

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**OMP No. 21 of 2026 in
Civil Suit No.4 of 2026**

Reserved on 30.03.2026

Date of decision: 20.04.2026

Ms. Kamla Devi ...Plaintiff/Applicant

Versus

Ms. Vijay Laxhmi & othersDefendants/Non-applicants

Coram

Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the Plaintiff/Applicant: Mr. Ajay Sharma, Senior
Advocate with Mr. Atharv
Sharma, Advocate.

For the Defendants/Non-applicants: Mr. Anil Dutt and Ms. Anjali
Soni Verma, Advocates, for
defendants No. 1, 2 and 4.

Mr. Sumeet Sharma,
Advocate, for defendant
No.3.

Romesh Verma, Judge

The present order shall dispose of an application filed by the plaintiff under the provisions of Order 39 Rules 1 and 2 CPC for the grant of an interim injunction.

2 Brief facts, for adjudication of the instant application, are that the applicant/plaintiff, Kamla Devi, has filed a suit bearing registration No. 4/2026 before this Court seeking declaration to the effect that the sale deed dated 18.02.2021

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

executed by defendant No. 2 through GPA holder defendant No. 4, in favour of defendant No. 3 as well as the sale deed dated 17.01.2022 executed by defendant No. 1 in favour of defendant No. 3 with respect to the land in dispute, be declared illegal and without any competency and she be declared owner to the extent of a 1/3rd share in the undivided suit property, with further prayer that she is entitled for possession after demolition of the structure, if any, raised by the defendants during the pendency of the suit, along with consequential relief of injunction restraining the defendants from interfering, alienating, encumbering, transferring, or gifting the suit property to the extent of 1/3rd share in the undivided suit property during the pendency of the present suit.

3 It is averred in the plaint that Tulsi Ram was the owner of the suit property, who was initially married to Smt. Kesri Devi. After the death of Kesri Devi in the year 1975, Tulsi Ram remarried Smt. Raj Rani. From the wedlock of Tulsi Ram with Smt. Kesri Devi, defendant Nos. 1 and 2 were born. According to the plaintiff, though she is the biological daughter of Sh. Chandu Ram, however, she claims that when she was one or two years old, she was brought up by late Sh. Tulsi Ram as his daughter, thus, she is entitled to ownership and possession of the suit property

along defendants No. 1 and 2 by way of natural succession coupled with the admission made by defendant No.2 Surendera Kumari while appearing as PW1 in Civil Suit No. 24/2000 having been instituted by the plaintiff and defendants No. 1 and 2 against late Raj Rani (second wife of Tulsi Ram), decided on 25.05.2004, to the effect that the plaintiff/applicant could be the adopted daughter of Tulsi Ram when she was about three years old. It is alleged that defendants No. 1 and 2, in connivance with the revenue authorities, wrongly got mutation No. 544 dated 20.03.2020 entered in their names with respect to the property of late Tulsi Ram, inherited by Smt. Raj Rani and thereafter got the same partitioned between them by way of a family partition qua which mutation No. 561 was sanctioned. Subsequently, vide mutation Nos. 565 and 589, the said land was sold to defendant No. 3 through different Sale Deeds. In this background, the plaintiff sought the aforesaid declaration by way of the suit.

4 Along with the suit, instant application has been filed seeking interim injunction against the defendants on the ground that there exists a strong prima facie case in favour of the applicant/plaintiff and in case during the pendency of the main suit, the defendants/non-applicants are not restrained from interfering, raising construction, if any, alienating, encumbering

and transferring the property, in any manner, whatsoever, irreparable loss and injuries would be caused to the applicant/plaintiff, which cannot be compensated in terms of money.

5 The suit has been contested by the defendants by raising preliminary objections with regard to maintainability, limitation, locus standi, undervaluation, etc and on merits, it was averred that defendants No. 1 and 2 are the only legal heirs of late Sh. Tulsi Ram and it is emphatically denied that the plaintiff/applicant is natural successor of late Sh. Tulsi Ram inasmuch as she was born out of the loins of late Sh. Chandu Ram, brother of late Sh. Tulsi Ram and this fact also finds mentioned in Will, dated 12.05.1993, having been executed by late Sh. Tulsi Ram.

6 As regards claim of the plaintiff/applicant that she is adopted daughter of late Sh. Tulsi Ram on the basis of admission made by defendant No.2 in Civil Suit No. 24/2000, wherein the Will of late Sh. Tulsi Ram was under challenge and the findings on issue No.10 framed therein to the effect that it cannot be ruled out that plaintiff was an adopted daughter of late Sh. Tulsi Ram, the same, according to defendants/non-applicant, is ill founded and misconceived because the said suit was eventually dismissed and the defendants/non-applicants had no occasion to challenge the

said findings, thus principles of res judicata would not be applicable in the case at hand. All the averments contrary to record, as made in the plaint, have been refuted and denied.

7 In reply to the instant application, averments made in the plaint, refuting the claim of the plaintiff/applicant for interim injunction qua the suit property, have been reiterated. It has been specifically averred that the plaintiff is not the adopted daughter of late Sh. Tulsi Ram. The sale deed in question was executed in favour of defendant No. 3 during 2021–2022, and since the plaintiff/applicant had full knowledge about the execution of the sale deeds in favour of defendant No.3, the suit having been filed on 6.1.2026 after a lapse of more than three years, is barred by limitation in view of Article 58 of the Limitation Act and ultimately they have prayed for dismissal of the application.

8 At this stage, it would be noticed that the main suit along with instant application came up for consideration before this Court on 07.01.2026, on which date, the main suit was admitted and notices were issued to the defendants for 27.02.2026.

9 The instant application came up before this Court for consideration on 16.01.2026, when learned counsel for the plaintiff/applicant argued the case for grant of ad interim

injunction, and the order was reserved. This Court, vide order dated 23.01.2026, declined the grant of ad interim injunction to the plaintiff/applicant at that point of time.

10 It is vehemently contended by Mr. Ajay Sharma, learned Senior Advocate, duly assisted by Mr. Atharv Sharma, appearing for the plaintiff/applicant that the instant application deserves to be allowed as the plaintiff/applicant has got prima facie a good case and even balance of convenience lies in her favour as she is the adopted daughter of late Sh. Tulsi Ram which fact stands proved not only by the admission made by Defendant No.2 but also findings recorded by the learned Civil Judge (Jr. Division), Palampur in Civil Suit No. 24/2000 while answering issue No. 10 *“Whether Kamla Devi plaintiff is the daughter of Chandu Ram and, as such her suit is not competent, in fact Sh. Tulsi Ram deceased had only two daughters, as alleged OPD”* to the effect that *“it cannot be said that Smt. Kamla Devi, plaintiff No. 1, is not the daughter of deceased Tulsi Ram”*.

11 On the other hand, Mr. Anil Dutt, Ms. Anjali Soni Verma and Mr. Sumeet Sharma, Advocates, appearing for the respective defendants/non-applicants have opposed the instant application on the ground that merely relying upon the so-called admission of the defendant No.2 in previous suit and

findings/observations recorded therein qua issue No. 10, as aforesaid, is not sufficient to prove that the plaintiff/applicant is an adopted daughter of late Sh. Tulsi Ram inasmuch nothing concrete material has been placed on record by the plaintiff/applicant evidencing her valid adoption by late Sh. Tulsi Ram nor is there any pleading qua prevailing custom to this effect. They have submitted that the plaintiff must meet the parameters as laid down in Hindu Adoption and Maintenance Act, 1956, more particularly in Sections 6, 7, 8, 9, 10 and 11 thereof, and only then it can be presumed that there has been a valid adoption of the plaintiff/applicant. To buttress their submissions, learned counsel for the non-applicants/ defendants have relied upon the judgment passed by Hon'ble Madras High Court in ***Appeal No. 6 of 2000*** titled ***Lalitha vs. Parameshwari & others***, decided on 26.04.2001, wherein it was 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. They have further urged neither the instant application nor the main suit is maintainable as the same are barred by limitation, thus they have prayed for dismissal of the instant application.

12 I have heard the learned counsel for the parties and have gone through the material available on record.

13 In order to obtain injunction, the plaintiff/applicant is required to show prima facie case, balance of convenience and irreparable loss and has to pass the hurdle of triplicate test, thus until and unless ingredients are made out, no injunction can be granted against the defendants/non-applicants.

14 Coming to the case at hand, according to plaintiff/applicant, she was brought up by the defendants No. 1 and 2' father and was taken into the family at a time when they had no children. It is borne out from the pleadings of the plaintiff/applicant, that she was born on 03.06.1939 and was adopted by late Sh. Tulsi Ram when she was hardly 1 or 2 years old. Meaning thereby, as per the plaintiff/applicant's own case, the alleged adoption took place somewhere in 1940-41. Thus, it would be borne in mind that the alleged adoption of the plaintiff/applicant being a female had taken place prior to the enactment of the Hindu Adoption and Maintenance Act, 1956. However for the disposal of the instant application, though she has claimed herself to be the adopted daughter of late Sh. Tulsi Ram, however, having gone through the material available on record, this Court prima facie is of the view that there is no

document available on record evidencing a valid adoption save and except some observations as made in Civil Suit No. 24/2000, which at this stage cannot be made basis to seek interim injunction against the non-applicants. Thus alleged adoption of the plaintiff/applicant is not prima facie established on record and equities seem to be in favour of the defendants/applicants, who, as per admitted case of the parties to the lis, are natural-born daughters of late Sh. Tulsi Ram, who by way of natural succession have inherited estate of their father. The applicant/plaintiff, prima facie, has also failed to demonstrate any specific pleading(s) with respect to custom permitting the adoption of a girl as regards the alleged adoption, when adoption of a female child was not recognized under Hindu law prior to enactment of Act of 1956.

15 As regards other contention of plaintiff/applicant with respect to findings on issue No. 10 in the previous suit, amounting to a categorical admission on the part of the defendants No. 1 and 2 qua her valid adoption and is binding upon the parties to the lis, to rebut this contention, learned counsel for the non-applicants has relied upon the judgment of the Hon'ble Apex Court in case titled ***Sajjanashin Sayed MD.B.EDR (D) vs Musa Dadabhai Ummer & Others, 2000 (3) SCC 350, more***

particularly, paras 12, 13 and 14 thereof that if the matter was in issue directly and substantially in a prior litigation and decided against a party, it is then only, the decision would be res judicata in a subsequent proceeding, which is not a fact situation in the instant matter.

16 If a matter was only collateral or incidental in issue, the findings therein would not ordinarily operate as res judicata in later proceedings, where the matter is directly and substantially in issue. Prima facie, non-applicants/defendants have been able to establish that the previous proceedings were collateral and incidental in nature, therefore, contention of the plaintiff/applicant that the judgment in the previous suit would constitute res judicata and bind defendants/non-applicants No. 1 and 2 seems to be misconceived and ill-founded. The test for the applicability of res- judicata would be whether aggrieved party could have preferred an appeal against it, which prima facie, defendants No. 1 and 2 could not have appealed against mere findings rendered by the Civil Judge as the previous suit was finally dismissed.

17 The existence of the prima facie right and infraction of the enjoyment of suit property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be

confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he or she needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction.

18 It would be clear from the record that the Sale Deed executed on 18.02.2021 has been challenged after a delay of approximately 4 years, 10 months, and 15 days by medium of the instant suit, and, in respect of the sale deed executed on 17.01.2022, there is a delay of approximately 3 years, 11 months, and 19 days. Thus, *prima facie*, the suit itself appears to be barred by limitation in view of Article 58 of the Constitution of India.

19 This Court is oblivious of the fact that while granting or refusing to grant injunction, it is required to exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus this Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

20 Having said so, the plaintiff, in order to make out a case for grant of interim injunction, has failed to satisfy the triplicate test of prima facie case, balance of convenience, and irreparable loss. Prima facie, the plaintiff/ applicant has failed to establish that, prior to the enforcement of the Act, adoption of a female was permissible, and that by virtue of any such custom, the alleged adoption is valid. To the same extent, the provisions of the Limitation Act prima facie indicate that the suit is barred by limitation. Therefore, it is not the applicant who has got a prima facie case in her favour, rather, it is the non-applicants/defendants who have a prima facie case in their

favour. The balance of convenience also lies in their favour. In case they are injuncted by way of an interim direction in the present application, it is the non-applicants who shall suffer irreparable loss. Therefore, the present application, being devoid of any merit, deserves to be dismissed. Ordered accordingly.

21 It is made clear that the observations made hereinabove are meant only for the determination of the application under the provisions of Order 39 Rules 1 and 2 CPC and shall have no bearing on the merits of the case, which shall be dealt with independently in accordance with law.

Application stands disposed of, accordingly.

Civil Suit No. 4 of 2026

List the case on 04.05.2026.

(Romesh Verma)
Judge

20.04.2026
(pankaj)