

(2020) 06 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1163, 1982 Of 2015(O&M)

Naresh Kumar Through His Lrs Amita And Others

APPELLANT

Vs

Charanpreet Kaur @ Priti And Others

RESPONDENT

Date of Decision : 27-06-2020

Acts Referred:

Evidence Act, 1872 — Section 68
General Clauses Act, 1897 — Section 3(12), 3(39)
Hindu Marriage Act, 1955 — Section 5, 7
Indian Succession Act, 1925 — Section 63
Code Of Civil Procedure, 1908 — Order 6 Rule 2, Order 6 Rule 4

Citation : (2020) 06 P&H CK 0080

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Advocate : Shailendra Jain, Anupama Arigala, Nandita Abrol, Navin Mishra

Final Decision : Disposed Of

Judgement

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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 Ist Grade, D.R.O., Yamuna Nagar at" ,,,,,,

Jagadhri being disputed one. Vide order dated 16.01.2013, Assistant Collector Ist 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 Ist 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 Ist 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,,,,,,

Topic,Mother (PW2),"Charanpreet (Suit)Â

(PW3),"Charanpreet (Ex.D6),Charanpreet (Ex.PA),,,

DateÂ Â Â Â Â Â Â Â Â Â Â

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.",,,,
MapÂ Â ofÂ Â the
HouseÂ Â Â Â Â Â 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.",,,,
AdmissionÂ of
SushilÂ Â Â Â Â Â in
Hospital",,,By his family,I do not know.,,,,
Widow ceremonies,She performed.,She performed.,She did not perform.,She did
perform.,,,,
BankÂ Â 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.",,,,
,,,,,
3,"Pradhan
Agrotech

Ltd. Receipt
(Ex.P3)","To show
Sushil
Kumar as
the husband
of
Charanpreet
To show
Sushil
Kumar as
the husband
of
Charanpreet","Charanpreet
(PW3)","No
witness
summon
ed
No
witness
summon
ed","never filled
any of those
forms.
-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.

-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.", "marriage/
cohabitation
or paternity.

-Entries in
documents
got entered
by
Charanpreet

herself or by
her relatives.

-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.

-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

entryÂ Â Â 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.",15.07.1997,"-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.

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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",15.05.1995,"-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

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//////// "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.

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 Ist 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.,,,,,,,