

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****RSA No. 408 of 2019.****Reserved on: 12th August, 2025.****Decided on: 2nd September, 2025.**

Vidya & Ors.

Versus

.... **Appellants.**

Vinita & Ors.

....**Respondents.****Coram:****The Hon'ble Mr. Justice Satyen Vaidya, Judge.***Whether approved for reporting?*¹ Yes.**For the Appellants:**Mr. Sudhir Thakur, Senior
Advocate with Mr. Karun Negi,
Advocate.**For the Respondents:**Mr. G.D. Verma, Senior Advocate
with Mr. Summit Sharma, Advocate.**Satyen Vaidya, Judge.**

This Regular Second Appeal has been filed by the appellants/plaintiffs against the judgment and decree dated 30.07.2019 passed by learned Additional District Judge-I, Solan, H.P. in Civil Appeal No. 26-S/13 of 2018, whereby the judgment and decree dated 02.07.2018 passed by learned Civil Judge, Junior Division, Court No.-II, Solan, H.P. in Civil Suit No. 410/1 of 2014/12 has been affirmed.

2. The appellants herein along with their mother Pampo Devi (now deceased) filed Civil Suit No. 410/1 of

¹ Whether reporters of the local papers may be allowed to see the judgment?

2014/12 before learned Civil Judge, Junior Division, Court No. II, Solan against the respondents herein with respect to the estate left behind by Anokhi Ram.

3. Original plaintiff No.1 Smt. Pampo Devi was wife and plaintiffs No.2 to 4 (appellants herein) are the daughters of Anokhi Ram. Another daughter of Anokhi Ram was named Prema Devi (now deceased), who was married to defendant No.4 Gopal. Prema Devi had predeceased her mother Pampo Devi. Defendants No.1 to 3 are the daughters of Prema Devi and defendant Gopal.

4. The parties, hereafter shall be referred to by the same status as they held before the trial court.

5. By virtue of Will dated 06.01.1983 Anokhi Ram had bequeathed his entire immovable property in favour of Prema Devi and her husband Gopal (D-4). Anokhi Ram died on 03.08.1984. The mutation of inheritance in respect of estate of Anokhi Ram was attested on 24.09.1984, as mutation No. 178, in favour of Prema Devi and Gopal(D-4) in terms of Will dated 06.01.1983.

6. Prema Devi had also executed a Will dated 03.04.2011 and on her death her estate devolved upon her daughters and husband in terms of said Will.

7. The plaintiffs, on 07.01.2012, instituted the suit for declaration to the effect that the Will of Anokhi Ram dated 06.01.1983 registered with Sub Registrar, Solan on 07.01.1983 was wrong, illegal, null and void and was result of fraud and misrepresentation exercised by Prema Devi and Gopal in league with the marginal witnesses. The mutation No. 178 dated 24.09.1984 was also sought to be declared as wrong, illegal, null and void. Further declaration was sought to the effect that the plaintiffs were owners of the suit property to the extent of 1/6th share each and the remaining 1/6th share belonged to the defendants after the death of Smt. Prema Devi. The Will dated 03.04.2011 executed by Prema Devi was also sought to be declared as wrong, null and void.

8. In addition, a decree of permanent prohibitory injunction was also sought to restrain the defendants from dispossessing the plaintiffs from the suit property on the basis of wrong and illegal revenue entries and also from changing the nature of the suit property, creating any charge or alienating the same in any manner.

9. Plaintiffs challenged the Will of Anokhi Ram on the ground *firstly*, that the property was ancestral coparcenary property in the hands of Anokhi Ram and hence he was not

entitled to bequeath the same by Will, secondly, the local custom of area prohibited/banned the transfer of ancestral property by gift or Will, *thirdly*, Anokhi Ram did not possess sound disposing mind as his mental condition was imbalanced and *lastly*, the Will was shrouded with suspicion as there was no special reason for Anokhi Ram to disinherit his wife and daughters.

10. Plaintiffs averred that they were not aware about the execution of Will by Anokhi Ram or attestation of mutation of inheritance in favour of Prema Devi and Gopal till the death of Prema Devi in the year 2011. As per the plaintiffs, they became aware about the said fact when they approached the revenue authorities for attestation of mutation after the death of Prema Devi.

11. It was also averred that Pambo Devi was illiterate and rustic villagers and she did not acknowledge the authenticity of her thumb impression allegedly found on the Will.

12. The plaintiffs also claimed themselves to be in possession of the suit property till the filing of the suit.

13. The challenge was also made to the Will of Prema Devi on the ground that she did not have any right, title or interest on more than her share in the suit property.

14. Defendants made known their defence by way of written statement. Objections were raised as to the limitation, maintainability and lack of cause of action etc. The plaintiffs were alleged to be estopped from filing the suit on account of their acts, conduct, acquiescence and laches.

15. The allegations as to the suit property being ancestral coparcenary property in the hands of Anokhi Ram were specifically denied. It was asserted that Anokhi Ram was exclusive owner of the suit property. It was submitted that Anokhi Ram had executed a registered Will in favour of his daughter Prema Devi and son-in-law Gopal which was duly registered in the office of Sub Registrar, Solan on 07.01.1983. The allegations regarding unsoundness of mind of Anokhi Ram were specifically denied. It was submitted that Anokhi Ram had executed Will in a sound disposing mind.

16. The defendants further submitted that Anokhi Ram had five daughters namely, Prema Devi, Vidya, Sushila, Santosh and Suman. Initially, Anokhi Ram worked as Carpenter, but later on he fell ill and a tumor was detected in his stomach for which surgery was conducted in IGMC Hospital, Shimla. Resultantly, Anokhi Ram could not undertake strenuous jobs and had started working in a Carton Factory at Chambaghat, District Solan. Anokhi Ram had

married his three daughters Prema Devi, Vidya and Sushila during his life time. Sushila went to Bombay after her marriage and came back to Solan after 20 years. She did not visit her ailing father and even on the death of Anokhi Ram, she had not visited her native place. Vidya, on the other hand, had six children and she remained over occupied in bringing them up in her matrimonial house. Vidya had shown her helplessness to look-after Anokhi Ram and Pampo Devi. Even financial condition of Vidya was stated to be not sound. Anokhi Ram was also having meager income and was not able to maintain his family. He fell ill second time and was operated upon at IGMC Hospital, Shimla. This resulted in disability of Anokhi Ram to work further. He was left without any source of income. Anokhi Ram was under heavy debt after the marriage of his daughters. In such circumstances, defendant Gopal had met all the expenses of his treatment. Anokhi Ram and Pampo Devi had compelled Prema Devi and Gopal to live and settle in the house of Anokhi Ram to look after and maintain them and his two minor daughters Santosh and Suman. Therefore, Gopal and Prema Devi had started living at Village Kathar Basal in the house of Anokhi Ram since 1977-78. Gopal was a government servant and was not only able to maintain Anokhi Ram, his wife and minor

daughters but also paid the debts of Anokhi Ram. Even the land of Anokhi Ram was cultivated and managed by Gopal. Anokhi Ram and Pampo Devi were satisfied and happy with the services of Prema Devi and Gopal and for such reason Anokhi Ram had executed the Will in favour of Prema Devi and Gopal out of love and affection.

17. Defendants had specifically averred that Will was executed by Anokhi Ram at the instance and with the consent and knowledge of Pampo Devi and Vidya. As per the defendants, all the last rites after the death of Anokhi Ram were performed by Gopal. Both the minor daughters of Anokhi Ram were provided education by him. The expenses of their marriage were also borne by Gopal.

18. Defendants further maintained that the plaintiffs throughout were having knowledge about the attestation of mutation of inheritance of Anokhi Ram in the year 1984.

19. Learned Trial Court framed the following issues:-

1. Whether the plaintiffs are entitled to a decree for declaration to the effect that the Will dated 06.01.1983 is illegal, null and void being result of fraud and misrepresentation?OPP
2. Whether the mutation No.178 of Will dated 24.09.1984 is also illegal, null and

void and not binding upon the plaintiffs?
OPP

3. Whether the plaintiffs are the owners of the suit property to the extent of 1/6th share each in the property of Prema Devi?

OPP

4. Whether the suit land is joint and unpartitioned?OPP

5. Whether the Will dated 30.04.2011 is illegal, null and void and not binding upon the plaintiffs?OPP

6. Whether the plaintiffs are entitled to a decree of permanent prohibitory injunction, as prayed for?OPD.

7. Whether the suit is not maintainable?OPD.

8. Whether the plaintiffs are estopped to file the present suit by way of their own act and conduct?OPD

9. Whether the suit is barred by limitation? OPD.

10. Whether the plaintiffs has no cause of action to file the present suit?OPD.

11. Whether the Will dated 06.01.1983 executed by Anokhi Ram and Will dated 30.04.2011 executed by Prem Devi are their last valid Wills in favour of the propounders?OPD

12. Relief.

20. Issues No.1 to 6, 8 and 9 were answered in negative. Issues No. 7, 10 and 11 were answered in affirmative. Accordingly, the suit of the plaintiffs was dismissed.

21. Defendants examined DW-1 Netar Singh, one of the marginal witnesses of the Will, as their witness. The Will was proved as Ex.DW1/A. DWs 7, 8 and 9, namely Sanjay Kumar, Vidya Dutt and Vinod were examined as witnesses to prove that Anokhi Ram and Pampo Devi were being looked after, cared and maintained by Prema Devi and Gopal.

22. DW-3 had produced original record of the Will from the office of Sub Registrar, Solan. DW-4 had proved the voter lists, DW-5 had proved ration card of the family of Anokhi Ram and DW-5 was examined to prove the entries in the Parivar Register. This entire evidence was led to prove that Prema Devi and Gopal were residing with Anokhi Ram after 1977-78.

23. On the other hand, one of the plaintiffs, namely, Vidya examined herself as PW-1. PWs 2 and 3 namely, Tej Ram and Hari Singh were examined to prove that all the daughters of Anokhi Ram used to take care of Anokhi Ram and Pampo Devi and there was no special reason to disinherit the plaintiffs from the estate of Anokhi Ram.

24. Learned trial Court, while deciding issues No.1 to 5 and 11, held that the suit property was not proved to be ancestral coparcenary in the hands of Anokhi Ram. As per learned trial Court required foundational facts to establish the existence of coparcenary were missing in the pleadings of plaintiffs. It was also noticed that after passing of Hindu Succession Act, 1956, there was no presumption as to existence of a Hindu Undivided Family and such fact was required to be independently proved.

25. Learned trial Court also found that plaintiffs had been able to prove the fulfillment of the requirements of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. Due execution of Will was found to have been proved through the statement of DW-1 Netar Singh. Learned trial Court further appreciated the statements of DW-6 and DW-7 to believe that Prema Devi and Gopal used to take care of Anokhi Ram and further on the basis of statements of said witnesses the recital in the Will to the same effect was found to have been corroborated.

26. Learned trial Court further abstained from sitting in appeal on the decision of the testator once its due execution was proved. It was also held that the plaintiffs had failed to

prove the exercise of any undue influence, coercion or fraud in execution of Will by Anokhi Ram.

27. As regards, the exclusion of Class-I heirs from inheritance by Anokhi Ram, learned trial Court held that the testator could exclude any of the Class-I heirs and merely on this ground, the validity and genuineness of the Will could not be suspected. Placing reliance upon the judgment passed by this Court in **Rajesh Kumar vs. Ravinder Kumar & Ors., Latest HLJ 2018(HP) 548**, the learned trial Court observed that the exclusion of natural heirs by itself was not a suspicious circumstance.

28. The issue of limitation was decided against the defendants on the ground that they had failed to produce on record any evidence.

29. Learned First Appellate Court affirmed the findings rendered by the learned trial Court except the findings on issue of limitation. The entries in jamabandis Ex. P-6 for the year 1974-75 and Ex. P-8 for the year 1982-83 were relied upon to hold that Anokhi Ram along with his brother Gita Ram and sister Ishwari Devi had inherited the estate of their father Basti Ram and mutation to this effect was attested in the year 1980. Inheritance of suit property by Basti Ram from his predecessors was held to be not traced. Learned First

Appellate Court held that since the inheritance of Basti Ram had opened in the year 1980, by application of Section 6 of the Hindu Succession Act the coparcenary could not be said to have been created as daughter of Basti Ram being Class-I heir was one of the heirs to inherit the estate of Basti Ram. It was further observed that since the suit property was not ancestral coparcenary in the hands of Anokhi Ram, on his death in the year 1984, it could be inherited by Prema Devi and Gopal under the Will of Anokhi Ram.

30. Learned First Appellate Court also found the valid execution of the Will proved through the statement of DW-1, Netar Singh.

31. In the absence of cogent evidence, the allegation of plaintiffs with respect to mental state of Anokhi Ram have also been held as not proved. Further, learned First Appellate Court found sufficient evidence on record in proof of the fact that Prema Devi and Gopal had been taking care of Anokhi Ram and Pampo Devi by residing at Village Kathar Basal in the house of Anokhi Ram after 1977-78. Thus, it was held that the bequeath made by Anokhi Ram in favour of Prema Devi and Gopal could not be said to be unnatural.

32. As regards limitation or delay in filing the suit, the learned First Appellate Court has disbelieved the stand of

plaintiffs as to their ignorance about the attestation of mutation of inheritance of Anokhi Ram in favour of Prema Devi and Gopal in 1984 and thus the suit of plaintiffs has also been held as barred by limitation.

33. The appeal was admitted for hearing on following substantial questions of law *vide* order dated 19.07.2021: -

1. Whether the impugned judgments and decrees passed by Courts below are vitiated on account of mis-interpretation, mis-construction and misreading of pleadings and evidence oral as well as documentary which has resulted into perversity?
2. Whether the Will has not been proved by defendants in accordance with Section 63 of the Indian Successions Act and Section 68 of Indian Evidence Act?
3. Whether the suspicious circumstances shrouding the Will have not been explained by the defendant/propounder and thus conclusion of Courts below that the Will exhibit DW1/B is a legal document is perverse?

34. I have heard learned counsel for the parties and have also gone through the entire record carefully.

35. Shri Sudhir Thakur, learned Senior Counsel representing the plaintiffs at the outset prayed to allow of the application bearing CMP No. 19067/2025 whereby the appellants had claimed framing of two additional substantial questions of law as under: -

- (4) *When the question of limitation raised by the defendants/respondents has been negated by the court below. Whether it was open for the First Appellate Court to decide the question of limitation in favour of defendants/respondents by holding that the suit is barred by limitation without setting aside the findings arrived at by the lower court and without assailing the same issue by the defendants/respondents in the first appeal by raising cross-objections or otherwise?*
- (5) *That when the first appellate court has failed to consider and discuss the statements i.e. PW-1, PW-2, DW-2 & DW-3 and other evidence on the file and the outcome of their statement and further failed to form relevant point of the determination as required under Order 41, Rule 31 whether the judgment and decree passed by the first appellate court is sustainable in the eyes of law?*

36. Mr. Thakur, learned Senior Advocate further urged to grant the parties opportunity of being heard on the aforesaid additional substantial questions of law.

37. The main thrust of Mr. Thakur, learned Senior Advocate has been on the ground that the defendants had

failed to remove the suspicion shrouding the Will Ex.DW1/A. He would contend that it had been sufficiently proved on record that Anokhi Ram was not hostile either to Pampo Devi or to other plaintiffs in any manner. Anokhi Ram maintained cordial relations with all the plaintiffs. It being so, the fact that Anokhi Ram had not made any arrangements for maintenance of his wife and minor daughters created grave suspicion on the genuineness of the Will.

38. Both the Courts have concurrently held the execution of will Ext. DW-1/B to have been validly proved. The deposition made by DW-1 Netar Singh has been found to be trustworthy and convincing. Learned counsel for the plaintiffs has not been able to point out even a single circumstance which may suggest that the findings of fact recorded by both the Courts with respect to execution of Will, were perverse. I have also not found any material on record from which an inference as to the illegality or perversity in the findings of both the Courts can be drawn. Thus, no interference is required with respect to the findings of fact, with respect to execution of Will, concurrently recorded by both the Courts.

39. It also cannot be ignored that the Will was registered in the office of Sub Registrar, Solan on the next

date of its execution. There is sufficient explanation on record for postponement of the registration for the next date. The fact that Sub Registrar had left the office by the time the Will was executed has not been rebutted by the plaintiffs.

40. No doubt, the proof of execution of Will does not absolve the propounder of the burden to remove the suspicion, if any, surrounding such execution. The existence of suspicious circumstance is a question of fact and its assessment cannot be made by a straight jacket formula.

41. Anokhi Ram had preferred only one of his daughters and her husband for inheritance of his estate by ignoring his wife and other daughters, two out of whom were minors. It was not even the case of the defendants that Anokhi Ram was not maintaining cordial relations with his wife and other daughters. In such circumstances, it was not unreasonable on the part of the plaintiffs to allege foul play.

42. The question, however, is whether the suspicion stood removed?

43. Falling back on record again, both the courts have found that the recitation in the Will Ex.DW1/A, to the effect that the testator had executed the Will on account of love and affection, stood corroborated by oral testimonies of the witnesses. The fact that Anokhi Ram and Pampo Devi were

taken care by Prema and Gopal by staying in the house of Anokhi Ram has even been admitted by plaintiff Vidya while appearing as PW-1. From perusal of version extracted from the cross-examination of this witness, it becomes clear that before execution of the Will by Anokhi Ram, Prema and Gopal had shifted to Village Kathar Basal and had started residing in the house of Anokhi Ram. It is not disputed that at that stage Vidya and Sushila were already married. PW-1 has admitted that she had given birth to six children out of whom one remained under the care and custody of Prema for considerable time. These facts have been duly corroborated by the oral depositions made by DWs 7, 8 and 9.

44. There is no material on record to suggest that the minor daughters of Anokhi Ram and Pampo Devi were not looked after by Prema and Gopal even after the death of Anokhi Ram. The minor daughters were provided education and were later married.

45. Thus, from the sum total of facts established on record the hypothesis drawn by the Courts below cannot be said to be unfounded, illegal or perverse. In the given circumstances, the execution of Will by Anokhi Ram in favour of persons, who were taking care of the entire family and in whom he had reasons to establish trust cannot be said to be

unnatural. The choice of testator for choosing one of the daughters and son-in-law to inherit the entire property stands duly explained and accordingly the defendants have been able to discharge the burden.

46. On the other hand, except for the bald assertions by plaintiffs regarding the mental status of Anokhi Ram, nothing has been placed on record to prove the fact. Rather it becomes evident from the cross-examination of PWs 2 and 3 that they were not the persons who had the closest proximity with Anokhi Ram or his family. Even, these witnesses had not been able to point out a single incident from which inference as to the ill mental health of Anokhi Ram could be drawn. As per these witnesses, they used to visit Anokhi Ram and were treated properly by him. More importantly, the plaintiffs had not been able to place on record any medical evidence in support of their contention. Though, PW-1 has made a mention that Anokhi Ram was being treated for mental ailment by Dr. Yogender Mohan at Dharampur, but again neither any medical record had been produced nor said Dr. Yogender Mohan had been examined.

47. Once the valid execution of Will stood proved and the suspicion stood removed, then to draw any contrary hypothesis that is antithetical to the intent of the testator, will

not be justified. In such circumstances, it will be preposterous to unnecessarily doubt the intent behind execution of the Will.

48. In light of above discussion, the substantial questions of law No. 1 and 3 as framed on 19.07.2021 are answered in negative, whereas question No.2 is answered in affirmative.

49. In result, though the question of limitation has been rendered academic only, still, in order to test the argument raised by learned Senior Advocate for plaintiffs, the provisions of Order 41 Rule 33 of the Code of Civil Procedure become relevant, which *inter alia* vests the Appellate Court with jurisdiction to look into the findings on all the issues notwithstanding the fact that the challenge has not been raised by either of the parties. No doubt, the defendants had not filed any cross-objections or appeal against the findings of learned trial Court on issue No.9, however, the First Appellate Court was not precluded from looking into such findings in exercise of jurisdiction under Order 41 Rule 33 of the Code of Civil Procedure. In this view of the matter, there is no requirement to frame additional substantial question of law as suggested by the plaintiffs as substantial question of Law No.4 by way of CMP No. 19067 of 2025.

50. As regards the prayer of appellants for framing fifth substantial question of law as proposed by way of CMP No. 19067 of 2025, the same also deserves to be rejected in light of what has been held above and also there being no factual foundation for framing such additional substantial question of law.

51. In result, no ground is made out for interference in the judgment and decree dated 30.07.2019 passed by the learned Additional District Judge-I, Solan, H.P. in Civil Appeal No. 26-S/13 of 2018, whereby the judgment and decree dated 02.07.2018 passed by the learned Civil Judge, Junior Division, Court No.-II, Solan, H.P. in Civil Suit No. 410/1 of 2014/12 has been affirmed. Accordingly, the appeal is dismissed and the impugned judgment and decree is affirmed with no orders as to the costs.

52. Decree sheet be prepared accordingly.

53. All pending applications also stand disposed of. Records be sent back forthwith.

(Satyen Vaidya)
Judge

2nd September, 2025.
(jai)