of the evidence, came to the conclusion that Plaintiff/Appellant **has no *locus standi* and entitlement to recover the alleged amount and the Suit was dismissed.**

8. Aggrieved by the said judgment dated 22.11.2024, **the present Appeal has been preferred.**

9. *The grounds of challenge* are that the Learned District Judge has erred in holding that the Appellant lacks necessary *locus standi* to institute the Suit, due to absence of any formal Adoption Deed. It has been disregarded and overlooked that Smt. Vidya had raised the Appellant as her own child. The factum of adoption was formally recognized by way of his



school records, Aadhar Card, Marksheet and the Will executed in his favor by his adopted mother.

10. It is settled principles of adoption that it need not be proved by way of a formal Deed, particularly when the child's status as the adopted son has been consistently proved through official records and acceptance of this adoption by society at large.

11. Reliance is placed on Kamla Rani vs. Ram Lalit Rai (2018) 9 SCC 663 wherein it was held that long duration of time during which the person is treated as adopted, cannot be ignored and can by itself, raise a presumption of adoption.

12. *Section 6 and Section 11 of Hindu Adoption and Maintenance Act* state that the only mandatory requirement for valid adoption, is the act of 'giving and taking' of the child in adoption. All the conditions of valid adoption were proved, through the pleadings.

13. It is submitted that merely absence of an Adoption Deed does not invalidate an otherwise, valid adoption under Hindu Law. The Appellant, therefore, had a *locus standi* to institute the present Suit.

14. Even otherwise if the adoption is held to be not conclusively established, he is still the Class-II legal of Smt. Vidya being her real sister's son. These aspects have not been considered while dismissing the Suit.

15. Furthermore, it has been specifically pleaded and established that the deceased had executed a Will in 2017 which was duly attested by two witnesses, in the favour of the Plaintiff. This fact was neither controverted nor disputed by the Respondent, at any stage. No admission denial of the document was done by the Respondent as he was proceeded *ex parte*, thereby amounting to a deemed admission in law.



16. The Learned District Judge observing that the Will was without the names and addresses of attesting witnesses, which made the Will deficient and consequently precluded the Appellant from relying upon it to establish his *locus standi*.

17. Section 63(c) Indian Succession Act clearly stipulates that no particular form of attestation shall be necessary, as long as two or more witnesses have signed the Will in the presence of the Testator. The statutory requirement is limited to the presence of two attesting witnesses who have signed in accordance with the prescribed procedure. The findings of the Learned District Judge in this regard is therefore, not sustainable.

18. The undue emphasis has been placed on procedural technicalities, such as non-examination of attesting witness, despite the fact that Respondent was *ex parte*. One of the attesting witnesses to the Will was Respondent himself, who deliberately evaded Court summons on multiple locations while the other attesting witness, Mr. Amit is untraceable because of legal proceedings initiated against him and he has unlawfully retained possession of the original Will.

19. The burden of producing the attesting witnesses, cannot be mechanically forced upon the Appellant, particularly, in the light of this factual scenario. Once the Plaintiff appeared as PW-1 and discharged the burden of proof through the evidence, further obligation to produce evidence does not arise, particularly, when the Respondent was *ex parte*. In the absence of any contest by the Respondent, all the documents placed on record including the plaint and the deposition of PW-1, are deemed to be admitted and uncontroverted.



20. The Learned District Judge erred in concluding that Will primarily dealt with immovable properties and was, therefore, irrelevant to the financial transaction in question. This finding is fundamentally flawed as all debts owed to Smt. Vidya Devi after her demise, became part of her estate and the Appellant as the sole legal heir and beneficiary under the Will, acquired an absolute right to recover the amount. The nature of the asset whether movable or immovable, is immaterial to the Appellant's entitlement.

21. It is submitted that Learned District Judge has completely disregarded the material documents including the cheque and acknowledgement of liability, which independently validated the Appellant's claim for recovery of Rs. 4,00,000/- along with the interest.

22. A prayer is, therefore, made that the impugned Judgment be set aside and the Suit of the Appellant for recovery of Rs. 4,00,000/- along with interest @ 18% p.a., may be decreed.

Submissions heard and record perused.

23. The case of the Appellant/Plaintiff was that during the lifetime, Smt. Vidya Devi had given a loan of Rs. 4,00,000/- to the Respondent/Defendant, which he failed to pay despite repeated requests. Unfortunately, Smt. Vidya Devi died on 21.03.2019 and consequently, the Plaintiff Master Mayank Rana through his natural mother Devi Rani, filed the present Suit.

24. The first ground for non suiting the Appellant was on the aspect of *locus standi*. It was held that the factum of adoption of the Appellant by Smt. Vidya Devi was not proved and therefore, the Appellant/Plaintiff had no *locus* to file the present Suit.

25. To prove that the Appellant/Plaintiff was the adopted son of Smt.



Vidya Devi, the natural mother Devi Rani, sister of Vidya Devi, had stepped into the witness box as PW-1 and deposed in her Affidavit of Evidence that late Smt. Vidya Devi was her real sister and who did not have a child, to whom she had given her son Mayank (Plaintiff) in adoption, under an oral Agreement/Undertaking. She started taking care of Master Mayank and used to say that Master Mayank is her legal heir and everything belonging to her, would go to him.

26. To corroborate her testimony, she proved the CBSE Certificate Ex. PW1/4 dated 12.05.2023, wherein the name of the mother of the Appellant/Plaintiff, was shown as Vidya Devi.

27. The testimony of PW-1, Ex. PW1/X in regard to she having given her child in adoption to her sister Vidya Devi, not only stood corroborated with the school record of the Appellant/Mayank, but was also not subjected to any cross-examination by the Respondent, who chose to not appear in the Trial Court despite service and was proceeded *ex parte*.

28. Section 11(vi) of the Hindu Adoption and Maintenance Act, 1965 states that the only mandatory requirement for valid adoption, is the act of 'giving and taking' of the child in adoption by the parents concerned, with the intent to transfer the child from birth family to adopted family.

29. Bhagwan Das, husband of Vidya Devi had died on 04.08.1994, of whose Death Certificate Mark D, had also been annexed.

30. PW1 in her Affidavit of Evidence had further deposed that Smt. Vidya Devi had executed a Will wherein she has bequeathed all her movable and immovable property, in favour of Master Mayank.

31. The Respondent has vehemently asserted that the Will Mark E, has not been proved by the Appellant to establish that all the movable and



immovable property of the deceased Vidya Devi, were inherited by the Appellant Master Mayank.

32. The original Will had not been exhibited since the original was not produced. The plaintiff had deposed that the original Will was in the possession of Sh. Amit, the second attesting witness, who is untraceable because of legal proceedings initiated against him.

33. In this context, it may be observed that firstly, this Will had not been contested by any person who had the interest in the property. Furthermore, even if the Will is ignored, there is an oral unrebutted and uncontroverted testimony of the Appellant/Plaintiff supported by the school record of the Appellant/Plaintiff to corroborate that he was adopted by Smt. Vidya Devi during her lifetime. The Appellant, being the adopted son, was the legal heir who became entitled to the estate of the deceased and therefore, had the *locus standi* to file the Suit.

34. The Learned Trial Court, therefore, fell in error in concluding that the *locus standi* of the Appellant/Plaintiff to file the Suit, was not proved.

35. Having concluded that Appellant/Plaintiff had the *locus standi* to file the present Suit, her testimony may further be examined to consider if she has been able to prove the case for recovery of the loan of Rs. Rs.4,00,000/-.

36. PW-1 Smt. Devi Rani deposed that the Respondent/Defendant was a Jeweller by profession and Vidya Devi used to visit him as a customer. The Respondent/Defendant was residing earlier in Dev Nagar, near the house of Smt. Vidya devi after which, he shifted his residence to Shastri Nagar, Delhi somewhere in 2008. Smt. Vidya sold her property in the year 2007 and shifted to C-1/10, Tibia Colony, Deshbandhu Gupta Road, Karol Bagh, New Delhi.



37. The Respondent/Defendant was in financial difficulty, therefore, Smt. Vidya Devi in November 2016, extended financial help of Rs. 4,00,000/- to the Respondent/Defendant in the presence of Master Mayank, at her residence at Tibia Colony, Deshbandhu Gupta Road. To secure the loan, the Respondent/Defendant handed over a cheque dated 25.03.2017 Ex.PW1/1 to the Appellant/Plaintiff's adopted mother, Smt. Vidya Devi.

38. The entire testimony of the PW1 in regard to giving of loan amount and a corresponding cheque Ex.PW1/1 of Rs. Rs. 4,00,000/- as a witness to the loan amount, has remained totally unchallenged and uncorroborated.

39. The Respondent/Defendant had chosen not to contest the Suit or to controvert the testimony of the Appellant/Plaintiff.

40. In the light of the aforesaid, it is proved that the Appellant/Plaintiff has successfully proved her case for recovery of Rs. 4,00,000/- from the Defendant. **The Suit is hereby, decreed** in the sum of Rs. 4,00,000/- along with *pendent lite and* future interest @ 6% p.a.

41. The impugned Judgment dated 22.11.2024 is hereby, set aside and the Appeal is allowed.

42. Pending Applications, if any, are disposed of accordingly.

NEENA BANSAL KRISHNA, J

FEBRUARY 17, 2026

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