

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****RSA No.260/2025****Date of Decision: 27th November, 2025.**

Priya VratAppellant
Versus

Sambodhna Devi and Ors.Respondents

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Appellant: Mr. Sumit Sharma, Advocate.

For the Respondent: Nemo.

Bipin Chander Negi, Judge (oral).

The appellant, by filing this appeal under section 100 of the Code of Civil Procedure (for short, CPC), has assailed the judgment and decree dated 11.06.2025, passed by the learned Additional District Judge, Dehra, District Kangra, HP in Civil Appeal No.30-G/XIII/2023/2017, affirming the judgment and decree dated 31.03.2017, passed by the learned Civil Judge (Senior Division), Dehra, District Kangra, HP, in Civil Suit No.16 of 2011.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned trial Court. The facts material and relevant for the disposal of the present appeal are that the respondent No.1 (hereinafter referred to as the plaintiff) filed a civil suit against the appellant and other respondents (hereinafter referred to as the defendants) in the learned trial court seeking partition and possession of her share



to the extent of 25967/311600 in the land comprised in khata No.296, khatoni No.477, Khasra No.1933/1509, measuring 3116 sq. mts., situated in Mohal Amarpuri, Mauza Dehra, Tehsil Dehra, District Kangra, H.P. (hereinafter referred to as the suit property). The plaintiff also sought a restraint order against the defendants from transferring, alienating, or changing the nature of the land till the decision of the suit, and further prayed for rendition of accounts on account of cultivation of the land by defendants No.1 and 2 to the extent of her share. This suit was partly decreed by the learned trial court, holding the plaintiff to be owner in possession to the extent of 25967/311600 shares in the suit land and granting her possession by way of partition of her share. The court further restrained the defendants from causing any interference in the suit land till its partition.

3. The case of the plaintiff before the trial court was that the suit land was jointly owned and possessed by the parties as per the jamabandi for the year 2006-2007, having originally been owned by Shri Vishwa Nath, to whom defendants No.1 and 2 had succeeded. The plaintiff claimed that she received a portion of this land from her mother, Smt. Shakuntla Devi, vide a registered gift deed dated 03.11.1994, measuring 259.61 square meters, and was given possession on the Southern-Western side. She contended that after her husband's death in 1992, she was left destitute and the land was gifted to her for constructing a house. She alleged that she remained in



possession till 2007, after which defendants No.1 and 2 took possession and began cultivating the land, enjoying its yield. The plaintiff, therefore, sought partition of her share, which she calculated as 25967/311600, and also claimed a share in the shops constructed on the land.

4. The suit was contested by the defendants by filing separate written statements. Defendant No.1 admitted that the plaintiff received the property from her mother via the gift deed and stated he had no objection to the separation of her khata and share by a decree of partition, but denied her claim for accounts and a share in the shops. Defendant No.2, the present appellant, contested the suit vehemently, taking preliminary objections regarding maintainability, locus standi, and limitation. On merits, he denied that the plaintiff was a joint owner, alleging that the gift deed was fraudulent, illegal, and executed without the sound mental capacity of Smt. Shakuntla Devi, who purportedly used to sign documents and not affix a thumb impression. He further contended that the plaintiff had sufficient property from her in-laws and was employed, thus not destitute. Defendants No.3 and 4 also filed written statements, with defendant No.3 raising objections regarding the jurisdiction of the civil court as the land was assessed to revenue, and defendant No.4 contending the suit was for partial partition and hence not maintainable.



5. On the pleadings of the parties, the following issues were framed by the learned trial court on 29.12.2011:-

- 1. Whether plaintiff is owner in possession to the extent of 25967/311600 share in the suit land, as alleged ? OPP.**
- 2. Whether the plaintiff is entitled for possession by way of partition of her share ? OPP.**
- 3. Whether the plaintiff is entitled for relief of injunction, as prayed for ? OPP.**
- 4. Whether the plaintiff is also entitled for rendition of accounts, as prayed for ? OPP.**
- 5. Whether suit of the plaintiff is within time ? OPP.**
- 6. Whether deceased Shakuntla Devi never executed any gift deed in favour of plaintiff, as alleged ? ?OPD2.**
- 7. Whether the suit of plaintiff is not maintainable in the present form ? OPD-2 & 3.**
- 8. Whether the plaintiff is estopped from filing the present suit by her act and conduct ? OPD-2.**
- 9. Whether the suit is collusive between plaintiff and defendant No.1 ? OPD-2.**
- 10. Whether this court has no jurisdiction to try the present case ? OPD-2.**
- 11. Relief.**

6. The suit was thus partly decreed. Aggrieved by this decree, the appellant/defendant No.2 filed a first appeal. The primary contentions raised before the first appellate court were that the trial court erred in decreeing the suit; the findings on Issues No.1 and 6 were wrong as the gift deed (Ext.PW1/A) was not proved and was the outcome of fraud and collusion, executed by Smt. Shakuntla Devi when she was not of sound mind. It was contended that she used to sign documents, yet the deed bore a thumb impression, an anomaly unexplained by the plaintiff. It was further argued that the judgment was against Order 20 Rule 18 CPC, necessary issues were not



framed, and the findings on all issues were incorrect. The first appellate court, however, dismissed the appeal, affirming the judgment and decree of the trial court. Being aggrieved by the dismissal of the first appeal, the appellant has now filed the present second appeal.

7. Heard counsel for the appellant, perused the impugned judgements.

8. The foundational claim of the plaintiff, Sambodhna Devi, rests upon a registered gift deed dated 03.11.1994 (Ext.PW1/A) executed by her mother, Smt. Shakuntla Devi. The evidence on this point is clear and convincing. PW1, Shri S.P. Dhanotia, an Advocate and an attesting witness to the deed, provided unequivocal testimony. He stated that the document was scribed at the instance of Shakuntla Devi, read over and explained to her in the presence of witnesses, and that she voluntarily affixed her thumb impression, admitting the contents to be true and correct. This process was reiterated before the Sub-Registrar, Dehra, where a formal endorsement (Ext.PW1/B) was recorded.

9. The testimony of PW1 remains unshaken in cross-examination. The defendant No.2's contention that the gift deed is fraudulent, alleging that Shakuntla Devi was of unsound mind and used to sign documents rather than use a thumb impression, is not borne out by the evidence. No medical evidence or credible testimony was led to prove any mental



incapacity of the donor at the relevant time. The minor anomaly regarding the mode of attestation i.e. a thumb impression versus a signature is, in the context of a rural document executed nearly three decades ago, an immaterial discrepancy that does not cast doubt on the validity of a registered instrument. The document carries a presumption of due execution, which the defendants have failed to rebut with anything more than bare allegations.

10. Crucially, the factum of the gift and its acceptance is further cemented by the judicial conduct of the parties, particularly the defendant No.2, Priya Vrat. In a previous civil suit between the parties, a compromise (Ext.P3) was recorded. The statements of Priya Vrat (Ext.PX), Satya Vrat (Ext.PY), and Sukhwinder Singh (Ext.P2) form part of this compromise, and the suit was decreed accordingly by the Lok Adalat (Ext.PZ). A plain reading of this compromise reveals an unambiguous admission by Priya Vrat acknowledging that the land gifted by Shakuntla Devi to Sambodhna Devi would remain in the plaintiff's ownership and possession. This constitutes a solemn judicial admission, which attains finality and operates as an estoppel. The defendant No.2 cannot now be permitted to approbate and reprobate by resiling from this clear admission and challenging the very basis of the gift. His subsequent plea of fraud in the present suit, raised without challenging the



earlier compromise decree, is an afterthought and lacks bona fides.

11. On the question of delivery of possession, a mandatory requirement for a valid gift under the Transfer of Property Act, the evidence is satisfactory. The gift deed Ext.PW1/A itself contains a recital of delivery of possession.. Furthermore, the plaintiff's testimony that she remained in possession till 2007 finds indirect support from the defendant No.1, Satya Vrat (DW3), who admitted that the land abutting the road was in the plaintiff's possession till that year.

12. The subsequent alleged dispossession by the defendants does not vitiate the completed gift but gives rise to a cause of action for recovery of possession, which is precisely what the suit for partition seeks. The contention that acceptance was not valid because the plaintiff was not physically present at the registration is also untenable. The evidence shows that her brother, Satya Vrat, accepted the gift on her behalf, which constitutes a valid acceptance under law.

13. Regarding the plaintiff's status as a co-sharer, the valid gift deed unequivocally transferred a specified portion of the joint property measuring 259.61 square meters to the plaintiff. This rendered her a co-owner in the larger khata to the extent of 25967/311600 shares. The defendant No.2's argument that the entire estate of Vishwa Nath devolved solely upon the two sons ignores the succession rights of Shakuntla Devi as the



widow and her consequent right to alienate a part of her share. The revenue entries reflecting the plaintiff's name further support her claim. The defences of the other defendants, including defendant No.3's purchase from Priya Vrat and defendant No.4's claims based on a separate compromise, do not extinguish the plaintiff's pre-existing right, title, and interest in her specific share. Their rights, if any, are subject to the outcome of the partition.

14. Concerning the relief of rendition of accounts, the trial court's denial of this prayer is upheld. The plaintiff's evidence on this aspect was vague and insufficient. While she claimed the defendants were cultivating her land and earning profits, she failed to adduce any concrete evidence such as crop yields, market rates, or accounts, to quantify the alleged mesne profits with any certainty. A decree for accounts cannot be granted on the basis of mere assertions.

15. In conclusion, the evidence on record overwhelmingly establishes the execution and validity of the gift deed Ext.PW1/A, the plaintiff's derivative title, and her status as a co-owner entitled to seek partition. The admissions of the defendant No.2 in the previous judicial proceedings fortify this conclusion. The findings of the courts below are based on a correct appreciation of the oral and documentary evidence and do not reveal any perversity, nor do they involve any substantial question of law warranting interference in this



second appeal. The challenges raised by the appellant are devoid of merit.

16. For these reasons, the appellant has failed to make out any sufficient cause for condoning the inordinate delay in filing the appeal before the First Appellate Court, and Consequently, the Learned First Appellate Court committed no error of law or perversity in appreciating the facts and evidence.

17. In the aforesaid facts and attending circumstances, there arises no question of law, much-less a substantial question of law for consideration of the Court, therefore, the appeal is dismissed being devoid of any merit. Pending miscellaneous applications, if any, also stand disposed of.

(Bipin Chander Negi)
Judge

27th November, 2025
(Gaurav Rawat/TB)