

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.158 of 2005

Reserved on: 18.04.2025

Decided on: 20.05.2026

Deepak Kumar Chopra (deceased) through LRs
and others

....Appellants

Versus

Rajni Devi Sehgal & others

...Respondents

Coram

Hon'ble Mr. Justice Romesh Verma, Judge

Whether approved for reporting?

For the appellants: Mr. Deepak Gupta, Advocate.

For the respondents: Mr. Bhupender Gupta, Senior Advocate
with Mr. Janesh Gupta, Advocate.

Romesh Verma, Judge

The present regular second appeal arises out of judgment and decree as passed by learned Additional District Judge (Presiding Officer, Fast Track Court), Solan, District Solan, H.P. dated 16.12.2004, whereby the appeals preferred by present respondent No.1, bearing Case Nos.2 FT/13 of 2004/97 & 3 FT/13 of 2004/97 were allowed and the judgments and decrees as passed by learned trial Court dated 30.12.1996 in Civil Suit Nos.570/1 of 1988 & 21/1 of 1989 were set aside, holding the present respondent No.1 to be owner-in-possession of suit property known as Summer Cottage situated at village Kather and

restraining the defendants from interfering in her possession over the suit property and from collecting rent from tenants. Defendants were further restrained from withdrawing the amounts lying in the bank in the account of her mother Mohini Devi.

2. Brief facts of the case are that three Civil Suits bearing Civil Suit No.21/1 of 1989, *titled as Manga Lal vs. Rajni Devi*, Civil Suit No.570/1 of 1988, *titled Shrimati Rajni vs .R.L. Malhotra & Ors.* and Civil Suit No.308/1 of 1989, *titled Rajinder Lal Malhotra vs. Rajni and another* were filed in the Court of learned Senior Sub Judge, Solan, H.P. on 09.01.1989, 07.11.1988 and 15.07.1989, respectively. The dispute pertains to the estate of late Mohini Devi and each of the parties in the civil suits is claiming right over the property to the exclusion of others over the suit property. Plaintiff, Manga Lal, filed a suit claiming his right, title or interest over the suit property on the basis of Will executed by late Mohini Devi in his favour on 20th July, 1988 being her real brother. Smt. Rajni filed Civil Suit No.570/1 of 1988 claiming herself to be the daughter of late Mohini Devi and sought title over the suit property being the daughter of said deceased. Shri Rajinder Lal Malhotra filed a Civil Suit No.308/1 of 1989 claiming to be the husband of late Mohini Devi and prayed for passing of decree in his favour, being the only natural legal heir of the

deceased, who had survived after her death. The aforesaid suits were decided together by learned Senior Sub Judge, Solan.

3. In the suit, which was filed by plaintiff Manga Lal, who was substituted by his son Deepak Kumar, it was averred that Mohini Devi was the real sister of the plaintiff and the suit property has been inherited by him, being the only legal heir, and also through Will executed by deceased Smt. Mohini Devi in his favour on 20.07.1988. There was long litigation going on between Mohini Devi and Rajinder Lal Malotra before the learned Chief Judicial Magistrate, Solan. Smt. Mohini died issue-less and it is only the plaintiff, who is the legal heir to inherit all movable and immovable properties left behind by the deceased. It has been averred in the plaint that the defendant Rajni Devi was brought up and maintained by the deceased and she got married with Shri B.D. Sehgal, who is presently residing at Shimla with the defendant. Defendant Rajni prepared some false documents and furnished an affidavit before the Assistant Collector 1st Grade, Solan and got mutation attested in her favour on 15.09.1988. Though, an application was submitted by the plaintiff before the Tehsildar Solan, requesting him to enter his name in the revenue record as he is the only legal heir vide letter dated 08.09.1988, however, the Tehsildar, Solan, intentionally and willfully attested

the mutation without any notice to the plaintiff. The said mutation No.275 dated 15.09.1988 was attested behind the back of the plaintiff and the same is not binding on the plaintiff. The defendants have no *locus standi* to claim any right, title or interest over the property left behind by deceased Mohini Devi and they are trying to take forcible possession of the property and threatening to oust the plaintiff. The Will executed by late Mohini Devi on 20.07.1988 was her last Will and the same was executed with free will and consent in presence of respectable persons.

4. The plaintiff, therefore, sought a decree for declaration to the effect that the plaintiff is owner-in-possession of house and land comprised in Khasra Nos.414/1, 415, 416, 417, 418 and 419, measuring 364 Sq meters situated at Mauja Kather, Solan, Tehsil and District Solan and all movable properties i.e. bank accounts and lockers in Canara Bank, Punjab National Bank etc. Solan and also shares purchased from different companies through Will executed by Mohini Devi on 20.07.1988. The mutation No.275 attested in favour of the defendant on 15.09.1988 by the revenue authorities behind the back of the plaintiff is illegal, null, void and is not binding on the plaintiff. Further, decree for permanent prohibitory injunction was sought restraining the defendant from interfering in the peaceful

possession of the plaintiff under the garb of illegal mutation and also to restrain her from alienating, selling or creating any charge over the suit property and also to withdraw any amount from the banks, either herself or through her agents, attorneys, servants whosoever in any manner whatsoever be passed in favour of the plaintiff.

5. The suit filed by the plaintiff was contested by defendant No.1 Rajni and defendant No.2 Rajinder Lal Malhotra. It was submitted by defendant No.1, in her written statement, that the plaintiff has got no *locus standi* to file the present suit, as he is not the successor in interest of the deceased. The defendant, being the daughter, is the only legal representative of deceased Mohini Devi. It has been stated that the property has been properly and legally inherited by defendant No.1, being the daughter of Mohini Devi, who was brought up, educated and married by her. It was denied that any Will was ever executed by late Mohini Devi in favour of the plaintiff. The same, if any, is result of fraud, collusion and fabrication and without any authority. It was stated that one Jolly alias Dhani Ram, was servant of late Mohini Devi, in whose favour a Will was executed by the deceased. He had no issue, therefore, he executed a valid Will in favour of defendant No.1, which is a registered Will. Throughout

her life Smt. Mohini Devi was being looked after and cared for by said Jolly alias Dhani Ram. It was stated that there was litigation between Mohini Devi and Rajinder Lal Malhotra (defendant No.2). The two were married and were living as husband and wife since much prior to 1956 and said Rajinder Lal Malhotra had also married to some other lady. The relation between Mohini Devi and Rajinder Malhotra became strained and certain litigations started between them, wherein relation of husband and wife was disputed by Rajindra Lal Malhotra. Defendant No.1 is the daughter of deceased Mohini Devi and Rajinder Lal Malhotra and she was brought up, maintained and married by them. She has been living with her mother and during her illness, she got her admitted in the hospital at Shimla for her treatment. Thereafter, she was living with her mother at Solan till her death. It was stated that the question of forcible possession does not arise as defendant No.1 is already in possession of the property and is receiving the rent from the tenants and further the proceedings for succession certificate are already pending in the Court, much prior to the filing of the suit. Therefore, defendant No.1 prayed for dismissal of the suit as filed by the plaintiff Manga Lal.

6. In the written statement filed by defendant No.2, Rajinder Lal Malhotra, he raised preliminary objections with

respect to maintainability, malafide intention etc. In his written statement, he has denied that the plaintiff is owner-in-possession of the land and house. The execution of Will in favour of the plaintiff was specifically denied. However, it was admitted that Mohini Devi had left behind no son or daughter after her death. It was stated that it is defendant Rajinder Lal Malhotra who is the sole successor-in-interest and legal heir of deceased Mohini Devi. It was submitted that it is he who has succeeded to the estate of late Mohini Devi.

7. Learned trial Court framed issues in the matter on 28.12.1990 in the following manner:

1. Whether the plaintiff is owner in possession of the land and house?OPP
2. Whether deceased Mohini Devi executed a valid will in favour of the plaintiff on 20.7.88?OPP
3. Whether plaintiff is the only heir of deceased Mohini Devi?OPP
4. Whether mutation No. 275 dated 15.9.88 is not binding on the plaintiff and does not confirm an right on the defendants?OPP
5. Whether defendants is threatening to take forcible possession?OPP
6. Whether the plaintiff has no locus standi?OPD
7. Whether the plaintiff has no cause of action?OPD
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
9. Whether the suit is not maintainable ?OPD

10. Whether the defendant No. 1 is daughter and sole heir of deceased Mohini Devi and is in possession of the property?OPD
11. Whether the will in favour of the plaintiff is result of fraud, collusion and fabrication? OPD
12. Whether Mohini Devi executed a will in favour of Jali alias Dhani Ram who in turn executed a valid will in favour of the defendant No.1 and if so its effect ? OPD
13. Whether defendant No. 2 is the sole heir of deceased Mohini Devi? OPD
14. Relief.

8. Learned Senior Sub Judge, Solan, vide its judgment and decree dated 30.12.1996, decreed the suit filed by plaintiff Manga Lal/Deepak Kumar and the suits filed by Rajni Devi (defendant No.1) and Rajinder Lal Malhotra (defendant No.2) were dismissed. It was ordered that the plaintiffs Deepak Kumar and Bhagi Ram were to be declared owners-in-possession of the property of the deceased Mohini Devi comprising in Khasra Nos.414/1, 415, 416, 417, 418 and 419, measuring 364 Sq meters, situated in village Kather and all movable property left by the deceased Mohini Devi. Mutation No.275 dated 15.09.1988 was also declared to be null and void and the defendants were restrained from causing any interference in the right, title and possession of the plaintiff.

9. Feeling dissatisfied, Rajni Devi (defendant No.1) filed two appeals bearing Case No.2 FT/13 of 2004/97 and Case No.3 FT/13 of 2004/97 on account of decreeing of suit of the plaintiff and on account of dismissal of her suit. The third appeal was filed by defendant No.2 Rajinder Lal Malhotra bearing Case No.4 FT/13 of 2004/97. The learned Additional District Judge (Presiding Officer Fast Track Court), Solan, District Solan, H.P., vide its judgment and decree dated 16.12.2004, accepted the appeals filed by Rajni, and third appeal filed by Rajinder Lal Malhotra was dismissed as having been abated. The judgment and decree passed by learned trial Court was set aside and it was held that Smt. Rajni, being the owner-in-possession of the suit property, is entitled to injunction restraining the defendants from interfering with her possession over the suit property known as Summer Cottage, situated in village Kather, and from collecting rent from the tenants. Further, they were restrained from withdrawing the amounts lying in the bank in the accounts of Mohini Devi.

10. Feeling dissatisfied, the present regular second appeal has been filed by Deepak Kumar Chopra and Bhagirath, the plaintiffs before the learned trial Court against the judgment and decree as passed by learned first appellate Court.

11. It is contended by Mr. Deepak Gupta, learned counsel for the appellants/plaintiffs, that the learned first appellate Court has not appreciated the point in controversy and has wrongly quashed and set aside the judgment and decree as passed by learned trial Court on surmises and conjectures. He has submitted that the learned first appellate Court has erred by declaring respondent No.1, Rajni Devi, as the natural daughter of deceased Mohini Devi. It is contended by learned counsel for the plaintiffs that, after setting aside the impugned judgment and decree as passed by learned first appellate Court, the suit filed by the plaintiff be ordered to be decreed.

12. On the other hand, Mr. Bhupender Gupta, learned senior counsel, duly assisted by Mr. Janesh Gupta, Advocate, has defended the impugned judgment and decree as passed by learned first appellate Court. He has submitted that the learned first appellate Court, while disbelieving the Will, has rightly come to the conclusion that the alleged Will executed by Smt. Mohini Devi in favour of Manga Lal plaintiff is a forged document. He has submitted that Rajni Devi, being the daughter of deceased Mohini Devi, is well within her right to inherit and succeed the properties left by the said deceased.

13. The present appeal was admitted by this Court on 1.11.2007 on the following substantial questions of law:

1. *Whether the first appellate court has misread and mis-appreciated the oral as well documentary evidence led by the parties, especially in law in reversing the judgement and decree passed by the trial court holding that the 'will' propounded by the predecessor-in-interest of the appellants have not been able to remove the suspicious circumstances surrounding the execution of the will?*
2. *Whether the first appellate court has rightly held the respondent No.1 to be the real daughter of the deceased Smt. Mohini in view of fact that the deceased had herself described Smt.Rajni to be her adopted daughter?*

14. I have heard learned counsel for the parties at length and have also scanned the entire record in detail.

15. The dispute in the present case pertains to the estate of Smt. Mohini Devi. Plaintiff, Manga Lal, claims himself to be her brother and owner of the suit property on the basis of alleged Will executed by Mohini Devi in his favour on 20.07.1988. Rajni Devi, defendant No.1 in the suit, claims herself to be daughter of Mohini Devi and asserts ownership of the suit property in that capacity. Rajinder Lal Malhotra claims himself to be the husband of deceased Mohini Devi and asserted that being his legally wedded

wife, he alone is entitled to succeed to the properties of the said deceased.

16. As far as the claim of Rajinder Lal Malhotra is concerned, his suit was dismissed by the learned trial Court and the appeal which was preferred before the learned first appellate Court was also dismissed as having been abated. Therefore, the findings as returned by learned trial Court have attained finality qua him.

17. Now, the dispute in the present proceedings is between the plaintiff, Manga Lal, and his sons, and Rajni Devi. Learned trial Court, after coming to the conclusion that the Will executed by late Mohini Devi in favour of Manga Lal was legal and valid, held that the plaintiff is the owner-in-possession of the suit property on the basis of valid Will executed by Mohini Devi in favour of the plaintiff on 20.07.1988.

18. Regarding the issue whether the defendant, Rajni Devi, is the daughter of Mohini Devi, it was held that there is mention in Will Ext. PW-2/A and Ext.DW-14/A that defendant No.1 is the adopted daughter of Mohini Devi. Learned trial Court came to the conclusion that, apart from the documentary evidence, it is also the case of defendant No.2 that Rajni was not the daughter of Mohini Devi and Rajinder Lal Malhotra. It was held that the

evidence leaves no doubt that the defendant No.1 was an adopted daughter of the deceased Mohini Devi and defendant No.2.

19. Learned trial Court, after accepting the Will (Ext. PW-2/A) in favour of the plaintiff as legal and valid, decreed the suit filed by the plaintiff. However, the appeals preferred by Rajni Devi were accepted by learned first appellate Court by coming to the conclusion that the aforesaid Will is surrounded by suspicious circumstances. Further, it was held by learned first appellate Court that Rajni Devi is the real daughter of Mohini Devi and Rajinder Lal Malhotra.

20. It is contended by Mr. Deepak Gupta, learned counsel for the appellants, that the pleadings and the documents which have been placed on record by defendant No.1 Rajni Devi are self-contradictory. On the one hand, a copy of mutation dated 15.09.1988 (Ext. DX/1) reveals that Smt. Rajni Devi had filed an affidavit before the revenue authorities claiming herself to be the adopted daughter of Mohini Devi, and based upon that, the said mutation was attested in favour of defendant No.1. On the other hand, in the written statement, a stand has been taken by her that she is the daughter of deceased Mohini Devi. Another stand was also taken in the written statement that one Jolly alias Dhani Ram

was the servant of her mother, who looked-after and maintained her mother, and on account of his services, Mohini Devi executed a Will in his favour, who further executed the Will in faovur of Rajni Devi.

21. Mr. Deepak Gupta, learned counsel, has contended that the finding as returned by learned first appellate Court regarding the fact that Rajni Devi is the real daughter of late Mohini Devi is contrary to the record and pleadings.

22. On the other hand, Mr. Bhupender Gupta, learned senior counsel, has submitted that there is ample evidence on record to show that Rajni Devi was the real daughter of late Mohini Devi. He has drawn attention of this Court to Ext. DX, the wedding card of Rajni Devi with one Shri Bhawani. In the said wedding card, she has been shown to be the daughter of Mohini Devi. Similarly, Mr. Bhupender Gupta, learned senior counsel, has relied upon Ext. D1W2/A, which is the matriculation certificate, showing Rajni Devi to be the daughter of Rajinder Lal Malhotra. He has submitted that, in conjunction with the oral evidence and these two documents, it is proved that Rajni Devi is the daughter of Mohini Devi.

23. This Court has to proceed with the matter on the basis of documents placed on record to verify whether defendant

No.1, Rajni Devi, is the adopted or the real daughter of deceased Mohini Devi. The admission on the part of defendant No.1 in the copy of mutation (Ext. DX/1) reveals that she had filed an affidavit before the revenue authorities claiming herself to be the adopted daughter of Mohini Devi. On the basis of the affidavit and the admission made by Rajni Devi, the said mutation dated 15.09.1988, was attested by the revenue authorities. Defendant No.1 has taken a stand in the written statement that her mother was happy with the services of her servant, namely, Jolly alias Dhani Ram and a registered Will was executed in favour of Jolly alias Dhani Ram, who thereafter executed the Will (Ext. D1W4/A) in her favour on 07.10.1988. In the said Will, it is mentioned that there is a daughter of Mohini Devi, who has been brought up and looked after by Mohini Devi like her daughter. It has further been stated that Rajni Devi was born out of an illicit relation of Rajinder Lal Malhotra and Mohini Devi.

24. There are divergent stands which have been taken by Rajni Devi. On one hand, she stated that she is adopted daughter, however, in the written statement, she claims to be the real daughter. Then, she further takes a stand that the suit land has been bequeathed in her favour by the servant of her mother. In case, the written statement of defendant No.2 Rajinder Lal

Malhotra is seen, he has categorically denied that Mohini Devi has left behind any son or daughter. He has further denied that defendant, Rajni Devi, was brought up by deceased Mohini Devi. Since, Rajni Devi claims that Rajinder Lal Malhotra is her father, and this fact has been denied by defendant No.2, an affidavit was filed before the revenue authorities stating that she is adopted daughter of Mohini Devi and based on that stand Mutation was attested in her favour. Even, if it is presumed that she is the adopted daughter of Mohini Devi, the necessary pleadings and proof are missing in the present case. There is no averment qua the same in the written statement or evidence led by her.

25. The procedure for a valid adoption has been prescribed under the provisions of Hindu Adoption and Maintenance Act, 1956, specifically in Sections 6 to 11. The said pleadings are missing in the present case. Furthermore, there are neither plausible pleadings nor any documents placed on record to show that a valid adoption took place. Defendant No.1 has also not proved any custom, as the kind of evidence required to establish custom or adoption of a girl, has not been adduced.

26. The Hon'ble Madras High Court in ***Appeal No.6 of 2000, titled Lalitha vs. Parameshwari & others***, decided on 26.04.2001 has held that adoption of female child was not

permitted prior to commencement of the Hindu Adoption and Maintenance Act, 1956. The Hon'ble Court has held as follows:

“28. It is further stated by the learned advocate for the plaintiff that P.W. 1, the plaintiff, was adopted at the time when she was three months old and P.W. 2, mother of the plaintiff had deposed that her sister had taken the plaintiff in adoption and her husband was also present at that time, and thereby she supports the case of the plaintiff that she was given in adoption.

29. Reverting back to the case of the appellant, it is submitted that adoption of a female child was not known to Hindu Law prior to passing of the Act in the year 1956 and admittedly, the plaintiff purported to have been adopted prior to passing of this Act. In Ex. A-3, the date of birth of the plaintiff is shown as 1-7-1946 and in Ex. A-8, the date of birth of the plaintiff is given as 6-9-1946. Though the date and month of the plaintiffs different, the year, in which the plaintiff was born is not in dispute and the evidence was that she was given in adoption at the time when the plaintiff was three months old. Then possibly the year in which the alleged adoption had taken place was 1946, which is prior to passing of the Act in the year 1956 and therefore, the Act is not applicable, and the Adoption, purported to have been taken place was not permissible under law.

30. Though the plaintiff is able to produce certain documents. Exs. A-4 to 7 and A-13 to 18, wherein she has been described as the daughter of Kuppusamy Naicker, the said recitals would not

cloth her with any right as that of a daughter as the very adoption of a female child before passing of the [Hindu Adoptions and Maintenance Act, 1956](#) was not permissible. In the said context, any amount of evidence either oral or documentary adduced on behalf of the plaintiff to make it appear, as if she was recognised as the daughter of Kuppusamy Naicker cannot be countenanced for the simple reason that the very validity of the adoption itself is questioned and in the said context, those documents are of no avail.

34. Taking into consideration of all the abovesaid aspects and circumstances of the case and also the appraisal of the various rulings relied upon by the plaintiff and defendant for and against the adoption of a female child, we are of the considered opinion that the factum of adoption itself is questionable on the ground that prior to [Hindu Adoptions and Maintenance Act, 1956](#), adoption of a female child was not known to Hindu Law and the same was not permissible. The plaintiff was also not able to bring home the family custom prevailed in the family, for adopting a female child and in the eye of law, it cannot be held that the plaintiff was the adopted daughter of late Kuppusamy Naicker. The mere fact that in the invitation card, printed for the puberty function, celebration of the marriage of the plaintiff and the school certificate, in which, the name of Kuppusamy Naicker finds a place, as the father of the plaintiff, would not establish that the plaintiff was adopted by Kuppusamy Naicker and as we have already adverted to that the adoption of a female

child was not legal, we have to necessarily hold that the plaintiff is not the adopted daughter of Kuppusamy Naicker.

35. In this case, the equities are clearly in favour of the defendant/appellant, who is the naturally born daughter and who, in the normal course, is entitled to succeed to the properties of her father. The plaintiff who had been brought up by the defendant's father and who had been taken into a family at the time when they had no children cannot, in the light of the law as it stood prior to the [Hindu Adoptions and Maintenance Act](#), claim a right in the properties. The plaintiff has also not proved any custom, as the kind of evidence required to establish custom of adoption of a girl, has not been adduced.

27. In the present case, admittedly, as per her own case, defendant No.1 was born in the year 1954. Therefore, on that account and as per the provisions of law then in force, no adoption of a female could have been done. Consequently, the alleged adoption is not proved, meaning thereby defendant No.1 has failed to prove the adoption. Defendant No.1 was not able to bring home any custom to prove adoption of female child. There is no pleading or proof qua the same. She has also failed to prove that she is the real daughter of deceased Mohini Devi.

28. In order to substantiate her claim, defendant No.1 examined Kewal Krishan as DW-1. He has stated in his

deposition that he knew Rajni and that she is the daughter of Mohini. He further stated that after the marriage, Rajni, on account of her services, resides in Shimla and these days she is residing in Solan. He stated that he does not know when Rajni was born. He stated that he does not know the name of her father nor does he know the year in which year Rajni was born. He stated that he is deposing that Rajni is the daughter of Mohini because she was residing with her. After her marriage, he did not see Rajni Devi with Mohini Devi.

29. DW-3 is the testimony of Shrawan Kumar Sahni. He stated that Rajinder Lal Malhotra and Mohini were the husband and wife and they came from Pakistan. He stated that Rajni is the daughter of Mohini and Rajinder Lal Malhotra and that she was brought up by them. He has admitted that regarding the birth of Rajni he has not seen any record. He denied the suggestion that Rajni was adopted by Ashcharj Lal through the Court. He stated that he does not know the date of marriage of Rajni. He stated that he does not know if Rajni was married under the supervision of Mohini Devi. He stated that he does not know that whether Rajni Devi is the adopted daughter or the real daughter.

30. DW-4 is the statement of Mathu Ram. He stated that he knew Rajinder Lal Malhotra and Mohini Devi since 1950-1951.

He stated that Rajni Devi is the daughter of the aforesaid persons. Rajni Devi was brought up by Rajinder Lal Malhotra and Mohini Devi. He stated that Jolly alias Dhani Ram, had executed a Will in favour of Rajni Devi in his presence.

31. Rajni Devi entered into the witness box as DW-2 and stated that she was born in the year 1954. She stated that Mohini Devi is her mother and Rajinder Lal Malhotra is her father. She was born in Solan and both her parents maintained and brought her up at Solan. In her deposition, she stated that the relations between Mohini Devi and Rajinder Lal Malhotra remained cordial until 1977. Thereafter, some differences arose between them and Rajinder Lal Malhotra suddenly started saying that he had kept his mother as his keep and that Rajni is his adopted daughter.

32. Defendant No.2, Rajinder Lal Malhotra, entered the witness box as D-2W-1 and stated that Mohini Devi was his wife. He stated that he knew Rajni from the time when his servant by Ashcharj Lal had adopted her. He further stated that Ashcharj Lal had adopted Rajni through the Court of Smt. Kaushalya Pawha, a competent Court of law. Rajni was adopted from an orphanage. He stated that by Ashcharj Lal was residing with him and, when Rajni was about 3 to 4 years, he died and after the death of Ashcharj Lal, his wife Mohini Devi stated that they should keep

Rajni Devi with them instead of sending her back to an orphanage. Thereafter, Rajni Devi was brought up, looked after and maintained by Mohini Devi. He stated that when Rajni started showing affection towards Rajinder Lal Malhotra as a daughter, difference arose between him and Mohini Devi. Regarding this, Mohini Devi used to state that if they will say that Rajni Devi is an orphan, it would be very difficult to arrange her marriage, however, if they claimed she is their daughter, she would be happily married. He has stated that he did not admit this fact and he did not participate in the marriage of Rajni Devi. He has stated that Rajni is not related to him in any manner.

33. From the depositions of the parties, in conjunction with the pleadings, documents and the findings of the learned trial Court, it is noted that defendant No.1 admitted that she is the adopted daughter of Mohini Devi. However, when the pleadings are examined, the said fact is totally missing. In order to prove the case of a valid adoption, the defendant was required to place on record material along with the documents to substantiate the validity of adoption. As per the provision of law as laid down by Hon'ble Madras High Court, it has been held that prior to the Hindu Adoption and Maintenance Act, 1956, the adoption of a female child was not recognized under Hindu Law and was not

permissible. The parameters for a valid adoption have been laid down in Hindu Adoption and Maintenance Act, 1956, more particularly, under Sections 6 to 11. Although a procedure has been prescribed for a valid and legal adoption, but in the present case there are neither pleadings nor any document(s) to establish and show that whether she is the adopted daughter or she is the real daughter of late Mohini Devi. Consequently, this Court holds that Rajni Devi is not the daughter of late Mohini Devi.

34. As far as the other contention as raised by learned counsel for the appellants is concerned that the finding of learned first appellate Court with respect to the execution of Will in favour of the plaintiff, whereby the finding as returned by the learned trial Court was set aside and it was held that the Will is shrouded by suspicious circumstances, requires interference and has to be examined in view of the evidence led by parties and the copy of Will.

35. Before coming to the factual matrix, as regards the requisites for proving of Will, the exposition of law as laid down by the Hon'ble Apex Court is required to be discussed in the following manner:

36. The Hon'ble Supreme Court in **Gopal Krishan and others vs. Daulat Ram and others, (2025) (2) SCC 804** has held as under:

“15. The requisites for proving of a Will are well established. They were recently reiterated in a Judgment of this Court in Meena Pradhan and others v. Kamla Pradhan and Another⁹. See also Shivakumar and Others v. Sharanabasappa and Others¹⁰. The principles as summarised by the former are reproduced as below:-

“...10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied. 10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) 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 and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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 acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. 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 court, and capable of giving evidence, shall be examined; 10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier; (2023) 9 SCC 734 (2021) 11 SCC 277

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious

circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation;

10.11. Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [[Shivakumar v. Sharanabasappa](#), (2021) 11 SCC 277] ”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.”

37. Similarly, the Hon’ble Apex Court in **Meena Pradhan and others vs. Kamla Pradhan and another, (2023) 9 SCC 734** has come to the conclusion that in order to prove the Will, the Court is required to consider factors, such as awareness of the

testator as to its content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will.

38. The Hon'ble Supreme Court has repeatedly held that a person who alleges fraud, fabrication, undue influence has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc. Broadly, it has to be proved that (a) the testator signed the Will out of his own free will, (b) at the time of execution, he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not

executed under any suspicious circumstances. It is a mandate of law that whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. The Hon'ble Supreme Court has held as under:

“10.8. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

Suspicious circumstances must be ‘real, germane and valid’ and not merely ‘the fantasy of the doubting mind’ 1. Whether a particular feature would qualify as ‘suspicious’ would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky

signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances.”

39. A copy of Will (Ext.PW-2/A) has been placed on record and the same is dated 20.07.1988. In order to prove his case, the plaintiff, Manga Lal, examined himself as PW-1. After his death, PW Deepak was examined. PW-1 has stated in his deposition that Mohini Devi was his younger sister and that she was issueless. He stated that Rajni Devi was adopted by the servant of late Mohini Devi. He stated that Mohini Devi executed the Will with respect to the entire property in his favour. He stated that Mohini Devi, after coming back from Shimla, gave a copy of Will to his son. After the death of Manga Lal, plaintiff, his son Deepak Kumar entered the witness box. In his deposition, he has stated that the Will was given to him by his father in the Court.

40. In order to prove the execution of Will, Chattar Singh, the scribe of the Will, entered the witness box as PW-2. He stated that Ext.PW-2/A was written by him at the instance of Mohini

Devi. He further stated that the Will was written according to the directions given by Mohini Devi and was scribed in Kamla Nehru Hospital at the time when she was admitted there. He stated that he knew Mohini Devi since 1968. He also stated that the said execution was made at about 5:00 to 6:00 PM in the evening. He further stated that in the hospital room, there was only one chair and one bed of Mohini Devi.

41. PW-3 is the deposition of K.P. Singh, who was examined to prove the execution of Will. In his testimony, he stated that he went to the hospital in the afternoon and returned from the hospital before 5:00 PM. He further stated that in the hospital there was only one patient in the room. He also stated that there was only one stool and one chair. He has denied the suggestion that Pushpa Sood, another patient, was also admitted in the same room.

42. The testimonies of these witnesses are full of contradictions, as rightly pointed out by the learned trial Court. PW-1, Manga Lal, stated in his deposition that Mohini Devi, after coming back from Shimla, gave the Will to his son, whereas his son stated that the Will was given to him by his father in the Court. There is material contradictions in the statements of PW-2 and PW-3, as PW-2, Chatter Singh, stated that the execution of

the Will took place between 5:00 PM and 6:00 PM in the evening,
whereas PW-3 stated that he came back from the hospital prior to
5:00 PM in the evening. PW-2 and PW-3, in their depositions,
have stated that there was only one patient admitted in the
hospital room at the relevant time. However, the said testimony is
in contrast to the record which has been placed on record as Ext.
D1W5/A.

43. DW-5, Nitya Nand Sharma, in his deposition has
stated that another patient, namely, Pushpa Devi was admitted
along with Mohini Devi in room No.3. These material
contradictions, in conjunction with the copy of Will (Ext. PW-2/A),
creates doubt regarding the due and legal execution of the said
Will.

44. A perusal of Ext. PW-2/A reveals that the second leaf
of the Will was cut diagonally and has been taped from the back
side. Although, the scribe of the Will, PW-2, Chatter Singh, in his
deposition, stated that the second page of the Will was not torn
when the Will was written. however, a perusal of Will, makes it
apparent on the face of record that there are interpolations,
cuttings and corrections. The first page of the Will gives an
impression that Mohini Devi was happy with the services of Jolly
alias Dhani Ram her servant and there is only reference of said

Dhani Ram. However, on the second leaf, the contents have been changed and there are interpolations and insertion of the words. On the second leaf, the words have been added which create doubt in the mind of the Court. It seems that the page was cut and pasted with another page in order to insert the signatures of late Mohini Devi. The document is highly suspicious, and the plaintiff has failed to establish its valid and due execution. Learned first appellate Court has rightly disbelieved Ext. PW-2/A and it does not call for any interference. The words "*Sampatti*", "*mere marne ke uprant*", "*man*", "*paksh*" and "*tareek*" have been joined with a piece of paper, which creates doubt and suspicion with respect to valid execution of said document.

45. Learned first appellate Court, after discussing the entire material placed on record along with evidence, rightly came to the conclusion that Ext. PW-2/A is not legal, valid and genuine and it requires outright rejection.

46. The substantial questions of law are answered accordingly.

47. No other point urged or raised by the learned counsel for the parties.

48. Cumulative effect of the aforesaid discussion is that Rajni has not been able to prove that she is the daughter of Rajinder Lal Malhotra and Mohini Devi. As regards the claim put forth by Rajinder Lal Malhotra, the suit filed by him stood dismissed and the appeal filed by him against the judgment of trial Court stood abated. Thus, no findings are required to be rendered qua him. Therefore, after holding the Will, Ext. PW-2/A, surrounded by suspicious circumstances and not sustainable in the eyes of law, the claim of Manga Lal on the basis of the Will executed by Mohini Devi in his favour, is rejected. However, being the real brother of Mohini Devi, he is held entitled to succeed to the suit property by way of inheritance.

49. Consequently, in view of discussions and findings hereinabove, the appeal is partly accepted and it is held that Rajni Devi is not the daughter of Mohini Devi and the plaintiff, being the real brother of deceased Mohini, is entitled to inherit the suit property on the basis of inheritance. Further, Will Ext. PW-2/A is declared null and void and it is not binding upon the rights of the parties.

50. Accordingly, the impugned judgment and decree dated 16.12.2004, as passed by learned First Appellate Court are partly quashed and set aside and modified in the aforesaid terms.

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

(Romesh Verma)
Judge

20th May, 2026
(vt)