

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision-27.05.2020

1. RSA No.1163 of 2015(O&M)

Naresh Kumar through his LRs Amita and others ... Appellants

Versus

Charanpreet Kaur @ Priti and others ... Respondents

2. RSA No.1982 of 2015(O&M)

Charanpreet Kaur @ Priti and others ... Appellants

Versus

Naresh Kumar through his LRs Amita and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Shailendra Jain, Sr. Advocate with
Ms. Anupama Arigala, Advocate
for the appellants in RSA No.1163 of 2015 and
for the respondents in RSA No.1982 of 2015.

Ms. Nandita Abrol, Advocate and
Mr. Navin Mishra, Advocate
for the appellants in RSA No.1982 of 2015 and
for the respondents in RSA No.1163 of 2015.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, above mentioned two regular second appeals arising out of judgments and decrees passed by the Courts below are being disposed of. For the sake of convenience, the parties are hereinafter being referred with the same status as before the trial Court.

[2]. The facts necessary to adjudicate the present *lis* are that the plaintiff-Charanpreet Kaur @ Priti and her two minor sons namely Rajat Kumar and Sumit Kumar had filed a suit for declaration and permanent injunction *inter alia* stating that plaintiff No.1 is widow and plaintiffs No.2 and 3 are minor sons of late Sushil Kumar. The suit qua plaintiffs No.2 and 3 was filed through their mother (plaintiff No.1). It was stated that Sushil Kumar was joint owner in possession of the property along with defendants No.1 and 2 as fully detailed in head note A of the plaint. Phool Singh, father-in-law of plaintiff No.1 and grand-father of plaintiffs No.2 and 3 was joint owner in possession of the land as described in head note B of the plaint. Phool Singh had died, leaving behind the plaintiffs and defendants as legal heirs and the property in the hands of Phool Singh was ancestral property qua the plaintiffs. Sushil Kumar had died on 16.07.1997, leaving behind the plaintiffs and defendant No.3 as his legal heirs. Immediately after the death of Sushil Kumar, mutation of his share was sanctioned in favour of the plaintiffs and defendant No.3.

[3]. Thereafter, objections were raised by defendants No.1 and 2 and mutation was sent to Assistant Collector 1st Grade, D.R.O., Yamuna Nagar at Jagadhri being disputed one. Vide order dated 16.01.2013, Assistant Collector 1st Grade had accepted the objections of defendants No.1 and 2 on the basis of Will alleged to be executed by Sushil Kumar in favour of defendants No.1 and 2.

The appeal against the same was stated to be pending before the Collector, Yamuna Nagar.

[4]. It was further pleaded that the order passed by the Assistant Collector 1st Grade, Yamuna Nagar at Jagadhri is illegal, null, void and not binding upon the rights of the plaintiffs. The deceased Sushil Kumar had never executed any Will in favour of defendants No.1 and 2, nor there was any occasion for the same. The Will (if any), is illegal, null, void, forged and fabricated document got prepared by defendants No.1 and 2 in collusion with its writer and witnesses and the same has been prepared after the death of Sushil Kumar in order to grab his property. The subsequent mutation sanctioned on the basis of the said order was also stated to be null, void and illegal.

[5]. Upon notice being served to the defendants, they appeared and filed written statement, controverting the facts stated in the plaint. It was denied by the defendants that plaintiff No.1 was widow of Sushil Kumar and it was further stated that plaintiffs No.2 and 3 are not the sons of Sushil Kumar. Sushil Kumar son of Phool Singh was bachelor and was not married during his lifetime. It was admitted that Sushil Kumar was joint owner in possession of land as detailed and described in head note A of the plaint along with defendants No.2 and 3. It was further admitted that Phool Singh was owner of the property as detailed in head note B of the plaint. Further, it has been stated by the defendants that Phool Singh out of

his free will and without any pressure or coercion, had executed a valid Will on 02.05.2002 in favour of defendants No.1 and 2, whereby he had bequeathed all his movable and immovable property in their favour and as such, defendants No.1 and 2 have become exclusive owners in possession of the properties held by Phool Singh during his lifetime. It was further pleaded that Sushil Kumar was suffering from liver problem and during his lifetime, he had executed a Will in favour of defendants No.1 and 2 on 23.02.1997, whereby he had bequeathed all his movable and immovable properties in favour of defendants No.1 and 2 as they were the only legal heirs of Sushil Kumar (since deceased). Upon the death of Sushil Kumar, the plaintiffs tried to get the mutation entered in their favour, but when the defendants came to know about the same, they filed objections and upon objections, decision was given by the District Revenue Officer (AC 1st Grade) on 16.01.2013 and mutation was entered in favour of defendants No.1 and 2 on the basis of Will dated 23.02.1997.

[6]. After perusal of the respective case of the parties, the trial Court framed the following issues:-

"1. Whether the plaintiff No.1 is widow of late Shri Sushil Kumar, if so its effect? OPP

2. Whether the plaintiffs are entitled to a decree for declaration that they are joint owners in possession of the suit property, if so its effect? OPP

3. If issue No.1 is proved in affirmative then whether the order dated 16.01.2003, passed by A.C. Ist Grade, Jagadhri and mutation No.794 sanctioned on its basis are liable to be set aside being illegal, null and void etc. If so its effect? OPP

4. Whether the suit is maintainable in the present form? OPP

5. Whether Phool Singh had executed a Will dated 02.05.2002, as per which the defendants No.1 and 2 have become owners in possession of the suit property, if so its effect? OPD

6. Whether the suit of the plaintiffs is false and frivolous and is liable to be dismissed as such? OPD

7. Relief."

[7]. Thereafter, additional issue was framed vide order dated 24.10.2011 in the following manner:-

"6(a). Whether Sushil Kumar has executed a Will dated 23.02.1997, if so to what effect? OPD"

[8]. In order to prove their case, the plaintiffs have examined Jai Pal as PW-1, Kartar Kaur as PW-2, Charanpreet Kaur @ Priti as PW-3, Ishwar Rathi as PW-3 (an error has crept in the record by mentioning two PWs at the same number), Jai Pal as PW-4, Gian Chand Sharma as PW-5, Rashida Bano as PW-6, Roshan Lal as PW-7, Suresh Kumar, Election Kanoongo as PW-8, Som Chand, Ahlmad, DC Office, Yamuna Nagar as PW-9 and thereafter, closed the evidence.

[9]. On the other hand, defendants have examined Ramshwar Dass as DW-1, Maan Singh as DW-2, Sushil Kumar, Patwari as DW-3, Gurbachan Singh as DW-4, Ranjit Singh as DW-5, Har Parkash,

Record Keeper, MC Yamuna Nagar as DW-6, Amita Devi as DW-7, Ramesh Kumar, Election Kanoongo as DW-8, Naresh Kumar as DW-9 and thereafter, closed the evidence.

[10]. It is worthwhile to point out that on 09.06.2006, plaintiff No.1 had made a statement in Court and had withdrawn the present case. Thereafter, an application for restoration/recalling of the order dated 09.06.2006 was filed and the same was ultimately allowed qua plaintiffs No.2 and 3 vide order dated 12.01.2009 but qua Plaintiff no. 1 the application stood dismissed.

[11]. Trial Court after appreciation of the pleadings as well as the evidence on record came to the conclusion that the plaintiffs have failed to prove that plaintiff No.1 is legally wedded wife of Sushil Kumar. So far as, paternity of plaintiffs No.2 and 3 was concerned, the trial Court held that there was sufficient evidence to prove the same, but since the marriage of plaintiff No.1 with Sushil Kumar (since deceased) was not proved, therefore, plaintiffs No.2 and 3 were held to be illegitimate sons of late Sushil Kumar. Trial Court had further come to the conclusion that the Will executed by Sushil Kumar in favour of defendants No.1 and 2 was a valid Will and the same was proved as per law by complying with the conditions of Section 68 of the Evidence Act. Further the Will dated 02.05.2002 allegedly executed by Phool Singh was not proved on record and accordingly, the same was discarded. As a net result, plaintiffs No.2 and 3 were held to be joint owners in possession of the property of

Phool Singh. Order dated 16.01.2003 passed by the Assistant Collector Ist Grade and mutation No.794 were held to be legal.

[12]. Both the plaintiffs and defendants being aggrieved by the judgment and decree dated 08.11.2011 passed by the trial Court, filed separate appeals before the Additional District Judge, Yamuna Nagar at Jagadhri. The judgment and decree passed by the trial Court was modified by the Lower Appellate Court vide judgment and decree dated 06.02.2015. Plaintiffs No.2 and 3 were held to be legitimate sons of deceased Sushil Kumar on the basis of documentary evidence. Though the Lower Appellate Court concluded that the marriage between plaintiff No.1 and Sushil Kumar was not proved, but by relying upon judgment in the case of **Madan Mohan Singh and others Vs. Rajbu Kant and others, 2010(3) Apex Court Judgments 196, S.P.S. Balasubramanyam Vs. Suruttayan @ Andali Padayachi and others, AIR 1992 SC 757, SLP (Crl.) No.3390 of 2014** titled **Uday Gupta Vs. Aysha and another** decided on 21.04.2014 and **Rameshwari Devi Vs. State of Bihar and others, 2000(1) Apex Court Journal 345 (SC)** held that the children are legitimate on the basis of presumption of long cohabitation between plaintiff No.1 and Sushil Kumar.

[13]. Further the Will dated 23.02.1997 (Ex.D1) was disbelieved, being based on the suspicious circumstances as stated in para Nos.22 and 23 of the judgment. As a result, the findings rendered by the trial Court were modified and plaintiffs No.2 and 3

were held entitled to the self acquired property mentioned in head note A of the plaint. Dissatisfied with the findings of the Lower Appellate Court, both the plaintiff and the defendant have filed the present regular second appeals.

[14]. Learned Senior Counsel for the defendants (appellants in RSA No.1163 of 2015) has raised many fold contentions. By referring to Order 6 Rules 2 and 4 CPC, learned Senior Counsel contended that no evidence can be looked into without there being any foundation in the pleadings. The pleadings are silent with regard to performance of rites and ceremonies of marriage as to when and in what manner, the marriage took place between plaintiff No.1 and deceased Sushil Kumar. The pleadings are silent as to how plaintiffs No.2 and 3 became sons of Sushil Kumar either from his loins or by adoption. No issue was framed with regard to status of plaintiffs No.2 and 3 being sons of Sushil Kumar. In the absence of such material pleadings, no declaration qua status of plaintiff No.1 can be granted, nor any findings can be recorded with regard to status of plaintiffs No.2 and 3 being sons of Sushil Kumar. In view of aforesaid, the suit is not maintainable on the basis of incomplete pleadings which is *sine quo non* for maintaining the suit on the basis of definite cause of action. Defendants have categorically denied the status of the plaintiffs viz-a-viz Sushil Kumar in the written statement by pleading that he was a bachelor. No replication was filed to deny the said assertions made in the written statement. Learned Senior Counsel by referring to Section 3(12) of the General Clause Act contended

that "Father", in the case of anyone whose personal law permits adoption, shall include an adopted father. Similarly, Section 3(39) of the said Act, "Son", in the case of anyone whose personal law permits adoption, shall include an adopted son. The suit stands withdrawn after framing of issues on 11.12.2003 qua plaintiff No.1. Oral and documentary evidence led by the plaintiffs in the absence of specific pleadings in the plaint are of no significance and the same would pale into insignificance. In the absence of status of plaintiff No.1 being of wife/widow of Sushil Kumar, the paternity of plaintiffs No.2 and 3 cannot be linked with deceased Sushil Kumar. No evidence can be led in the absence of such pleadings. Learned Senior counsel further submitted that no case has been set by the plaintiffs to attract any presumption of marriage on account of cohabitation between plaintiff No.1 and deceased Sushil Kumar. The alleged occurrence of marriage is sought to be proved only by self serving statements of Charanpreet Kaur @ Priti (PW-3) and her mother Kartar Kaur (PW-2) without any corroborative evidence of Pandit who allegedly performed the marriage, landlord of the house where the marriage was performed, relatives and friends from either side who attended the marriage, photographs and the photographer who allegedly clicked the photographs, friends and relatives who used to frequently visit the married couple, the neighbours, in whose neighbourhood, the couple started living after the marriage, landlord of the house where they lived on rent after marriage and midwife who performed the delivery of the first son i.e. plaintiff No.2 namely

Rajat Kumar. Learned Senior Counsel further submitted that statements of PW-2, PW-3 and documents Exs.D6 and PA are contrary and do not advance paternity of plaintiffs No.2 and 3 from such alleged union.

[15]. Learned Senior Counsel further submitted that no evidence has been led in respect of custom/usage prevalent on both sides according to which marriage was allegedly performed as per Sections 5 and 7 of the Hindu Marriage Act, 1955. The evidence is inconclusive and does not advance the case of the plaintiffs. PW-3 Charanpreet Kaur @ Priti has not stated cohabitation in her statements in defence vide Exs.D6 and PA made before the Collector at the time of sanctioning of mutation of the estate of deceased Sushil Kumar and Phool Singh. In some documentary evidence, the status of Charanpreet Kaur @ Priti is alleged to be wife of Sushil Kumar and plaintiffs No.2 and 3 being sons of Sushil Kumar. These are the result of self serving statements and the entries were created on the basis of such statements made by PW-3 during lifetime of Sushil Kumar and even after his death without any participation of Sushil Kumar in the preparation of such documents in any manner. By referring to charts, learned Senior Counsel sought to highlight following features on record:-

CHART-I

Topic	Mother (PW2)	Charanpreet (Suit) (PW3)	Charanpreet (Ex.D6)	Charanpreet (Ex.PA)
Date of marriage	First says 1994 then 22.02.1992	22.02.1992	02.02.1992	No date only 1992

Relatives of Sushil who attended the wedding	His father and mother, Tau, Taya and whole family around 50-60 from his side	His brothers, Massi's son, Jija, 4 friends and his father.	-- His brothers, brother and friends. -- His sister in law (mausi's son's wife) -- Later she contradicts and says his own brothers were not present. But his mausi's brother one Mahendra was present. -- His parents were not in the wedding.	-- Massi's son i.e. Mahendra -- Her mother. -- Her sister. -- Her brother.
Ceremonies performed	-- Pandit present. -- 7 pheras done. -- Maala done. -- NOTE: nothing else mentioned	-- Pandit present. -- Maang sindoor -- Jaimala done -- Mangalsutra done. -- doli as love marriage -- NOTE: no mention of steps or pheras	-- 7 Pheras done -- All the pheras Sushil was ahead of her. -- Sindoor done	-- No pandit. -- Sindoor done. -- No kanyadaa-n. -- No saptapadi. -- No pheras.
Photographs of marriage	---	Yes	Yes	No
Admission of hospital	Sushil got her admitted. Note: she was not present in the hospital.	Sushil and her neighbour who is her sister.	At the time of labour by her mother and her sister.	Sushil got her admitted but no proof. Before

				DRO she said that her sister and Sushil got her admitted.
Ration card	Joint ration card of Charanpreet and Sushil	No ration card with Sushil was got prepared.	Ration card was prepared after his death.	No ration card with Sushil.
Map of the House in Bank Colony	Map prepared with the committee. In which the name of Charanpreet's husband is stated to be Sushil.	No map was passed by the committee.	---	Plot registry does not have Sushil's name on it.
Admission of Sushil in Hospital		By his family	I do not know.	
Widow ceremonies	She performed.	She performed.	She did not perform.	She did perform.
Bank colony plot	Her family gave it to Charanpreet.	In 1984 bought by her father.	---	---
2 or 3 sons	Only 2 sons	3 sons	---	Admits having a 3rd son with Vinay.
Marriage with Vinay	No	No but has a son		Admits marriage at Dev Samaj Mandir.

CHART-II

Sr. No	Document Description/ Exhibit No.	Purpose	Tendered by	Examined	Fact Proved/ Relevant Statement in examination/ cross-examination	Dated	Remarks
1	Discharge Slip (Ex.P1)	To show Sushil	Charanpreet (PW3)	No official	-Read statement of	11.7.1997	-Merely a discharge

		Kumar as the husband of Charanpreet.		witness summoned to prove its authenticity from original record.	PW3 in her cross: To the effect that all forms of the records tendered by her have been filled by her and that Sushil has never filled any of those forms.		slip, proving treatment and discharge of the patient from the hospital is irrelevant to prove that fact of marriage/ cohabitation or paternity. -Entries in documents got entered by Charanpreet herself or by her relatives.
2	Employment Exchange Card Charanpreet (Ex.P2)	To show Sushil Kumar as the husband of Charanpreet	Charanpreet (PW3)	No witness summoned	-Read statement of PW3 in her cross: To the effect that all forms of the records tendered by her have been filled by her and that Sushil has never filled any of those forms.		-Merely an employment exchange card and is irrelevant to prove the fact of marriage/ cohabitation or paternity. -Entries in documents got entered by Charanpreet herself. Entered in the employment exchange card. Got entered by Charanpreet herself. -Post death of Sushil Kumar.
3	Pradhan Agrotech Ltd. Receipt (Ex.P3)	To show Sushil Kumar as the husband of Charanpreet	Charanpreet (PW3)	No witness summoned	-Read statement of PW3 in her cross: To the effect that all forms of the records tendered by her have been filled by her and that Sushil has never filled any of those forms.	31.3.1997	-Merely a receipt mentioning Sushil Kumar as husband of Charanpreet and is irrelevant to prove the fact of marriage/ cohabitation or paternity. - Entries in

							documents got entered by Charanpreet herself. Entries in receipt got entered by Charanpreet herself.
4	Ration Card (Ex.P4)	To show Sushil Kumar as the husband of Charanpreet	Charanpreet (PW3)	Depot dealer (PW5)	Read statement of PW5 in his examination in chief: -- Brought depot register of 2005. Read statement of PW5 in his cross examination:- -- Sushil Kumar's name is registered in his register but nothing mentioned therein, about Sushil Kumar's relationship with Charanpreet. -- This entry in the register was made on Charanpreet's insistence and only her signatures are there. -- No such entry in the register to show that Sushil got an entry done along with Charanpreet. -- Sushil never took any ration from depot. -- Charanpreet took ration from depot.		-The original record from Food and Supplies Department was not summoned to prove its authenticity from original record. -Merely a ration card and a depot register which carry significance with respect to ration only and are irrelevant to prove the fact of marriage/ cohabitation or paternity. -Entries in documents got entered by Charanpreet herself. Got entered by Charanpreet herself. -Post death of Sushil Kumar. In defence Ex.D3 ration card of 1992 was tendered by DW7/A (Amita Devi) and DW9 Naresh Kumar Inspector Food and Supply was examined

							who affirmed that EX.D3 is the original ration card.
5	Birth Certificates (Ex.P5 and P6)	To show Sushil Kumar as the father of Sumit and Rajat.	Charanpreet (PW3)	Rashida Bala, S.A, Municipal Corp. (PW6)	Read statement of PW6 in cross examination:- -- 1994 entry was got entered by Charanpreet herself. -- There is a form that is filled for the entry to be made. She did not have the form on the day of her cross examination.	15.7.1997	-Original record pertaining to births summoned for proving entry for the examination of the Court. - presumption of the fact of birth of the children merely and not qua the information contained in the entries (Section 17(2) Registration of Birth and Death Act) and case Selvamani Vs. Minor K. Gomathi 2016(6)MLJ 734 para 21-25.
6	Voter list of 1995 Kansapur (Ex.P7)	To show Sushil Kumar as the husband of Charanpreet.	Charanpreet (PW3)	Suresh Kumar, Election Kanungo (PW8)	Read statement of PW8: -- The entries in the survey register are done by going to every house and getting the signatures done. -- When one goes to the house, if a major is present they make the entries on the information provided by him and get his signatures. -- In this	15.5.1995	-Voter list is only a proof of being an elector and no presumption as to the relationship arises therefrom. -No survey register summoned. -Who filled the form or gave the information during the survey cannot be proved. -Entries in documents got entered by Charanpreet herself.

					case, who has filled the form or who has put the signatures cannot be said.		- Section 2(f) of the Haryana Municipal Election Rules, 1978 defines elector and the voter list as prepared as the Registration of Electors Rules, 1960 no where is it mentioned that names mentioned in the voter list carry a presumption of relationship between the parties. - In defence Ex.D2 (Voter list of 1994 of Nagar Parishad) D4 (Voter list of 1995 of Vidhan Sabha Elections) and D5 (Voter list of 2000 Vidhan Sabha Elections) of Munda Majra where Sushil Kumar is shown with all the family members and Charanpreet (PW3) is no where mentioned, were tendered by DW7/A (Amita Devi) and in connection to which DW6 (Harparkash Store Keeper) and
--	--	--	--	--	---	--	---

							DW8 (Ramesh Kumar (Election Kanungo, District Election Office were examined.
7	. Certificate of qualification with Marksheet (middle school) of Rajat (Ex.P9) . Marksheet of Primary of 5th standard 2004-05 of Rajat (Ex.P10) . Certificate of qualification with marksheet secondary examination of Rajat (Ex.P11). . Certificate of primary school of Sumit (Ex.P12)	To show Suhil Kumar as the father of Rajat and Sumit.	Charanpreet (PW3)	No original record of any person from the school was summoned to prove authenticity of the entries in the certificates from the original record	Read statement of PW3 in her cross:- -Read statement of PW3 in her cross: To the effect that all forms of the records tendered by her have been filled by her and that Sushil has never filled any of those forms.	17.4.2008 31.3.2008 14.5.2010	-No one was examined -Tendered in her affidavit (Ex.PW3/A) -No proof of paternity. -Merely a proof of marks obtained. -Entries in documents got entered by Charanpreet herself. -Post death of Sushil Kumar.
8	Labour room register of Maharshi Dayanand Hospital/Birth Certificate (Ex.13, P14 and P15)	To show Sushil Kumar as the father of Rajat and Sumit.	Jai Pal Singh (PW4)	Jail Pal Singh (PW4)	Read statement of PW4 in examination in chief: --Brought the copy of certified copy of the original summoned register. However, original record summoned. -- On the birth of the baby boy then informed the Nagar Parishad. Read statement of PW4 in his		-Merely a copy of an entry in the register of a hospital that shows nothing as to who made the entry and hence, is irrelevant to prove the fact of marriage/ cohabitation or paternity. - Entries in documents got entered by Charanpreet herself. Got entered by Charanpreet

					cross examination: -- He did not bring the original of Ex.P13 to P15. -- The said copies have the signature of the Director of the Hospital as well as the seal. -- However, the copies have not written on them as		herself.
--	--	--	--	--	--	--	----------

[16]. Trial Court held issue No.6-A in affirmative thereby holding that Will Ex.D1 is validly proved. No evidence has been led by the plaintiffs to prove forgery and fabrication of Will in question, nor any suspicious circumstance has been brought on record. The Will has been proved by the scribe DW-4, attesting witness DW-5 and DW 7. The Will has been proved as per Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. Lower Appellate Court has gone beyond the pleadings and made out a new case of suspicious circumstances. Section 63 of the Indian Evidence Act prescribes no form of a Will. The Will can be handwritten also. Even registration of Will is optional. Perusal of the Will would show that there are no adjustment on the papers. Simple language has been used and the same has been scribed by an independent person who is not beneficiary in any manner. No independent witness has been examined to corroborate forgery and fabrication.

The testimonies of DWs have not been impeached by any cogent

evidence by the plaintiffs. Even if, Sushil Kumar was sick, that does not mean that he lacked testamentary capacity. Even such incapacity has not been pleaded by the plaintiffs. Deceased Sushil Kumar was living with his father. Father is not a beneficiary in any manner. The Will was prepared in February and the testator died in the month of July.

[17]. Learned Senior Counsel by raising arguments that the pleadings are lacking in terms of Order 6 Rules 2 and 4 CPC, does not advance the case of the plaintiffs. It has not come on record as to how, plaintiff No.1 became wife of deceased Sushil Kumar in the absence of custom and necessary pleadings made as a foundation of the case. Further pleadings are lacking as to how, plaintiffs No.2 and 3 became sons of deceased Sushil Kumar. Learned Senior Counsel referred to **Reshamlal Baswan Vs. Balwant Singh Jwalasingh Punjabi and others, 1994(2) HLR 188** in support of his assertions. Learned Senior Counsel further submitted that the Courts below have gone beyond the pleadings. No amount of evidence can be looked into without there being any pleadings to that effect. The documents pleaded by the plaintiffs, have been created and are self generated documents and these documents do not prove the paternity of plaintiffs No.2 and 3, rather these documents would only show the relevant fact in the context of these documents having been prepared/created in due course of official duty. For example, birth certificate would show birth of a child and nothing more. No amount of presumption can prove a fact in reality in the absence of

cogent linked evidence. With regard to Will dated 23.02.1997 Ex.D1 executed by Sushil Kumar in favour of defendants No.1 and 2, the same is proved as per requirements of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. Due execution of Will has been proved by the statements of scribe, attesting witnesses and other witnesses. The testimonies of the witnesses could not be impeached the plaintiffs by any incriminating fact. By referring to **Surjit Kaur vs. Garja Singh and others, 1994 AIR (SC) 135, Satwant Singh Vs. Amar Kaur and others, 2019(1) PLR 734, Phool Singh and others Vs. Smt. Santosh and others, 2018(1) HLR 379, Chhanga Singh Vs. Dharam Singh and others, 1965 AIR (Punjab) 204, Januava Dasi wife of L. Kunj Dass Bairagin Vs. Hari Dasi, 1957 All. LJ 667, Sohan Singh Vs. Preet Kamal Singh and others, 2015(1) PLJ 662, Mohinder Singh and others Vs. Lachhman Singh and others, 2013(13) RCR (Civil) 607, Selvamani Vs. Minor K. Gomathi, 2016(6) MLJ 734, S. Thangiah Vs. Thangamani Alex and another, 1990(1) HLR 92, H. Subba Rao Vs. The Life Insurance Corporation of India and another, 1976 AIR (Karnataka) 231, Singaram @ Velayudha Udayar and others Vs. Subramaniam and others, 2000(1) HLR 600, G. Sekar Vs. Geetha and seven others, 2007(5) RCR (Civil) 118, Lalji and others Vs. Mus. Mariyam Bai and another, 2007 AIR (Chattisgarh) 21, K. Alagimeenal and others Vs. B. Chandravadana and others, 2017(7) MLJ 668, Vivek Sharma Vs. Vani Sharma, 2018(4) PLR 811, Ramkali Vs. Mahila Shayamwati,**

2001 AIR (MP) 288, Rani Dixit and another Vs. State of UP and others, 2013(31) RCR (Civil) 354, Harvest Securities Pvt. Ltd. and another Vs. BP Singapore Pvt. Ltd. and another, 2014(19) RCR (Civil) 418 and R.K. Angousana Singh and others Vs. Laisram Ningol Ningthemcha Ongbi Leinambi Devi and others, 1979 AIR (Gauhati) 52, learned Senior Counsel wanted to prove his point.

[18]. Per contra, learned counsel for the plaintiffs (respondents in RSA No.1163 of 2015) submitted that civil cases are to be decided on the basis of preponderance of probabilities/evidence. Both the Courts below have recorded a concurrent finding of fact that plaintiffs No.2 and 3 are the sons of Sushil Kumar (deceased). Whether plaintiffs No.2 and 3 are legitimate or illegitimate sons, have not been countered by the defendants/appellants by way of any cogent evidence. On the strength of documents viz. birth certificate, marriage and record of hospital, the plaintiffs have successfully discharged initial onus to prove that plaintiffs No.2 and 3 took birth from the loins of Sushil Kumar irrespective of the proof of any valid marriage with plaintiff No.1, who has already withdrawn the suit qua her claim of being legally wedded wife. In view of aforesaid, the onus heavily shifted upon the defendants to disprove genuineness of the documents by way of leading cogent evidence. Bald assertion to the effect that these documents were prepared solely on the basis of self-serving statement of PW-3, would not be sufficient to dislodge the presumption which is otherwise attracted in view of other attending

circumstances of payment of Rs.7 lacs to plaintiff No.1 for effecting compromise with the defendants. If there was no such relationship between plaintiff No.1 and Sushil Kumar, there was no occasion for the defendants to pay the hefty amount of Rs.7 lacs which according to plaintiff No.1 was first installment out of total agreed amount of Rs.70 lacs which was agreed to be paid to plaintiff No.1 and on behalf of plaintiffs No.2 and 3 for severing tie with defendants family for all times to come. Plaintiffs have proved their case on the basis of preponderance of probabilities and on the basis of concurrent findings of fact on the aspect of plaintiffs No.2 and 3 being sons of Sushil Kumar. These findings are based on voluminous documentary record, majority of which has been prepared prior to the death of Sushil Kumar. Some of the documents are prepared after the death of Sushil Kumar. Learned counsel referred to **Hero Vinoth (minor) Vs. Seshammal, 2006(2) RCR (Civil) 677, Govindaraju Vs. Mariamman, 2005(2) RCR (Civil) 105, Sheel Chand Vs. Prakash Chand, 1999(2) RCR (Civil) 446, Bharatha Matha and another Vs. R. Vijaya Renganathan and others, 2010(3) RCR (Civil) 252, S.P.S. Balasubhramaniam's case (supra), Smt. Parayankandiyal Vs. K. Devi and others, Manu/SC/0487/1996, Jinia Keotin and others Vs. Kumar Sitaram Manjhi and others, 2003(1) RCR (Civil) 469, Rameshwari Devi's case (Supra), RSA No.52 of 2018** titled **Jagdish Chand Vs. Piar Singh and others** decided on 07.05.2018, **Bachhaj Nahar Vs. Nilima Mandal and another, AIR 2009 SCC 1103, RSA No.2155 of 2006** titled **Sheela**

Rani Vs. Tarlok Chand decided on 11.08.2009, **J. Naval Kishore Vs. D. Swarna Bhadran, 2007(6) RCR (Civil) 599** and **S.R. Srinivasa and others Vs. P. Padmavthamma, 2010(4) ALD 160(SC)** in support of their contentions.

[19]. I have gone through the evidence and submissions made by learned counsel for the parties.

[20]. So far as, arguments raised by learned Senior Counsel for the defendants to the effect that there is lack of pleadings in the plaint and the evidence recorded being beyond pleadings are concerned, the same has no merit and deserves to be rejected. Para No.1 of the plaint reads as under:-

*"That the plaintiff No.1 is widow of Shri Sushil Kumar-deceased son of Shri Phool Chand deceased and the **plaintiffs No.2 and 3 are minor sons of late Shri Shushil Kumar.** Plaintiffs No.2 and 3 are filing this suit through their next friend, natural guardian their mother Smt. Charanpreet Kaur alias Priti widow of Shri Sushil Kumar deceased. As no relief has been claimed against the defendant No.3, who has been impleaded as party being legal heir of Phool Singh and Sushil Kumar-deceased."*

[21]. Perusal of the above averments in the plaint would clearly show that it is the specific case of the plaintiffs that plaintiff No.1 is the widow of Sushil Kumar and plaintiffs No.2 and 3 are the minor sons, therefore, it cannot be said that there is lack of pleadings to that effect and the evidence got recorded is beyond the pleadings.

The evidence brought on record is totally in consonance of the above pleading and is elaborating the same.

[22]. Plaintiffs have not been able to establish that plaintiff No.1 was legally wedded wife of Sushil Kumar. The oral evidence in the shape of statements of PW-2 Kartar Kaur (mother of Charanpreet Kaur @ Priti) and PW-3 Charanpreet Kaur @ Priti is not sufficient to establish marriage between plaintiff No.1-Charanpreet Kaur @ Priti and Sushil Kumar. There are contradictions in the statements of PW-2 and PW-3 and further contradictions have been pointed out with the earlier statement of PW-3 got recorded by her in the mutation proceedings. PW-2 in her cross-examination had stated:-

".....Pandit was present in the wedding and pheras were performed. Pandit got the pheras performed. There are 7 pheras and 7 pheras were performed. I do not know the name of the Pandit. I do not know where the Pandit resides.

Pandit got the 7 pheras performed as per the Hindu ceremonies and mala was done....."

Whereas PW-3 Charanpreet Kaur in her cross-examination had stated:-

".....Sushil Kumar brought the Pandit. I do not know the name of the Pandit."

Pandit was present in the wedding. He got the maang filled and the Jaimala was performed. Mangal sutra was also done. Photographs were taken. No bidaai was performed as it was a love marriage. Kanyadaan was performed by my mother....."

[23]. In the statement of Charanpreet Kaur @ Priti Ex.D6 before the Collector, she had stated:-

".....In the marriage, the pheras were got performed by a Pandit. There were 7 pheras performed and in the 7 pheras, Sushil was ahead of me. Sushil filled my maang.

In my wedding photographs were clicked however, there are no photographs of Sushil Kumar's brother and sister in law or anyone....."

Charanpreet Kaur further in her statement Ex.DA before the Assistant Collector 1st Grade had stated:-

*".....**There was no Pandit present in my wedding.** Sushil Kumar filled my maang and I became his wife.....*

*Photographs were clicked when maang filling ceremony was performed. **No Kanyadaan or Saptapadi or pheras were performed....."***

[24]. In view of the above stated inconsistencies and contradiction in the statements and the fact that apart from the self serving statements of PW-2 Kartar Kaur and PW-3 Charanpreet Kaur @ Priti, there is no evidence to establish marriage of Charanpreet Kaur @ Priti and Sushil Kumar, it is held that plaintiffs have failed to prove the marriage between Charanpreet Kaur @ Priti and Sushil Kumar. Further, the self serving statements of PW-2 and PW-3 are also not sufficient to establish long cohabitation between Charanpreet Kaur @ Priti and Sushil Kumar.

[25]. The next question that arises for consideration is regarding the paternity of plaintiffs No.2 and 3. It has been submitted

by learned Senior Counsel for the defendants that the documents i.e. discharge slip (Ex.P1), ration card (Ex.P4), birth certificates (Exs.P5 and P6), voter list (Ex.P7), certificate of qualification and mark-sheet (Ex.P9), mark-sheet (Ex.P10), certificate of qualification (Ex.P11), certificate of primary school (Ex.P12) along with labour room register of Maharshi Dayanand Hospital (Exs.P13 and P14) and birth certificate (Ex.P15) are not sufficient to establish paternity of plaintiffs No.2 and 3 as has been held by both the Courts below. He has further submitted that both the Courts below fell in error while giving undue weightage to these documents. These documents have been made at the instance of Charanpreet Kaur @ Priti and it is only on the basis of her statement that the authorities have prepared these documents. In none of the documents, handwriting or signatures of Sushil Kumar appear, nor Sushil Kumar had filled any of the form.

[26]. On the other hand, learned counsel for the plaintiffs stated that these documents have been proved on record by the relevant witnesses from the Government offices and a presumption of truth is attached to these documents. She further stated that both the Courts below have rightly given weightage to these documents.

[27]. In my considered opinion, these documents specially the birth certificates Exs.P5 and P6 dated 14.01.2005 and 06.10.1998 clearly established the fact that plaintiffs No.2 and 3 are sons of Sushil Kumar and were born on 13.07.1994 and 11.07.1997. Further record of the labour room register Ex.P14 corroborates the case of

the plaintiffs, wherein also names of the parents have been stated. It is a settled principle of law that civil cases are to be decided on the basis of preponderance of probabilities. The evidence on record at least *prima facie* establishes that plaintiffs No.2 and 3 are sons of Sushil Kumar. Defendants on the other hand, have not produced any evidence to show that these documents are forged, fabricated or procured documents. Another relevant factor for coming to this conclusion is that, in the present case, the suit was withdrawn vide order dated 09.06.2006 in view of verbal statement made by plaintiff No.1-Charanpreet Kaur @ Priti. Thereafter, an application for restoration/recalling of the said order was filed by her on her behalf as well as on behalf of plaintiffs No.2 and 3. In the said application, it was pleaded by the plaintiffs that on account of compromise, the case was withdrawn and it was agreed between the parties that share of deceased Sushil Kumar would be given to the plaintiffs or an equivalent amount of the market value of the property of the share of Sushil Kumar would be given to the plaintiffs. The market value of the property was assessed @ Rs.70,00,000/- and an amount of Rs.7,00,000/- by way of draft was given to the plaintiffs. Thereafter, further payments were not made and as such, the application for recalling was filed. The statement of Amita Devi (DW-3) widow of late Naresh Kumar would also prove the factum of payment of Rs.7 lacs in the context of civil suit filed by plaintiff No.1. This is one of the strong circumstances which would negate theory of the defendants that the aforesaid payment was made on the asking

of the plaintiffs being poor persons and at the insistence of the respectables. The context in which the aforesaid payment was made to plaintiff No.1 has not been dispelled by the defendants by any evidence.

[28]. In the reply, the averments of the restoration application were denied, but as far as, the payment of Rs.7,00,000/- was concerned, the same was admitted by the defendants. The relevant portion of the reply is reproduced as under:-

"It may further be submitted that the present plaintiffs had approached the defendants that they are poor persons and they be given something and it was with the intervention of the respectables that the defendants had paid a sum of Rs.7,00,000/- through draft to her out of courtesy."

[29]. This Court fails to understand as to why this payment of Rs.7,00,000/- was made to the plaintiffs, when they had no interest or title in the property, nor they were related to Sushil Kumar. The Court cannot shut its eyes and has to take into consideration each and every factor that has happened during course of the trial.

[30]. Taking into consideration the documentary evidence and the fact that at one point of time, an amount of Rs.7,00,000/- has been paid to the plaintiffs by the defendants, this Court comes to the conclusion that plaintiffs No.2 and 3 are the sons of Sushil Kumar.

[31]. The next question which falls for determination before this Court is with regard to the Will (Ex.D1) executed by deceased Sushil Kumar in favour of defendants No.1 and 2. The Will dated

23.02.1997 (Ex.D1) is scribed by DW-4 Gurcharan Singh and further the same was proved by attesting witness and DW-5 Ranjit Singh.

[32]. Perusal of the evidence on record specially the statement of DW-4 Gurcharan Singh would show that the said witness had not scribed any other document apart from the present Will. The Will is written on a simple paper and in the Will itself, it has been mentioned that the executant is 30 years old and seriously ill and in no position to move. At the time of the execution of the Will, the deceased was residing with his brothers in whose favour the property has been bequeathed by the said Will, therefore undue influence, pressure, misrepresentation cannot be ruled out. In ordinary course, if there had been no sons or daughters of Sushil Kumar, there was no necessity for execution of this document, but since Sushil Kumar was having two sons (plaintiffs No.2 and 3), therefore, non-mentioning of their names in the Will creates a grave suspicion and as such, Will Ex.D1 has to be discarded. The findings recorded by the Lower Appellate Court in para Nos.22 and 23 of the judgment are totally correct and do not call for any modification.

[33]. So far as, Will dated 05.02.2002 allegedly executed by Phool Singh in favour of defendants No.1 and 2 is concerned, the findings do not call for any interference as the execution of the Will dated 02.05.2002 has not been proved by way of evidence and as such, the findings qua Will dated 05.02.2002 are affirmed. The judgments rendered by learned counsel for the parties do not

advance their case as they are not related to the facts and circumstances of the present case.

[34]. No other argument was raised before this Court.

[35]. In view of aforesaid, the appeal filed by the defendants is partly allowed and the appeal filed by the plaintiffs is dismissed. The net result being that plaintiffs No.2 and 3 are held to be sons of Sushil Kumar, but the marriage of Sushil Kumar with plaintiff No.1- Charanpreet Kaur @ Priti is not proved, therefore, plaintiffs No.2 and 3 are illegitimate sons of deceased Sushil Kumar and as such, would be entitled to self acquired property of deceased Sushil Kumar as per ratio laid down in the case of **Bharatha Matha and another’s case (supra) and Jinia Keotin’s case (supra).**

[36]. Both the appeals stand disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

27.05.2020
Prince

Whether reasoned/speaking Yes/No

Whether reportable Yes/No