IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.2006 of 2018 (O&M)
Date of Decision:01.06.2020

Rajkumari Amrit Kaur .....Appellant(s)
Vs
Maharani Deepinder Kaur and others ....Respondent(s)

2. RSA No.1418 of 2018 (O&M)

Maharani Deepinder Kaur and others .....Appellant(s)
Vs
Rajkumari Amrit Kaur and others ....Respondent(s)

3. RSA No.2176 of 2018 (O&M)

Bharat Inder Singh (since deceased) though his LR Kanwar Amarinder Singh Brar
.....Appellant(s)
Vs
Maharwal Khewaji Trust through its Boards of Trustees and others
....Respondent(s)

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

Present: Mr. Manjit Singh Khaira, Sr. Advocate with
Mr. Balbir Singh Sewak, Advocate,
Mr. Dharminder Singh Randhawa, Advocate
Mr. Ripudaman Singh Sidhu, Advocate, and
Mr. Gagandeep Singh Mann, Special Attorney Holder
for the appellant in RSA No.2006 of 2018
for respondent No.1 in RSA No.1418 of 2018 and
for respondent No.6 in RSA No.2176 of 2018.

Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Mukul Aggarwal, Advocate
Mr. N.S. Wahniwal, Advocate
for the appellants in RSA No.1418 of 2018
for respondents No.1, 2, 3(1), 3(2), 3(5) & 3(8) in RSA No.2006 of 2018;
for respondents No.1(A), 1(B), 1(E), 1(F), 2 and 3 in

RSA No.2176 of 2018.

Mr. Vivek Bhandari, Advocate
for the appellant in RSA No.2176 of 2018
for respondent No.5(i) in RSA No.2006 of 2018 and
for respondent No.3(i) in RSA No.1418 of 2018.

Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
respondent No.4 in RSA No.2176 of 2018.

****

Judgment Index

Sr.No.	*Title/Sub-Titles*	*Para No.(s)*	*Page No.(s)*
1	**Common Facts**	**2 to 22**	**5-25**
2	**Issues framed by the Trial Court**	**23**	**25-28**
3	**Proceedings & outcome before the Courts below**	**24 to 25**	**28-32**
4	**Nomenclature of the appeals in the High Court**	**26 to 28**	**32-33**
5	**Brief background, originated from Covenant dated 05.05.1948 entered into between the Union of India and Ruler of Faridkot State**	**29 to 34**	**33-36**
6	**Questions/Points framed by this Court for consideration in all the three appeals**	**35**	**36-37**
7	**Discussion/Arguments made by the parties on 1st Point regarding applicability of The Raja of Faridkot's Estate Act, 1948**	**36 to 39** (inclusive of sub paras based on individual arguments of learned counsel)	**37-120**
8	**Conclusion on 1st Point/Question**	**40-57**	**120-136**

Sr.No.	*Title/Sub-Titles*	*Para No.(s)*	*Page No.(s)*
9	**Discussion/Arguments made by the parties on 2nd Point regarding applicability of The Law of Primogeniture** **(a) Discussion and conclusion regarding effect of judgment dated 22.07.1996 passed by the UK High Court Justice, Chancery Division relating to Faridkot Family Settlement Trust.** **(b) Discussion and conclusion regarding effect of Will dated 27.01.1997 executed by Kanwar Manjit Inder Singh (Brother of Raja).**	**58-61** **62-67** **68-77**	**136-159** **159-163** **164-173**
10	**Conclusion on 2nd Point/Question**	**78-101**	**173-196**
11	**Discussion/Arguments made by the parties on 3rd Point regarding Validity of Will dated 01.06.1982 executed by Raja Harinder Singh and creation of Trust thereunder**	**102 to 105** (Inclusive of sub paras wherein arguments of the parties are separately discussed under different headings.	**196-376**
12	**Conclusion on 3rd Point/Question**	**106-190**	**376-462**
13	**Discussion/Argument made by the parties on 4th Point regarding Maintainability of Civil Suit filed by Kanwar Manjit Inder Singh.**	**191 to 198**	**462-471**
14	**Conclusion on 4th Point/Question**	**199-200**	**471-472**
15	**Discussion/Conclusion on effect of Will dated 29.03.1990 (Ex.D-10) executed by Maharani Mohinder Kaur**	**201-210**	**472-479**
16	**Point wise discussion on 5th Point/Question re: Maintainability of Civil Suit filed by the plaintiff Rajkumari Amrit Kaur.**	**211**	**479-480**

Sr.No.	*Title/Sub-Titles*	*Para No.(s)*	*Page No.(s)*
17	**Discussion/Argument regarding:** **(a) Court Fee** **(b) Section 34 of Specific Relief Act** **Conclusion on (a) and (b)**	**212 & 213** **214 to 218**	**480-506** **506-509**
18	**Discussion/Argument regarding:** **(c) Non-joinder and mis-joinder of necessary parties.** **Conclusion**	**219 & 220** **221**	**509-516** **516-518**
19	**Discussion/Argument regarding:** **(d) Relief beyond pleadings** **Conclusion**	**222 & 223** **224**	**518-520** **520**
20	**Discussion/Argument regarding:** **(e) Assignment of right by the plaintiff in favour of 3rd party** **Conclusion**	**225** **226 & 227**	**520-523** **523-524**
21	**Discussion/Argument regarding:** **(f) Limitation to challenge the Will dated 01.06.1982** **Conclusion**	**228 to 230** **231**	**524-539** **539-540**
22	**Discussion/Argument regarding:** **(g) Limitation with regard to the filing of court fee** **Conclusion**	**232 & 233** **234**	**540-544** **544-545**
23	**Overall conclusion**	**235 to 238**	**545-547**

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment RSA Nos.2006, 1418 and 2176 of 2018 (O&M) are being decided. Since the dispute relates to the succession of Late Maharaja Colonel Sir Harinder Singh Brar Bans Bahadur KCIS Ex.-Ruler of former Faridkot State, therefore, for the sake of brevity common facts are being noticed.

Facts

[2]. Late Maharaja Colonel Sir Harinder Singh Brar was the last ruler of the former Faridkot State. He was born on 29.01.1915 and was the eldest son of Maharaja H.S. Farjand-i-Saddat-Nishan Hazrat-i-Kesar-i-Hind Maharaja Brij Inder Singh Brar Bans Bahadur Raja of Faridkot. Raja Harinder Singh Brar died on 16.10.1989. His only son Tikka Harmohinder Singh died on 13.10.1981. Raja Harinder Singh Brar was survived by three daughters namely Rajkumari Amrit Kaur, Rajkumari Deepinder Kaur and Rajkumari Mahipinder Kaur. Father of Raja Harinder Singh Brar i.e. Maharaja Brij Inder Singh died in the year 1918. He was survived by his widow Maharani Mohinder Kaur, Raja Harinder Singh Brar and Kanwar Manjit Inder Singh. Raja Harinder Singh Brar succeeded by his three daughters as his son Tikka Harmohinder Singh had died earlier to his death. Kanwar Manjit Inder Singh was succeeded by Tikka Bharat Inder Singh, Rajkumari Devinder Kaur and thereafter Rajkumari Heminder Kaur. Wife of Raja Harinder Singh Brar had died during his life time, however she was alive on 01.06.1982 i.e. the date on which Raja Harinder Singh Brar is purported to have executed the alleged Will. Raja Harinder Singh Brar died on 16.10.1989 in Batra Hospital at Delhi. His dead body was brought to Faridkot and was cremated on 17.10.1989 with royal

family traditions in *Shahi Samadhan*.

[3]. On 20.10.1989, Board of Trustees and Executors assembled in the Palace known as Moti Mahal Qila Mubarik, Faridkot, where Sardar Umrao Singh Dhaliwal read over the contents of Will in the presence of Board of Trustees and Executors. Under the aforesaid Will, all the concerned persons are alleged to have occupied the position with which they were invested under the said Will. They passed resolution No.1 dated 20.10.1989. Board of Trustees alleged to have taken possession, control and management of the entire estate of deceased Raja Harinder Singh Brar with the assent of the Executors. The properties located in various revenue estates were mutated in the name of the Trust and the urban properties were also transferred in the name of the Trust.

[4]. Last rites of Raja Harinder Singh Brar were performed on 26.10.1989 in Qila Mubarik, Faridkot, where Sardar Karnail Singh Doad proclaimed in the huge gathering that late Raja Harinder Singh Brar had executed a registered Will dated 01.06.1982, thereby bequeathing his entire properties in favour of Trust known as Maharwal Khewaji Trust with definite Board of Trustees for the benefit of public at large.

[5]. On 14.10.1992, Rajkumari Amrit Kaur filed a suit for

declaration that she is owner of 1/3rd share in the property as shown in the headnote of the plaint along with consequential relief of joint possession with defendants No.1 and 2. She further sought relief of injunction restraining the defendants from alienating the suit property by way of mortgage and exchange etc. At a subsequent stage, she also challenged the Will by way of amendment and in alternative prayer, claimed ownership of entire estate left by the deceased Raja Harinder Singh Brar on the basis of The Raja of Faridkot's Estate Act, 1948. The second suit was filed by Kanwar Manjit Inder Singh through LRs seeking inheritance of entire estate of deceased Raja Harinder Singh on the basis of Rule of Primogeniture, besides challenging the Will dated 01.06.1982 being null and void. Both the suits were ordered to be consolidated and evidence was led in Civil Suit No.473/1992 titled '*Rajkumari Amrit Kaur vs. Maharani Deepinder Kaur and others*'.

[6]. In the civil suit filed by Rajkumari Amrit Kaur, the plaintiff has pleaded that Raja Harinder Singh Brar son of Brij Inder Singh was the father of the plaintiff and defendants No.1 & 2. He was erstwhile Ruler of Faridkot State. The plaintiff and defendants No.1 and 2 are the daughters of late Raja Harinder Singh Brar, who died on 16.10.1989, leaving behind the plaintiff and defendants No.1 and 2 to succeed the estate as only legal

heirs under the Hindu Succession Act. Tikka Harmohinder Singh was the only son of late Raja Harinder Singh Brar, who died on 13.10.1981, prior to death of Raja Harinder Singh Brar. Therefore, Tikka Harmohinder Singh pre-deceased his father Raja Harinder Singh Brar. Wife of Raja Harinder Singh Brar namely Rani Narinder Kaur died on 19.04.1986 during his life time. She was however alive on 01.06.1982 i.e. the date on which Raja Harinder Singh is alleged to have executed the Will. Plaintiff has also pleaded in respect of Covenant/Agreement of accession between the sovereign and Government of India. As a result of the Covenant, PEPSU came into being and the Rulers of covenanting States were required to submit a list of properties to the Rajpramukh which they wanted to keep as personal properties. Under the different Articles of Covenant, the administration of State was to be run by the Rajpramukh and the laws applicable to the State of Patiala were to apply *mutatis mutandis* to PEPSU and the laws applicable to the covenanting States had ceased to exist. The properties belonging to the ancestors were claimed by the Raja as belonging to him on the date of his making over the administration of the State to the Rajpramukh. Raja was the holder of title, ownership, use and enjoyment of the personal properties as a member of the joint Hindu family property as well

as a coparcener.

[7]. Plaintiff further pleaded that Raja Harinder Singh Brar submitted a list of his properties, which was accepted by the Union of India. The properties were treated to be the ancestral as well private individual properties, subject to the law of inheritance. The inheritance of such properties cannot be governed by Rule of Primogeniture. At the most the Rule of Primogeniture could apply to the *Gaddi* and such properties which are distinct from personal properties are preserved by Raja. Plaintiff further pleaded that Rule of Primogeniture is feudal law and the same is violative of the Constitution of India and is against the Hindu Succession Act. It is also discriminatory because it excludes females in the matter of inheritance. Plaintiff further pleaded that the properties in dispute are joint Hindu and ancestral properties, therefore, plaintiff is entitled to succeed to the properties along with defendants No.1 and 2 after the death of Raja Harinder Singh Brar. Raja had no right to alienate such ancestral/joint Hindu family properties by way of alleged Will and the plaintiff is entitled to succeed to the entire estate of her father Raja Harinder Singh Brar even assuming (without admitting) that the same is impartible. Since the plaintiff is eldest surviving child and there is no male child, who will have any priority to her

under the rule of lineal primogeniture, therefore, the plaintiff claimed that she is entitled to succeed the entire estate of her father. In alternative and without prejudice to the aforesaid, the plaintiff claimed that on the basis of The Raja of Faridkot's Estate Act, 1948, she is entitled to the entire estate of Raja Harinder Singh under Section 4(3) of the Act being legitimate descendent of late Raja. In any event and without prejudice to the aforesaid, the plaintiff claimed that she is entitled to 1/3rd share in the estate of her father as prayed, as the plaintiff and defendants No.1 and 2 are the nearest agnates contemplated by the Act. Raja had no right to alienate the properties which are joint Hindu family/ancestral/coparcenary properties of late Raja except for the maintenance of corpus of joint Hindu family. Raja Harinder Singh was a Hindu and was governed by the Hindu Succession Act. Section 4 of the said Act had abrogated the custom. Raja Harinder Singh died on 16.10.1989 and thereafter plaintiff and defendants No.1 and 2 inherited the property in equal shares according to Hindu Succession Act. The defendants have no right on the basis of alleged Will dated 01.06.1982 which they have set up by way of forgery and fabrication of document.

[8]. The plaintiff further claimed that the alleged Will is surrounded by suspicious circumstances, therefore, the

inheritance of the properties left by Raja Harinder Singh would be governed by Section 8 of the Hindu Succession Act to which plaintiff and defendants No.1 and 2 have equal shares. The ancestral property could not be alienated by way of alleged Will or otherwise.

[9]. The plaintiff has challenged the execution of Will on numerous grounds. It has been averred that the plaintiff is the eldest daughter of Raja Harinder Singh and her mother was alive at the time of execution of alleged Will, but they were left out of the bequest and were accommodated on a small portion as compared to the wealth and quantum of the property in the alleged Will. Maharani Mohinder Kaur, mother of the Raja Harinder Singh Brar was also alive at the time of execution of the alleged Will, but she was completely ignored and denied any share or position in the Trust. No provision has been made in the alleged Will for the dependents of deceased Raja according to their status and standard of their living which they led.

[10]. Plaintiff further pleaded that the alleged Will is result of misrepresentation, undue influence played upon late Raja Harinder Singh and was not an act of voluntary disposition. It has been averred that Sh. Brijinder Pal Singh Brar, Advocate one of the attesting witness of the Will has exercised undue influence upon Raja. After death of Tikka Harmohinder Singh

only son of Raja Harinder Singh on 13.10.1981, Raja used to remain depressed. He was mentally upset because of death of his only son. After about eight months, the Will in question was allegedly executed with the help of the beneficiaries as the Raja was surrounded by the coterie around him, who took benefit of vulnerability of Raja and exercised undue influence upon him by way of misrepresentation and fraud. The alleged Will is claimed to be null and void. The Will has been challenged on numerous grounds like, spacing for date in the alleged Will which was kept blank and was subsequently filled in with pen, whereas whole of the remaining Will is duly typed. No reasons have been given in the alleged Will by the testator for excluding the plaintiff, her mother and her grandmother.

[11]. Raja is purported to have created the Trust known as Maharwal Khewaji Trust by the Will to be managed by the trustees. Creation of said Trust is claimed to be illegal under the provisions of Indian Trust Act. According to the Will, the Trust in perpetuity has been created which is *void ab initio* and is not permissible in the law. The dominant purpose of the alleged Trust is to look after the old and defunct buildings and other immovable properties of late Raja Harinder Singh. There is no provision as to how the surplus income is to be utilized. Plaintiff claimed that the Trust created by way of the Will is vague and

suffers from inherent defect. Raja Harinder Singh Brar could not create any Trust in respect of joint Hindu family/ancestral property inherited by him from his ancestors. Creation of Trust was claimed to be illegal.

[12]. With the aforesaid background the suit has been filed which has been opposed by the defendants. In the written statement defendants also took objections to the effect that Kanwar Manjit Inder Singh younger brother of late Raja Harinder Singh Brar has also staked his claim to succeed to the estate of late Raja Harinder Singh Brar and he has also filed Civil Suit No.75 of 01.04.1982 titled '*Kanwar Manjit Inder Singh vs. Maharani Deepinder Kaur and others*' in respect of the suit property. The defendants have contested the suit on the ground of suit being not property valued for the purpose of court fee and jurisdiction. Plaintiff has claimed joint possession to the extent of 1/3rd share of the suit property and has fixed value of the suit property at a low value of Rs.130 only and has affixed a very meager court fee of Rs.19.50 paisa**,** whereas market value of the suit property would run into billions of rupees. The defendants claimed that the market value of the property has been estimated by the District Valuation Officer appointed by the Government of India under Section 16-A of the Wealth Tax Act, 1957 in the manner as suggested in the written statement.

In addition to the above, defendants claimed the market value of the properties i.e. stables**,** Faridkot in an area around 4 acres and Surajgarh Fort at Manimajra in an area of 5 acres is Rs.30 lakhs and 2 crores respectively. The market value of the immovable properties would run into billions. The deficiency in court fee should be made good from the plaintiff and the suit is bad for non-joinder of the necessary parties.

[13]. Defendants also claimed that that land bearing Khasra No.43/6, 31 Kanals 15 Marlas in village Kaimbwala is in possession of the UT Administration, Chandigarh which is also a necessary party to the suit. Similarly remaining land in revenue estate of Kaimbwala (except 12 Kanals comprised in Rectangle No.27, Killa No.24/2/2 and Killa No.25) is also in possession of Forest Department, UT, Chandigarh. The possession of the aforesaid land was taken as a measure of soil conservation, therefore, Forest Department of UT, Chandigarh is also necessary party to the suit. Defendants further pleaded that land at Mauli Jagran measuring 13 Kanals 1 Marla is also recorded as *shamlat deh*, therefore, Gram Panchayat or members of the village proprietary body are also necessary party to the suit. They also pleaded that the land in Ballabhgarh revenue estate bearing Khasra Nos.156, 157 and 158 are recorded in the revenue record in the possession of District

Board of Zila Parishad and PWD Department, Haryana. Therefore, in their absence the suit cannot proceed. A part of Khasra No.158 measuring 1 Kanal 15 Marlas has already been sold. Vendees of the aforesaid land are in possession of the same and they are also necessary parties to the suit. On that score the suit is claimed to be not maintainable. Khasra No.133 of Revenue Estate Ballabhgarh is also in possession of Pujari of Mandir Sh. Mool Chand and his descendants as shown in the *jamabandi* and, therefore, they are also necessary parties to the suit. Some of the land in revenue estate Dhana was also declared surplus under the Punjab Land Tenure Act, 1953 vide order dated 01.05.1979 passed by the Special Collector and the Haryana Government has taken possession of the said land and thereafter ejectable and eligible tenants were settled**,** who are in possession of the land, therefore, State of Haryana and the said tenants are necessary parties to the suit.

[14]. Defendants further submitted that one of the original trustees namely Sardar Niranjan Singh, Treasury and Accounts Officer/H.H. Personnel Estate has unfortunately died on 15.01.1992 and according to the terms and conditions of the Trust, the board of trustees have appointed Lieutenant Mukhtiar Singh Sandhu son of S. Tota Singh resident of village Qila Nau, Tehsil and District Faridkot as trustee in place of Sardar

Niranjan Singh vide resolution No.55 dated 13.04.1992. Lieutenant Mukhtiar Singh Sandhu has accepted the appointment and has taken over as trustee. He is also a necessary party to the suit. The suit is deficient in terms of full description of the particulars as required under Order 7 Rule 3 CPC. The descriptions of the suit property are vague and incomplete. Similarly no particulars and identifiable description of movable properties have been given. The details of such properties have been duly recited in the written statements. Defendants also pleaded that the property known as Fairy cottage (Country Club) situated in Bir Chahal, Tehsil and District Faridkot, Flat No.32, Riviera Apartments, The Mall, Delhi and one another property stand vested in declaratory Trust known as "Faridkot Ruling Family Housing Trust" created by late Raja Harinder Singh Brar. The beneficiaries of this Trust are all the three daughters of the settler. The said properties are in the possession of the beneficiaries, therefore, the suit is not maintainable qua the same. The aforesaid Trust is also necessary party in the suit. These properties ceased to be the ownership of the testator. A part of screw factory area is in possession of District Red Cross Society, which has built over there Amar Ashram, therefore, District Red Cross Society, Faridkot is also necessary party in the suit. In the Revenue

estate of Mashobra land measuring 87 *Bighas* 8 *Biswas* of land comprising Khasra Nos.37/1/50, 52, 60/2, 65/1 and 77 has has been declared surplus by the Collector Agrarian, Himachal Pradesh vide order dated 28.04.1985 and the appeal against the said order has been dismissed by the Commissioner, Shimla Division vide order dated 05.11.1990. The revision petition has also been dismissed by the Financial Commissioner, Himachal Pradesh. The possession has been taken over as per rapat *roznamcha* No.439 dated 24.07.1991. Therefore, State of Himachal Pradesh is also necessary party to the suit.

[15]. Defendants further pleaded that members of the Board of Trustees of Maharwal Khewaji Trust should have been impleaded personally in the suit. The civil suit at Chandigarh has no territorial jurisdiction to entertain the suit because the plaintiff has claimed the suit property to be ancestral coparcenary and joint Hindu family property of the testator by alleging that late Raja Harinder Singh Brar was not capable of making any Will. The properties within UT Chandigarh as referred to in the plaint do not fall within the scope of present suit. The agricultural land in village Kaimbwala, Mauli Jagran and Manimajra, constructed fort known as Surajgarh Fort at Manimajra and hotel site No.12 in Sector 17 Chandigarh were

gifted to Raja Harinder Singh Brar by his grandmother Rani Suraj Kaur vide registered gift deed dated 18.02.1937 along with other landed and immovable properties mentioned in the gift deed. Rani Suraj Kaur had inherited the said properties from her mother Shabdit Kaur which the later had inherited from her husband Raja Bhagwan Singh vide mutation No.207 dated 30.05.1937 which was sanctioned in respect land in village Kaimbwala and mutation No.768 dated 31.05.1937 sanctioned in respect of land of Manimajra. The inheritance of the land was duly recorded in the mutation No.207/30.05.1937. Hotel Site No.12 in Sector 17-D, Chandigarh had an area of 13198.77 sq. yards which was purchased by the testator late Raja Harinder Singh Brar in an open auction on 27.09.1970 as a commercial site for a consideration of Rs.13,40,000/- which is apparent from the sale letter dated 05.11.1970 issued by Estate Officer, Chandigarh. The installments were paid by the testator during his own life, therefore, the aforesaid properties are self acquired properties. None of these could form the subject matter of the suit property. None of the properties can ever remotely be claimed by the plaintiff to be ancestral properties. Under these circumstance, none of the properties mentioned in the suit could be claimed by the plaintiff to be an ancestral properties of late Raja Harinder Singh Brar, which are located within the

jurisdiction of trial Court. On these grounds, the defendants claimed that the Civil Court at Chandigarh had no jurisdiction to entertain the suit. The board of trustees of Maharwal Khewaji Trust created by the impugned Will comprising of defendants No.3 (1, 2, 3, 5, 7) and Sardar Niranjan Singh after the demise of late Raja Harinder Singh Brar had taken over possession, control and management of the estate of deceased Raja with assent of the executors appointed under the Will, therefore, defendants No.3, (4, 6 and 9) are not necessary parties. Similarly, defendants No.3 (8 & 10) are also not necessary parties.

[16]. Defendants further pleaded that the claim for additional declaration and relief as sought in the amended plaint dated 18.11.1993 are beyond time. Raja Harinder Singh Brar died on 16.10.1989. The Trust comprising of defendant No.3 (1, 2, 3, 5,7) and late S. Niranjan Singh as members of the board of trustees of Maharwal Khewaji Trust, Faridkot constituted by the registered Will dated 01.06.1982 had taken over the management, possession and control of the entire estate and since then they are in actual and physical possession of the property and are administering the Trust according to terms of the Will which is apparent as per Resolution No.1 dated 20.10.1989 and other resolutions passed in that context. The

claim for additional declaration and relief as made in the amended plaint are claimed to be beyond limitation for which the plaintiff is not entitled to sue the trustees of the Trust namely Maharwal Khewaji Trust personally for accounts. Plaintiff has no right to claim accounts from the trustees. Trustees are bound to execute the Trust in accordance with the directions given in the Will. The plaintiff is not entitled to claim any account from the defendants No.3 (4, 6, 9). As per conditions of the Will dated 01.06.1982 they are only executors and not the trustees. The suit has not been property valued and for the relief of rendition of account in the amended plaint, alternative relief of the plaintiff being exclusive owner of the suit property is made and consequential relief as may be necessary in the facts and circumstances of the case has been made. Plaintiff is not in possession of the suit property. In the amended plaint, the plaintiff seeks declaration to be in deemed possession along with defendants No.1 and 2. For seeking alternative relief of exclusive ownership under The Raja of Faridkot's Estate Act, 1948, the plaintiff has to value her suit for the purpose of court fee and jurisdiction for consequential relief flowing from the above declaration. If the plaintiff claims herself to be an exclusive owner and not in possession, then she is required to pay *ad valorem* court fee on the market value of the suit

property for claiming consequential relief. In the original suit, the plaintiff has sought declaration that she is owner of 1/3rd share in the suit property and she claimed the relief of possession for which suit is not properly valued.

[17]. Defendants further pleaded that defendants No.1 and 2 admittedly and jointly after demise of testator have not entered into possession of any part of the estate of late Raja Harinder Singh in their capacity as natural heirs and defendants No.1 and 2 have never staked any claim to the succession of the estate of Raja Harinder Singh Brar as natural heirs after demise of the testator, rather they accepted the Will and also accepted the offices to which they were invested by the Will. All these things are clear from resolution No.1 dated 20.10.1989 and other resolutions of the Board of Trustees of Maharwal Khewaji Trust. The trustees have taken over the possession, control and management of the entire estate of the deceased Raja Harinder Singh Brar and are in actual physical possession of the property in the capacity as trustees. Agricultural land situated in different revenue estates have already been mutated in the name of Board of Trustees and Trust is recorded to be in possession of the said properties. One of the properties, situated in Faridkot and Mashobra have also been mutated in the name of the Trust. Plaintiff is out of possession and defendants No.1 and 2 being

not in actual possession of any part of the suit property, therefore, plaintiff cannot claim any declaration to be in deemed possession. Simpliciter suit for declaration is not maintainable without seeking relief of possession under the proviso to Section 34 of the Specific Relief Act.

[18]. On merits the defendants have denied the averments of the plaint and claimed that the Will in question is validly executed. Wife of Raja Harinder Singh Brar died on 19.04.1986. She was alive on 01.06.1982. She was living separately and getting fixed monthly sum as maintenance from her husband prior to 01.06.1982 and subsequently thereto till her death.

[19]. Defendants further pleaded that the Rule of Primogeniture was never applied in the Faridkot Estate. In fact no female especially married one could succeed under the alleged Rule of Primogeniture. The testator was having every right to alienate the property through Will. The properties were his personal and self acquired properties. The Will is claimed to be genuine and not surrounded by suspicious circumstances. The Will was read out from the ramparts of historic Qila Mubarik, Faridkot on the Bhog ceremony and last rites of the testator in the presence of plaintiff and her husband. She was given photocopy of the Will duly attested by the Chief Executive S. Umrao Singh Dhaliwal. After conclusion of the Bhog

ceremony, plaintiff never raised any finger against the Will, rather acquiesced the taking over of the estate of the testator by the Trust. In the Will there is recital with regard to the maintenance and other provisions for the family members of the testator.

[20]. Testator also created a Trust in England vide settlement deed dated 01.04.1955 making Grindlays Bank London as sole trustee with the object that his daughters would not lay claim to his remaining estate. By pleading the aforesaid, defendants claimed that this act is a clear manifestation of the intention of the testator. The income from the Trust was in full and final satisfaction of the claims of the daughters to his estate. The Bank was directed to disburse the income of the above investment, out of which half yearly of first portion is of his three daughters and of the second portion to be disbursed to his son Tikka Harmohinder Singh. The Bank was also authorized to sell or convert the above investments and invest into the money in any manner to maximize the income of the beneficiaries. After the death of Tikka Harmohinder Singh i.e. the only son of the testator, income of the second portion of the said Trust also destined to go to the three daughters. The income from the above income has been paid throughout regularly by the Bank according to their respective shares. Permanent regular income

from the Trust is quite healthy amount for meeting expenses of the daughters of the testator according to their status. Provisions made in the settlement deed dated 01.04.1955 cannot be said to be meager or paltry in any manner.

[21]. Defendants further claimed that the plaintiff was not at all dependent upon the testator at the time of execution of the Will or at the time of his death. Plaintiff got herself married in the year 1952 with high ranking police officer in State of Haryana. Her husband had a stint in BSF and ultimately retired as DIG. Throughout his long service in Police Department, the husband of the plaintiff commanded great influence. The plaintiff has built up a very big house in Chandigarh. Family of the plaintiff owns considerable land in different villages and plaintiff is leading high profile life and her family is well placed.

[22]. The defendant Kanwar Manjit Inder Singh, plaintiff of the connected case also filed separate written statement questioning the entitlement of the plaintiff viz-a-viz. the properties left by late Raja Harinder Singh. He claimed that in the matter of succession rule of lineal primogeniture would apply. In the absence of male living child, the brothers would succeed to the late Raja Harinder Singh Brar and he would inherit all the moveable and immovable properties left by Raja Harinder Singh Brar. Answering defendant was the only brother,

therefore, he would inherit all the properties left by late Raja Harinder Singh Brar. According to Rule of Primogeniture, females do not inherit any property and no cause of action is accrued in favour of the plaintiff to file the suit in question. Answering defendants also claimed the Will to be fictitious, forged and fabricated document. Creation of Trust by the alleged Will is also claimed to be null and void. The nomenclature of the Trust created in the Will is claimed to be vague, indefinite and suffers from defects.

[23]. After completion of pleadings, the parties in the both the suits went to trial on the following issues:-

> *"1. Whether the plaintiff is entitled to succeed to the extent of 1/3rd share of the suit property alongwith defendants no.1 and 2 being daughters of deceased under the provisions of Hindu Succession Act and the plaintiff thus is owner of 1/3rd share of the suit property? OPP*
>
> *2. Whether in the alternative, the plaintiff is entitled to succeed to the entire estate of her father being eldest surviving child? OPP*
>
> *3. Whether in the alternative, the plaintiff is entitled to succeed as sole owner under Raja of Faridkot Estate Act, 1948 (Act No.5 of 1948) being senior most living child? OPP*

4. *Whether the property mentioned in Annexure A1 is joint family and ancestral coparcenary property and late Raja Harinder Singh had no right to alienate in any manner? OPP*

5. *Whether Raja Harinder Singh was governed by Hindu Succession Act which had abrogated custom and plaintiff and defendants no.1 and 2 inherited the property in dispute in equal share according to Hindu Succession Act and plaintiff has become owner of 1/3rd share of the suit property? OPP*

6. *Whether the deceased Raja Harinder Singh of Faridkot executed a valid Will dated 1-6.1982? if so, what is its effect? OPD*

7. *Whether the deceased Raja Harinder Singh executed a valid Trust known as Faridkot Rulling Family Housing Trust with the plaintiff and the defendant no.1 and deceased defendant no.2 being sole beneficiaries? If so, what is its effect? OPD*

8. *Whether the defendants are liable to render accounts for the period they have managing and receiving income from the properties left by the deceased late Raja Harinder Singh? OPD*

9. *Whether the suit is bad for non-joinder or misjoinder of parties? If so, what is its effect? OPD*

10. *Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? If son what is its effect? OPD*

11. *Whether this Court has no territorial jurisdiction to try the suit? OPD*

12. *Whether the Trust known as "Maharwal Khewaji Trust" is valid legal entity? If so, what is its effect? OPD*

13. *Whether the family of Raja Harinder Singh and defendant no.6 Kanwar Manjit Inder Singh in matters of inheritance and succession is governed by the Rule of Primogeniture and in the absence of male lineal child according to custom, brother succeeded to the estate? OPD-6.*

14. *Whether Kanwar Manjit Inder Singh defendant no.6 inherited all the immovable and movable properties of late Raja Harinder Singh under the law of Primogeniture? OPD-6.*

15. *Whether according to Article 14 fo the covenants of Pepsu to which later Raja Harinder Singh was signatory, succession was according to law and custom to the Gaddi of each Covenanting States was guaranteed and according to which plaintiff under custom is entitled to inheritance to the estate of Raja Harinder Singh under rule of Primogeniture and the female heirs have no*

right to succeed to the property of late Raja Harinder Singh according to custom and rule of Primogeniture? OPD-6.

16. Relief."

[24]. Both the parties led evidence. The trial Court took up issues No.1 to 8, 12 and 15 together and found after scanning the entire evidence of the parties that the pivotal question in these issues is whether deceased Raja Harinder Singh executed a valid Will in favour of defendant? The propounder of the Will has to clear all the suspicious circumstances and satisfy the conscious of the Court that there was reason for the testator to prefer the propounder of the Will and exclude others. The Court while deciding the issue has to consider the solemn question and must be fully satisfied that the testator had executed his last Will. The trial Court, ultimately, on the basis of evidence held that the Will does not appear to be genuine as there are large number of suspicious circumstances proving the Will to be an invalid document. As regards applicability of the Rule of Primogeniture to the estate of Raja Harinder Singh, the trial Court held that Rule of Primogeniture is not applicable, nor The Raja of Faridkot's Estate Act, 1948 applies to the case. The trial Court further held that the earlier suits decided by the Courts at District Faridkot, the plaintiff Rajkumari Amrit Kaur was

not party in those cases, therefore, the plaintiff was not bound by the earlier judgments. As regards maintainability of the suit, the trial Court held that the statement given by Naresh Prabhakar, Advocate was valid upto filing of amended suit and no order was passed thereafter by the Court. Even the defendants accepted the statement and insisted for payment of *ad valorem* court fee. Therefore, the Court never allowed the plaintiff to waive her claim with regard to consequential relief. The trial Court held that the suit instituted by the plaintiff Rajkumari Amrit Kaur is maintainable. As regards limitation, the trial Court held that the suit is within limitation as the same is governed by Article 65 of the Limitation Act which prescribes 12 years of limitation for possession of immovable properties or any interest therein based on title and the time began to run when possession of the defendant has become adverse to the plaintiff. In the instant case, the plaintiff could file the suit for possession on the basis of inheritance after the death of her father and the suit could be defeated by the defendants, if they proved that their possession was adverse. No question of adverse possession is available to the defendants in the instant case, nor the same has been set up by the defendants in the pleadings. As regards rendition of accounts, the trial Court held that the plaintiff is not entitled for rendition of accounts from the

defendants as the same is available to the partners of the firm for dissolution of partnership firm and when there is a fiduciary relationship between the parties to the *lis*. There is no dispute between the partners, nor there is any fiduciary relationship between them. The issue of non-joinder and mis-joinder was not pressed by the defendants. The trial Court despite the aforesaid fact observed that the suit is bad for non-joinder and mis-joinder of necessary parties. To that extent the observation of the Court is to be seen in legal prospects. As regards valuation and sufficiency of court fee, the trial Court held that the court fee affixed in pursuance of application for depositing the court fee filed is sufficient as the revision petition filed by the defendants against the order was dismissed by the High Court and no further challenge was made by the defendants. Deposit of court fee of Rs.15,43,550/- after calculating the value of Raja's Estate was held to be proper court fee. The trial Court also observed that the onus of issue was on the defendants to prove market value of the properties in question. Defendants have failed to give exact and correct market value of the properties which have to be inherited by the plaintiff by way of natural succession. Since the Will has been set aside, therefore, according to the stand taken by the plaintiff the Court proceeded to hold that the plaintiff has paid court fee of Rs.15,43,550/-

which is just and proper. As regards the issue of territorial jurisdiction, the defendants did not press that issue and the same was decided in favour of the plaintiff. Ultimately the trial Court partly decreed the suit of the plaintiff and partly dismissed the same vide judgment and decree dated 25.07.2013 passed by the Addl. Civil Judge (Senior Division) Chandigarh. Relevant operative part of the decree reads as under:-

> *"It is ordered that suit of the plaintiff Raj Kumari Amrit Kaur is hereby partly dismissed and partly decreed with costs and the Will dated 1-6-1982 is hereby declared as null and void, not binding upon the rights of plaintiff Amrit Kaur. The plaintiff Amrit Kaur is entitled to joint possession to the extent of ½ (half) share with defendant No.1 Maharani Deepinder Kaur qua the properties fully detailed and described in Annexure A1, except the properties which have been acquired by any State Governments or Central Government. Trust which was constituted on the basis of the alleged Will is hereby declared as non-existent. The defendants are also restrained from alienating, mortgaging, transferring, leasing, encumbering or exchanging the suit property as fully detailed and described in Annexure A1. Annexure A1 be treated as part of decree. Suit being maintained by plaintiff Kanwar Manjit Inder Singh through his legal heir is hereby dismissed with no order as to costs."*

[25]. Feeling aggrieved against the aforesaid judgment and decree dated 25.07.2013 passed by the Addl. Civil Judge (Senior Division) Chandigarh, Civil Appeal No.1046/13 titled

'*Maharani Deepinder Kaur and others vs. Rajkumari Amrit Kaur and others*, Civil Appeal No.480/17 titled '*Maharani Deepinder Kaur and others vs. Rajkumari Amrit Kaur and others*', Cross-objections under Order 41 Rule 22 CPC on behalf of Rajkumari Amrit Kaur, Civil Appeal No.1054/2013 titled '*Bharat Inder Singh (since deceased) through his LR vs. Maharwal Khewaji Trust through Board of Trustees and others and* Civil Appeal No.1062/13 titled *'Bharat Inder Singh (since deceased) through LR vs. Maharwal Khewaji Trust through Board of Trustees and others'* were filed before the lower Appellate Court. Vide common judgment, all the Civil Appeals and cross-objections were taken up together and the lower Appellate Court vide judgment and decree dated 05.02.2018 dismissed all the appeal and cross-objections with costs. That is how the present Regular Second Appeals came to be filed by the concerned parties.

[26]. Aggrieved against the judgment and decree of the lower Appellate Court, Rajkumari Amrit Kaur has preferred RSA No.2006 of 2018, in which she has claimed the entire estate of Late Raja Harinder Singh Brar on the basis of The Raja of Faridkot's Estate Act, 1948 besides challenging the Will dated 01.06.1982.

[27]. In RSA No.2176 of 2018 preferred by Bharat Inder

Singh (since deceased) through his LR Kanwar Amarinder Singh Brar, the estate of Late Raja Harinder Singh Brar has been claimed on the basis of primogeniture.

[28]. In RSA No.1418 of 2018 Maharani Deepinder Kaur and others have staked their claim on the basis of validity of Will and Trust created thereunder and have also challenged the maintainability of the suit(s) filed by Rajkumari Amrit Kaur and Kanwar Manjit Inder Singh through his LR Kanwar Amarinder Singh Brar. They have also claimed that Rule of Primogeniture is not in existence and The Raja of Faridkot's Estate Act**,** 1948 had already ceased to operate after the merger agreement and coming into being of PEPSU.

[29]. On 05.05.1948, a Covenant was entered into between the Union of India and Ruler of Faridkot along with other Rulers. The sovereignty was surrendered. On 15.07.1948, Patiala and East Punjab States Union (for short 'the PEPSU') was inaugurated by Sardar Vallabh Bhai Patel. On 18.08.1948, the Raja of Faridkot's Estate Act, 1948 received assent of his Highness Ruler of Faridkot Raja Harinder Singh Brar. The covenant was entered into by Raja on 05.05.1948. On the date of giving assent to the Raja of Faridkot's Estate Act, on 18.08.1948, Raja was having no sovereign power to promulgate any Act. This is one of the issue to be debated in RSA No.2006

of 2018.

[30]. The Covenant by the Rulers of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsia and Nalagarh for the formation of PEPSU was entered into on 05.05.1948, which is known as Covenant of Merger. Article X reads as under:-

"Article X

(1) *There shall be formed, as soon as practicable a constituent Assembly in the manner indicated in Schedule II; and it shall be the duty of that Assembly to frame Constitution of unitary type for the Union within the framework of this Covenant and the Constitution of India and providing for a Government responsible to the legislature.*

(2) *Until a legislature elected in accordance with the terms if the Constitution framed by it comes into being, the Constituent Assembly as constituted in the manner indicated in Schedule II shall function as the interim legislature of the Union.*

Provided that until a Constitution framed by the constituent Assembly comes into operation after receiving the Assent of the Rajpramukh, the Rajpramukh shall have power to make and promulgate ordinances for the peace and good Government of the Union or any part thereof, and any ordinance so made shall, for the space of not more than

six months from its promulgation have the like force of law as an Act passed by the Constituent Assembly; but any such ordinance may be controlled or superseded by any such Act."

[31]. By exercising the powers under Article X of the Covenant on 20.08.1948, the Rajpramukh promulgated Ordinance (I of 2005 BK). Under Section 3 of the Ordinance, the laws applicable in the State of Patiala were made applicable *mutatis mutandis* and the law of all other covenanting States ceased to have any effect.

[32]. Before expiry of six months of Ordinance (I of 2005 BK) on 15.02.1949, the Rajpramukh promulgated Ordinance (XVI of 2005 BK) and the said ordinance also contained Section 3 (as reproduced in Ordinance I) providing that the laws applicable in the State of Patiala were made applicable *mutatis mutandis* and the laws of all other covenanting States ceased to have any effect. Thereafter, Ordinance No.XVIII of 2006 BK was promulgated by the Rajpramukh.

[33]. In PEPSU, the Constituent Assembly came into being on 24.11.1949. A promulgation was made by Rajpramukh that Constitution of India shall be the Constitution of the PEPSU. With the aforesaid promulgation made by the Rajpramukh regarding adoption of Constitution of India, Article X of the

Covenant was substituted as under:

> *"Until the commencement of the Constitution of India, the legislative Authority of the Union shall vest in the Rajpramukh, who may promulgate ordinances for the peace and good Governance of the Union or part thereof and Ordinance so made shall have the like force of law as an Act passed by the Legislature of the Union."*

[34]. On 26.01.1950, the Constitution of India came into force and the same was adopted by the PEPSU. As a result of such adoption of Constitution of India, Ordinance No.XVI was saved by Article 372 of the Constitution of India which provides that all the laws in force in the territory of India immediately before commencement of the Constitution of India shall continue in force until altered or repealed or modified by a competent legislature of other competent authority.

[35]. Before deliberating upon the controversy involved in these appeals, I would like to consider the following points for deciding the appeals finally:-

> **(1) Whether The Raja of Faridkot' Estate Act 1948 is a valid enactment and is applicable for succession to the Estate of Raja by the plaintiff (Rajkumari Amrit Kaur)?**
>
> **(2) Whether Law of Primogeniture is applicable in the succession of Estate of**

deceased Raja Harinder Singh?

(3) Whether Raja Harinder Singh executed a valid Will dated 01.06.1982 and Maharwal Khewaji Trust constituted thereunder is a legally constituted Trust?

(4) Whether Civil Suit No.4193 dated 21.08.2010/04.04.1992 titled *'Kanwar Manjit Inder Singh through LR vs. Maharani Deepinder Kaur and others'* is maintainable?

(5). Whether Civil Suit No.437 dated 23.07.2010/15.10.1992 titled '*Rajkumari Amrit Kaur vs. Maharani Deepinder Kaur and others is maintainable*?

[36]. Now I would deal with the first point i.e. **Whether The Raja of Faridkot' Estate Act 1948 is a valid enactment and is applicable for succession to the Estate of Raja by the plaintiff (Rajkumari Amrit Kaur)?**

[37]. Mr. Manjit Singh Khaira, Sr. Advocate assisted by Mr. Balbir Singh Sewak, Advocate and other Advocates appearing on behalf of the appellant-Rajkumari Amrit Kaur submitted as under:-

(i). The ordinance cannot repeal The Raja of Faridkot's Estate Act, 1948. Rajkumari Amrit Kaur alone succeeds the

Estate of Raja under The Raja of Faridkot's Estate Act, 1948. Rajkumari Amrit Kaur alone succeeds that Estate of Raja under the custom of Primogeniture. Rajkumari Amrit Kaur is entitled to succeed as per Section 4(3) of The Raja of Faridkot's Estate Act, 1948.

(ii). The Raja of Faridkot and other rulers, who signed the Covenant to form the PEPSU were sovereign till 20.08.1948, when the new (PEPSU) came into existence on 20.08.1948. According to Article VI of the Covenant (Ex.D-6) sovereignty of the Rulers was intact till 20.08.1948. In support of his contentions, learned Senior counsel referred to ***His Highness Maharaja Pratap Singh vs. Her Highness Maharani Sarojini Devi and others, (1994) Supp(1) SCC 734***. Para No.49 of the said judgment reads as under:-

> "*It is thus plain that the Ruler of Chattarpur lost none of his sovereignty by integrating his State with other States except to the extent in which it was arranged or redistributed on some of its aspects. It is in exercise of that sovereign power that the Ruler, in the manner indicated above, had set apart the property in dispute as one of his private properties, in the list submitted on July 5, 1948. It is nobody's case that he could not submit such a list on July 5, 1948. Further, it was in exercise of his sovereign as also individual right over his private property, that he transferred the house in dispute to his father-in-law on August 25, 1948. In these circumstances, the suggested Conference which took place later in September, 1949 between him and Shri N. M. Buch, Secretary in the*

Ministry of States, New Delhi, evident from letter Ex. P-9 dated January 22, 1950, and the lists Exs. P-10 to P-12, appended therewith, is not of much significance. In the first place, the Ruler denied when appearing as a witness in the trial as having received any such letter or the lists appended therewith, suggestive of the fact that he had reconverted the donated property to be a State property. In the second place, but for the said letter, purportedly issued at a time when the State of Chattarpur had otherwise ceded to the Central Government vide agreement dated January 1, 1950, there was no direct evidence forthcoming for such conference. In the third place, even if such Conference had taken place in September, 1949, as suggested, the minutes thereof cannot be treated as amounting to a divestiture of the gift made in favour of the father-in-law. Fourthly, the Ruler had no sovereign power towards administering his State which had become part of the integrated United State in terms of Article VI of the Covenant, and during the integration he could not exercise such a sovereign power, so as to take away the property of a private person and treat it as State property because the property in dispute having once vested in the defendant-appellants could not be divested in the manner suggested. And lastly, there was no raise able question or issue which the Ruler could, while sitting with Shri Buch, decide amicably without the aid of the judicial Officer nominated by the Government entering upon such dispute, because before integration he owned his State and its properties and there could legitimately not arise a dispute as to which was his private property or State property and thus its settlement by a mutual consent did not arise. Taking thus the totality of these circumstances in view, we are driven to the conclusion that the High Court committed an error that the , Ruler lost his sovereign right to earmark the property as his private property after May 1, 1948, or that the said property vested in the State with effect from that date or that the letter

Ex. P-9 of Shri N. M. Buch and the lists attached thereto, had the effect of divesting the appellants of the title to the property in dispute in favour of the State with effect from that date. In that strain, factual position having not been denied, the validity of the gift dated August 25, 1948, cannot be questioned on the grounds enumerated in the plaint, due to exercise of sovereign power of the Ruler in the grant thereof at that point of time. Once that is held the claim for damages too caves in. We hold it accordingly."

(iii). In view of ***Tikka Shatrujit Singh vs. Brig. Sukhjit Singh & Anr., 2011(1) ILR Delhi 704,*** the Ruler was the absolute owner of all the properties and the ratio of ***His Highness Maharaja Pratap Singh's*** case (supra) is conclusive on this aspect. Some of the Princely States prior to their merger into the dominion of India had enacted formal legislation in the name of the Ruler. These succession Acts, specifically stated that the rule of succession applicable to their respective families would be the Rule of Primogeniture. Learned Senior counsel referred to the extract of page No.295-296 of the White paper showing the date of merger of the PEPSU as 20.08.1948.

(iv). The Raja of Faridkot's Estate Act, 1948 (Ex.P-1) was enacted on 18.08.1948 by the Raja exercising his sovereign powers two days prior to surrendering his sovereignty. As per Section 4(3) of the Act, Rajkumari Amrit Kaur succeeds to the entire estate of her father late Raja Harinder Singh being the

eldest daughter and nearest agnate. Ordinance XVI of 2005 BK (Ex.PX-2) does not repeal The Raja of Faridkot's Estate Act, 1948. Rajpramukh was one of eight Raja's, who signed the Covenant to form PEPSU and was created by the terms of Covenant. His powers were limited to those given by the Covenant. The Covenant only delegated administrative powers to the Rajpramukh and he was not given full legislative authority. Rajpramukh had limited powers to promulgate ordinance for peace and good government/governance only as per Article X of the Covenant. Legislative powers of the PEPSU were delegated to the Constituent Assembly of the PEPSU which was never formed. Rajpramukh was mere an executive head and had power to issue ordinances for peace and good government/governance only. Rajpramukh was given only Executive Authority as per Article IX of the Covenant, which reads as under:-

> *"Subject to the provision of Covenant and of the Constitution to be framed thereunder, the Executive Authority of Union of India shall be exercised by the Rajpramukh either directly or through officers subordinate to him, but the Rajpramukh may from time to time consult the Up-Rajpramukh in important matters connected with the administration of Union of India. Nothing in this Article shall prevent the competent legislature of the Union of India from conferring functions upon subordinate authorities or to be deemed to be*

transferred to Rajpramukh any factions conferred by any existing law or any Court/Judge, Officer or local or other Authority in a covenanting State"

The Ordinance is only regarding administration of the PEPSU according to the aforesaid Preamble. It did not affect the law of succession of personal estates of rulers, who surrendered their sovereignty by signing the Covenant.

(v). In view of the Preamble to the Ordinance as well as its title, the Ordinance cannot repeal The Raja of Faridkot's Estate Act, 1948 as the Act was enacted by Ruler of Faridkot as succession to personal estate of Raja of Faridkot which had nothing to do with the administration of PEPSU.

(vi). List of enactments repealed by Ordinance XVI of 2005 BK are contained in Section 17 of the Ordinance itself. The Raja of Faridkot's Estate Act, 1948 is not mentioned in the said list. The power to repeal law vests in the similar competent authority which had the power to enact the law in view of judgment of the Hon'ble Apex Court in ***Rama Krishna Ramanath vs. The Janpad Sabha, Gondia, AIR 1962 SC 1073.*** The Rajpramukh was not competent to do the same being an Executive head. The ordinance, exercising executive powers cannot repeal the legislative Act.

(vii). In view of Privy Purse case ***H.H. Maharajadhiraja***

Madhav Rao Jivaji Rao scindia Bahadur of Gwalior and others. vs. Union of India and anr., 1971(1) SCC 85, the Ordinance cannot repeal the statute without amendment by the competent authority. In the said case, the President of India attempted to repeal Articles 291 and 362 of the Constitution of India through an Ordinance and Notification which was struck down by the Constitutional Bench of 11 Judges of the Hon'ble Apex Court. Similarly, an attempt made by the President of India by way of Notification to amend the Sikh Gurdwara Act, 1925 was also struck down by the Full Bench of the Punjab and Haryana High Court. Later on, the Act itself was amended by an Act of competent legislature. The Punjab and Haryana High Court in ***Sehajdhari Sikh Federation vs. Union of India & Ors., 2012(1) R.C.R. (Civil) 384*** has held that no executive order/notification can amend/repeal legislative Act.

(viii). The succession to occupancy right in Faridkot Estate and Shahi Farman of Maharaja Kapurthala are still in force. Both the States were part of PEPSU. If Ordinance No.XVI (2005 BK) promulgated by Rajpramukh, he has not repealed Shahi Farman of Maharaja Kapurthala and succession to occupancy rights of Faridkot Estate, then how could it repeal The Raja of Faridkot's Estate Act, 1948. In view of ***Phuman Singh Prem Singh vs. State of Patiala and anr., AIR 1961 Pb 200,*** the

Ordinance did not repeal succession to occupancy rights of Faridkot Estate and, therefore, the Ordinance cannot repeal The Raja of Faridkot's Estate Act, 1948. Shahi Farman dated 12.03.1925 was issued by Maharaja Kapurthala and was not repealed by Ordinance No.XVI (2005 BK) and the same was protected by Article 372 of the Constitution of India as held in ***State of Punjab and another vs. Brig. Sukhjit Singh, 1991(2) PLR 39***, wherein it was held that the Ordinance No.XVI (2005 BK) did not repeal the Shahi Farman of Maharaja Kapurthala. In view of above, the said Ordinance could not repeal The Raja of Faridkot's Estate Act, 1948.

(ix). Article 372 of the Constitution of India and its Explanation Nos.I and IV protect The Raja of Faridkot's Estate Act, 1948 which is still in operation. In view of Explanation Nos.I and IV, even if it is assumed that Ordinance affected The Raja of Faridkot's Estate Act, 1948, then even as per clause 3(I) of the Ordinance, it does not repeal The Raja of Faridkot's Estate Act, 1948, but at the most ceased to have effect as per the clause. The Raja of Faridkot's Estate Act, 1948 stood revived in view of Article 372 of the Constitution of India and its Explanation Nos.I and IV, when the Constitution of India came into force on 26.01.1950. Clause 3(I) of the Ordinance reads as under:-

> *"As from the appointed day all laws and rules, regulations, by laws and notifications made thereunder, and all other provisions having the force of law in Patiala State on the said day shall apply mutatis mutandis to the territories of the State and all laws in force in other covenanting States immediately before that day shall cease to have effect."*

(x). The Article 372 of the Constitution of India only saves those laws which trace their origin to the exercise of legislative power, as held by the Hon'ble Apex Court in ***State of Gujarat vs. Vora Fiddali, 1964 AIR SC 1043*** wherein it was held that what survives the Constitution and is continued by Article 372 of the Constitution of India are those laws which could trace their origin to the exercise of legislative power.

(xi). Section 5(ii) of Hindu Succession Act, 1956 protects The Raja of Faridkot's Estate Act, 1948. The Hindu Succession Act came into being in the year 1956. Section 5(ii) guaranteed the continuation of The Raja of Faridkot's Estate Act, 1948. The Act shall not apply to any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act. The Succession Act 1956 was enacted for succession of property rights and not enacted for the succession of '*Gaddi*'.

The meaning of term “Estate” means property and not '*Gaddi*'. The heading of Section 5 states that the '*Act not to apply to certain properties*'. The word 'Act' means Hindu Succession Act as a whole including Section 4. The words used in Section 5 i.e. *'certain properties'* and not '*Gaddi*' which means Hindu Succession Act does not apply to certain properties (properties of special nature). This Section 5(ii) excludes the applicability of Hindu Succession Act on the properties and not to Gaddi. Section 5(ii) applies only to certain properties which fulfills the following necessary conditions:-

(a) 'estate' which descends to single heir;

(b) by the terms of any covenant or agreement entered into by the ruler of any Indian State with the Government of India; or

(c) by the terms of any enactment passed before the commencement of this Act (which in the present case is The Raja of Faridkot's Estate Act, 1948 (Ex.P1). The result of which debars the applicability of entire provisions of Hindu Succession Act except Section 5(ii) which applies to certain properties/estate of special kind which fulfills the said criteria.

(xii). The properties in dispute fulfill all the necessary conditions of Section 5(ii) of the Act and, therefore, Rajkumari Amrit Kaur alone succeeds to the entire estate of Raja Harinder Singh Brar under Section 4(3) of The Raja of Faridkot's Estate Act, 1948. Section 5(ii) of the Hindu Succession Act is an exception to Section 4 of the aforesaid Act.

(xiii). The meaning of *mutatis mutandis* as contained in Ordinance has been explained by the Hon'ble Apex Court in ***Ashok Service Centre & others vs. State of Orissa, 1983 AIR (SC) 394*** with reference to Section 3(i) of the Ordinance XVI (2005 BK). There was no law in Patiala State to govern inheritance of personal estate of Ruler of Patiala, therefore, Section 3(i) of the Ordinance XVI (2005 BK), the expression '*mutatis mutandis'* conveys that the law of State of Patiala will only prevail on the subject, where there is corresponding law in any of the covenanting States. As there was no law in Patiala State to exclusively govern the inheritance of personal estate of Maharaja Patiala, therefore, no law of Patiala would replace The Raja of Faridkot's Estate Act, 1948. As per Section 3(i) of Ordinance No.XVI (2005 BK), The Raja of Faridkot's Estate Act, 1948 is neither general law of inheritance, nor it had anything to do with the governance of the State. It is a law regarding succession to the private properties of the Raja of

Faridkot. Rajpramukh was not a sovereign. He was a creation of the Covenant. He was only an Executive Head as per Article IX and was empowered to exercise limited powers to govern under the covenant as stated in Article X of the Covenant (Ex.D-6). The powers were only in relation to peace and good government/governance of the PEPSU till a competent legislature (Constituent Assembly) of PEPSU come into existence.

(xiv). The 'Impartible Estate' means an Estate inheritable by a single heir and incapable of partition or sub division. It means that the estate of Raja Harinder Singh cannot be partitioned and only one can inherit the entire estate of Raja. **"**The Raja of Faridkot's Estate**"** means all the personal and private immovable and movable properties of late Raja, wherever the same are situated and includes all additions and accretions which may from time to time made there to**,** by the holder of that Estate. It also includes all rights incidental and appertaining thereto. All the properties acquired by the Raja at any point of time during his lifetime and held by Raja in his name at the time of his death are part of the Raja of Faridkot's Estate and will devolve upon his successor according to Rule of succession provided in the Act. According to Section 4(3) of The Raja of Faridkot's Estate Act, 1948 females are not excluded.

After the demise of Tikka Harmohinder Singh before the death of Late Raja Harinder Singh, the property has to be devolved upon the plaintiff Rajkumari Amrit Kaur in terms of Section 4(3) of The Raja of Faridkot's Estate Act, 1948 i.e. the rule of descent provided therein.

(xv). The Rule of descent provided by this Act would mean that it will go downwards from his children as specified by the Act itself and it would not go in ascending order to the collaterals of Raja. Section 4(3) of The Raja of Faridkot's Estate Act, 1948 reads as under:-

> *"If the holder of the Raja of Faridkot's Estate for the time being has no legitimate male descendant in the male line, and if he shall leave no legitimate descendants surviving him, the succession shall pass to the nearest agnates and such agnates shall be governed by the same rules and shall follow the same order."*

(xvi). Clause 4(3) of The Raja of Faridkot's Estate Act, 1948 would mean that only when there is no legitimate male descendants, the agnate would succeed. In the absence of direct male heir, the plaintiff Rajkumari Amrit Kaur being the eldest legitimate descendant and nearest agnate alone is entitled to succeed estate of Raja Harinder Singh. A person is said to be agnate of another if the two are related by blood or adoption wholly through males.

(xvii). The Preamble of 1948 Act declares the Estate to be impartible Estate. It preserves and enforces the rule of descent. Lineal Male preference is shown under Section 4(1) (a) to (c) and Section 4(2) of the The Raja of Faridkot's Estate Act, 1948. In the absence of any male descendant or legitimate male descendant, Section 4(3) of the Act would come into play, which would make the plaintiff Rajkumari Amrit Kaur entitled for succession to the estate of her father being the eldest legitimate descendant and nearest agnate. Raja did not exercise his right of adoption. Lineal descendant is a blood relative in the direct line of descent i.e. the children, grand children, great grand children etc. of Late Raja Harinder Singh which includes both male and female descendants. Lineal descendant is a descendant in the direct line of descent. In ***Sunderlal Chourasiya vs. Tejila Chourasiya and Ors.,2004 AIR MP 138*** it was observed that the word descendants means those persons who are in blood stream of the ancestor and further it means those descended from another, persons who proceed from a body of another such as child or grand child, to the remotest degree. Descents are of two kinds, lineal and collateral. Lineal descent is a descent in a direct or right line, as from father or grand father to son or grand son. Collateral descent is a descent in a collateral/oblique line i.e. upto the

common ancestor and then down from him as from brother to brother or between cousins.

(xviii). The Preamble cannot be used to eliminate as redundant or inoperative, provisions of a statute. In other words, the Preamble cannot be used to make specific provisions of a statute to be redundant. In ***State of Rajasthan vs. Lila Jain, AIR 1965 SC 1296*** and ***Union of India vs. Elphinstone Spinning and Weaving Co. Ltd. & Ors. (2001) AIR SC 724*** it was observed that when question arises as to the meaning of a certain provision in a statute, it is not only legitimate, but proper to read that provision in its context. The context means, the statute as a whole, the previous state of law, other statutes in *pari-materia,* the general scope of the statute and the mischief that it was intended to remedy. The Preamble of an Act, no doubt can also be read along with other provisions of the Act to find out the meaning of the words in enacting provisions to decide, whether they are clear or ambiguous, but the Preamble in itself not being an enacting provision is not of the same weight as an aid to construction of a Section of the Act, as are other relevant enacting words to be found elsewhere in the Act. The utility of the Preamble diminishes on a conclusion as to clarity of enacting provisions. Therefore, the substantive provision, Section 4(3) of The Raja of Faridkot's Estate Act,

1948, being clear and unambiguous, the Preamble cannot over-ride or restrict the effect of the aforesaid Act.

(xix). Section 5 of The Raja of Faridkot's Estate Act, 1948 is a provision for maintenance. The Raja was conscious that as per Section 2 of the aforesaid Act, his Estate is impartible and as per Section 4, it is inheritable in descends to a single heir, therefore, for the maintenance of his widow and unmarried daughters, he made provisions. In this way Section 5 in no way relates to any succession rather, it is exclusively governed by Section 4 of the aforesaid Act. The term "agnate" has not been defined anywhere in the Act, however it finds mention in the Hindu Succession Act, wherein as per Section 3(1)(a) of the said Act, one person is said to be an 'agnate' of another, if the two are related by blood or adoption wholly through males. Rajkumari Amrit Kaur fully fits in the aforesaid definition, being the first born child of late Raja and is a nearest agnate. According to Section 5(ii) of the Hindu Succession Act, 1956, estate descends to a "single heir" irrespective of male or female.

(xx). The documents viz. Ex.PX-25 and Ex.PX-26 on the record would show that while deciding the question as to the legal heir of deceased Raja Harinder Singh, the High Court of

Justice, Chancery Division, London has decided that Mrs. Amrit Harpal Singh (Nee Rajkumari Amrit Kaur) is entitled to the income of second portion which was previously going to Tikka Harmohinder Singh son of Raja Harinder Singh. Defendants No.1 and 2 were parties to the judgment and they never challenged the legality of the aforesaid judgment dated 22.07.1996 in accordance with law and the said fact has been admitted by defendant No.1 while appearing as DW-3, therefore, the findings recorded by the Foreign Court are conclusive and binding on the rights of the defendants under Section 13 of the Code of Civil Procedure.

(xxi). In view of aforesaid, it is apparent that DW-3 Deepinder Kaur has admitted on 12.03.2013 that the Trust office, Faridkot wrote letter to the Bank authorities in U.K. that the transfer money of her father be not given to anybody till the issue of succession is decided. The aforesaid deposition has disclosed further revelations that the Bank after legal opinion decided that Law of Primogeniture as claimed was applicable and started paying the said amount to Rajkumari Amrit Kaur and the said decision of the High Court of Justice, Chancery Division, London was not assailed in any hierarchy of the Courts. In view of aforesaid, it has to be taken that Ordinance XVI of 2005 BK, does not repeal The Raja of Faridkot's Estate

Act, 1948. Rajkumari Amrit Kaur being the eldest legitimate descendant and nearest agnate of late Raja, alone succeeds to the estate of her late father in terms of Section 4(3) of The Raja of Faridkot's Estate Act, 1948.

(xxii) Recent pronouncement of the judgment by the Hon'ble Apex Court dated 31.07.2019 in "***Talat Fatima Hasan through her constituted attorney Sh. Syed Mehdi Hasan vs. Nawab Syed Murtaza Ali Khan (D) by LRs & Ors. (2019) 10 Scale*** (known as Rampur's case) would show that succession to estate of former ruler of Rampur State will devolve according to personal law applicable and not by custom of primogeniture. Reference to ***State of Uttrakhand vs Kumaon Stone Crusher (2017) JT 164*** would show that the law which has been continued in force by virtue of Article 372 of the Constitution of India is to continue until altered, repealed or amended by the competent legislature. There is a presumption against a repeal by implication. When a law does not provide repealing provision, it gives out an intention not to repeal the existing law. Therefore, Article 372 of the Constitution of India, saves The Raja of Faridkot's Estate Act, 1948 and Section 5(ii) of the Hindu Succession Act protects it and ensures its application in the instant case. Rajkumari Amrit Kaur alone succeeds to the entire estate of Raja in view of ***Talat Fatima Hasan's*** case (supra).

Earlier High Court of Allahabad in the aforesaid ***Talat Fatima Hasan's*** case (supra) i.e. ***(2002) AIR (Allahabad) 119,*** held that primogeniture will be applicable to the Estate of Ex.Ruler of Rampur and personal law will not be applicable. The said judgment of the Allahabad High Court has been over ruled by the Hon'ble Apex Court in the aforecited case. Para No.12 of the said judgment is to the following effect:-

> *"12. The only issue to be decided is whether the properties held by Nawab Raza Ali Khan would devolve on his eldest son by applying the rule of primogeniture or would be governed by Muslim Personal Law (Sheriat) Application Act, 1937 and devolve on all his legal heirs."*

[xxiii]. In the aforecited case, the Hon'ble Apex Court has held that the custom of primogeniture is not applicable to the estate of former ruler of Rampur since there is valid enacted law and is in force i.e. Muslim Personal Law (Sheriat) Application Act, 1937 and the properties will devolve according to that law and not by custom of primogeniture. Personal law shall prevail in the matter of succession to personal/private properties of Ex.Ruler of Rampur. On the basis of aforesaid, it can be appreciated that there is a valid enacted law i.e. The Raja of Faridkot's Estate Act, 1948**,** which is also protected in terms of Section 5(ii) of the Hindu Succession Act 1956 and the properties of Raja shall devolve as per provisions of the Act.

The Estate of Raja would include personal and private properties as per list of the properties submitted to and approved by Government of India in view of the Covenant and, therefore, these personal and private properties of Raja are not attached to *Gaddi* as held by the Constitution Bench of the Hon'ble Apex Court in 'Dholpur case' i.e. ***Kunwar Shri Vir Rajendra Singh vs. Union of India & Ors., (1970) AIR SC 1946***. Para Nos.40 and 42 of the judgment reads as under:-

> *"40. .....We have, therefore, no hesitation in holding that on the death of ruler, Nawab Raza Ali Khan in the year 1966, succession to his private properties was governed by personal laws.*
>
> *42. .....However, one thing which is clear is that the rulers enjoyed right to privy purses, private properties and privileges only because of the Constitution and in other respects they were ordinary citizens.* ***It was urged that since the rights were guaranteed under the Constitution, the rule of primogeniture would apply. We find no force in this contention*** *because, as already discussed above, in Article 362 reference is made only to the personal rights, privileges and dignities of the ruler of an Indian State and, in our view, rights would not include succession to personal properties."*

(xxiv). The personal law in case of Muslims is Muslim Personal Law (Sheriat) Application Act, 1937 and in case of Hindu, it is Hindu Succession Act, 1956. As per Section 5(ii) of

the Act, there is an exception to the properties of former Rulers of Indian States and, therefore, The Raja of Faridkot's Estate Act, 1948 is attracted which is a valid law enacted by the Raja on 18.08.1948, exercising his sovereign powers as he was sovereign until 20.08.1948. Ordinance was valid for six months only and the repeal by way of Ordinance by the Rajpramukh was not valid as the same was not within the powers of Rajpramukh. After Constitution of India came into force on 26.01.1950, The Raja of Faridkot's Estate Act, 1948 was saved by Article 372 of the Constitution of India and is still in force. The repeal by implication is not attracted to the aforesaid Act and the ratio of ***State of Uttrakhand vs. Kumaon Stone Crushers (2017) 11 JT 164*** would be attracted. The law which has been continued in force by virtue of Article 372 of the Constitution of India is to continue until altered, repealed or amended by competent legislature.

(xxv). There is a presumption against a repeal by implication, and the reason for this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislature. When the new Act contains a repealing section, mentioning the

Act which is expressly repealed, the presumption against implied repeal and other laws is further strengthened on the principle of '***expressio unius est exclusio alterious***'. Undoubtedly the legislature can exercise the power of repeal by implication. It is equally well settled principle of law that there is a presumption against implied repeal. For implying a repeal, the next thing to be considered is whether the two statutes relate to the same subject matter and have the same purpose. The repugnancy between two statutes can be ascertained on the basis of established principles of law i.e.

> *(a) Whether there is a direct conflict between the two provisions;*
>
> *(b) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State legislature; and*
>
> *(c) Whether the law made by the Parliament and the law made by the State Legislature occupy the same field.*

(xxvi). In view of above, it is contended that Section 4(3) of The Raja of Faridkot's Estate Act, 1948 has not been repealed by any necessary implication and Rajkumari Amrit Kaur alone succeeds to the entire estate of Raja being the eldest legitimate descendant and nearest agnate and The Raja of Faridkot's

Estate Act, 1948 will prevail over custom of primogeniture.

(xxvii). In ***H.H. Mehr Taj Nawab Sultan, Bhopal vs. State of M.P. and others (1977) Jab. LJ 337*** and ***Commissioner of Income Tax vs. Princess Usha Trust, (1985) 156 ITR 650 (MP)*** females were recognized as rulers under Article 366(22) of the Constitution of India. If The Raja of Faridkot's Estate Act, 1948 was repealed by Section 3(1) of the Ordinance XVI 2005 BK, then how did custom survive. Brother of Raja will only succeed when Raja's line of inheritance fails and the nephew will only succeed when childless Raja adopts him and he succeeds in the capacity of his son and not as nephew. Brother's family has never succeeded and general observation regarding primogeniture has no place as against the Statute which was never repleaded. Raja was sovereign until 20.08.1948 and by the enactment of The Raja of Faridkot's Estate Act, 1948 on 18.08.1948**,** two days prior to surrendering his sovereignty on 20.08.1948, consequently the custom relating to primogeniture came to an end and customs were abrogated. Customary primogeniture was finished and thereafter it has to be survived as per the enactment of The Raja of Faridkot's Estate Act, 1948.

[38]. Per contra, Mr. Vivek Bhandari, learned counsel for the appellant-Bharat Inder Singh through his LR Kanwar

Amarinder Singh Brar in RSA No.2176 of 2018 submitted on the issue of validity of The Raja of Faridkot's Estate Act, 1948. He argued on the issue of validity of Law of Primogeniture as the same is also overlapping with the issue of validity of The Raja of Faridkot's Estate Act, 1948. Learned counsel submitted as under:-

(i). Admittedly the property in dispute belongs to the former Ruler of Faridkot i.e deceased Raja Harinder Singh, who was a signatory to the Covenant with the Government of India and the properties in dispute are the same which were retained by him under the terms of Covenant entered into with the Government of India. Hindu Succession Act does not apply to the property of former Rulers in view of Section 5(ii) of the Hindu Succession Act. There is a bar on application of the Hindu Succession Act, 1956 to the properties of former Rulers, who had entered into the Covenant with the Government of India. Male primogeniture has to be presumed and to be applied to the properties of former Rulers, who is signatory to the Covenant. Admittedly, on 05.05.1948, the Covenant was signed. Eight Princely States had merged to form a Union known as PEPSU. On 18.08.1948**,** Notification of The Raja of Faridkot's Estate Act, 1948 came to be issued**.** 20.08.1948 was the last date of making over the administration of Faridkot Estate as per Article

VI of the Covenant**.** 20.08.1948 was the date of issue of PEPSU General Provision (Administration and Ordinance) 2005 BK**.** 20.09.1948 was the last date for submitting inventory of all the immovable properties, securities, cash balances held by the Raja as per Article XII. That was only after accession to India. PEPSU General Provisions (Administration and Ordinance) 2005 BK was issued by the Rajpramukh repealing all laws of States and enforcing laws of Patiala w.e.f. 20.08.1948. Rajpramukh was appointed by seven States and the Covenant in question signed by seven States was with the Government of India.

(ii). Case titled ***Pratap Singh vs. Sarojini Devi, 1994 SCC 734*** known as **'**Nabha Royal Family's case**'** dealt with impartibility and primogeniture in relation to *jamidari* of estates and other impartible estates are to be established by custom, but in case of sovereign rulers, they are presumed to exist under Article 372 of the Constitution of India. Primogeniture is a law which has been continued after coming into force of Constitution of India. The same view as taken in ***Tikka Satrujit Singh and others vs. Brig. Sukhjit Singh and anr. (2011) 1 ILR (Delhi) 704***, Privy Council in ***Rao Kishore Singh vs. Mussamat Gahenbhai, AIR 1919 PC 1000*****,** Allahabad High Court in Royal Family case of ***Talat Fatima Hasan's*** case

(supra); Gujarat High Court in Royal family of Kucth i.e. ***Yuvraj Prithivisinhji vs. Brijraj Kumari Saheba of Kutch, 2010 SCC Online Gujarat 7447***.

(iii). The genealogical table published in the official gazetteer, a public document, clearly shows existence of primogeniture. There are specific instances in case of Faridkot Royal family**,** where in the event of failure of direct male line, Gaddi and properties were inherited by brother or brother's son. The factum of existence of primogeniture has been admitted by Deepinder Kaur as well as Rajkumari Amit Kaur in their oral evidence (testimonies).

(iv). Section 5(ii) of the Hindu Succession Act exempts the property owned by a former Ruler of Indian State, who has signed the Covenant with the Government of India from its operation and, therefore, the properties in question cannot be made subject matter of succession under the Hindu Succession Act. For the applicability of Rule of Primogeniture, the claimant need not be the eldest son of the Ruler.

(v). Para nos.93, 94, 95, 98 and 99 of the judgment passed by the lower Appellate Court, would show that the Court has confused the issue on conjectures and surmises. Reports on the administration of the Punjab and its dependencies for the

years 1870-71, 1881-82 and 1900-1901 are public documents admissible in law. From the aforesaid public documents i.e. extract of Punjab State gazetteer, genealogical/pedigree table and report of administration of Punjab and its dependencies, existence of primogeniture has to be presumed in case of royal/properties of former ruler, who is signatory to the Covenant.

(vi). It is the duty of the Court to rely upon gazetteer and administration report in view of ***Mahant Shri Srinivasa Ramanuj Das vs. Surajnarayan Dass & anr. , AIR 1967 SC 256; Thakor Shri Sher Singhji's case i.e. C.A. No.160 of 1965*** and ***Union of India vs. Nihar Kanta Sen & Ors., 1987(3) SCC 465***. In ***Rao Kishore Singh's*** case (supra) primogeniture was claimed by second cousin. A decision was rendered by the District Judge holding that primogeniture prevails and women are excluded. It was held that head of the family cannot destroy the custom. The decision of the District Judge qua primogeniture was upheld. The Court of the District Judge was the first Court and succession opened on 06.10.1906 in the said case.

(vii). In Nabha's case i.e. ***His Highness Maharaja Pratap Singh's*** case (supra), Maharaja Ripudaman Singh was ruling

chief of Nabha State in early Twenties. Ruling powers were withdrawn by the British Government in the year 1923. Thereafter, he was deposed from the Gaddi in 1928 and was exiled to Kodaikanal in Tamil Nadu. He remained there till 1942 when he died. He left behind his wife Sarojini Devi, three sons namely Pratap Singh, Kharagh Singh and Gurbaksh Singh and two daughters Kamla Devi and Vimla Devi. Sarojini Devi wife of Ripudaman Singh and her children were residing in England from 1934 to 1944. She came to India when Pratap Singh was to receive administrative training as he was to become the ruler of the Nabha State by the applicability of rule of primogeniture. The family came back to India in the year 1945. Gurbaksh Singh the third son of Ripudaman Singh died in November, 1963. He left behind his widow Chander Prabha Kumari and two minor daughters Krishana Kumari and Tuhina Kumari and minor son Vivek Singh. The property i.e. Sterling Castle in Shimla was owned by Col. S. Appaji Rao Sitole of Gwalior. In view of restriction relating to acquisition of property imposed by the British Government, Ripudaman Singh purchased this property in the name of his friend Dr. Tehal Singh. The sale deed was executed on 21.12.1921. Dr. Tehl Singh executed a relinquishment deed on 30.04.1952, relinquishing his title in favour of three sons and widow of late Ripudaman Singh. In the

year 1957, dispute arose between the parties. Pratap Singh claimed absolute right over this property, thereby denying the title of other heirs of Ripudaman Singh. In March, 1961, the two younger brothers sought leave from the Central Government under Section 86 read with 87(b) of Code of Civil Procedure to file a suit against Pratap Singh. The leave was refused in July 1961. On 30.01.1962, Pratap Singh sold this property in favour of "The Save the Children Fund" a Society incorporated in the United Kingdom for a sum of Rs.50,000/-. Sarojini Devi, Kharagh Singh and minor children of Gurbaksh Singh filed a suit for partition and in the alternative for joint possession and also for recovery of *mesne profits*. It was averred that they had a share in the Sterling Castle, Shimla, as the heirs of late Ripudaman Singh. Though the property was ostensibly stood in the name of Dr. Tehl Singh, but Ripudaman Singh was the real owner of the property and the sale consideration was paid by him. Therefore, Pratap Singh had no right to sell the property in favour of defendants i.e. "The Save the Children Fund" and its Administrator. The plaintiffs in the suit claimed that sale was not binding upon their rights. During pendency of the suit, original defendants No.1 and 2 further sold the property in favour of defendants No.4 to 8 vide sale deed dated 01.05.1970. Originally the suit was filed in Shimla. After merger of the area in

Himachal Pradesh, the original jurisdiction came to be exercised by the Delhi High Court. On the formation of Himachal Pradesh High Court, Civil Suit No.14 of 1968 was transferred to the original side of that Court.

(viii). In the aforesaid cited case defendants contested the suit on number of grounds including the ground that from the year 1942 onwards Pratap Singh became absolute owner of the property in question. Learned Single Judge came to the conclusion that the property was purchased *benami* by Ripudaman Singh. After his death, the property devolved on the entire joint family. The rule of primogeniture would not be applicable to his personal property, since it applied only to the property of the State. Merely because Ripudaman Singh was declared as Ruler of Nabha State, he could not become the owner of this property. Preliminary decree for partition and recovery of mesne profits was granted in favour of the plaintiffs and the 3rd defendant. RFA No.22 of 1973 was filed. The Division Bench reversed the judgment of the learned Single Judge and held that the plaintiff had failed to establish that the property i.e. Sterling Castle was purchased benami in the name of Dr. Tehl Singh, out of personal funds of Ripudaman Singh. The suit was dismissed by accepting the appeal.

(ix). In the aforecited case, Civil Appeal No.5857 of 1983

was filed out of judgment of Delhi High Court in RFA(OS) No.6 of 1977 dated 23.05.1980. Pratap Sigh filed Civil Suit No.394 of 1966 for possession of House No.394, Alipur Road, Civil Lines, Delhi. The defendants were mother Sarojini Devi, two brothers and two sisters. One of the brother namely Gurbaksh Singh had died and his legal representatives were brought on record. The suit property came to be purchased in the year 1922 by Ripudaman Singh in the name of one Gurnarain Singh Gill. The vendor was one Sh. Ram Popli. The sale deed was executed on 08.04.1922 for a sum of Rs.1,25,000/-. The property was managed by officials of Nabha State. In 1937, Gurnarain Singh Gill executed a release deed in favour of Nabha State. The property was treated to be of Nabha State even after Pratap Singh ascended the *Gaddi*. On 05.05.1948, Covenant was entered between Central Government and the Princely States and they merged to form a Union known as Patiala and East Punjab States Union (PEPSU). In the inventory prepared under Article XII, the house in question was included and on that basis it was urged by the plaintiff that the property was his private property and he was exclusive owner of the same. On that basis, suit for possession came to be filed by Pratap Singh. The defendants contested the claim and contended that it was a private property of Ripudaman Singh. The Covenant had

recognized this position and it did not create a new right. The intention of the Covenant was to receive claims and after scrutiny put the controversy at rest, if there was anything between Ruler and the Government of the States Union once and for all times to come.

(x). Learned Single Judge came to the conclusion that the property was the property of Nabha State. It was not a personal property of Ripudaman Singh and held that Ripudaman Singh could hold the property in his personal capacity. After 04.05.1949, the property changed and on that basis the suit came to be decreed. In RFA (OS) No.6 of 1977, the Division Bench held that the Covenant dated 05.05.1948 did not create any new right. It only declared the pre-existing rights. The claim of Pratap Singh as private property was not established. The ownership of the property continued unchanged even after Pratap Singh ascended the Gaddi. It was concluded that the property was personal property of Ripudaman Singh and after his death it devolved upon Pratap Singh and his brothers. Sarojini Devi being the widow got her right under Hindu Women Right to Property Act 1937 as Ripudaman Singh had died in the year 1942. Appeal was allowed. The suit was dismissed. Civil Appeal No.5857 of 1983 came to be filed against the decision of the Division Bench. In

this manner, two Civil Appeal Nos.1208 of 1990 and 5857 of 1983 came to be considered by the Hon'ble Apex Court.

(xi). The effect of Article 363 of the Constitution of India was considered. The Hon'ble Apex Court after considering ***Revathinnal Balagopala Varma vs. His Highness Sri Padmanabha Dass Bala Rama Verma, 1993 Suppl. (1) SCC 233*** (Trivoncore's case) held that the rule of primogeniture only prevails in the family of ruling chief or *jagirdars, whose* ancestors were ruling chiefs. Impartability and primogeniture in relation to z*amidari* estates or other impartible estates are to be established by custom, whereas in case of sovereign ruler, they are presumed to exist. Distinction between public and private property was held to be not correct. Even private property can be pooled in the State for applying the rule of primogeniture. The question whether primogeniture lapsed in the year 1947-48 was also considered. Respondents therein contended that Pratap Singh had ceased to be governed by primogeniture on 15.08.1947 and in any case, on 20.08.1948 when he ceased to be a sovereign. The question whether in case the Estate is impartible in nature, it would continue to be governed by the rule of primogeniture or not, was answered and it was held that rule of primogeniture would continue even after 1947-48 under Article 372 of the Constitution of India. The law of succession

relating to primogeniture continues until it is repealed. This is the position of law relating to succession. It was held that the recognition by the sovereign parties to the Covenant that the suit property is a private property of Pratap Singh would amount to an act of State and law of succession relating to primogeniture continues till date under Article 372 of the Constitution of India.

(xii). In ***Tikka Satrujit Singh and others vs. Brig. Sukhjit Singh and anr. (2011) 1 ILR (Delhi) 704***, popularly known as 'Kapurthala's case', it was held that law which applies to the former rulers was different than the law applied to the non-sovereign States. The distinction drawn in Nabha's case i.e. ***Pratap Singh's*** case (supra) was relied and it was reiterated that primogeniture would be presumed in case of ruler, whereas in case of zamindari, it would not be presumed, but will have to be proved as a custom. The ruler/sovereign would be the absolute owner of the State and its properties. None else would have any interest or share in his property. He would have to be signatory to a Covenant/agreement ceding his State on 15.08.1947 to the dominion of India on three subjects external affairs, communication and defence. Thereafter by the Covenant/merger agreement ceding the administration of his State to the Union prior to 26.01.1950. After 26.01.1950, he

would be recognized as a ruler of former Indian State by the President of India under Article 366 of the Constitution. He would be receiving an annual privy purse for the amount fixed by the Ministry of States. On his death, succession to his estate/properties would be covered by the first part of the exception under Section 5(ii) of the Hindu Succession Act, and therefore, not affected by 1956 Act. If he dies after 17.06.1956, it would make no difference to the succession which will still be by primogeniture. He would be de-recognized as a ruler by the 26th Amendment. In case of *Zamindari*, if he dies after 17.06.1956 succession to his estate would not be by primogeniture. It will be as per Section 8 of the Hindu Succession Act.

(xiii) In ***Yuvraj Prithvisinhji vs. Brijraj Kumari Sahiba of Kutch, 2010 SCC Online Gujarat 7447*** the issue was whether the family custom of inheritance of Raja and incidentally of all properties devolving on a single member of the family to the exclusion of other members of the family is ancient, settled, consistently followed without being challenged from time immemorial as alleged in the written statement by the defendants. The trial Court came to the conclusion that a rule of primogeniture was a custom in Kutch. As per family custom and succession or inheritance, it was on the demise of the ruler, his

eldest son succeeded to the *Gaddi* i.e. defendant No.1. All the properties were in his possession and enjoyment and whatever property devolved in the succeeding person i.e. defendant No.1 was not subject to any liability for maintenance of any members of the royal family and this family custom of inheritance was observed as a matter of right since the time immemorial. It continued to be followed and observed without violation by the royal family. It was also held by the trial Court that primogeniture existed. The Court while noticing the fact that on 05.04.1948, the original defendant No.1 entered a Kutch merger agreement with dominion Government and applicability of Section 5(ii) of the Hindu Succession Act, 1956 and non-applicability of judgments under Income Tax Act held that the property remained impartible even after Hindu Succession Act and after the 26th Amendment in 1971. The rule of primogeniture continued even after 1947-48. Under Article 372, the law of succession relating to primogeniture continues until it is repealed. The judgment of the trial Court was upheld.

(xiv) In ***Col. H.H. Sir. Harinder Singh vs. Commissioner of Income Tax, Punjab and Haryana, Jammu And Kashmir and Himachal Pradesh, 1972(4) SCC 536***, Col. H. Harinder Singh himself admitted primogeniture in an appeal before the Hon'ble Apex Court. The controversy involved in the aforesaid

case was in respect of the assessment which was done in respect of status of Raja to be an individual for the assessment years 1957-58 to 1960-1961, corresponding to the accounting year being the period ending April 12, 1957, April 12, 1958, April 12, 1959 and April 12, 1960 respectively. The assignee had executed a registered trust deed dated 01.04.1955, whereunder he has transferred the United Kingdom Government's Securities of the face value of 1,80,000/- pounds to the Grindlays Bank, London as trustee to be held in trust in accordance with the terms and conditions set down therein. According to the clause in the trust deed, the trustee was directed to divide the trust property into two equal parties after meeting all outstanding and contingent liabilities. The balance was to be paid to the children of the settler, living at the respective dates of payment in equal shares. Similarly under clause (4), the trustee after meeting all outstanding and contingent liabilities, was directed to pay balance income to the eldest son of the settler Tikka Harmohinder Singh of Faridkot, during his life. Clause 3(b) and 4(c) of the said Trust deed dated 01.04.1995 provided that at the termination of the period of distribution, the Bank shall stand possessed of the capital and income of both parts upon trust from the person who, at the date of said termination, shall be the successor of the settler

according to rule of primogeniture applicable to the dynasty of the settler absolutely.

(xv). The oral evidence viz. statement of Maharani Deepinder Kaur, Chairperson of Maharwal Khewaji Trust, wherein she admitted that according to the precedent among the royal family members of Brar Sikh of Faridkot State only eldest male member used to become ruler after the demise of previous ruler. She volunteered that females were not allowed to succeed in the royal family. Primogeniture was admitted and if rulership was in existence then Kanwar Manjit Inder Singh might have succeeded Raja Harinder Singh after his demise. Similarly, according to oral evidence of Rajkumari Amrit Kaur, the Rule of Primogeniture is admitted and Bharat Inder Singh is the sole surviving male descendant from the line of Maharaja Brijinder Singh, Bans Bahadur of Faridkot State.

(xvi) Article II of the Covenant entered into by the rulers of seven Princely States forming PEPSU, would show that the covenanting States agreed to unite and integrate their territories in one State with a common executive, legislature and judiciary by the name of 'PEPSU'. The council of Rulers was to elect Rajpramukh and Up-Rajpramukh under Article III(3) of the Covenant. Under Article VI(1) of the Covenant, the Ruler of each covenanting State shall make over the administration of

his State to the Rajpramukh upto 20.08.1948 and thereafter all rights authorities and jurisdiction belonging to the Ruler shall vest in PEPSU and shall be exercised as provided by the Covenant. All duties and obligations of the Rulers pertaining or incidental to the Government of covenanting State shall devolve on the Union and shall be discharged by the Union and all the assets and liabilities of the covenanting State shall be the assets and liabilities of the Union. The military forces of the covenanting State shall also became military forces of the Union. Under Article VIII of the Covenant, instrument of accession was to be executed and signed by the Rajpramukh upto 30.08.1948 on behalf of the Union in accordance with the provision of Section 6 of the Government of India Act, 1935. Under Article IX of the Covenant, executive authority of the PEPSU Union was to be exercised by the Rajpramukh. Under Article X of the Covenant, Rajpramukh was authorized to make and promulgate ordinances for the peace and good governance of the Union until a legislature elected in accordance with the terms of the Constitution framed by it comes into being, the constituent Assembly as contained in the manner indicated in Schedule II shall function as the interim legislature of the Union. The ordinance so made was valid for six months from its promulgation and had the like force of law as an Act passed by

the Constituent Assembly, but any such ordinance may be controlled or superseded by any such Act.

(xvii). Under Article XII(2) of the Covenant, list of private properties was to be furnished to the Rajpramukh before 20.09.1948. The Ruler was to furnish inventory of all immovable properties, securities and cash balances held by him as such private property. According to Article XII(3), if any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India nominate in consultation with the Rajpramukh and the decision of such person shall be final and binding on all the parties concerned. Provided that no such dispute shall be so referable after 31.12.1948. Under Article XIII of the Covenant, the Ruler of each covenanting State as also the members of his family were entitled to personal privileges, dignities and title enjoyed by them, whether within or outside the territories of the State immediately before 15.08.1947. Under Article XIV the succession according to law and custom to *Gaddi* of each covenanting State and to the personal rights, privileges, dignities and titles of Ruler thereof was guaranteed. Every question of disputed succession in regard to a covenanting State which arose after inauguration of the Union was to be decided by the Council of Rulers, after referring the

same to a Bench of consisting of all the available Judges of the High Court of the Union and in accordance with the opinion given by such Bench.

(xviii). The PEPSU General Provisions (Administration Ordinances) i.e. Ordinance (1 of 2005 BK) was promulgated by Rajpramukh in exercise of his powers under Article X of Covenant on 20.08.1948. According to Section 3(1) of the aforesaid Ordinance the laws applicable in State of Patiala were made applicable *mutatis mutandis* and the law of all other covenanting State ceased to have any effect.

(xix) The Preamble of The Raja of Faridkot's Estate Act, 1948 would show that the preamble clearly says to preserve and enforce the rule of descent to one single male heir in the matter of succession to the said estate and to provide for other matters connected therewith. The declaration was in regard to the impartibility of the Personal Estate of Raja. Under Section 2(3) of The Raja of Faridkot's Estate Act, 1948, the holder of the Raja of Faridkot Estate shall mean His Highness Col. Raja Harinder Singh Brar Bans Bahadur and after his death shall mean Tikka Harmohinder Singh Bahadur and shall include through heirs male lawfully begotten on whom the Estate shall devolve according to rule of descent provided by the Act. According to Section 5 of the aforesaid Act, the daughters and

holder of the Estate were only entitled to maintenance until marriage and thus a female cannot be a holder of the estate.

(xx). In ***Dalmiya Dadri Cement Limited vs. Commissioner of Income Tax, AIR 1958 SC 816***, Section 3 of PEPSU Ordinance was considered and it was held that the Covenant was an Act of State. The Court also opined that after the formation of the new State on 20.08.1948, the first legislative Act of the sovereign was the promulgation of Ordinance No.I of Samvat 2005 and Section 4 thereof expressly recognizes the rights of the permanent members of Public Services. That undoubtedly is a law enacted by the sovereign, conferring rights of his subjects and enforceable in a Court of law, but at the same time the enactment of such a law serves to emphasize that the Articles have not in themselves the force of law and were not intended to create or recognize rights. In this connection, reference should also be made to Clause 16 of the Ordinance which enacts that the provision of Articles XV and XVII of the Covenant relating to the bar of certain suits and proceedings shall have the force of law. In view above, Ordinance No.I of Samvat 2005 was held to be a legislative Act. It was also held that the Covenant is in whole or parts an act of State, that Article VI therein does not operate to confer any rights on the subjects of the covenanting States as against the

sovereign of the new State constituted thereunder and that Ordinance No.1 of Samvat 2005 is, in consequence, not open to attack as being a violation of Article VI. Ultimately, in view of effect of Section 3 of the Ordinance, Patiala laws were applied and it was held that Jind laws had ceased to have any effect.

(xxi). In ***Laxman Dass vs. State of Punjab, AIR 1963 SC 222***, it was held that all legislative powers stood transferred to Rajpramukh after 20.08.1948 without any fetters. The contention that the Covenant does not dispose of the entirety of the legislative power possessed by the Rulers, because under Article X, the Rajpramukh could enact laws only for a period of six months and the legislative powers not having been completely transferred to him and, therefore, residue must vest somewhere and that could only be in the Rulers themselves. This contention was repelled that the Rulers of the covenanting States could, subsequent to 20.08.1948, have passed any laws within their own territories on the ground that powers of Rajpramukh did not extend under Article X, to enact legislation beyond six months. It is further to be noted that under Article VI, all powers of the Rulers are to vest in the Union, and even if the whole of the legislative power is not exercisable by the Rajpramukh by reason of Article X, it is in the Union that the residue of the power must be held to be lodged and not with the

Rulers.

(xxii). In ***State of Haryana vs. Amarnath Bansal, (1977)10 SCC 700***, the effect of Section 3 of the Ordinance was discussed and it was held that the Covenant is an Act of State and the laws in force in Patiala State were made applicable to the entire PEPSU union. Para No.13 of the judgment reads as under:-

> *"13. In the instant case, there was no such declaration by the PEPSU Government recognising the duties and obligations of the rulers of Jind State under the laws of the Jind State. Nor was there a law similar to Ordinance No. 1 of 1948 of Saurashtra continuing the laws of the Jind State. On the other hand, there was Ordinance No. 1 of S. 2005 followed by the Ordinance No. 16 of S. 2005 whereby the laws of the covenanting States were repealed and the laws of Patiala State were made applicable in the entire territory of PEPSU. Can it be said that in spite of the said ordinances the Jind Service Regulations of 1945 which prescribed 62 years as the age of superannuation was a law in force in PEPSU on the date of commencement of the Constitution and by virtue of Article 372 of the Constitution the said Regulations continued in the Part B State of PEPSU after the coming into fore of the Constitution and in the reorganised State of Punjab under the States Re-organisation Act, 1956 and in the State of Haryana under the Punjab Re-organisation Act, 1966. In our opinion, this question must be answered in the negative. As noticed earlier the Raj Pramukh of*

> *PEPSU look over the administration of Jind State on August 20, 1948 and on the same date he promulgated Ordinance No. 1 of S. 2005 and by section 3 of the said ordinance all laws, ordinances, acts, rules, regulations, notifications, Hidayate, Shahi-farman having force of law in Patiala State on the date of commencement of the said Ordinance were made applicable mutatis mutandis to the territories of all the covenanting States (including Jind State) and with effect from that date all laws of such covenanting States immediately before that date would stand repealed. Ordinance No. 1 of S. 2005 was followed by Ordinance No. 16 of S. 2005 which contained a similar provision. As a result of the said ordinances the Jind State Civil Service Regulations of 1945 stood repealed on August 20, 1948 and the relevant law as applicable in the State of Patiala became applicable in the entire area of PEPSU, including the Jind State, and the terms and conditions of the respondent were, therefore, governed by the provisions contained in the law that was applicable in Patiala State and he could not claim any right on the basis of the Jind State Civil Service Regulations 1945."*

(xxiii). The provision of Section 3 of Ordinance No.1 (Samvat 2005) and Section 3(1) of Ordinance XVI (Samvat/2005 BK) have the effect of excluding applicability of laws of other covenanting States in the territory of PEPSU and the laws of covenanting States were repealed absolutely and laws of Patiala State were applicable in entirety in the territory of PEPSU. Repeal of law of other covenanting States by

Ordinance No.1 and XVI of BK 2005 was intended to for all times. Expiration of said ordinance would not mean that the effect of said ordinance regarding non-applicability of laws of other covenanting States in the territory of PEPSU was nullified on the expiration of Ordinance No.XVI (Samvat/2005 BK). Para 19 of the judgment in ***State of Haryana vs. Amarnath Bansal's*** case (supra) reads as under:-

> *"19. If the provisions of Section 3 of Ordinance No. 1 of S. 2005 and Section 3(1) of Ordinance No. 16 of S. 2005 are construed in the light of the principles laid down by this Court in Bhupendra Kumar Bose (supra), it must be held that the object underlying said provisions was to exclude the applicability of the laws of other covenanting States in the territory of PEPSU by repealing them absolutely and to apply the laws applicable in Patiala State in the entire territory of PEPSU. Since the repeal of the laws of other Covenanting States by Ordinances Nos. 1 and 16 of S. 2005 was intended to be for all time, the expiration of the said Ordinances would not mean that the effect of the said Ordinances regarding on-applicability of the laws of other convenanting States in the territory of PEPSU was nullified on the expiration of Ordinance No. 16 of S. 2005. In view of the express terms used in the said Ordinances it must be held that Jind State Civil Service Regulations 1945 stood repealed absolutely and ceased to have any application after the Raj Pramukh of PEPSU took over the administration of Jind State on 20-08-1948."*

(xxiv) In ***State of Punjab vs. Puran Chand Jindal, 2011***

SCC Online, Punjab and Haryana 16306, this High Court considered the object of ordinance which was to exclude the applicability of laws of other covenanting States in the territory of PEPSU, by repealing them absolutely and to apply the laws applicable in the Patiala State in the entire territory of PEPSU. The effect of the ordinance was, therefore, not nullified on its expiry.

(xxv). In ***K. Nagraj vs. State of Andhra Pradesh and another (1985) 1 SCC 523***, it was held that the power to issue an ordinance is not an executive power, but is the power of the executive to legislate. The power of the Governor to promulgate an ordinance is contained in Article 213 which occurs in Chapter IV of Part VI of the Constitution of India. The heading of that Chaper is "Legislative Power of the Governor". This power is plenary within its field like the power of the State Legislature to pass laws and there are no limitation upon that power except those to which legislative power of the State Legislature is subject. Therefore, though an ordinance can be invalidated for contravention of the constitutional limitations which exist upon the power of the State Legislature to pass laws. It cannot be declared invalid for the reason of non-application of mind, any more than any other law can be. An executive act is liable to be struck down on the ground of non-application of mind. Not the

act of a Legislature.

(xxvi). Articles 291, 362, 366(22) of the Constitution of India and Lok Sabha debates regarding 26th Amendment of the Constitution of India and Rulers of Indian States (Abolition of Privileges) Act 1972 would show that there was no intention to interfere with the rule of primogeniture which was applicable to the Rulers in the matter of succession. Section 5(ii) of the Hindu Succession Act, 1956 has not been interfered with till date and in view of precedents on the point, the same continues till date. For ready reference Articles 291, 362 and 366(22) of the Constitution of India are reproduced hereasunder:-

> *291. Privy purse sums of Rulers:-*
>
> *(1) Where under any covenant or agreement enterered into by the Ruler, of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse-*
>
> > *(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and*
> >
> > *(b) the sums so paid to any Ruler shall be exempt from all taxes on income.*
>
> *(2) Where the territories of any such Indian State*

as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of payments made by the Government of India under clause (1) and for such period as may be subject to any agreement entered into in that behalf under clause (1) of Article 278, be determined by order of the President.

*362. Rights and privileges of Rulers of Indian States:- In the exercisse of power of Parliament or of the Legistature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in *[* * *] Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."*

"366(22). "Ruler" means the Prince, Chief or other person who, at any time before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was recognised by the President as the Ruler of an Indian State or any person who, at any time before such commencement, was recognised by the President as the successor of such Ruler;].

(xxvii). The Constitution (26th Amendment Act) 1971 has nothing to do with the personal properties. Only privy purse and privileges were omitted. Section 5(ii) of the Hindu Succession Act 1956 has not been abolished. Thereafter the Rulers of Indian States (Abolition of Privileges) Act 1972 came to be

passed and in the said Act also Section 5(ii) of the Hindu Succession Act was not amended, nor rule of primogeniture was abolished. In ***Commissioner of Gift Tax vs. Maharaja Amarinder Singh (2004) 191 CTR PH 358*** it was observed that though Patiala State, after it was carved out by its original Ruler, was governed by a Ruling Chief, yet such a Chief's succession was on the basis of rule of primogeniture (male) and after succession on the *Gaddi* of the State, he had well-defined responsibilities towards maintenance of Kanwars on scheduled rates and other relatives.

(xxviii). Further the Rajya Sabha debates on Section 5(ii) of the Hindu Succession Act, 1956 established that Section 5(ii) of the Act was enacted specifically to preserve primogeniture in the ruling family, who had signed the Covenant of merger. New interpretation of Section 5(ii) of the Act cannot be accepted in view of the precedents of the Hon'ble Apex Court i.e. ***Prakash vs. Phulavati, (2016) 2 SCC 36***; ***Director of Settlements, A.P. & Ors., vs. M.R. Apparao & Anr., 2004 SCC 638***; ***Mamleshwar Prasad vs. Kanhaiya Lal (1975) SCC 232***; ***South Central Railway Employees Coop. Credit Society Employees Union vs. B. Yashodabai (2015)2 SCC 727*** and ***Suganthi Suresh Kumar vs. Jagdeeshan, 2002(2) SCC 420***.

(xxix). The bar of Article 363 of the Constitution of India cannot be applied in view of ratio of ***H.H. Maharajadhiraja Madhav Rao Jiwaji Raoscindia Bahaur vs. Union of India, 1971(1) SCC 85***, wherein it was concluded that Article 291 of the Constitution of India is not a position relating to Covenants and agreements, but a special provision for the source of payment of privy purse by charging them on the consolidated fund and for making the payment free of taxes on income. It does not in its dominant purpose and theme answer the description in the later part of Article 363 of the Constitution of India. Article 362 of the Constitution of India is within the bar of Article 363 because its dominant purpose is to get recognized the Covenants and agreements with Rulers. However, insofar as the same guarantees, find place in legislative measures, the provisions of Article 362 of the Constitution of India need not to be invoked and the dispute decided on the basis of those statutes. Such a case may not attract Article 362 and consequently the bar of Article 363 may not also apply. Article 366(22) of the Constitution of India is within the description so long as the President in recognizing a Ruler or a successor is effectuating the provisions of a Covenant or agreement. It may apply when the description exercised is relatable to his powers flowing from the covenants read with the article. However where

the President acts wholly outside the provisions of Article 366(22) of the Constitution of India, his action can be questioned because the bar applies to *bona fide* and legitimate action and not to *ultra vires* actions. As per majority view, the petitions were allowed and the order dated 06.09.1970 made by the President was held to be illegal. Petitioners therein were held entitled to all their pre-existing rights and privileges including the right of privy purse.

(xxx). In ***Revathinnal Balagopala Varma vs. Padmanabha Dasa Bala Verma, 1993 Supp(1) SCC 233,*** '(Trivoncore's case)' the judgment was delivered after considering various case laws on the subject. The cases covered by Section 5(ii) of the Hindu Succession Act continued. The effect of the provision is that the succession to impartible estates other than those mentioned in clauses of Section 5(ii) of the Act stands abrogated. The Court while dealing with the issue in question adverted to the nature of extent of authority of respondent No.1 therein over the properties in the suit in his capacity as sovereign ruler of Travancore. The suit property belonged to Tarwad and respondent No.1 was managing the same as Karnavan (Karta). Respondent No.1 was not only a Karnavan of Tarwad but also the sovereign ruler of Travancore. The properties were impartible in order to maintain his estates.

But after he ceased to be ruler of Travancore, these properties even though were impartible earlier became partible according to the submissions made by learned counsel. The reliance was placed in this behalf to certain statutory provisions including the Hindu Succession Act. The Court in that context relied upon ratio of case laws viz. ***Baijnath Prasad Singh and Ors. vs. Tej Bali Singh, AIR 1921 PC 62*** and observed that it was apparently not a case of sovereign ruler. Secondly the Court placed reliance upon ***Shiba Prasad Singh vs. Rani Prayag Kumari Debi and Ors., AIR 1932 PC 216***. It was observed that the case is not to be of sovereign ruler. ***Commissioner of Income-tax, Punjab, North-West Frontier and Delhi Provinces, Lahore vs. Dewan Bahadur Dewan Krishna Kishore, Rais, Lahore AIR 1941 P.C. 120*** was also not found to be a case of sovereign ruler inasmuch as that such ruler could not have been governed by Income Tax Act, 1922. Similarly other case laws were also not found attracted and it was held that so far as these decisions are concerned, apart from the fact that in the said case, respondent No.1 was holding properties as sovereign ruler and his right over the properties will have to be considered in that background. What has been held in the cited case laws may be of some assistance, if it is found as a fact that family of the appellant and defendants

therein was undivided Tarwad governed by Marumakkathayam Law as modified by custom and usage in respect of succession/ inheritance and the suit properties belonged to his Tarwad and respondent No.1 had been managing the same as its Karavan (Karta). If it is found that these properties were personal properties of respondent No.1 in the manner alleged by him, then these decisions will be of no assistance. In the said context the concept of Hindu Undivided Family was distinguished. In the said case succession opened in the year 1991 and it was observed that Section 5(ii) of the Hindu Succession Act does not apply in case of sovereign ruler.

(xxxi). The Court proceeded to discuss the case laws on the subject and observed that this being the law with regard to the powers of a sovereign and legal status of the properties held by him, then there can be no manner of doubt that till the sovereignty the Maharaja of Travancore had ceased, he was entitled to treat and use the properties under his sovereignty in any manner he liked and his will in this regard was supreme. On the principle that a sovereign never dies and succession to the next ruler takes place without there being a hiatus, there could be no change in the legal status of the properties held by one ruler and his successor. As seen above, one incidence of property held by a sovereign was that there was really no

distinction between the public or State properties and on the one hand and private properties of the sovereign on the other hand. The other incidence was that no one could be co-owner with the sovereign in the properties held by him. Respondent No.1 was a sovereign and the properties in this dispute as held by sovereign rulers from time to time were impartible. The said fact has not been disputed before the Court. The mode of succession of a sovereign ruler and the powers of such a ruler are two different concepts. Mode of succession regulates the process whereby one sovereign ruler is succeeded by other. It may *inter alia* be governed by rule of general primogeniture or lineal primogeniture or any other established rule governing succession. This process ends with one sovereign succeeding another. Thereafter what powers, privileges and prerogatives are to be exercised by the sovereign is a question which is not relatable to the process of succession, but relates to legal incidents of sovereignty. If someone asserts that to a particular property held by a sovereign the legal incidents of sovereignty do not apply, it will have to be pleaded and established by him because onus of such fact is always on the party, who asserts in affirmative, because of presumption, onus shifts upon the opposite party to prove that a primogeniture does not exits. No precedents were cited before the Court to show that the

personal properties of respondent No.1 would get transformed into joint Hindu Family property, wherein the appellant in the said case would acquire the interest. Apparently such properties would on demise of respondent No.1 be governed by either of testamentary depositions or would devolve upon his personal heirs.

(xxxii). The ratio of ***Yuvraj Prithvisinhji's*** case (supra) has already been dealt with in the preceding part of the judgment, wherein it was observed that the properties declared by the sovereign and accepted by the Government of India as his private properties, would be his personal properties. In the said case succession opened on 21.06.1981.

(xxxiii). The claim of appellant in RSA No.2176 of 2018 is dependent upon Rule of Primogeniture. Originally the Ordinance No.I (Samvat 2005) came into force on 20.08.1948 for six months and the period ended on 20.02.1949. It was re-notified as Ordinance No.XVI (Samvat/2005 BK) w.e.f. 15.02.1949 and the period of six months ended on 15.03.1949. Again it was re-notified by Ordinance No.XVIII (2006 BK) on 31.07.1949 and the period of six months ended on 31.07.1950. In the meanwhile Constitution of India came into force w.e.f. 26.01.1950 and in this manner the ordinance never came to an end. The ordinance remained in force from the date of promulgation till 26.01.1950,

when the Constitution of India came into force and this proposition has been noticed by the Court in ***Dalmiya Dadri Cement Limited's*** case (supra).

(xxxiv). The ratio of precedents viz. ***State of Punjab and others vs. Mahant Jatinder Dass Chela Mahant Narotam Dass, Mahant, Mandir Dun, Patiala, 2015 SCC online, P&H 7648 (DB)*** and ***State of Haryana vs. Amarnath Bansal's*** case (supra) would show that the PEPSU General Provisions (Administration Ordinance) and its subsequent amendments remained in force from the date of promulgation on 20.08.1948 till 26.01.1950, when the Constitution of India came into force and as such the arguments of validity of ordinance for six months alone does not survive.

(xxxv). The word 'single heir' appearing in Section 5(ii) of the Hindu Succession Act is relatable to personal law and that is Hindu Succession Act, but distinction of single heir will attract primogeniture and it will exclude female and the rule continued even after 1947-48. Under Article 372 of the Constitution of India, the law of succession relating to primogeniture continues till its repeal.

(xxxvi). Ratio of ***Talat Fatima Hasan's*** case (supra) submitted has to be interpreted in favour of the appellant in RSA

No.2176 of 2018. Reference to para nos.26, 27, 28, 29, 30 and 47 of the aforesaid judgment is necessary which would show that the rule of Impartibility and primogeniture in relation to zamindari must be established by proving the custom, but in case of sovereign ruler, they are presumed to exist. If the Estate is impartible even after 26.01.1950, the same would continue to be governed by Rule of Primogeniture. Primarily, the reference was made to ***Travancore*** and ***Nabha'*** s cases (supra) and ***Talat Fatima Hasan***'s case (supra) is a case of muslim ruler and the conclusion is drawn that the property of ruler would descent according to personal law which was Muslim Personal Law (Sheriat) Application Act, 1937. In case of Hindu ruler, the personal law applicable is Section 5(ii) of the 1956 Act in which rule of male lineal primogeniture has to be preferred.

(xxxvii). Punjab State Gazetteer volume XVI(a), Faridkot State 1915, genealogical table spanning 14 generations, updated genealogical table spanning 18 generations and report on the administration of Punjab and its dependencies 1870-71, Report on administration of Punjab and its dependencies 1881-82, report on administration of Punjab and its dependencies 1900-1901 and oral evidence of Maharani Deepinder Kaur and Rakumari Amrit Kaur would show that the consideration on the aforesaid evidence would make the rule of male lineal

primogeniture applicable to the property of late Raja Harinder Singh in the matter of succession and after his demise his brother Kanwar Manjit Inder Singh would succeed to the entire property.

(xxxviii). The aforesaid documents are public documents having their origin in public domain and, therefore, these documents are *per se* admissible. Exception for relying upon these documents can be made irrespective of want of pleadings and evidence led by the parties in the said context.

[39]. Mr. Ashok Aggarwal, Senior counsel assisted by Mr. Mukul Aggarwal and other Advocates appearing on behalf of the appellants in RSA No.1418 of 2018 opposed the arguments of both the learned counsel for the appellant(s) in RSA No.2006 of 2018 and RSA No.2176 of 2018 on the following grounds:-

(i). The Covenant was entered into between the ruler of Faridkot and Union of India on 05.05.1948. According to Article VI, the possession of the estate was to be surrendered to Rajpramukh by 20.08.1948. Under Article X of the Covenant, Rajpramukh shall have the powers to make and promulgate ordinances for peace and good governance of the PEPSU. Article XII of the Covenant provides for submitting a list of

private properties, as distinct from State properties to Rajpramukh before 20.09.1948. Under Article XIV of the Covenant, the succession according to law and custom to the *Gaddi* of the covenanting States and to personal rights, privileges, dignities and title to the rulers thereof, was guaranteed. On 15.07.1948, PEPSU was inaugurated by S. Vallabh Bhai Patel. This finds mention in para No.131 of the White Paper on Indian States published by the Government of India. On 18.08.1948, The Raja of Faridkot's Estate Act, 1948 allegedly enacted by Raja Harinder Singh. The said Act was never approved or adopted by the PEPSU. On 20.08.1948, Rajpramukh promulgated Ordinance No.I (Samvat/2005 BK). According to Section 3 of the said Ordinance, the laws applicable in State of Patiala were made applicable *mutatis mutandis* to PEPSU and the laws of all other covenanting States ceased to have any effect. The said Ordinance was to remain in force for six months and the laws of covenanting States including The Raja of Faridkot's Estate Act, 1948 ceased to have any effect. Reference of this Ordinance No.I (2005 BK) has been taken from ***State of Haryana & Ors. vs. Amar Nath Bansal, AIR 1997 SC 718***.

(ii). The Rajpramukh promulgated Ordinance No.XVI (2005 BK) on 15.02.1949 i.e. within the period of six months

from the date of promulgation of Ordinance No.I (2005 BK). According to Section 3 of the aforesaid Ordinance, the laws applicable in State of Patiala would be applicable *mutatis mutandis* to PEPSU and the laws of all other covenanting States ceased to have any effect. This Ordinance had expiry date of 31.07.1949. On 31.07.1949, Ordinance No.XVIII (2006 BK) was issued by amending Ordinance No.XVI (2005 BK). Section 3 of the said Ordinance also specifically provided that law applicable in State of Patiala would be applicable *mutatis mutandis* to PEPSU and the laws of other covenanting States ceased to have any effect. In this manner all the laws of the covenanting States including The Raja of Faridkot's Estate Act, 1948 ceased to have any effect. On 24.11.1949 a promulgation was made by Rajpramukh that Constitution of India shall be the Constitution of PEPSU. Reference can be made in this context to the White Paper on record. On 26.01.1950, Constitution of India came into force. According to Article 372 of the Constitution of India all existing laws shall continue which were in force in the territory of India immediately before the commencement of the Constitution of India until altered or repealed or amended by a competent legislature.

(iii). Article 366(10) of the Constitution of India defines existing law which means any law, ordinances, order, bye-law,

rule, or regulation passed or made before the commencement of this Constitution by any legislature, authority, or person having power to make such a law, ordinance, order, bye-law, rule or regulation.

(iv). The Hindu Succession Act, 1956 came into force on 17.06.1956. Sections 4 and 5 of the Act read as under:-

> *"4.* ***Overriding effect of Act****.—(1) Save as otherwise expressly provided in this Act,—*
>
> *(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;*
>
> *(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.*
>
> ***5. Act not to apply to certain properties-****This Act shall not apply to—*
>
> *(i) any property succession to which is regulated by the Indian Succession Act, 1925 (39 of 1925), by reason of the provisions contained in section 21 of the Special Marriage Act, 1954 (43 of 1954);*

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin."

(v). Reference to Section 4 of the Act, would show that Rule of Primogeniture is not a codified law. At the most it can be treated to be a custom which stands abrogated in view of Section 4 of the Hindu Succession Act. Reference to Section 5(ii) of the Act, would show that the word '*any estate*' is not related to property, rather it is limited to *Gaddi*. In view of Article XIV of the Covenant, no estate is covered, nor there is any agreement entered into by the Ruler with the Government. Covenant dated 05.05.1948 would not advance any such proposition contained in the aforesaid Section 5(ii) of the Hindu Succession Act. There is no such codified law by legislature, which would confer any such right to succeed to the property. Succession according to Article XIV of the Covenant dated 05.05.1948 is to the *Gaddi* of the covenanting State and to the

personal rights and personal privileges, dignities, and title to the rulers thereof and the same was guaranteed. Personal properties are distinct from personal rights and privileges.

(vi). The 26th Constitutional Amendment came into force on 28.12.1971 which omitted Article 291 (providing privy purse) and Article 362 (enshrining rights and privileges of rulers). Article 363-A was inserted thereby taking away recognition of rulers.

(vii). While exercising the powers under Article X of the Covenant (05.05.1948), the Rajpramukh on 20.08.1948 promulgated Ordinance No.1 (2005 BK) and under Section 3 of the said Ordinance, the laws applicable to the State of Patiala were made applicable *mutatis mutandis* to PEPSU and the laws of all other covenanting States ceased to have any effect. In ***Dalmiya Dadri Cement Limited's*** case (supra), it has been held by the Hon'ble Apex Court consisting of Five Judges Bench that Ordinance No.I (2005 BK) was in furtherance of legislative powers of Rajpramukh. Para Nos.3, 18 and 23 of the said judgment are relevant in the present context. Thereafter on 15.02.1949, Rajpramukh promulgated Ordinance No.XVI (2005 BK). According to Section 3 of the said Ordinance, the laws applicable to the State of Patiala were made applicable *mutatis mutandis* to PEPSU and the laws of all other covenanting States

ceased to have any effect. Thereafter on 31.07.1949, Ordinance No.XVIII (2006 BK) was issued by amending Ordinance No.XVI (2005 BK). Same provision was made in Section 3 of the said Ordinance, thereby applying laws of State of Patiala *mutatis mutandis* and the laws of all other covenanting States ceased to have any effect. In this manner The Raja of Faridkot's Estate Act, 1948 also stood repealed.

(viii). Evidently, with regard to the PEPSU, no constituent Assembly came into being, rather on 24.11.1949, a proclamation was made by Rajpramukh that Constitution of India shall be the Constitution of PEPSU. In this context reference can be made to the White Paper already on record. In view of above changes in Article X of the Covenant dated 05.05.1948, there is no doubt that the legislative powers were always vested in Rajpramukh and as such Ordinance No.I and Ordinance No.XVI (2005 BK) were existing and valid enactments vide which the Raja of Faridkot's Estate Act, 1948 was repealed. On 26.01.1950, the Constitution of India came into force and PEPSU Ordinance No.XVI (2005 BK) unequivocally fell in the category of laws as defined under Article 13(3)(a) and (b) of the Constitution of India and was an existing law within the territory of India. In this context, para No.135 of the judgment rendered by the Division Bench of this

Court in ***State of Punjab & Ors. vs. Mahant Jatinder Dass's*** case (supra) is relevant to be quoted:-

> *"(135). When the Constitution of India, as the fountain-head of all Statutes, came into force on 26.01.1950, the Farman-i-Shahi dated 18.04.1921 AD read with Sections 3(1) & 5(1) of PEPSU Ordinance No.XVI of 2005 BK unequivocally fell in the category of 'laws' as defined under Article 13(3)(a)&(b) of the Constitution and was in force within the territory of India.*

(ix). As a result of such adoption of Constitution of India, Ordinance No.XVI (2005 BK) was saved by Article 372 of the Constitution of India which provides that all laws in force in the territory of India immediately before commencement of the Constitution shall continue in force therein until altered or repealed or modified by a competent legislature or other competent authority. Reference can be made to para No.15 of the judgment of the Division Bench of Rajasthan High Court in ***Mohan Lal and Anr. vs. Lal Chand and Ors., AIR 2001 Rajasthan 87***. The same reads as under:-

> *"15. His Highness the Rajpramukh on 21st of January, 1949, promulgated an ordinance to provide for establishment of High Court of Judicature for Rajasthan, known as "the Rajasthan High Court Ordinance 1949". The Ordinance has been defined under Clause (i) of the Ordinance of 1949, which provides as follows:*

1. Ordinance definition of Clause (51) of Section 32 of the Rajasthan General Clauses Act, 1955 defines the term 'Ordinance as under:

(51) "Ordinance" shall mean and include.

(a) as respects any period before the commencement of the Constitution

(i) an Ordinance lawfully made and promulgated by the Ruler or the Government of a covenating State;

(ii) an Ordinance lawfully made and promulgated by the Rajpramukh of the former Rajasthan State in pursuance of the Covenant;

(iii) an Ordinance likewise made and promulgated by the Rajpramukh of the former Matsya State; and

(iv) an Ordinance likewise made and promulgated by the Rajpramukh of Rajasthan; and

(b) as respects the period after such commencement, an ordinance made and promulgated under and in accordance with the provisions of the Constitution.

(i) by the Rajpramukh upto the 31st day of October, 1956, or

(ii) by the Governor on or after the first day

of November, 1956."

(x). With the enactment of Hindu Succession Act on 17.06.1956, all laws, customs etc. were repealed and abrogated. Succession is governed only by provisions of the said Act. Since The Raja of Faridkot's Estate Act, 1948 was repealed by Ordinance No.I and Ordinance No.XVI (2005 BK), therefore, it could not said to be a law in force on 26.01.1950 and as such could not be saved by Article 372 of the Constitution of India. In this context, it would be appropriate to refer para nos.109, 110 and 122 to 134 of ***State of Punjab & Ors. vs. Mahant Jatinder Dass's*** case (supra). The same read as under:-

ARTICLE 13(1) OF THE CONSTITUTION

(109) Article 13 of the Constitution declares that all 'laws' in force in the territory of India immediately before the commencement of this Constitution which are inconsistent with the provisions of Part-III of the Constitution, shall be void to the extent of such inconsistency. The 'law' within the meaning of Article 13 includes any Ordinance, Order, Bye-law, Rule, Regulation, Notification, Custom or Usage having in the territory of India the force of law. It is mandatory that the preConstitutional laws must conform to the Fundamental Rights. A pre-Constitutional law shall be void if it runs contrary to the Fundamental Rights guaranteed under Part-III of the Constitution though only to the extent of

such inconsistency. The complete Code therefore will not be rendered void and if the inconsistent part is also amended subsequently, so as to remove the repugnancy, then the entire law shall become free from all blemishes.2 The Supreme Court has clarified that the effect of Article 13(1) is not to obliterate the inconsistent law from the Statute Book for all times or for all purposes or for all people. The effect is that the inconsistent law cannot stand in the way of exercise of Fundamenal Rights by persons who are entitled to those rights on the commencement of this Constitution. But such law remains good even after the Constitution has come into force as regards persons who have not been given Fundamental Rights, namely, the aliens.

(110) Article 13(1) though is couched with negative phrases to reinforce the supremacy of Part-III of the Constitution above any other law, nonetheless, this provision by implication, protects the enforceability of all such laws in force in the territory of India immediately before the commencement of this Constitution provided they are not derogatory to Part-III of the Constitution. Article 372(1) sets at rest the doubt, if any, when it declares that "subject to other provisions of this Constitution", all the 'law' in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. Thus, if a law in force in the territory of India immediately before the commencement of the Constitution is not inconsistent with its Part-III within the meaning of Article 13(1), such law shall continue in force under Article 372(1) subject to its

alteration, repeal or amendment by a competent Legislature or other competent authority. Further, Part-III of the Constitution has no retrospective effect and any action taken under any law which was valid at the time when such action was taken, namely, prior to the enforcement of the Constitution, cannot after the commencement of this Constitution, be challenged as unconstitutional on the score of its infringing any of the Fundamental Rights.

(122) As regards the legal status of Farman-i-Shahi on attainment of Independence by India, it may be mentioned here that the erstwhile Rulers of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsia and Nalagarh entered into a Covenant on 05.05.1948 followed by the Supplementary Covenant dated 09.04.1949 AD to merge and establish as a 'State' of independent India to which they had "already acceded to". All these territories were integrated by the name of "Patiala and East Punjab States Union", namely, the PEPSU State. The Rulers of each Covenanting State handed over the administration of his respective State to the Rajpramukh (Article VI of the Covenant).

(123) Immediate thereupon the PEPSU State issued Ordinance No.XVI of 2005 BK (notified on 15th February, 1949) as amended by Patiala and East Punjab States Union General Provisions (Administration) Amendment Ordinance No.XVIII of 2006 BK (notified on 31st July, 1949), the salient features whereof are as follows:-

> *2. In this Ordinance, unless there is anything repugnant in the subject or context:*

(a) "appointed day" means the fifth day of Bhadon, 2005;

(b) xxx xxx xxx

3.(1) As from the appointed day, all laws and rules, regulations, bye-laws and notifications made thereunder, and all other provisions having the force of law, in Patiala State on the said day shall apply, mutatis mutandis, to the territories of the (State) and all laws in force in the other Covenanting States immediately before that day shall cease to have effect:

Provided that all suits, appeals, revisions, applications, reviews, executions and other proceedings, or any of them, wherther civil or criminal or revenue pending in the Courts and before authorities of any Covenanting State shall, notwithstanding anything contained in this Ordinance, be disposed of in accordance with the laws governing such proceedings in force in any such Covenanting State immediately before the appointed day.

(2) xxx xxx xxx

4. xxx xxx xxx

5. (1) Except where the context otherwise requires, any reference in any law, order, rule, regulation, bye-law, notification, Hidayat or Farman-i-Shahi referred to in Section 3, and other instrument shall, where the reference is to the officers, authorities, documents or territories mentioned in column one of the following table, be construed as a reference to the officers, authorities, documents or territories respectively mentioned in the second column of the said table:-

1. Ruler, High Highness Rajpramukh of

	and the like.	*the State*
2.	*Government of the State, Darbar or Ijlas-i Khas.*	*Government of the State.*
3.	*Official Gazette, Government Gazette, State Gazette and the like*	*Official Gazette of the State.*
4.	*Patiala State*	*The State."*

(124) Reference may, at this stage, be made to PEPSU Repealing Act of 2008 BK notified on 09.09.1951. Its Section 2 repealed the enactments specified in the Schedule of the Act without affecting the validity, consequences or anything already done or any past act or thing. The Schedule also included the Patiala and East Punjab States Union General Provisions (Administration) Amendment Ordinance No.XVIII of 2006. The only amendment made in the Ordinance No.XVI of 2005 BK vide PEPSU Ordinance No.XVIII of 2006 was the insertion of subSection (3) in Section 10 so as to enable the Rajpramukh to make Rules for the more convenient transaction of the business of Government, and for allocation of the said business among the Ministers. Section 14 of the Ordinance of 2005 was also amended to confer powers upon the Rajpramukh to regulate the recruitment and conditions of service of a persons appointed to public services etc.

(125) The brief legislative history as narrated above manifests that Farman-i-Shahi dated 18.04.1921 AD was formulated by Ijlas-i-Khas, who was equivalent in status with the present day State Government. The Farman-i-Shahi was issued under the command of the Ruler, who too enjoyed the status and rank of Rajpramukh or Governor of a State in the post Constitution regime.

(126) Farman-i-Shahi was neither amended or repealed nor superseded by any subsequent dictate of equal or superior legal force till the Princely State of Patiala along with other Princely States integrated into the post-Independent State of PEPSU in May 1948.

(127) PEPSU State then issued Patiala and East Punjab States Union General Provisions (Administration) Ordinance No.XVI of 2005 (BK) (notified on 15.02.1949) as was amended by PEPSU Ordinance No.XVIII of 2006 (notified on 31.07.1949) (for convenience and in short, referred to as 'the 1949 Ordinance'). The Ordinance was promulgated by the Rajpramukh and as per its Section 3(1), all laws, rules, regulations, bye-laws, notifications made thereunder and all other provisions having the force of law in Patiala State stood applied, mutatis mutandis, to the territories of PEPSU State and all laws in force in the other Covenanting States immediately before that day ceased to have effect.

(128) Section 3(2) & Section 4 of the 1949 Ordinance contained saving clauses with which we are not concerned here. Its Section 5(1) determines corresponding status of the officers, authorities or documents of the Patiala State under the independent India.

(129) The 1949 Ordinance explicitly provides the status of the Ruler equivalent to that of the Rajpramukh of the State (i.e. Governor, at present); and of Darbar or Ijlas-i-Khas equivalent to the Government of State. The word 'Patiala State' was to be construed as the PEPSU State.

(130) It is pertinent to point out that the Princely State of Patiala had also its own codified Patiala General Clauses Act, 2002 BK (Act No.XII of 2002 BK), which was sanctioned by Ijlas-iKhas vide Order No.4107/383-AR-2002 BK dated 05.02.1946. According to Section 3-A of this Act, "When any enactment in force in British India is enforced in the Patiala State, by an order of Ijlas-i-Khas, in the absence of any specific provision to the contrary, the following expressions will be deemed to have been substituted for the corresponding expressions in the British Indian enactment…". We have purposefully cited this provision to point out that the power to adopt or enforce a law was expressly vested in Ijlas-i-Khas only.

(131) Vide PEPSU Repealing Act, 2005 BK which came into force on 09.09.1951, only the PEPSU Ordinance No.XVIII of 2006 BK was repealed and not the Ordinance No.XVI of 2005 BK. The legal effect of the repeal of Ordinance No.XVIII of 2006 is that it remained no more on the Statute Book, for the amendments brought into force through this Ordinance had already been subsumed in Ordinance No.XVI of 2005 BK and those amended provisions remained unaffected, notwithstanding the repeal of Ordinance No.XVIII of 2006 BK.

(132) Section 4-A read with Section 6 of the Punjab General Clauses Act, 1898, which remained in force till it was repealed by the Punjab General Clauses Act, 1956, used to provide that where any 'Punjab Act' repeals any amendment by which the text of any Punjab Act was amended by the express omission, insertion or substitution of any matter, then, unless a different

intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

(133) Section 2(46) of the above-mentioned 1898 General Clauses Act, as amended from time to time till the year 1951, used to define the expression "Punjab Act" to mean "…an Act made by the Lieutenant Governor of the Punjab in Council under the Indian Councils Act, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915, or by the Local Legislature or the Governor of the Punjab under the Government of India Act, or by the Provincial Legislature or the Governor of the Punjab [or by the Provincial Legislature or the Governor of East Punjab under the Government of India Act, 1935, or by the Legislature of Punjab under the Constitution]".

(134) The amended definition of Punjab Act(s) under the Punjab General Clauses Act, 1898 was thus so wide that it included all the PEPSU laws within its sweep. The provisions of the amended Ordinance of 2005, therefore, remained unaffected notwithstanding the repeal of Ordinance of 2006."

Para No.135 has already been reproduced in the preceding para.

(xi). As a consequence of above, The Raja of Faridkot's Estate Act, 1948 not being an existing enactment cannot be covered under Section 5(ii) of the Hindu Succession Act, 1956.

The same Ordinance has been incorporated in ***State of Haryana & Ors. vs. Amar Nath Bansal's*** case (supra) wherein it has been held by the Hon'ble Apex Court that since the repeal of laws of other covenanting States by Ordinance Nos.I & XVI (2005 BK) intended to be for all times, the expiration of said Ordinance would not mean that the effect of said Ordinances regarding non-applicability of laws of other covenanting States in the territory of PEPSU was nullified on the expiration of Ordinance No.XVI (2005 BK). Section 3(35) of the PEPSU General Clauses Act, 1954 defines PEPSU Act which shall mean an Act of legislature of the (territories which, immediately before 01.11.1956, formed part of State of Patiala and East Punjab States Union) and shall include:-

(a) Any Act or Ordinance made or promulaged by the Ruler of the former Patiala State and made applicable to PEPSU by virtue of Section 3 of the Patiala East Punjab States Union General Provisions (Administration Ordinance) 2005 BK;

(b) An Ordinance made and promulgated by the Rajpramukh under Article X of the Covenant.

(xii). Therefore, from the bare reading of the aforesaid provisions, it would be beyond all doubt that even an Ordinance

has to be treated as an Act for the purposes of PEPSU Law.

(xiii). As per Section 30 of Patiala General Clauses Act, (2002 BK), when an Ordinance expires, the provision of Section 6 shall apply. Section 6 of the said Act provides that expiry of the ordinance shall not revive anyting not in force or existing at the time when the ordinance expires. In view of aforesaid, The Raja of Faridkot's Estate Act, 1948 is not covered under the exception of Section 5(ii) of the Hindu Succession Act, 1956. The expression 'estate' in the Hindu Succession Act, 1956 is used only with regard to Gaddi and other titles and privileges of Ruler and not the private properties of the Ruler. In ***Shatabhanu Singh Deo vs. State of Bihar, 1981 BBCJ 155 (Patna)*** it has been held in para No.10 of the judgment in the following manner:-

> "*.....Supreme Court has repeatedly held that the agreement or recognition has nothing to do with the private properties of the Ruler and the guarantee under the agreement is only with regard to the Gaddi of the State and of the Raja's personal rights, privileges, dignities and titles qua a Ruler. The word "estate" in section 5(ii) of the Act must be confined to properties other than private properties of the Ruler. The right to the private properties of the Ruler shall depend on the personal law of succession by which the family is governed. It must, therefore, be held that section 5(ii) of the Act has no application to this case."*

(xiv). Even the latest judgment in ***Talat Fatima Hasan's*** case (supra) in para No.46 and 47, the Hon'ble Apex Court has held as under:-

> *"46. A Gaddi or rulership and private property have two different connotations even in the merger agreement/instrument of accession. In Article 2 of the agreement, it is clearly mentioned that Nawab would continue to enjoy the same personal rights, privileges, immunities and dignities and other titles which he would have enjoyed prior to the agreement. Conspicuously, the word 'property' or 'personal property' is missing. Article 2 deals only with personal rights, privileges, dignities, etc. Article 3 deals with privy purse which would also be a part of the rulership or Gaddi. Article 6 which deals with succession, guarantees the succession according to law and custom to the Gaddi of the State and to the Nawab's personal rights, privileges, immunities, dignities and title. 7 Rajpal Hindi Shabdkosh, Dr. Hardev Bahri, Rajpal & Sons, Pg.206 (2018) 8 Oxford Hindi-English Dictionary, Edited by R.S. McGregor, Oxford University Press, Pg.254 (2018) Gaddi would be the 'throne' or 'title' of Nawab in the context in which it has been used and the personal rights, privileges, immunities, dignities and titles will be those referred to in Article 2. The word 'property' is also conspicuously absent in Article 6.*
>
> *47. Article 4 states that the Nawab shall be entitled to full ownership, use and enjoyment of all private properties as distinct from State properties. Such properties must belong to him as on the date of agreement. In our view, Article 6 does not relate to the properties mentioned in Article 4 and the private*

properties would remain the private properties of the Nawab as a common citizen of the country as held in various authorities referred to above. We have, therefore, no hesitation in holding that on the death of the ruler, Nawab Raza Ali Khan in the year 1966, succession to his private properties was governed by personal laws."

(xv). The aforesaid proposition was held to the effect that Gaddi/rulership and private property have two distinct connotations. Even in the merger agreement/instrument of accession, the words **"**personal property**"** are missing from Article 2 of the Agreement which clearly mentioned that Nawab would continue to enjoy the same personal rights, privileges, immunities and dignities and other titles which would have enjoyed by him prior to the agreement. The word(s) **"**property**"** or **"**personal property**"** are missing. Article 2 deals with only personal rights, privileges, dignities etc. which are distinct from personal property. Article 3 deals with privy purse which would also be a part of rulership/*Gaddi*. Article 6 deals with succession, guarantees the succession according to law and custom to the *Gaddi* of the State and to the Nawab's personal rights, privileges, immunities and dignities and title. Gaddi would mean the throne/title in the context in which it has been used and the personal rights, privileges, immunities, dignities and title will be those as referred to in Article 2. The word **'**property**'** is conspicuously missing in Article 6. According to Article 4**,**

Nawab shall be entitled full ownership use and enjoyment of all private properties as distinct from state properties. Such properties must belong to him as on the date of agreement. Article 6 does not relate to properties mentioned in Article 4 and the private properties would remain the private properties of the Nawab as a common citizen of the country.

(xvi). The life of Ordinance No.XVI (2005 BK) was never expired after six months, as the same was extended by Ordinance No.XVIII (2006 BK), therefore, on expiration of period of Ordinance, The Raja of Faridkot's Estate Act, 1948 never revived or continued to remain in existence till commencement of Constitution of India on 26.01.1950. The mandate of Section 3 contained in Ordinance and the said provision was extended by passing new Ordinances within the life span of six months, which provided that the laws applicable in the State of Patiala were made applicable *mutatis mutandis* and the law of all other covenanting States ceased to have any effect. After Ordinance No.I (2005 BK), Rajpramukh promulgated Ordinance No.XVI (2005 BK) on 15.02.1949 within a time span of six months and same provision was made in respect of applicability of law of State of Patiala to be applicable mutatis mutandis to PEPSU and the law of other covenanting States ceased to have any effect. The aforesaid Ordinances No.I and XVI (2005 BK) finds

mention in ***State of Haryana & Ors. vs. Amar Nath Bansal's*** case (supra).

(xvii). On 31.07.1949, by virtue of Ordinance No.XVIII (2006 BK), Ordinance No.XVI (2005 BK) was amended according to Section 3, same provision was made as regards law of State of Patiala to be applicable mutatis mutandis to PEPSU and laws of all other covenanting States ceased to have any effect. The Raja of Faridkot's Estate Act, 1948 stood repealed in view of aforesaid factual position.

(xviii). With regard to PEPSU**,** no constituent Assembly came into being. On 24.11.1949, a proclamation was made by Rajpramukh that Constitution of India shall be the Constitution of PEPSU. It finds mention in the White Paper which is already on record. On 26.01.1950, Constitution of India came into force. PEPSU Ordinance No.XVI (2005 BK) unequivocally fell in the category of laws as defined under Article 13(3)(a) and (b) of the Constitution of India and was an existing law within the territory of India. Reference has already been made to para No.135 of the judgment rendered in ***State of Punjab vs. Mahant Jatinder Dass's*** case (supra). With the adoption of Constitution of India, Ordinance No.XVI was saved by Article 372 of the Constitution of India which provides that all the laws in force in the territory of India immediately before the commencement of the Constitution

shall continue in force therein until altered or repealed or modified by competent legislature and other competent authority. Reference has already been made to ***Mohan Lal vs. Lal Chand's*** case (supra). As such Ordinance No.XVI read with Article 372 of the Constitution of India, the laws in force in Patiala State which were enforced by Ordinance No.XVI continued in operation until they are repealed, altered or modified. Thereafter with the enactment of the Hindu Succession Act on 17.06.1956, all laws and customs etc. were repealed and abrogated and the succession is covered only by the provision of the said Act. Since the repeal of laws of other covenanting States was intended to be for all times, therefore, the expiration of the said Ordinances would not mean that the effect of said Ordinance regarding non-applicability of laws of other covenanting States in the territory of PEPSU was nullified on the expiration of Ordinance No.XVI (2005 BK). Reference has already been to para nos.4, 5 and 19 of ***State of Haryana vs. Amarnath Bansal's*** case (supra) and 109, 110 and 122 to 134 of ***State of Punjab vs. Mahant Jatinder Dass's*** case (supra).

(xix). Section 30 of The Patiala General Clauses Act (2002 BK) specifically provides that expiration of Ordinance does not revive anything not in force or existing when the Ordinance

expires. Rajpramukh had legislative powers as held in ***Dalmiya Dadri Cement Limited's*** case (supra), Ordinance No.I (2005 BK) was held to be in furtherance of legislative powers of Rajpramukh in para no.18 of the judgment. Similarly in terms of Section 3(35) of the PEPSU General Clauses Act, 1954, PEPSU Act has been defined in the manner as discussed in the preceding paras. The distinction made by the precedents in respect of expression Estate has to be read in context of *Gaddi* alone. Personal properties are distinct from personal rights, privileges, immunities, dignities and other titles which the Ruler would have enjoyed prior to the agreement. The word 'property/personal property' is conspicuously missing in Article II. Personal rights, privileges, immunities and dignities will be those as referred to Article II. The word 'property' is also conspicuously missing in Article VI. The position of law has been explained in latest judgment ***Talat Fatima Hasan's*** case (supra) which is the latest law on the subject and has been delivered after due consideration of all the precedents on the point. The issue is no more *res integra*. Even in ***Dalip Kumar vs. State of Rajasthan and others, 2005(37) R.C.R. (Civil) 493 (Rajasthan)***, the Division Bench of the Rajasthan High Court has held that the Ordinance promulgated by the Rajpramukh was an exercise of legislative power in absolute

terms and constituted an existing law in terms of Article 366(10) of the Constitution of India which was in force in the territory of India immediately before commencement of Constitution.

Conclusion in respect of validity of The Raja of Faridkot's Estate Act, 1948 and its effect.

[40]. Having considered the submissions and rival submissions made by learned Senior counsel for the parties, it can be appreciated that a Covenant was entered into between the Ruler of Faridkot State and Union of India on 05.05.1948. According to Article VI of the aforesaid Covenant, possession of the Faridkot State was to be surrendered to Rajpramukh upto 20.08.1948. According to Article X of the said Covenant, Rajpramukh shall have the powers to make and promulgate ordinances for peace and good government/governance of PEPSU. Article XII of the Covenant provides for submitting list of private properties as distinct from State properties by the Ruler to the Rajpramukh before 20.09.1948. Similarly according to Article XIV of the Covenant, the succession as per law of custom to the *Gaddi* of the covenanting States and to personal properties, privileges, dignities and title to the Rulers thereof were guaranteed. In this manner, PEPSU was inaugurated by Sardar Vallabh Bhai Patel on 15.07.1948. This finds mention in Para 131, Page 88 of the White Paper on Indian States

published by Government of India. On 18.08.1948, The Raja of Faridkot's Estate Act, 1948 was enacted. The said Act was never approved or adopted by the PEPSU, rather on 20.08.1948, Rajpramukh promulgated Ordinance No.I (Samvat/2005 BK), though this Ordinance has not been placed by any of the parties, but it finds mention in ***State of Haryana & Ors. vs. Amar Nath Bansal's*** case (supra) which has been relied by all the three parties. According to Section 3 of the said Ordinance, the laws applicable in the State of Patiala were made applicable *mutatis mutandis* to PEPSU and the laws of all other covenanting States ceased to have any effect. The time span of this Ordinance was for six months. Therefore, the laws of covenanting States including The Raja of Faridkot's Estate Act, 1948 had ceased to have any effect in view of the said Ordinance. Before expiry of six months, Rajpramukh promulgated another Ordinance No.XVI (2005 BK) on 15.02.1949. The said Ordinance was promulgated with the same configurations. Section 3 of the aforesaid Ordinance also provided that all laws applicable in the State of Patiala would apply *mutatis mutandis* to PEPSU and all laws of other covenanting States ceased to have any effect. Reference of this Ordinance also finds mention in ***State of Haryana & Ors. vs. Amar Nath Bansal's*** case (supra). Before the expiry of said

Ordinance, another Ordinance No.XVIII (2006 BK) was promulgated by the Rajpramukh on 31.07.1949. Vide this Ordinance, Ordinance No.XVI (2005 BK) was amended. Section 3 of the said Ordinance also provided the same effect of applicability of laws of State of Patiala *mutatis mutandis* to PEPSU and laws of all other covenanting States ceased to have any effect. It is quite apparent that all laws of covenanting States including The Raja of Faridkot's Estate Act, 1948 also stood repealed in view of aforesaid Ordinances.

[41]. In the light of aforesaid Ordinances, the laws of all other covenanting States were held not applicable to PEPSU, rather the laws of State of Patiala were held to be *mutatis mutandis* applicable to PEPSU. With regard to PEPSU, no Constituent Assembly came into being. Before expiry of duration of Ordinance No.XVI (2005 BK) as amended by Ordinance No.XVIII (2006 BK), a proclamation was made by Rajpramukh on 24.11.1949 that the Constitution of India shall be the Constitution of PEPSU. In this context reference can be made to the White Paper on record to show that in view of the aforesaid changes in Article X of the Covenant, nothing remained under doubt that the legislative powers were always vested in Rajpramukh and as such Ordinances No.I and XVI (2005 BK) were valid enactments. Ordinance No.XVI (2005 BK) was

lawfully amended by Ordinance No.XVIII (2006 BK) and the same were in existence which repealed The Raja of Faridkot's Estate Act, 1948.

[42]. On 26.01.1950, when Constitution of India came into force, PEPSU Ordinance No.XVI (2005 BK) as amended by Ordinance No.XVIII (2006 BK) was in existence and unequivocally fell in the category of laws as defined under Article 13(3)(a) and (b) of the Constitution of India. This Ordinance was saved by Article 372 of the Constitution of India as a result of such adoption made by Rajpramukh by way of proclamation dated 24.11.1949.

[43]. In view of aforesaid factual position on record, Ordinance No.I (2005 BK) and Ordinance No.XVI (2005 BK) as amended by Ordinance No.XVIII (2006 BK) were existing and valid enactments vide which The Raja of Faridkot's Estate Act, 1948 was repealed. Ordinance No.XVI (2005 BK) was the existing law and was saved by Article 372 of the Constitution of India which provides that all the laws in force in the territory of India immediately before the commencement of Constitution shall continue in force therein until altered or repealed or modified by a competent legislature of other competent authority. This is so held in ***Mohan Lal and Anr. vs. Lal Chand and Ors.'s*** case (supra) and in para No.135 of ***State of Punjab***

& Ors. vs. Mahant Jatinder Dass's case (supra).

[44]. When the Constitution of India as the fountain head of all the States came into force on 26.01.1950, Ordinance No.XVI (2005 BK) as amended by Ordinance No.XVIII (2006 BK) read with Section 3(1) and 5(1) of PEPSU unequivocally fell in the category of laws as defined under Article 13(3)(a) and (b) of the Constitution of India and was in force within the territory of India, therefore, at the time of enactment of Hindu Succession Act on 17.06.1956, all laws, customs etc. were repealed or abrogated and succession was governed by the provision of said Act. The Raja of Faridkot's Estate Act, 1948 stood repealed on the basis of existing laws/Ordinance No.XVI (2005 BK) which fell in the category of laws and saved by Article 372 of the Constitution of India at the time of coming into force of Constitution of India on 26.01.1950. Reference paragraphs No.109, 110 and 122 to 134 of ***State of Punjab & Ors. vs. Mahant Jatinder Dass's*** case (supra) can be relied in this context.

[45]. As a result of aforesaid position, The Raja of Faridkot's Estate Act, 1948 not being an existing enactment at the time of coming into force of Constitution of India on 26.01.1950 would not be covered under Section 5(ii) of the Hindu Succession Act, 1956. Ordinances No.I and XVI (2005

BK) have been discussed in ***State of Haryana & Ors. vs. Amar Nath Bansal's*** case (supra). The said Ordinances have been interpreted and it has been held by the Hon'ble Apex Court that since the repeal of the laws of other Covenanting States by Ordinances No.I and XVI (2005 BK) was intended to be for all times, the expiration of the said Ordinances would not mean that the effect of said Ordinances regarding non-applicability of the laws of all other covenanting States in the territory of PEPSU was nullified on expiration of Ordinance No.XVI (2005 BK).

[46]. It would not be out of context to mention here that Section 3(35) of PEPSU General Clauses Act, 1954 defined **"**PEPSU Act**"** which shall mean an Act of the Legislature of the (territories which immediately before the 1st November 1956 formed part of the State of Patiala and East Punjab States Union) and shall include:-

(a) any Act or Ordinance made or promulgated by the Ruler of the former Patiala State and made applicable to PEPSU by virtue of Section 3 of the Patiala East Punjab States Union General Provisions (Administration) Ordinance 2005 BK; and

(b) an Ordinance made and promulgated by

the Rajpramukh under Article X of the Covenant.

[47]. In view of aforesaid**,** it would be crystal clear that even an Ordinance was considered to be an Act for the purpose of PEPSU law. According to Section 30(2) of Patiala General Clauses Act, (2002 BK), when an Ordinance expires, it does not revive anything not in force or existing at the time of expiry of the Ordinance, rather provision of Section 6 shall apply which provides that on expiry of Ordinance, it shall not revive anything not in force. From this proposition as well, The Raja of Faridkot's Estate Act, 1948 is not covered under exception of Section 5(ii) of the Hindu Succession Act, 1956. The expression **'**estate**'** is used in the said Act is used only with regard to *Gaddi* and other title and privileges of the Ruler and not the private properties of the Ruler. Rajpramukh had the legislative powers and it has been held in ***Dalmiya Dadri Cement Limited's*** case (supra) that Ordinances No.I and XVI (2005 BK) were in furtherance of legislative powers of Rajpramukh. Reference para No.18 of the said judgment is necessary to be quoted in this context. The same reads as under:-

> *"18. Considerable emphasis was laid for the appellant on Art. XVI of the Covenant under which the Union guaranteed the continuance of the service of permanent members of public services, and this 'was relied on as showing that the rights of the subjects of the*

> *quondam States were intended to be protected. This argument is sufficiently answered by what we have already observed, namely, that a clause in a treaty between high contracting parties does not confer any right on the subjects which could be made the subject-matter of action in the courts, and that the Patiala Union is not bound by it, because it was not a party to the Covenant. It should, however, be mentioned that after the formation of the new State on 20-8-1948, the first legislative act of the sovereign was the promulgation of Ordinance No. 1 of Section 2005,* and Section 4 th*ereof expressly recognises the rights of the permanent members of public services. That undoubtedly is a law enacted by the sovereign conferring rights on his subjects and enforceable in a court of law, but at the same time the enactment of such a law serves to emphasise that the Articles have not in themselves the force of law and were not intended to create or recognise rights. In this connection, reference should also be made to clause XVI of the Ordinance which enacts that " the provisions of articles XV and XVII of the Covenant relating to the bar of certain suits and proceedings shall have the force of law."*

[48]. In view of aforesaid legal position, I have no hesitation to hold that Ordinances No.I and XVI (2005 BK) were considered as an Act for the purpose of PEPSU Law which on coming into force of Constitution of India on 26.01.1950 were saved by Article 372 of the Constitution of India and unequivocally fell in the category of laws defined under Article

13(3)(a) and (b) of the Constitution of India and were an existing laws within the territory of India. It has been so held by the Division Bench of this Court in ***State of Punjab & Ors. vs. Mahant Jatinder Dass*** and ***Mohan Lal and Anr. vs. Lal Chand and Ors.'s*** cases (supra). So far the validity of Rajpramukh is concerned, it has been held in ***Dalip Kumar vs. State of Rajasthan, 2005(37) R.C.R. (Civil) 493 DB*** and ***Dalmiya Dadri Cement Limited's*** case (supra) that Ordinances were promulgated by Rajpramukh in exercise of legislative powers vested in him and in absolute terms which constituted an existing law in terms of Article 366(10) of the Constitution of India which was enforced in the territory of India immediately before commencement of Constitution of India. When Constitution of India came into being, then in terms of Article 372 such Ordinances were saved and became existing laws in view of aforesaid Article 372 of the Constitution of India.

[49]. Even as per ***State of Haryana & Ors. vs. Amar Nath Bansal's*** case (supra), repeal of laws of all other covenanting States by Ordinances No.I and XVI (2005 BK) was intended to be for all time. The expiration of said Ordinances would not mean that effect of such ordinances regarding non-applicability of laws of all other covenanting States in the territory of PEPSU was nullified on the expiration of Ordinance

No.XVI (2005 BK). Reference to para nos.4, 5, 6, 11, 12 and 19 of the aforecited judgment can be made.

[50]. In view of aforesaid position, The Raja of Faridkot's Estate Act, 1948 does not advance the case of the appellant Rajkumari Amrit Kaur for the succession of the Estate. The said Act was not a valid law on the date of commencement of Constitution of India on 26.01.1950 as the said Act never saved by Article 372 of the Constitution of India, rather Ordinance No.XVI (2005 BK) as amended by Ordinance No.XVIII (2006 BK) was saved on the strength of proclamation made by Rajpramukh on 24.11.1949 as no Constituent Assembly came into being and Rajpramukh proclaimed that Constitution of India shall be the Constitution of PEPSU. The said fact finds mention in the White Paper on record. Once The Raja of Faridkot's Estate Act, 1948 was not adopted and it had ceased to have any effect on the covenanting States, therefore, it has no application to the succession in terms of Section 4 of The Raja of Faridkot's Estate Act, 1948. Once The Raja of Faridkot's Estate Act, 1948 itself was not approved by PEPSU, the properties as per list of properties in the hands of late Raja Harinder Singh Brar will not be governed by the said Act.

[51]. Article X of the Covenant even though prescribed that the Rajpramukh had the administrative powers for peace and

good government/governance, but in view of Ordinance No.I and Ordinance No.XVI (2005 BK) as amended by Ordinance No.XVIII (2006 BK) and interpreted in ***Dalmiya Dadri Cement Limited*** and ***Dalip Kumar vs. State of Rajasthan's*** cases (supra), the same are the result of exercise of legislative powers by the Rajpramukh. Section 3 of the Ordinance No.XVIII (2006 BK) amending Ordinance No.XVI (2005 BK) prescribed for non-applicability of laws of covenanting States in PEPSU, rather laws of State of Patiala were applicable *mutatis mutandis* to the all covenanting States. The repeal of laws of other covenanting States including The Raja of Faridkot's Estate Act, 1948 was never intended to be revived even on expiration of validity period of Ordinances. In view of ratio of ***State of Haryana & Ors. vs. Amar Nath Bansal's*** case (supra) and even otherwise Ordinance No.XVI (2005 BK) as amended by Ordinance No.XVIII (2006 BK) and before expiration of validity period of said Ordinances, Rajpramukh made a proclamation on 24.11.1949, adopting the Constitution of India as Constitution of PEPSU, and thereafter on 26.01.1950, PEPSU Ordinance No.XVI (2005 BK) unequivocally fell in the category of laws as defined under Article 13(3)(a) and (b) of the Constitution of India and was saved by Article 372 of the Constitution of India. In view of aforesaid legal position, the arguments that Rajpramukh

did not have any legislative authority do not hold good, rather the Ordinances were having the background of legislative exercise of powers by Rajpramukh as interpreted in the case laws and the same repealed The Raja of Faridkot's Estate Act, 1948 which was not saved by Article 372 of the Constitution of India and the said Act was not the law as covered by Article 13(3)(a) and (b) of the Constitution of India.

[52]. The arguments raised by learned Senior counsel appearing on behalf of the appellant-Rajkumari Amrit Kaur that The Raja of Faridkot's Estate Act, 1948 was never repealed, do not hold good in view of Section 3 of the Ordinance No.XVI (2005 BK) which was amended by Ordinance No.XVIII (2006 BK) which unequivocally fell in the category of laws and Article 13(3)(a) and (b) of the Constitution of India and saved by Article 372 of the Constitution of India. Secondly, in view of Section 3(35) of the PEPSU General Clauses Act, 1954, PEPSU Act means an Act of Legislature to the territories which immediately before 01.11.1956 formed part of PEPSU and shall include any Act or Ordinance made or promulgated by the Ruler of former Patiala State and made applicable to PEPSU by virtue of Section 3 of PEPSU General Provision (Administration) Ordinance 2005 BK and an ordinance made and promulgated by the Rajpramukh under Article X of the Covenant. Therefore,

from the above position as well, the Ordinance has to be considered as an Act for the purpose of PEPSU law and the effect of The Raja of Faridkot's Estate Act, 1948 had ceased to exist. It is true that duration of Ordinance was six months, but before expiry of six months of Ordinance No.I (2005 BK), second Ordinance No.XVI (2005 BK) came into being w.e.f. 15.02.1949. Before expiry of six months of this Ordinance, 3rd Ordinance No.XVIII (2006 BK) came into being vide which Ordinance No.XVI (2005 BK) was amended and before expiry of the time, the Rajpramukh made proclamation on 24.11.1949 adopting the Constitution of India as Constitution of PEPSU and, therefore, on coming into force the Constitution of India on 26.01.1950, PEPSU Ordinance No.XVI (2005 BK) unequivocally fell in the category of laws and was saved by Article 372 of the Constitution of India. The Raja of Faridkot's Estate Act, 1948 was never approved, therefore, its revival never arose because it was never in existence. It was never saved by Article 372 of the Constitution of India. Since, The Raja of Faridkot's Estate Act, 1948 was not an existing enactment at the time of commencement of Constitution of India as well as Hindu Succession Act, 1956, therefore, the claim of the appellant Rajkumari Amrit Kaur is not covered under the exception of Section 5(ii) of the said Act.

[53]. The expression 'estate' in Hindu Succession Act, 1956 is used only with regard to *Gaddi* and other titles and privileges of the Ruler and not the private properties of the Ruler. The Hon'ble Apex Court has repeatedly held that the agreement or recognition has nothing to do with the private properties of the Ruler and the guarantee under the agreement is only with regard to the *Gaddi* of the State and of Raja's personal right, privileges, dignities and title *qua* a Ruler. The word 'estate' in Section 5(ii) of the Hindu Succession Act must be confined to the properties other than private properties of the Ruler. The right to private properties of the Ruler shall depend upon the personal laws of succession by which the family is governed. It must, therefore, be held that Section 5(ii) of the Hindu Succession Act has no application in the case in hand. The proposition as highlighted in ***Shatabhanu Singh Deo vs. State of Bihar, 1981 BBCJ 155 (Patna)*** can be followed. Para No.10 of which has already been reproduced in the preceding para of the judgment.

[54]. Similarly in ***Talat Fatima Hasan's*** case (supra) *Gaddi* or rulership and private property have two distinct connotations. Even in the merger agreement/instrument of accession, Article 2 of the agreement it is clearly mentioned that Nawab would continue to enjoy the same personal rights,

privileges, immunities and dignities and other title which he would have enjoyed prior to the agreement. The word 'property/personal property' is conspicuously missing. Therefore, Article 2 deals with only personal rights, privileges, dignities etc. Article 3 deals with privy purse which would also be part of *Gaddi*. Article 6 deals with succession, guarantees succession according to law of custom to the *Gaddi* of the State according to the Nawab's personal right, privileges, immunities, dignities and title. The word ***'Gaddi'*** would mean the throne/title of Nawab in the context in which it has been used and the personal rights, privileges, immunities, dignities and titles will be those as referred to Article 2. Property has not been mentioned in Article 2 as well as in Article 6. Article 4 provides that Nawab shall be entitled to full ownership, use and enjoyment of private properties as distinct from State properties. Such properties must belong to him as on the date of agreement. In view of above, Article 6 does not relate to the properties as mentioned in Article 4. Private properties would remain the private properties of Nawab as a common citizen.

[55]. For the reasons recorded hereinabove**,** it is held that The Raja of Faridkot's Estate Act, 1948 stood repealed in view of Section 3 of Ordinance No.I and Ordinance No.XVI (2005 BK) as amended by Ordinance XVIII (2006 BK) which was the result

of valid exercise of legislative powers by Rajpramukh and Ordinance No.XVI (2005 BK) was saved by Article 372 of the Constitution of India as law. The Rajpramukh made a proclamation on 24.11.1949 that the Constitution of India shall be the Constitution of PEPSU, therefore, Ordinance No.XVI (2005 BK) unequivocally fell in the category of laws as defined under Article 13(3)(a) and (b) of the Constitution of India. Therefore, The Raja of Faridkot's Estate Act, 1948 has no application in the context of succession in the present case(s). Rajpramukh was exercising legislative powers under Ordinances No.I and XVI (2005 BK) and Ordinance No.XVIII (2006 BK) as held in ***Dalip Kumar vs. State of Rajasthan*** and ***Dalmiya Dadri Cement Limited's*** cases (supra).

[56]. Article 372 of the Constitution of India did not save The Raja of Faridkot's Estate Act, 1948 and at the time of commencement of Hindu Succession Act, 1956**,** the said Act had stood repealed in view of Ordinances, reference of which has already been made. Exception in terms of Section 5(ii) of the Hindu Succession Act is not attracted in case of succession of Rajkumari Amrit Kaur on the basis of Section 4(3) of The Raja of Faridkot's Estate Act, 1948. The 26th Amendment of Constitution of India has also the effect of repealing The Raja of Faridkot's Estate Act, 1948 and succession to Raja Faridkot's

Estate would not be governed by The Raja of Faridkot's Estate Act, 1948 in any manner.

[57]. For the reasons recorded hereinabove**,** it is held that **The Raja of Faridkot's Estate Act, 1948 is not a valid enactment after commencement of Constitution of India and is not applicable for succession to the Estate of deceased Raja Harinder Singh Brar** by the appellant-Rajkumari Amrit Kaur.

Now I would deal with second point i.e. Whether Law of Primogeniture is applicable in the succession of Estate of deceased Raja Harinder Singh.

[58]. On the basis of Law of Primogeniture, the appellant in RSA No.2176 of 2018 has staked claim to the estate of deceased Raja Harinder Singh. The discussions made in the preceding paras would show that learned counsel for the appellant in RSA No.2176 of 2018 has made much emphasis on ***Pratap Singh vs. Sarojini Devi's*** case (supra) commonly known as **'**Nabha Royal Family's case**'**, wherein proposition was in respect of impartiblity and primogeniture in relation to *zamindari* estates and other impartible estates which are to be established by custom, but in case of sovereign ruler, they are presumed to be existed under Article 372 of the Constitution of

India.

[59]. With regard to the second point i.e. **whether Law of Primogeniture is applicable in the succession of Estate of deceased Raja Harinder Singh,** Mr. Vivek Bhandari, learned counsel appearing on behalf of the appellant in RSA No.2176 of 2018 argued in the following manner:-

(i). The Rajya Sabha debates on Section 5(ii) of the Hindu Succession Act, 1956 clearly established that what was under discussion in the Rajya Sabha when the provisions of the Section 5(ii) of the Act were discussed**,** was the continuation of male lineal primogeniture amongst Hindu rulers. Punjab State Gazetteer Volume XVI(a)**,** Faridkot State 1915 and genealogical table spanning 14 generations would provide an evidence of the prevalence of male lineal primogeniture in the Faridkot royal family. Gazetteer can be consulted on the matter of public history. Similarly, updated genealogical table spanning 18 generations, report(s) on the administration of the Punjab and its dependencies 1870-71, 1881-82 and 1900-1901 would also provide public documents for consideration and these documents can be looked into on the strength of Section 74 of the Evidence Act. A judicial notice of gazette notifications can be taken in view of ***Thakore Sri Singh Jagat Singh vs. State***

of Gujarat, 1968 SCD 451 and ***Union of India vs. Nihar Kanta Sen & Ors., 1987(3) SCC 465***. Public documents read with Section 5(ii) of the Hindu Succession Act, 1956 and Rajya Sabha debates would advance applicability of rule of lineal primogeniture to the property of Raja Harinder Singh in the matter of succession and after his demise, his brother Kanwar Manjit Inder Singh alone would succeed to the entire property.

(ii). On 18.08.1948, Raja Harinder Singh was the ruler of Faridkot State. He alone was the legislature, executive and judiciary. His word was law of the land. His last word as a sovereign on rule on primogeniture prevalent is spelt out in The Raja of Faridkot's Estate Act, 1948, which deals with his personal estate and not *Gaddi*. Male primogeniture is in existence between 1948-50. More than 50 Princess signed Covenants with the Government of India and merged their territories with India. All of them were male and entered into similarly worded Covenants. Eight princely States namely Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsia and Nalagarh merged together to formed 'PEPSU'. All the States followed the male primogeniture. Even male primogeniture is evident from reports on administration of the Punjab and its dependancies in the years 1870-71, 1881-82 and 1900-01. Male primogeniture was prevalent in Faridkot State

which can be gathered from the oral evidence of Rajkumari Amrit Kaur and Maharani Deepinder Kaur, judgment(s) of ***Col. H.H. Sir. Harinder Singh vs. Commissioner of Income Tax, Punjab and Haryana, Jammu And Kashmir and Himachal Pradesh, 1972(4) SCC 536; Pratap Singh vs. Sarojini Devi, 1994 SCC 734*** and ratio of ***Tikka Satrujit Singh and others vs. Brig. Sukhjit Singh and anr. (known as Kapurthala Royal Family's case).*** Parliamentary debates on Section 5(ii) of Hindu Succession Act was in furtherance of prevalence of male primogeniture.

(iii). It is a settled principle of law that when a custom is repeatedly recognized by Courts, it gets blended into law. Rule of Primogeniture is applicable to the estate of former rulers of Indian States both before and after merger. This phenomenon has been recognized by the Courts in different precedents from time to time. Ratio(s) of ***Rao Kishore Singh vs. Mussamat Gahenbhai***; ***His Highness Maharaja Pratap Singh's (Nabha Royal Family"s case); Tikka Satrujit Singh and others vs. Brig. Sukhjit Singh and anr. (Kapurthala Royal Family's case)*** and ***Yuvraj Prithivisinhji's vs. Brij Rajkumari Sahiba'***s cases (supra) are the prominent cases.

(iv). Signing of Covenant created no fresh right of the Ruler qua the property. It only recognized/continued existing

rights and the legal status of the Ruler qua the property retained by him by submitting a list to the Government qua the property both before and after signing of the Covenant. Section 5(ii) of the Hindu Succession Act has preserved the Rule of Primogeniture in case of Rulers and recognized the fact in cases of former Rulers, the estates descend to single heir. There is no reference beyond this point, therefore, reference can be made to the documents and judgments already produced for determination as to the nature and application of Rule of Primogeniture.

[60]. On the other hand, Mr. Ashok Aggarwal, learned Senior counsel on behalf of the appellants in RSA No.1418 of 2018 while refuting the arguments raised by Mr. Vivek Bhandari, learned counsel for the appellant in RSA No.2176 of 2018 submitted as under:-

(i). The suit property is not proved to be ancestral in nature, therefore, Rule of Primogeniture is not attracted in the present case(s). Except the bald statement made by the appellant in RSA No.2176 of 2018, no oral or documentary evidence was produced to prove the factum of property being ancestral in nature. As per law, the presumption is that the property is presumed to be non-ancestral or self-acquired of the party, unless it is proved by leading cogent evidence. Ancestral

nature of property has to be proved as a fact even if, the admission is made in respect of ancestral nature of property. Ancestral nature of property can only be proved by way of producing excerpt **(***intekhab)* as per para 232 of Hindu Mulla's Code and under the provisions of High Court Rules and orders. In the absence of aforesaid, the property will be presumed to be non-ancestral and self acquired property. Onus was on the plaintiff to prove the property to be ancestral as a matter of fact. It has special connotation and it is not sufficient to prove that last male holder had inherited it from his grandfather and as such it was his ancestral property. It has to be established that it has devolved from common ancestor of the parties and the party asserting the same has to show that the property was common by common ancestor and it had descended to the party or parties concerned by inheritance and in no other manner. Tikka Bharat Inder Singh while appearing as PW-4 has not produced any documentary evidence to prove the suit property to be ancestral property. Agricultural land in village Kaimbwala, agricultural land in village Mauli Jagran and Manimajra, constructed fort known as Surajgarh Fort in Manimajra, shops No.239/9 to 259/15 total area measuring 1617 sq. yards., Hotel site No.12 in Sector 17, Chandigarh are acquired properties. Aforesaid properties cannot be treated to

be ancestral properties. Even Gift deed dated 18.02.1937 executed by Rani Suraj Kaur would make out the aforesaid point. Rani Suraj Kaur inherited the same from her mother Shabdit Kaur which the later inherited her from her husband Raja Bhagwan Singh. Mutation No.207 dated 30.05.1927 was sanctioned in respect of property of village Kaimbwala, Mutation No.768 dated 31.05.1937 was sanctioned in respect of land of village Manimajra. As regards hotel site in Sector 17, having area of 131398.77 sq. yards which was purchased by late Raja Harinder Singh in an open auction on 27.09.1970 as commercial site for Rs.13,40,000/- vide sale letter dated 09.11.1970 issued by the Estate Officer, Chandigarh Administration, UT, Chandigarh. Heavy onus was on the plaintiff to prove that the property is a ancestral property**,** but the plaintiff has failed to prove the same.

(ii). The claim of the plaintiff-Bharat Inder Singh on the basis of Rule of Primogeniture cannot be be accepted as the Rule of Primogeniture was never followed in the family of Raja Harinder Singh with regard to the property which is distinct from *Gaddi*. Even no evidence has been led in this context. Rule of Primogeniture was never followed in the family of Raja erstwhile Faridkot State. Succession to *Gaddi* of Faridkot Estate was under paramountacy of British Crown and under the *sanad* of

Raja and British Crown, the successor was being recognized by the British Crown only. The succession was not automatic, rather it was subject to recognition by the British Crown. It was for the plaintiff Kanwar Manjit Inder Singh to prove the Rule of Primogeniture in the family by leading cogent evidence because the custom cannot be presumed or extended by any presumption or analogy. The custom has to be pleaded and proved for which onus has to be discharged by the plaintiff to the satisfaction of the Court in a most clear and unambiguous manner. A judicial decision recognizing a custom may be relevant, but these are not indispensable for its establishment. When a custom is to be proved by judicial notice, relevant test would be to see if the custom has been acted upon by the Court or superior or co-ordinate jurisdiction in the same jurisdiction to the extent that justifies the Court, which is asked to apply the same. In assumption that persons or class of persons concerned in that area look upon the same has binding in relation to the circumstances similar to those under consideration. In ***Rattan Lal @ Babu Lal Chunilal Samsuka vs. Sundarabai Govardhandas Samsuka, 2018(2) R.C.R. (Civil) 687 (SC)*** and ***MST Sukho vs. Balwant Singh, 1961 PLR 729 DB (Punjab)*** it was observed that the custom cannot be extended by analogy, rather it has to be specifically pleaded

and proved.

(iii). Will dated 27.01.1997 marked as 'Y6' executed by Kanwar Manjit Inder Singh in respect of his inheritance would show that Rule of Primogeniture was never followed in the family, rather the properties were being made subject matter of transfer. Probate proceedings were initiated by Rajkumari Devinder Kaur (daughter of original plaintiff Kanwar Manjit Inder Singh) on the basis of Will dated 27.01.1997 executed by Kanwar Manjit Inder Singh in her favour. The probate case was contested by present appellant-Tikka Bharat Inder Singh by raising a defence that the parties are governed by custom in the matter of succession and Rule of Primogeniture is applicable in the family. At the same time,Tikka Bharat Inder Singh raised a claim of inheritance in his favour on the basis of a Will dated 09.08.1999 allegedly executed by Kanwar Manjit Inder Singh in his faovur. The probate case was decided vide judgment dated 10.03.2013 and the Will dated 27.01.1997 was upheld and the claim of Tikka Bharat Inder Singh on the basis of Rule of Primogeniture was rejected.

(iv). Prior to merger agreement, late Raja Harinder Singh was a sovereign ruler and there was no distinction between state properties and private properties. Prior to merger of the State, the Raja was a sovereign authority and there was no

distinction of public or State properties on the one hand and private properties of the sovereign on the other hand. The properties in question were earmarked by late Raja as his personal properties for which he was competent to do so as a sovereign under the Covenant and the Government by accepting the list of properties submitted by the ruler as personal properties. Para nos.61, 63, 64, 67 and 69 of ***Revathinnal Balagopala Varma's*** case (supra) would show that with the merger of Faridkot State with dominion of India, Rule of Primogeniture, if any, ceased to exist on account of Act of the State and the properties became absolute properties of the ruler. The Covenant or merger was entered into between the then Ruler of Faridkot State with dominion of India on 05.05.1948 (Ex.D-6) and there was no clause/Article recognizing or guaranteeing the continuation of any such Rule of Primogeniture. As per Article XII(3) of the said Covenant, if any dispute arises as to whether any item or property is the private property of the ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the ruler of State concerned as the case may be and the decision of that person shall be final and binding on all the parties concerned provided that no such dispute shall be so referable after 31.12.1948.

(v). As per list of private properties supplied by late Raja Harinder Singh, the same contained all details of immovable properties situated outside Faridkot and within Faridkot State, securities, cash balances and properties to be transferred to Raja Harinder Singh. In response to the letters/letter issued by late Raja, the Rajpramukh of PEPSU vide letter dated 01.08.1949 (Ex.DW3/12) sent the list of properties declared by the Raja to be his private properties. The Government of India vide letter dated 07.04.1952 (Ex.D3/19) declared Faridkot House New Delhi as private property of late Raja Harinder Singh besides other properties. Under Article XII(1) of the Covenant, full ownership of all the private properties declared by the Rajpramukh to be private properties of Raja and Raja was to be the absolute owner of such properties and nobody else can make any claim to the same. Upon approval of the list by Rajpramukh**,** the properties in the hands of the Ruler became as absolute properties and he was competent to deal with the same in the manner he liked. The properties held by erstwhile sovereign/ruler after surrendering his sovereignty to Government of India in pursuance of a Covenant, were his personal properties and the other members of royal family had no claim to the same. Ratio of ***Revathinnal Balagopala Varma's*** case (supra), particularly paras No.69 & 81 to 86

would be attracted.

(vi). The suit properties which were approved by the Rajpramukh under the terms of Covenant (Ex.D-6) as private properties of Raja and after such approval, the properties became absolute properties of the Ruler and he was treating the same as his private and individual properties. Various tax returns were submitted by the late Raja before the Tax Authorities claiming the suit properties to be his individual properties i.e. Ex.DW3/22 to Ex.DW3/36. The Covenant between the ruler and the Indian Government is an act of State and, therefore, no action in the Court can be founded by any citizen of a new State which come into existence unless the successor estate has otherwise recognized such a right. By the aforesaid Act of State, sovereign powers were taken away by the dominion in respect of territory which was not till then a part of its territories either by conquest, treaty or accession or otherwise. Sovereign power including the right to legislate for that territory and to administer it, may be acquired when territory itself emerging in a new State, has become a part of the State, necessary authority to legislate in respect of that territory may be obtained by a legislation and that would be an Act of State and derive its authority not from a municipal law, but from ultra legal or supra legal means. Municipal Courts have no power to

examine the proprietary or legality of an Act which comes within the ambit of an Act of State. Whether the Act of State has reference of public right or private right, it is beyond the jurisdiction of procedural Courts to investigate the rights and wrongs of the transaction and to pronounce upon them and, therefore, such a Court cannot interfere its decision, if any.

(vii). Reference to para nos.11, 13 and 14 of ***Dalmiya Dadri Cement Limited's*** case (supra), would show that the Covenant is an Act of State. In the new set up, residents do not carry with them the rights which they possessed as subjects of the ex-sovereign and that has subjects of a new sovereign, they have only such rights as are guaranteed or recognized by them. The impartible estate or Hindu Undivided Family (if any) existed, disappeared on account of the State Act, the territories of former State of Patiala have emerged into territories of India and all the joint Hindu family property or impartible estate which existed prior to accession, if at all, have ceased to exist as such. As such, State of Patiala having been emerged into Union of India, the impartible estate or Hindu Undivided Family, if any existed, disappeared on account of an Act of State.

(viii). Reference to ***Raja Raghavinder Singh vs. State of Punjab, 1973 PLR 139*** and ***Ambicaprasadsinh Jayra***

Purajsinh vs. Manohar Sinhji, 1998 Online Gujarat 768 would show that grant of private properties to the ruler was an act of State and, therefore, it cannot be said that the property so given to the ruler shall preserve character which it had prior to the entering into Covenant by the Ruler with the Government of India. With the merger into dominion of India, the character of the properties had ceased to exist i.e. ancestral or impartible character on account of merger into the dominion of India and the Rule of Primogeniture, if any, had also ceased to exist on account of merger of Faridkot State with the dominion of India.

(ix) The guarantee under the Covenant was only with regard to succession to *Gaddi* and not to the private properties. The right to private properties of the last ruler depends upon the personal law of succession to the private properties. Article XIV of the Covenant (Ex.D-6) only recognized the succession to *Gaddi* and not to the private properties as mentioned and approved in Article XII of the Covenant. *Gaddi* and private properties are distinct from each other and it cannot be said that *Gaddi* includes private properties. Article XIV of the Covenant, would show that succession according to law and custom to the Gaddi of each covenanting State and to the personal right, privileges, dignities and titles of the Ruler thereof were guaranteed. However question of disputed succession in

respect of a covenanting State which arise after inauguration of the Union, shall be decided by the council of rulers after referring it to a Bench consisting of all the available judges of High Court by the Union and in accordance with the opinion given by the said Bench. Article XIV of the Covenant does not extend the assurance of guarantee to private properties given under Article XII of the Covenant. The guarantee with regard to succession, according to law of custom under the Covenant was given to each covenanting States and to the personal rights, privileges, dignities and title of the Ruler thereof. There is no guarantee with regard to the succession according to law and custom qua the private properties. The Government never guaranteed succession according to law and custom to the private properties of the Ruler.

(x). The White Paper on Indian States published by the Government of India, Ministry of States was issued on 05.07.1948. According to Part XI (Indian States under the new Constitution) under the head “guarantees regarding rights and privileges” only guarantees rights and privileges and not the succession to the property. Further private properties cannot be treated as a right or privilege. Further reference can be made to Part VIII “Settlement of Rulers” private properties. The aforesaid two provisions have been reflected in the White Paper, wherein

it has been stated that prior to Covenants, there was no distinction between private and state property of the Ruler. In the White Paper it has been mentioned that upon integration of States, The Rulers were required to furnish a list of immovable properties, securities and cash balances etc. claimed by them as private property and upon approval of the same, Ruler was entitled to full ownership and enjoyment of the private properties as distinct from state properties.

(xi). In ***Sudhanshusekhar Singh Deo vs. State of Orissa, AIR 1961 SC 196 (Five Judges Bench)*** and ***State of Bihar vs. Sir Kameshwar Singh, AIR 1952 SC 252 (Five Judges Bench)*** it has been held that right to private properties of the last ruler depends upon the personal law and succession to the private properties. The recognition of the Ruler is a right to succeed to the *Gaddi* of the Ruler. This recognition of rulership by the President is an exercise of political power vested in the President and is thus an instance of purely an executive jurisdiction of the President. This Act of recognition and rulership is not associated with the Act of recognition of right to private properties in any manner. As far as privy purse of Ruler is concerned, Article 291 of the Constitution of India provided that the payment of any sum which has been guaranteed to any Ruler of a State as a privy purse shall be

charged/paid out of the consolidated fund of India. The privy purse is not an item of private property to which the Ruler succeeds. Ratio of ***Kunwar Shri Rajendra Singh vs. Union of India, AIR 1970 SC 1949 (Five Judges)*** would be attracted.

(xii). Under the Articles of Covenants there is no specific reference to succession to private properties. The only reference is of recognition of succession. According to law of custom to the *Gaddi* of the State and to the personal rights, privileges and dignities and title of the Ruler. The successor, therefore, would be entitled not only to succeed to *Gaddi* but also to the personal rights, privileges and dignities of the late Ruler. Right to private property has nothing to do with the succession or personal rights, privileges and dignities of the Ruler. One person may as a heir succeed to the private property and another person may be recognized as a heir to the *Gaddi*. Both are two distinct analogies.

(xiii). Reference to the Division Bench judgment of Andhra Pradesh High Court in ***Ahmadunnia Begum vs. Union of India, AIR 1969 AP 423 DB*** and ***Partapsinhji N. Desai vs. Commisioner of Income Tax, 1983 (139) ITR 77 Gujarat DB*** would show that the privileges guaranteed by the Covenant of merger are personal privileges of a ex-ruler and those privileges do not extend to the personal property of the Ruler. The

guarantee or assurance is in the context of personal rights, privileges and dignities of the Ruler and it does not extend to personal property which is different from personal rights. Right to private properties of the last Ruler depends upon personal law of succession to the said private properties.

(xiv). Section 4 of the Hindu Succession Act has abrogated all the Rules and laws of succession hitherto applicable to Hindus, whether by virtue of any text or rule or Hindu Law or any custom or usage having the force of law in respect of all matters dealt within the act. Any custom or usage like primogeniture in force ceased to have any effect after commencement on 17.06.1956. This Act also has precedence over any other law contained in any central or states legislation in force immediately before it came into force and so far as such legislation is inconsistent with the provisions of this Act. Ratio(s) of ***Pritam Singh vs. Assistant Controller of Estate Duty, 1976 PLR 342 (Punjab) (Full Bench*** and ***Guru Amarjit Singh vs. Commissioner of Wealth Tax, 2002(2) R.C.R. (Civil) 418 (DB)*** would be attracted. Sections 4 and 5 of the Hindu Succession Act, 1956**,** provided over riding effect whereby bare perusal of the Act would show that any custom or usage like primogeniture as part of Hindu law in force shall cease to have any effect after commencement of the Act. Section 5 stands

exception to Section 4 which applies to any estate which descends to a single heir as indicated in the provision. A bare perusal of Section 4 would indicate that any custom or usage as part of Hindu Law in force will cease to have any effect after the enforcement of Hindu Succession Act with respect to any matter for which provision is made in the Act. If rule of lineal primogeniture in an estate left by deceased is a customary one, it will certainly cease to have any effect. Section 5 of the Act stands an exception to Section 4 and in *inter alia* provides that the said Act will not apply to any estate which descends to a single heir by the terms of Covenant or agreement entered into by the Ruler of any Indian State with Government of India or by the term of any enactment passed before commencement of this Court. Ratio(s) ***Maharaj Shri Manvendrasinhji Ranjit Singh Jadeja vs. Rajamata Vijaykunverba, 1998 SCC Online 281 (Gujarat);*** ***Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj Pratap Deo, AIR 1981 SC 1937***; ***Commissioner of Income Tax vs. Bhawani Singhji, 2018 Online 11723 Delhi*** and ***Pratapsinhji N. Desai vs. Commissioner of Income Tax, 1983(139) ITR 77 (DB) (Guj.)*** would be attracted. No such proposition is involved in favour of the plaintiff Manjit Inder Singh deceased through Bharat Inder Singh.

(xv). The expression 'estate' as appearing in Section 5(ii)

of the Hindu Succession Act is used with regard to only *Gaddi* and other titles and privileges of the Ruler and not in respect of private properties of the Rulers. Section 5(ii) of the Act provides that the Hindu Succession Act will not apply to any estate which descends to a single heir by the terms of any Covenant or agreement entered into by the Ruler of any Indian State with the Government of India. In the instant case, the Covenant entered into by the Ruler of Faridkot does not contain any provision that the private property (as distinct from State property) would descend to a single heir. Only guarantee was of succession to the *Gaddi* and not to private property. In view of above**,** Section 5(ii) of the Act is not attracted in the present case. When Section 5(ii) is not applicable to the provisions of the Covenant**,** cannot be enforced by the municipal courts as the jurisdiction of the Court is barred under Article 363 of the Constitution of India. For the applicability of Section 5(ii) of the Act**,** pre-requisites envisaged have to be fulfilled. The Covenant does not indicate that the estate stands guaranteed to a single heir by the terms of Covenant. Ratio of ***Commissioner of Income Tax vs. Her Highness Maharani Vijaya Raje Scindia, 1994 (208) ITR 38 (Bombay DB)*** would be attracted.

(xvi). By virtue of 26th Amendment of India coming into force, it invoked all the aforesaid Covenants regarding

preservation of succession on the basis of Rule of Primogeniture which came to an end. The hurdle against applicability of Act of 1956 by virtue of Section 5(ii) of the Act no longer survived. The guarantees and assurance under the Covenants were guaranteed qua Article 362 of the Constitution of India when the Constitution of India adopted Article 291 of the Constitution provided for payment of privy purse. Vide 26th Amendment of 1971, Article 362 and Article 291 have been omitted from the Constitution of India and the concept of rulership and privy purse were abolished. The effect of this amendment is that after this amendment the ruler became an ordinary citizen of India. Thus effect of Covenant came to an end on coming into force of 26th Constitutional Amendment.

(xvii). The Parliament also enacted Rules of Indian States (Abolition of Privileges) Act**,** 1972 for de-recognition of Rulers of Indian States. The abolition of privy purses and the privileges of the Rulers by virtue of this Act, all the Rulers were de-recognized as Rulers. Raja Harinder Singh was also de-recognized as Ruler of Faridkot by the letter of President dated 06.07.1970 (Ex.D-59). This fact has been admitted by the plaintiff himself in the following manner:-

> *"Raja Harinder Singh ceased to be the Ruler of Faridkot Estate on 20.08.1948. All the personal*

privileges/titles of the Ruler of erstwhile Faridkot State were abolished by the Government of India. After amendment of the Constitution to that effect in 1972. Provinces were de-recognized in 1972. The privy purses/privileges were also abolished in 1972 through amendment of the Constitution."

(xviii). With the coming into force the 26th Amendment, the last ruler no longer remained recognized as ruler. He became an ordinary citizen. The Act of 1956 can be said to be an municipal law for the purpose of applicability on all the citizens. The hurdle against applicability of succession act by virtue of Section 5(ii) no longer survived. The effect of Covenant came to an end on coming into force of 26th Amendment of the Constitution of India on 28.12.1971 by which Articles 291 and 362 were omitted and Article 363-A was inserted. By virtue of the said Constitution of India, the Constitution ended within a guarantee regarding succession to *Gaddi*. In terms of that, Article XIV of the Covenant came to an end as such on that date i.e. 28.12.1971, the applicability of Rule of Primogeniture, if any also came to an end.

(xix). The holder of impartible estate can alienate the estate by way of Will. The plaintiff Kanwar Manjit Inder Singh himself executed a Will. The only limitation of this power would flow from the family custom to the control or from the condition

of a tenure which has the same effect. The holder of an impartible estate has power of alienation not only by transfer *inter vivos* but also by Will. Mere absence of any instance of alienation would not be any evidence of custom. Ratio(s) of ***Thakore Shri Vinayasinhji vs. Kumar Shri Natwar Sinhji, IR 1988 SC 247*** and ***Sri. Protap Chandra vs. Raja Jagdish Chandra, AIR 1297 PC 159*** would be attracted.

(xx). The Law of primogeniture is unconstitutional being hit by Article 14 of the Constitution of India. The right in a property which is vested in terms of provisions of Hindu Succession Act cannot be taken away except in terms of provisions of another statute which would have an overriding effect. Such special statute could be a complete Code which shall ordinarily have a later statute and it must contain a non-obstante clause. Law of Primogeniture is no more applicable in India and such a law is unconstitutional being hit by Article 14 of the Constitution of India. Ratio(s) ***N. Padmamma vs. Ramakrishna Reddy, 2008(15) SCC 517*** and ***Anu Garg vs. Hotel Association, 2008(1) R.C.R. (Civil) 240 (SC)*** would be attracted. The Raja has also treated the properties in village Kaimwala, Mauli Jagra and Manimajra and hotel site in Sector 17 as his individual properties. In the absence of any evidence of ancestral nature of the properties, these properties are personal properties of

late Raja Harinder Singh and would be governed by normal law of succession. No evidence has been led that Jat Sikh in Punjab were governed by custom. The latest observation of the Hon'ble Apex Court in ***Talat Fatima Hasan's*** case (supra) in view of consideration made in para nos.38, 40, 41, 43, 44, 46 and 47 of the judgment would show that the succession is to be governed by personal law of succession and not by Rule of Primogeniture in any manner.

[61]. Mr. M.S. Khaira, learned Senior counsel appearing on behalf of the appellant-Rajkumari Amrit Kaur in RSA No.2006 of 2018 refuted the claim of the plaintiff-Bharat Inder Singh on the same grounds and contended that Rule of Primogeniture is unsustainable.

[62]. Before deciding the validity of Law of Primogeniture, **effect of judgment dated 22.07.1996 passed by the UK High Court Justice, Chancery Division relating to Faridkot Family Settlement Trust** is also to be seen.

[63]. Late Raja Harinder Singh made the Faridkot Family Settlement Trust (Ex.PX-25 and Ex.PX-26) in 1955. All the four

children were beneficiaries therein. The aforesaid Trust provided income to all the four children and was having two components. Income of one portion was to be paid to Raja's son Tikka Harmohinder Singh during his life time. The income of the second portion was shared equally amongst three daughters. After the death of Rajkumari Mahipinder Kaur (youngest daughter of Raja), her share of income was being shared equally between two surviving sisters i.e. Maharani Deepinder Kaur and plaintiff-Rajkumari Amrit Kaur. The income which was being paid to late Tikka Harmohinder Singh is being paid to the plaintiff on the basis of Rule of Primogeniture as applicable to the dynasty. Now question arises whether decision regarding applicability of rule of primogeniture as held by UK High Court of Justice, Chancery Division would apply to the present case, wherein applicability of primogeniture is being pressed by the appellant in RSA No.2176 of 2018. Learned Senior counsel in RSA No.2006 of 2018 also claims that the judgment being conclusive would advance the case of Rajkumari Amrit Kaur qua her claim to succession in India as well.

[64]. Evidently, the judgment dated 22.07.1996 passed by the aforesaid Court at UK binds the parties to the litigation and that was not in respect of inheritance of the estate of Raja after his demise in favour of surviving children. The said litigation is

limited to the Trust property to the extent of share of late Tikka Harmohinder Singh. The said judgment cannot be read in piecemeal. The executory mechanism attached to the judgment dated 22.07.1996 cannot be appreciated in the present context as the said judgment has been passed by a foreign Court. The question whether United Kingdom (UK) is a reciprocating country as envisaged in Section 44-A CPC or not would require determination of point in accordance with law. Whether that judgment is executable in the present context or not is a question which is not covered under the present litigation. The Chancery judgment is an ex parte judgment which was merely for direction to the trustees. It is only based upon a legal opinion of a Lawyer. The Judge while delivering the judgment has himself observed that the party would be free to litigate on the issue amongst themselves and the proper Court for the decision on the issue of primogeniture was the Court in India. In view of above, the judgment has no legal value and has no applicability in the present case(s), as no right flows from it qua the Estate in India involved in these cases. Kanwar Manjit Inder Singh was not even party to the aforesaid case. In the reported case i.e. ***1972(4) SCC 536***, wherein there is a reference of Trust deed dated 01.04.1955, which was executed by the Ruler and reference was made to Rule of Primogeniture. It is completely

misplaced as the Trust Deed was in respect of property situated in UK only and it does not talk about any other properties in India. The said Trust was executed on 01.04.1955 i.e. prior to the commencement of Hindu Succession Act, 1956. Therefore, Rule of Primogeniture, if subsisting stood abrogated. Furthermore, in the said judgment, there was neither any issue, nor any finding with regard to the applicability of Rule of Primogeniture in the family of Ruler.

[65]. Under Section 13 CPC, a foreign judgment shall be conclusive as to the matter thereby directly adjudicated upon between the same parties or between the parties under whom they or any of them claim litigating unde the same title except:-

(a) *Where it has not been pronounced by a court of competent jurisdiction;*

(b) *Where it has not been given on the merits of the case;*

(c) *Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;*

(d) *Where the proceedings in which the judgment was obtained are opposed to natural justice;*

(e) Where it has been obtained by fraud;

(f) Where it sustains a claim founded on a breach of any law in force in India."

[66]. Whether the aforesaid judgment dated 22.07.1996 would fall strictly under the domain of Section 13 CPC**,** would require to meet all ingredients as narratted hereinabove. Evidently while paying share of late Tikka Harmohinder Singh in favour of the plaintiff on the basis of application of Rule of Primogeniture**,** as applicable to the dynasty**,** does not mean that rule of primogeniture is applicable to the estate of Raja. Different covenants and interpretation of law based on amendments carried out in Constitution of India were not the subject matter of interpretation before the UK High Court of Justice, Chancery Division. The judgment dated 22.07.1996 passed by the said Court does not advance any such interpretation of applicability of Rule of Primogeniture in the present case to bind the parties to the litigation as suggested by the appellant in RSA No.2006 of 2018.

[67]. In view of above, the only irresistible conclusion is that the **judgment dated 27.07.1996 passed by the UK High Court of Justice, Chancery Division has no application in the context of applicability of Rule of Primogeniture** in the present case.

[68]. Again before adverting to the **validity of Law of Primogeniture,** it would also be necessary to appreciate the **effect of Will dated 27.01.1997 executed by Kanwar Manjit Inder Singh (brother of the Raja)**.

[69]. A registered Will dated 27.01.1997 was executed by Kanwar Manjit Inder Singh, vide which earlier Will dated 05.09.1995 relating to his property was cancelled. Vide the aforesaid Will, the entire movable and immovable properties situated wherever in India or outside India were willed away in the following manner:-

> (a) Out of agricultural land consisting of Khasra Nos.69 (9-12), 68 (20-8), 65 (20-08), 65 (20-08), 93 (20-8), 94(22-9), 91 (16-07), 92 (16-0), 68 (16-0), 67(16-0), 70 (7-9), 3073/1507 (10-2), 1080 (14-11) measuring 189 Kanals 10 Marlas and land measuring 95 Marlas 18 Marlas consisting of Khasra Nos.71(5-2), 72(16-0), 80 (16-0), 81 (16-0), 90 (14-7), 82 (16-0), 89 (12-9) situated at village Dhudi, Tehsil and District Faridkot would be inherited by the daughter of testator i.e. Rajkumari Devinder Kaur and grand daughter Heminder Kaur/daugher of Rajkumari Devinder Kaur in equal shares.

(b) Out of agricultural land measuring 82 Kanals 19 Marlas consisting of Khasra No.1061 (16-11), 1062 (18-9), 1071 (13-16), 1070 (13-16), 1037 (20-7) situated in Village Dhudi, Tehsil and District Faridkot would be inherited by grand son of the testator namely Amarinder Singh along with all buildings constructed thereon at present or in future.

(c) Out of agricultural land measuring 73 Kanals 15 Marlas comprising in Khasra No.88 (10-11), 83 (16-0), 78 (10-0), 74 (10-16), 73 (16-8) and 79 (10-0) situated in village Dhudi, Tehsil and District Faridkot would be inherited by the grand son of the testator namely Ravi Inder Singh along with all buildings constructed thereon at present or in future.

(d) Land measuring 91 Kanals comprising in Khasra Nos.86 (16-1), 85 (16-0), 76 (11-13), 75 (6-13), 77 (16-0), 84 (16-0) and 87 (16-13) situated in village Dhudi Tehsil and District Faridkot would be inherited by son of the testator namely Bharat Inder Singh. He will inherit this land as limited owner and would not be entitled to sell or mortgage the same and would only be entitled to income from this land. After his death, the agricultural land shall be inherited

by two grand sons namely Amarinder Singh and Ravi Inder Singh in equal shares. In case any of the grand sons pre-deceased Tikka Bharat Inder Singh, the same would be inherited by the son of the grand son, who will pre-deceased and if no heir is there, the same shall be inherited by the surviving grand son and his son(s)/daughter(s).

(e) The residential house situated at Faridkot known as Council House in Khasra No.3253/2 would be inherited by son of the testator namely Tikka Bharat Inder Singh, grand sons namely Amarinder Singh and Ravi Inder Singh in equal shares. However, Tikka Bharat Inder Singh would inherit his share in the said house as limited owner and he would be entitled to live in it during his life time and after his death, his share would devolve upon two grand sons namely Amarinder Singh and Ravi Inder Singh

(f) All deposits in Indian bank and foreign banks shall be inherited by daughter of the testator namely Rajkumari Devinder Kaur. The other provisions were already made in respect of immovable properties.

(g) It was recited in the Will itself that Tikka Bharat Inder Singh son of the testator was not having cordial relations with him and he was not happy with him. However, the testator observed that it would not be proper to mention the reasons for not con-cordial relations of his son with him, however he made provision for his son as per his parental duty. The farm machinery would be inherited by his son Tikka Bharat Inder Singh. Any other movable or immovable property owned by the testator, apart from the property mentioned earlier shall be inherited by the daughter of the testator namely Rajkumari Devinder Kaur.

[70]. Perusal of the Will would show that Tikka Bharat Inder Singh was given limited rights in the properties. Rajkumari Devinder Kaur daughter of Kanwar Manjit Inder Singh filed a petition under Section 276 of Indian Succession Act for grant of probate of Will dated 27.01.1997 against general public and Tikka Bharat Inder Singh. The Probate case was contested by Tikka Bharat Inder Singh on the ground that the Will dated 27.01.1997 was a forged and fictitious document. He relied upon Will dated 09.08.1999 executed by Kanwar Manjit Inder Singh in his favour. Probate Court i.e. District Court, Chandigarh

vide order dated 10.05.2013 held that the parties are not governed by primogeniture. Tikka Bharat Inder Singh could not prove execution and validity of Will dated 09.08.1999, whereas execution and validity of Will dated 27.01.1997 were duly proved. The Court also found that if the deceased had executed the Will as propounded by Tikka Bharat Inder Singh i.e. Will dated 09.08.1999, the same would have the recital of cancellation of Will dated 27.01.1997 executed by testator in favour of Rajkumari Devinder Kaur. In the absence of any such recital, the Court found that the execution of Will dated 27.01.1997 was duly proved.

[71]. Rajkumari Devinder Kaur had already expired at the time of decision dated 10.05.2013 in the aforesaid probate case. Her daughter Heminder Kaur was impleaded as her legal heir by the High Court vide order dated 01.05.2009. Letter of administration qua movable and immovable properties as detailed in the Will dated 27.01.1997 was ordered to be issued in favour of Heminder Kaur on filing of required stamps/fee after obtaining market value of the said movable and immovable properties from the concerned authorities. Appeal is statedly pending against the said judgment without any interim stay. It is apparent that in the Will dated 27.01.1997, Tikka Bharat Inder Singh was not given ownership rights in any property except life

interest in few properties. His claim qua the property of Raja Harinder Singh on the basis of rule of primogeniture would not survive.

[72]. Even if the judgment of probate granting probate of Will in favor of Rajkumari Devinder Kaur through Ms. Heminder Kaur is a judgment in *rem* in terms of Section 41 of the Indian Evidence Act, it will bind the parties in the context of properties contained therein. The Will in question was in respect of private properties of Kanwar Manjit Inder Singh. That has nothing to do with the properties of Raja. Whatever Ms. Heminder Kaur could get, that was also the part of private properties of Kanwar Manjit Inder Singh and that had nothing to do with *Gaddi* or properties of Late Raja Harinder Singh. The civil suit on re-numbering as 4193 dated 31.08.2010 from original Civil Suit No.75 of 1992 is based on rule of primogeniture. The entire claim is rested upon the aforesaid doctrine/phenomenon. Kanwar Kanwar Manjit Inder Singh died on 05.10.1999 and thereafter his son Bharat Inder Singh and his daughter Rajkumari Devinder Kaur were brought on record as legal representatives of plaintiff. Rajkumari Devinder Kaur died on 06.01.2009 and her daughter Ms. Heminder Kaur was impleaded as legal representative of deceased Rajkumari Devinder Kaur. During trial of the case, no independent arguments were addressed on behalf of Ms.

Heminder Kaur. Bharat Inder Singh also died during pendency of the appeal. His eldest son Kanwar Amarinder Singh was brought on record as legal representative. Kanwar Amarinder Singh claims inheritance of the entire property of the Raja Harinder Singh on the basis of Rule of Primogeniture, being the eldest male member of the family. Rajkumari Heminder Kaur has no stake in the case as she cannot get anything as rule of primogeniture also excludes the female. Rajkumari Heminder Kaur, filed an application for dismissal of the appeal. Filing of the application is attributed to the trustees of Maharwal Khewaji Trust against Bharat Inder Singh and his legal representative Amarinder Singh in order to create some unwarranted obstacle in the case, despite knowing the fact that Rajkumari Heminder Kaur has no entitlement in the property.

[73]. It has also come on record that the Trustees throughout sponsored various litigations on behalf of Rajkumari Heminder Kaur by incurring expenses from the Trust's fund against Tikka Bharat Inder Singh. Ex.PX-103 to Ex.PX-105 are the instances showing the payments made from the Trust's fund. The transaction mentioned in the application dated 15.02.2014 also proved the fund utilization details which were brought on record on 01.03.2014. From these instances, it was apparent on record that the Trust had made payments of legal

expenses of one Rajkumari's case for the dates of hearing on 22.10.2012, 15.12.2012 and 21.12.2012 in the amount of Rs.16,500/-, Rs.16,500/- and Rs.27,000/- respectively. In the probate case also, the legal experts were paid by the Trust. It has been brought on record that the Maharwal Khewaji Trust had sponsored the litigation against Tikka Bharat Inder Singh out of the Trust's fund. If Rajkumari Heminder Kaur had any grievance against the judgment of the trial Court, she could have challenged the same in appeal by paying requisite court fee. Admittedly, she has not done so, therefore, she was not competent to seek dismissal of the appeal by filing any application.

[74]. Evidently, the property of Kanwar Manjit Inder Singh is distinct from the property of Raja Harinder Singh. The claim to rule of primogeniture viz-a-viz. the property of Raja/former ruler of Faridkot State, who was signatory to the Covenant with Government of India and who had submitted a list of private properties in accordance with the Covenant as approved by the Government of India, was distinct, whereas Kanwar Manjit Inder Singh was not the Ruler of former Indian State, therefore, separate and distinct properties cannot be made subject matter of any such plea of primogeniture. The litigation of Rajkumari Heminder Kaur was evidently sponsored by the Trust.

[75]. The details regarding withdrawal of the amount from the Bank and the expenditure for the period 01.01.2014 to 31.01.2014 have been proved at the instance of Trust and the amount was admittedly paid towards litigation of probate between Rajkumari Devinder Kaur and Bharat Inder Singh. Kanwar Manjit Inder Singh had owned some private properties which were not subject to Section 5(ii) of the Hindu Succession Act. The dispute in that context cannot be treated to be a disputed covered under rule of primogeniture because the estate of Kanwar Manjit Inder Singh was not subject to Section 5(ii) of the Hindu Succession Act and the Will executed by Kanwar Manjit Inder Singh was under challenge by Rajkumari Devinder Kaur vide separate case against her brother Bharat Inder Singh.

[76]. In view of aforesaid position, **Will dated 27.01.1997 probated by the competent Court does not advance any such plea regarding validity of Rule of Primogeniture in any manner**. The findings recorded in the order dated 10.05.2013 passed by the Probate Court are in respect of the scope of Will dated 27.01.1997 executed by Kanwar Manjit Inder Singh which was in respect of his private property which is distinct than the properties of late Raja Harinder Singh. The findings in the order dated 10.05.2013 recorded by the probate Court/District Court,

Chandigarh do not in any manner advance any such case of validity of Rule of Primogeniture.

[77]. In view of aforesaid factual position, the arguments raised by Mr. Arun Jain, learned Senior counsel duly assisted by Mr. Amit Jain, Advocate cannot be accepted in the context of the case. **Rajkumari Heminder Kaur has no subsisting right in the property of late Raja Harinder Singh.** The application filed by her for dismissal of the appeal has no legs to stand. The same is dismissed.

[78]. Now coming to the conclusion **whether Law of Primogeniture is applicable in the succession of Estate of deceased Raja Harinder Singh,** it can be seen that admittedly appellant in RSA No.2176 of 2018 has claimed the property to be the ancestral property in order to attract the Rule of Primogeniture which according to him exists on presumptory notion in case of rulers. Ancestral nature of the property can be proved only by way of producing Excerpt (*Intekhab)*/pedigree table**,** as per requirement of Volume 1, Chapter 9, Rules 5 & 6 of High Court Rules and Orders**,** and as per para No.232 of Mullah's Law. The properties situated in village Kaimbwala, Mauli Jagran and Manimajra-fort known as Surajgarh Fort Manimajra and Hotel site No.12 in Sector 17, Chandigarh are

proved to be self acquired properties. No evidence has been led by the plaintiff/appellant to discharge the onus to show that the properties have descended from common ancestor and only by rule of descent and not otherwise. Appellant while appearing as PW-4 has not adduced any documentary evidence to show that the properties in question are ancestral properties. The succession to Gaddi of the Faridkot Estate was under the paramountcy of the British Crown. The successor was being recognized by the Britishers only and the same was not automatic, rather it was subject to the approval/recognition by the British Crown. Primogeniture is not codified law. The alleged custom i.e. rule of primogeniture has to be pleaded and proved by way of evidence. The person who relies upon the existence of custom/primogeniture has to discharge the onus of proving the same to the satisfaction of the Court in the most innocuous manner. The custom cannot be extended by analogy. Specific custom has to be pleaded with reference to necessary particulars in the pleadings and thereafter to be proved by the asserting party by way of cogent and admissible evidence.

[79]. Prior to merger agreement, the property in question was held by the late Raja as sovereign and there was no distinction between the State and the private properties, as sovereign was owner of all the properties. After the merger

agreement and accession to dominion of India, the properties were earmarked by late Raja as his personal properties for which he was competent to do so under the Covenant. After approval of the properties in the list submitted by the Raja as his personal properties, the same ceased to be State properties. Reference can be made to para nos.61, 63, 64, 67 and 69 of ***Revathinnal Balagopala Varma's*** case (supra).

[80]. On merger of Faridkot State with dominion of India, Rule of Primogeniture, if any, ceased to exist on account of Act of State. In the Covenant dated 05.05.1948, there is no clause/article which either recognizes or guarantees the continuance of alleged Rule of Primogeniture. The Covenant has been reproduced in the White Paper. As per Article XII of the Covenant, the Ruler of each Covenanting States was entitled to the full ownership, use and enjoyment of all the private properties as distinct from the State properties, belonging to him on the date of his making over the administration of the State to Rajpramukh. As per clause 2 of Article XII, the Ruler of each covenanting States was required to furnish an inventory of all the immovable properties, securities and cash balances to the Rajpramukh before 20.09.1948. This inventory is in the context of immovable properties, securities and cash balances held by the Ruler as private properties. On

approval of list by Rajpramukh, the properties in the hands of the Ruler became his absolute properties and he was entitled to deal with his properties in the manner he liked. Once the properties have been retained by the Ruler as his personal properties after surrendering the sovereignty to Government of India, pursuant to Covenant, then the properties held by him are his private properties and other members of royal family had no claim. Reference can be made to para nos.69 & 81 to 86 of ***Revathinnal Balagopala Varma's*** case (supra).

[81]. After submission of list and approval of the same by Rajpramukh, the Raja treated the suit properties to be his private and individual properties, which is apparent from various Tax Returns submitted by him before the Tax Authorities, claiming the suit properties to be his individual properties in view of Ex.D3/22 to Ex.D3/36. The Covenant entered into by the Ruler is an Act of State between two sovereigns. No action in a Court of law can be founded by any citizen of a new State. In the new set up, the residents do not carry with them the rights which they possessed as subjects of the ex-sovereign and that as subjects of new sovereign, they have only such rights as are guaranteed or recognized by him. Reference can be made to para nos.11, 13 and 14 of ***Dalmiya Dadri Cement Limited*** case (supra).

[82]. The impartible estate of Hindu Undivided Family, if any, existed prior to Covenant entered by the Ruler disappeared on account of an Act of the State. The territories of former State of Patiala have merged into the territories of India and all the joint Hindu family property/impartible estate**,** which existed prior to the accession have ceased to exist on account of Act of the State. The grant of private properties to the Ruler was an Act of State and such properties cannot maintain the earlier character which was prior to entering into Covenant by the Ruler with Government of India. Impartibility of Estate ceased to exist on account of merger into the dominion of India and, therefore, Rule of Primogeniture, if any, ceased to exist on account of merger of Faridkot State with dominion of India. The guarantee under the Covenant was only in respect of succession to *Gaddi* and not to the private properties. The right to private properties of the Ex-Ruler depends upon the personal law of succession to such private properties.

[83]. Article XIV of the Covenant only recognized the succession to ***"Gaddi"*** and not to the private properties**,** as approved in Article XII of the Covenant. *Gaddi* and private properties are two distinct connotations and it cannot be said that Gaddi included private properties in any manner. Clause I of Article XIV of the Covenant prescribed that the succession**,**

according to law and custom**,** to the Gaddi of each covenanting State and to the personal rights, privileges, dignities and titles of the Ruler thereof is hereby guaranteed. Article XIV does not extend the assurance and guarantee to private properties in any manner. The guarantee with regard to succession, according to law and custom is given to the Gaddi of each covenanting State and to the personal rights, privileges, dignities and title to the Ex-Rulers thereof. There is no guarantee with regard to succession according to law and custom qua the private properties. The Government never guaranteed succession according to law and custom to the private property of the Ruler which he kept after submission of the list to the Rajpramukh. Reference can be made to White Paper on India States published by Government of India, Ministry of States issued on 05.07.1948. **Part XI of the Indian States under the new Constitution under the head "Guarantees Regarding Rights and Privileges" and part VII "Settlement of Rulers Private properties"** would show that the nomenclature has been reflected in the White Paper**,** wherein it has been mentioned that prior to the Covenant, there was no distinction between private and State property of the Ruler. In the White Paper, it has been mentioned that upon integration of States, Ruler was required to furnish list of immovable properties, securities and cash

balances etc. claimed by him as private property and upon approval of the same, the Ruler was entitled to full ownership and enjoyment of private properties as distinct from State properties. The personal privileges of the Ex.-Ruler and those privileges have nothing to do with the personal property of the Ruler. The guarantee or assurance are in respect of personal rights, privileges and dignities of the Ruler. It does not extend to personal property which is different from personal rights, privileges and dignities of the Ruler. In this context reference can be made to the ratio of ***Sudhansu Shekhar Singh Deo vs. The State of Orissa and another, AIR 1961 SC 196*** (Five Judges Bench) and ***State of Bihar vs. Sir Kameshwar Singh, AIR 1952 SC 252*** (Five Judges Bench).

[84]. The right to private properties of the Ex-Ruler depends upon personal law of succession. The recognition of the Ruler is a right to succeed to the *Gaddi* of the Ruler alone. This recognition of the Rulership by the President is an exercise of political power vested in the President and the same is an instance of pure executive jurisdiction of the President. The Act of recognition of Rulership is not associated with any Act of recognition of right to private properties. For privy purse of a ruler, Article 291 of the Constitution of India was enacted. Payment of any sum which has been guaranteed to any Ruler of

a State as a privy purse shall be charged on and paid out of the Consolidated Fund of India. Such privy purse is not an item of private property to which the Ruler succeeds. Reference to para nos.9 and 13 of ***Kunwar Shri Vir Rajendra Singh vs. Union of India, 1970 AIR 1946*** can be made. Personal rights undoubtedly are personal qua the Ruler, but the rights to private property have nothing to do with the succession to the *Gaddi.* Ratio(s) of ***Ahmadunnia Begum vs. Union of India*** and ***Partapsinhji N. Desai vs. Commissioner of Income Tax*** (supra) can be relied.

[85]. Section 4 of the Hindu Succession Act abrogated all laws of succession and custom etc. applicable to Hindus**,** whether by virtue of any text or rule of Hindu Law or any custom or usage having the force of law. Any custom or usage like primogeniture in force shall cease to have effect after enforcement of The Hindu Succession Act, 1956. This Act also supersedes any other law contained in any central or State legislation in force immediately before this Act came into force insofar as such legislation is inconsistent with the provisions contained in the Act. Ratios of ***Pritam Singh vs. Assistant Controller of Estate Duty*** and ***Guru Amarjit Singh vs. Commissioner of Wealth Tax's*** cases (supra) can be relied in this context.

[86]. Sections 4(i)(a) and 5 of Hindu Succession Act of 1956 provide overriding effect of the Act. Any custom or usage like primogeniture as part of Hindu Law in force shall cease to have any effect after enforcement of the Act. Section 5 stands exception to Section 4 which apply to any Estate which descends to a single heir as indicated in the provision itself. Section 4 of the Act would indicate that any custom or usage as part of Hindu Law in force will cease to have effect after enforcement of Hindu Succession Act with respect to any matter for which provision is made in the Act itself. If Rule of lineal primogeniture in an estate left by the deceased Ruler is a customary one then it will certainly cease to have any effect.

[87]. Section 5 stands as an exception to Section 4 of the Hindu Succession Act which provides that the Act will not apply to any **'**estate**'** which descends to a single heir by the terms of Covenant or agreement entered into by the Ruler of any Indian State with Government of India or by the terms of any enactment passed before the commencement of this Act. The discussion made by the different Courts in ***Maharaj Shri Manvendrasinhji Ranjit Singh Jadeja vs. Rajamata Vijaykunverba;*** ***Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj Pratap Deo;*** ***Commissioner of Income Tax vs. Bhawani Singhji***, and ***Partapsinhji N. Desai vs.***

Commisioner of Income Tax's cases (supra) are the case laws on the aforesaid subject which have decided the issue conclusively.

[88]. The expression 'estate' appearing in Section 5(ii) of the Hindu Succession Act, 1956 is used only with regard to Gaddi and other titles and privileges of Ruler and not the private properties of the Ruler. The aforesaid Section 5(ii) of the Act provides that the Hindu Succession Act will not apply to any estate which descends to a single heir by the terms of any Covenant or agreement entered into by the Ruler of any Indian State with the Government of India. In the instant case, the Covenant in question does not contain any provision that the private property as distinct from the State property would descend to a single heir. Only guarantee was of succession to the *Gaddi* and not the private property. Therefore, Section 5(ii) of the Hindu Succession Act is not attracted to the present case and is thus not applicable. The provision of the Covenant cannot be enforced by the municipal Courts as the jurisdiction of the Court is barred under Article 363 of the Constitution of India. The word 'estate' in Section 5(ii) of the Act is confined to the properties other than private properties of the Ruler. The right to the private properties of the Ruler shall depend upon the personal law of succession by which the family is governed,

therefore, Section 5(ii) of the Act has no application.

[89]. The Covenant does not indicate that the estate stands guaranteed to a single heir by the terms of Covenant or agreement entered into between the Ruler and the Union of India. The Covenant came to an end on coming into force the 26th Amendment of the Constitution of India. The effect of Covenant, if any, in respect of preservation of succession on the basis of Rule of Primogeniture came to an end. The hurdle against applicability of the Act of 1956 by virtue of Section 5(ii) of the Hindu Succession Act, no longer survived thereafter. The guarantees and assurances under the Covenant were guaranteed by Article 362 of the Constitution of India. Article 291 of the Constitution of India provided for payment of privy purses. Vide the 26th Amendment of 1971, Articles 291 and 362 of the Constitution of India have been omitted and the concept of rulership and privy purses were abolished. After this amendment, the rulers became ordinary citizens of India. Therefore, the effect of the Covenant came to an end on coming into force of 26th Constitutional Amendment.

[90]. The Parliament also enacted the Rulers of Indian States (Abolition of Privileges) Act 1972 for de-recognition of Rulers of Indian States and Abolition of Privy Purses. The privileges of all the Rulers by virtue of this Act were de-

recognized as Rulers. In the instant case also, Raja Harinder Singh was also de-recognized as Ruler of Faridkot State by the letter of President of India vide letter dated 06.09.1970 (Ex.D-59). The Raja Harinder Singh has himself admitted this fact as mentioned in earlier part of the judgment. In 26th Amendment of the Constitution of India, Article 363-A was inserted. By virtue of constitutional amendment, even the guarantee regarding succession to *Gaddi* in terms of Article XIV of the Covenant (Ex.D-6) came to an end and as such on 28.12.1971**,** the applicability of Rule of Primogeniture, if any, also came to an end.

[91]. It is well settled that even holder of an impartible estate can alienate the estate by a Will. The ratio(s) of ***Mirza Raja Pushpavathi Vijayram vs. Pushpavathi Visweshwar Gajapathiraj, AIR 1964 SC 118*** and ***Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj Pratap Deo, AIR 1981 SC 1937*** can be referred in the aforesaid context. The holder of an impartible estate has power to alienate not only by transfer *inter vivos*, but also by Will. Mere absence of any instance of alienation would not be considered as an evidence of custom. In this context reference can be made to ***Thakore Sri Vinayasinhji vs. Kusum Shri Natwarsinhji, AIR 1988 SC 247*** and ***Sri Protap vs. Raja Jagdish Chandra, AIR 1927 PC 159***.

[92]. In view of Article 13 of the Constitution of India, all laws which are in consistent with the provisions of Part III of the Constitution of India and which were in force immediately before commencement of the Constitution, shall be void. Article 14 and 15 of the Constitution of India would be attracted. Right of inheritance and succession to the property is a statutory right and such right cannot be taken away, except in terms of provisions of another Act, which would have an overriding effect. Such special statute should be a complete Code and it shall ordinarily be later statute and must contain a *non-obstante* clause. The ratio(s) of ***N. Padmamma vs. Ramakishna Reddy, 2018(15) SCC 517*** and ***Anu Garg vs. Hotel Association, 2008(1) R.C.R. (Civil) 240 SC*** can be considered in support of aforesaid legal position.

[93]. Even rights and privileges conferred upon the Ruler under the Covenant came to an end with his death, being purely personal in character. They are not inheritable and do not devolve as of right on the next heir. The right to Ruler's personal property, would be governed by the personal law of succession applicable to him. Late Raja Harinder Singh treated the properties i.e. land in villages Kaimbwala, Mauli Jagran and Manimajra Fort known as Ramgarh Fort at Manimajra and Hotel Site No.12 in Sector 17, as his individual properties. Late Raja

Harinder Singh filed his IT Returns and Wealth Tax Returns in respect of these properties by considering the same to be individual personal properties. These properties cannot be termed as ancestral in nature, rather these properties were self acquired properties and were not part of the list given to the Rajpramukh. Sources of acquisition of these properties have already been detailed in earlier part of the judgment.

[94]. The controversy regarding Rule of Primogeniture is no more *res integra* i.e. whether succession to the properties declared by an erstwhile Ruler to be his private properties in the agreement of accession with the dominion of India will be governed by rule of succession applicable to the "*Gaddi*" (Rulership) or by personal law applicable to the Ruler. This proposition has been conclusively decided by the Hon'ble Apex Court in the latest judgment of ***Talat Fatima Hasan through her constituted Attorney Sh. Syed Mehdi Husain vs. Nawab Syed Murtaza Ali Khan (D) by LRs and others, 2019 SCC Online SC 947***. In the aforesaid case popularly known as 'Rampur case**'.** Nawab Raza Ali Khan was the ruler of Rampur. The State of Rampur merged into the Union of India. Merger Agreement was signed by the Nawab on 15.05.1949. Nawab Raza Ali Khan gave list of his private properties in terms of Merger Agreement. He died intestate on 06.03.1966. The

relevant provision of the instrument of accession executed by late Nawab Raza Ali Khan on 15.05.1949 are Articles 2, 4 and 6 which are relevant in the present context. Bare perusal of Articles 2, 4 and 6 of the aforesaid Covenant/Merger Agreement dated 15.05.1949 in Rampur's case would show that these Articles in pith and substance are the same and identical with Articles XIII, XII and XIV of the Covenent dated 05.05.1948 in the present in hand. It would be relevant to give a comparative chart and the language used in Articles 2, 4 and 6 viz.-a-viz. the Articles XIII, XII and XIV i.e. in both the Covenants.

Covenant dated 15.05.1949 in Rampur's case	Covenant dated 05.05.1948 entered into between Union of India and Ruler of Faridkot
Article 2 *The Nawab shall continue to enjoy the same personal rights, privileges, immunities, dignities and titles which he would have enjoyed had this agreement not been made.*	***Article XIII*** *The Ruler of each Covenanting State, as also the members of his family, shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State, immediately before the 15th day of August, 1947.*
Article 4 *The Nawab shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of this agreement.* *The Nawab will furnish to the Dominion Government before the 30th June 1949 an inventory of all the immovable property, securities and cash balances held by him as such private properties.*	***Article XII*** *(1) The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to Raj Pramukh.* *(2) He shall furnish to the Raj Pramukh before the 20th day of September, 1948, an inventory of all the immovable properties, securities and cash balances held by him as such private property.*

Covenant dated 15.05.1949 in Rampur's case	Covenant dated 05.05.1948 entered into between Union of India and Ruler of Faridkot
Article 4 *If any dispute arises as to whether any item of property is the private property of the Nawab or State property, it shall be referred to a judicial officer nominated by the Government of India and the decision of that officer shall be final and binding on both parties.*	***Article XII*** *(3) If any dispute arises as to whether any item of property in the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned.* *Provided that no such dispute shall be referable after the 30th June 1949.*
Article 6 *The Dominion Government guarantees the succession according to law and custom to the gaddi of the State and to Nawab's personal rights, privileges, immunities, dignities and titles.*	***Article XIV*** *(1) The succession, according to law and custom, to the Gaddi of each Covenanting State, and to the personal rights, privileges, dignities and titles of the Ruler thereof, is hereby guaranteed.* *(2) Every question of dispute succession in regard to a Covenanting State which arises after the inauguration of the Union shall be decided by the Council of Rulers after referring it to a bench consisting of all the available Judges of the High Court of the Union and in accordance with the opinion given by such bench.*

[95]. In the aforesaid cited case, the stand of the defendants was that the property was not, strictly speaking, the personal property of the Nawab. According to them, the property was attached to "*Gaddi"* of the State of Rampur and, therefore, it was governed by the law of succession which was applicable to the rulership of Rampur which was the rule of male lineal primogeniture. Apparently, the aforesaid stand of the defendants in the aforesaid cited case is exactly the same as

taken by the appellants in RSA No.2176 of 2018. The issue which was debated in the aforesaid case is whether the properties held by Nawab Raza Ali Khan would devolve upon on his eldest son by applying the Rule of Primogeniture or would be governed by Muslim Personal Law (Shariat) Application Act, 1937 and devolve on all his legal heirs. The Hon'ble Apex Court relied upon ***Visweshwar Rao vs. The State of Madhya Pradesh, (1952) S.C.R. 1020***, wherein Justice Das in his concurring judgment held as follows:-

> *"The guarantee or assurance to which due regard is to be had is limited to personal rights, privileges and dignities of the Ruler qua a Ruler. It does not extend to personal property which is different from personal rights."*

[96]. The next judgment relied by the Hon'ble Apex Court is ***Sudhansu Shekhar Singh Deo vs. State of Orissa, (1961) 1 SCR 779***, wherein it was held

> "*…...The privileges guaranteed by Arts. 4 and 5 are personal privileges of the appellant as an ex-Ruler and those privileges do not extend to his personal property…*".

The Hon'ble Apex Court further relied upon ***K. S. V. R. Singh v. Union of India & Ors, (1969) 3 SCC 150*** popularly known as 'the Dholpur case'. In the said 'the Dholpur case' it was urged that the estate left behind by the Ruler of Dholpur

was an impartible estate and was to be governed by the rule of male lineal primogeniture. It was observed by the Constitution Bench in the following manner:-

> *"6…..It is manifest that the right to private properties of the last Ruler depends upon the personal law of succession to the said private properties. The recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This recognition of Rulership by the President is an exercise of political power vested in the President and is thus an instance of purely executive jurisdiction of the President. The act of recognition of Rulership is not, as far as the President is concerned, associated with any act of recognition of right to private properties……"*

[97]. The Hon'ble Apex Court further held that the recognition of Rulership is one of personal status. It cannot be said that claim to recognition of Rulership is either purely a matter of inheritance or a matter of descent by devolution. Nor can claim to recognition of Rulership be based only on covenants and treaties. That is why Article 363 of the Constitution constitutes a bar to interference by Courts in a dispute arising out of treaties and agreements. No claim to recognition of Rulership by virtue of a Covenant is justiciable in a Court of law. It cannot be said that recognition of Rulership is bound up with recognition of private properties of the Ruler because the former is within the political power of the President

and the latter is governed by the personal law of succession. Recognition of Rulership by the President is not recognizing any right to private properties of the Ruler, because recognition of Rulership is an exercise of the political power of the President. The distinction between recognition of Rulership and succession to private properties of the Ruler has to be kept in the forefront. The rights to private properties of Rulers are not the matters of recognition of Rulership. The recognition of Rulership is not an indicia of property, but it entitles the Ruler to the enjoyment of the Privy Purse contemplated in Article 291 and the personal rights, privileges and dignities of the Ruler of an Indian State mentioned in Article 362 of the Constitution

[98]. In the aforesaid case, the Hon'ble Apex Court further relied upon ***Revathinnal B. Varma vs. H. H. Padmanabha Dasa, 1993 Supp (1) SCC 233***, known as 'the Travancore case' and after due consideration held that it was not disputed that as far as the position before accession was concerned the properties devolved from ruler to ruler by applying the rule of primogeniture. This Court negated the argument holding that after signing of the merger agreement, the properties became the private properties of the Maharaja and did not belong to an undivided family. The Hon'ble Apex Court further relied upon ***Pratap Singh vs. Sarojini Devi. 1994 Supp (1) SCC 734***

known as 'Nabha case'. After appreciating Article XII of the instrument of merger of Nabha State with Article 4 in the Talat Fatima Hasan's case (Rampur case), the Hon'ble Apex Court observed that there is a fleeting remark that the property formed part of impartible estate and, therefore, would be governed by Rule of Primogeniture. In our view, this question did not arise for consideration and this Court did not decide the question as to whether the impartible estate continued to exist after the ruler ceased to be a ruler.

[99]. The Hon'ble Apex Court after relying upon the aforesaid precedents including ***Madhav Rao Scindia, etc. vs. Union of India, (1971) 1 SCC 85***, known as **'**the Princes Privy Purses**'** case has laid the law on the aspect of applicability of Rule of Primogeniture as under:-

> *"38. The issue is whether the rulers continued to be rulers after executing the instruments of merger. They had agreed to merge their States with the Indian Union because they were to be paid privy purses and would enjoy certain privileges. They were also entitled to declare some properties to be their private properties. In case of disputes whether the property is private or State property, the Union could refer the dispute for decision to a committee headed by a judicial officer. The rulers were no longer sovereign. There was no paramountcy vested in the rulers. They had no land other than the private properties. They had no subjects. They were rulers only*

in name, left only with the recognition of their original title, a privy purse, some privileges, etc.

40. ….Paramountcy as such was no more as there was no paramount power and no vassal. The Rulers had lost their territories and their right to rule and administer them. They were left only a recognition of their original title, a Privy Purse, their private properties and a few privileges. These rights were the only indicia of their former sovereignty but they enjoyed them by the force of the Constitution although in every respect they were ordinary citizens and not potentates……."

41. The definition of ruler in clause (22) of Article 366 of the Constitution itself shows that the person who is defined as ruler is a former prince, chief or other person, who was, on or after 26.01.1950 recognised as a ruler having signed the covenant of accession. Necessarily, the ruler was a person who was recognised before independence by the British Crown and was the sovereign of his State. Such person, though defined as a 'Ruler', has no territory and exercises no sovereignty over any subjects. He has no attributes of a potentate nor does he enjoy all the powers and privileges which are normally exercised by a potentate. As Justice Shah in the ***Princes Privy Purses case*** *judgment held, "he is a citizen of India with certain privileges accorded to him because he or his predecessor had surrendered his territory, his powers and his sovereignty".*

43. Examples were also given where in cases of disputes, the same were referred to committees comprising of the Chief Justices of the States and erstwhile rulers. However, it is clear that the declaration

under clause (22) of Article 366 relates only to the Gaddi or the rulership and not to the properties which were declared to be private properties by the ruler.

44. It was contended by Mr. Ganguli that there could be no Gaddi without a property and the properties which were declared to be the private properties were, in fact, attached to the Gaddi and the properties would be of the ruler so declared. We find no force in this submission. These were rulers without any subjects. These were rulers without any territory. These were so called rulers enjoying certain privileges and privy purses. They had been given the choice of declaring certain properties to be their private properties and these private properties could not be said to be attached to the Gaddi. When they were actual sovereigns, their entire State was attached to the Gaddi and not any particular property. There are no specific properties which can be attached to the Gaddi. It has to be the entire 'State' or nothing. Since, we have held that they were rulers only as a matter of courtesy, to protect their erstwhile titles, the properties which were declared to be their personal properties had to be treated as their personal properties and could not be treated as properties attached to the Gaddi.

46. A Gaddi or rulership and private property have two different connotations even in the merger agreement/instrument of accession. In Article 2 of the agreement, it is clearly mentioned that Nawab would continue to enjoy the same personal rights, privileges, immunities and dignities and other titles which he would have enjoyed prior to the agreement. Conspicuously, the word 'property' or 'personal property' is missing. Article 2

deals only with personal rights, privileges, dignities, etc. Article 3 deals with privy purse which would also be a part of the rulership or Gaddi. Article 6 which deals with succession, guarantees the succession according to law and custom to the Gaddi of the State and to the Nawab's personal rights, privileges, immunities, dignities and title. Gaddi would be the 'throne' or 'title' of Nawab in the context in which it has been used and the personal rights, privileges, immunities, dignities and titles will be those referred to in Article 2. The word 'property' is also conspicuously absent in Article 6.

47. Article 4 states that the Nawab shall be entitled to full ownership, use and enjoyment of all private properties as distinct from State properties. Such properties must belong to him as on the date of agreement. In our view, Article 6 does not relate to the properties mentioned in Article 4 and the private properties would remain the private properties of the Nawab as a common citizen of the country as held in various authorities referred to above. We have, therefore, no hesitation in holding that on the death of the ruler, Nawab Raza Ali Khan in the year 1966, succession to his private properties was governed by personal laws."

[100]. Thus, in view of the latest law of the land settled by the Hon'ble Apex Court**,** succession is to be governed by the personal law of succession and not as per Rule of Primogeniture. The aforesaid judgment has been rendered by the Hon'ble Apex Court after considering earlier precedents/Constitutional Benches of the Hon'ble Apex Court,

therefore, the judgment in question cannot be '*per incuriam*'. The Hon'ble Apex Court has set at naught the controversy arising from different precedents by way of present authoritative judgment after consideration of earlier judgments of the Hon'ble Apex Court and has taken recourse to the principle for settling the issue to the hilt. The judgment is well founded on reasons and is a law declared by the Hon'ble Apex Court under Article 141 of the Constitution of India. The law declared by the Hon'ble Apex Court by way of authoritative pronouncement is the law of the land. The law includes not only legislative enactments, but also judicial precedents. Reference can be made to ***Virender Kumar Dixit vs. State of U.P., 2014(9) ADJ 506*** and ***Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others, 2017(4) R.C.R. (Civil) 359***.

[101]. For the reasons recorded hereinabove, it is concluded that **Law/Rule of Primogeniture has no validity in the present case. The succession has to be governed by the personal law of succession and not as per Rule of Primogeniture.**

[102]. Now I will deal with the 3rd point i.e. "**Whether Raja Harinder Singh executed a valid Will dated 01.06.1982 and Maharwal Khewaji Trust constituted thereunder is a**

legally constituted Trust?

Learned Senior counsel for the defendants/Trust has argued this point prior in point of time and that is why, the point is being discussed in that order only. Onus to prove execution and validity of Will dated 01.06.1982 is also on the defendants/Trust.

[103]. Mr. Ashok Aggarwal, Senior counsel duly assisted by Mr. Mukul Aggarwal, Advocate on behalf of the defendants/Trust submitted as under:-

(i). The plaintiff in her plaint has challenged the Will on the ground that the Will is forged, fictitious and fabricated and the same does not inspire confidence and its execution is full of suspicious circumstances and the same is the most unnatural document. Plaintiff has further alleged that the Will is the result of misrepresentation, undue influence and fraud played upon Raja Harinder Singh, who had not made the Will in question voluntarily. Raja Harinder Singh used to remain depressed all the times. He was mentally upset on account of death of his only son which took place eight months prior to the execution of alleged Will. On account of death of his only son, Raja Harinder Singh was continuously living in the state of depression and was dependent upon coteries around him which capitalized on

vulnerability of the Raja and exercised undue influence upon him by making misrepresentation and fraud was played by the said coteries on late Raja Harinder Singh. The spaces for the date in the Will kept blank which were subsequently filled in with pen, whereas whole of the remaining alleged Will is duly typed. Maharani Mohinder Kaur, mother of late Raja Harinder Singh was alive at the time of execution of alleged Will and she was completely ignored and denied any share or role in the Trust. No provision has been made for the dependents of deceased suitable to their status which they have led and supported by the Raja throughout his life. No reasons were given in the alleged Will by the testator for excluding the plaintiff, her mother and grandmother.

(ii). In order to prove the aforesaid allegations, the plaintiff has not led any evidence, except her only oral statement, whereas defendants have led oral as well as voluminous documentary evidence to dispel the alleged suspicious circumstances.

(iii). Reference to the pleadings in the plaint and the affidavit filed by the plaintiff in examination-in-chief as PW-1 would show that para No.8 of the plaint is in respect of fictitious and forged Will, which reads that the Will is fictitious and is forged and fabricated document. It does not vest any right, title

or interest in any body, nor it can divest the plaintiff and defendants No.1 and 2 of the properties. The affidavit in examination-in-chief of plaintiff as PW-1 would show that no allegation of Will being fictitious and forged has been made, rather new ground that Raja would not have excluded his daughters, wife and mother has been pleaded. The new ground has been alleged beyond pleadings that the Raja always loved and cared for his daughters, wife and mother and could never think of depriving them of their inheritance of properties created by their forefathers and the alleged Will has not been executed by him and in any case the signatures of Raja existed on any such document the same is result of undue influence and fraud played upon him during the period of depression in the period following the death of his only son on 13.10.1981. Para No.9 of the plaint would show that alleged Will is shrouded by suspicious circumstances. In examination-in-chief**,** suspicious circumstances have been pleaded beyond pleadings that mother and the wife have been excluded and pittance has been provided for. It has been vaguely pleaded that Maharani Mohinder Kaur and Rani Narinder Kaur have been excluded. It has been pleaded that the alleged Will is unnatural and suspicious as Maharani Mohinder Kaur and Rani Narinder Kaur were alive at that time and the provisions for their maintenance

are not enough. Even the unmarried daughter has been provided a pittance. The cumulative effect of loss of Tikka Harmohinder Singh made the Raja to stay away from his wife and amongst servants and those, who created delusions of begetting a child by Raja which was almost not natural. Para No.10 of the plaint would show that the ancestral property which could not be alienated by way of alleged Will or otherwise under the custom. It has not been stated in the affidavit and as such the said plea is given up by the plaintiff. Para No.11 is in respect of undue influence on account of exclusion of eldest daughter and mother of the plaintiff. It has been alleged that the alleged Will is forged, fictitious and fabricated and does not inspire confidence and its execution is full of suspicious circumstances. It is most unnatural. The eldest daughter and the mother have been left out of the bequest or have been most meagerly provided for as compared to the wealth and quantum of properties. Maharani Mohinder Kaur mother of Raja, who was alive at the time of execution of alleged Will has been completely ignored and denied any share or position in the Trust just like the wife and the eldest daughter. No provision has been made in the alleged Will for dependents of the deceased suitable to their status and the life which they have led and supported by the Raja throughout his life.

(iv). In the affidavit of examination-in-chief of PW-1, a total contradictory stand has been taken that all the daughters have been excluded including wife and mother. It has been vaguely pleaded in para No.14 of the affidavit that the Raja always loved and cared for his daughters, wife and mother and could never think of depriving them of their inheritance of property created by their forefathers and the alleged Will has not been executed by him and in any case his signatures exist on any such document, the same is the result of undue influence of fraud played upon him during the period of depression in the period following the death of his only son on 13.10.1981. In para No.21 of the affidavit, it has been alleged that the Will is unnatural and suspicious as Maharani Mohinder Kaur and Rani Narinder Kaur were alive at that time and the provision for their maintenance is not enough. Even the unmarried daughter has been provided a pittance. The cumulative effect of loss of Tikka Harmohinder Singh kept the Raja to stay away from his wife and amongst servants and those, who created delusions of begetting a child by Raja which was almost not natural. Para No.12 of the plaint relates to the allegation of misrepresentation. It has been alleged that the Will dated 01.06.1982 is fictitious and is the result of misrepresentation, undue influence played on Raja Harinder Singh. The said Will has not been made voluntarily by

the late Raja Harinder Singh and is the result of misrepresentation as would be apparent from the alleged Will itself. The aforesaid plea has not been incorporated in the affidavit and, therefore, the said plea is presumed to have been given up by the plaintiff.

(v). Para No.13 of the plaint relates to undue influence by the attesting witness Brijinder Pal Singh, Advocate being beneficiary. It has been alleged that Brijinder Pal Singh, Advocate is one of the attesting witnesses. He particularly exercised influence over the Raja and this is clear from the fact that Brijinder Pal Singh himself is the beneficiary under the alleged Will. These facts have not been pleaded in the affidavit, therefore, the same will be presumed to have been given up. Para No.14 relates to undue influence by coterie around the Raja because the Raja used to remain depressed and was mentally upset on account of death of his only son. It has been alleged that the Raja used to remain depressed all the time and was mentally upset on account of death of his son which took place about eight months prior to the execution of alleged Will. Due to the death of his son, Raja was constantly living in the state of depression and was imbalanced and became dependent upon the coterie around him which capitalized on vulnerability of the Raja and exercised undue influence upon

him by making misrepresentations and fraud was played by the said coteries on the late Raja. The alleged Will is, therefore, null and void. In the affidavit, undue influence is pleaded mainly by his servants including some of trustees and executors. After the death of Tikka Harmohinder Singh on 13.10.1981, late Raja went into depression and during that period he was under the undue influence and those, who were with him mainly his servants including some of trustees and executors of the alleged Trust, as none of all three daughters were living with him, his wife was also living at Delhi and his mother was also not living with him. These facts have been pleaded in para No.7 of the affidavit.

(vi). Para No.15 relates to the allegations that spaces for the date were kept blank and subsequently filled in with pen. It has been alleged that the spaces for the date in the alleged Will were kept blank and were subsequently filled in with pen, whereas whole of the remaining Will is duly typed. No reasons were given in the alleged Will by the testator for excluding the plaintiff, her mother and grandmother. It was the result of misrepresentation and fraud. In the affidavit, no such things have been stated, therefore, the plea is presumed to have been given up. Para No.16 relates to creation of Trust which is alleged to be illegal through the alleged Will. It has been alleged

that the creation of Trust by way of alleged Will is illegal under Sections 4, 5, and 6 of the Indian Trust Act. In the affidavit no such plea has been stated and the plea is given up by the plaintiff. Para No.17 of the plaint relates to creation of Trust in perpetuity which is *void ab initio*. It has been alleged that as per Will, a Trust has been created which is *void ab initio* and is not permissible in law. There is no provision as to how the surplus income is to be utilized. The Trust created is vague and indefinite and carries inherent defects and cumbersome procedure for its execution. It is thus void. In the affidavit, no such pleas have been pleaded and such pleas are presumed to have been given up. Para No.18 relates to creation of Trust in respect of joint Hindu family and ancestral property which is illegal. It has been alleged that Raja could not create any Trust in respect of joint Hindu family/ancestral property inherited from by him from his ancestors and on that account the creation of Trust is illegal. Nothing has been stated in the affidavit in the said context.

(vii). Reference to the aforesaid comparative pleadings in the plaint viz.-a-viz. the affidavit tendered by PW-1 in her examination-in-chief**,** would show that the plaintiff has admitted the execution of Will, but the allegations have been made that the execution is by way of undue influence. Plaintiff has not

examined herself in rebuttal to the issue of Will. Furthermore, the plaintiff at the time of her evidence has abandoned the allegation of undue influence which is apparent from the comparison of the pleadings in the plaint and the examination-in-chief of the plaintiff.

[104]. In furtherance of the aforesaid submissions, Mr. Ashok Aggarwal, Senior counsel assisted by Mr. Mukul Aggarwal on behalf of the defendants/Trust sub-divided his submissions in the following categories:-

1. General allegations of undue influence and fraud are without any particulars as required by law in terms of Order 6 Rule 4 CPC.

2. Effect of Will dated 22.05.1952 (Ex.PX-132/Ex.D-20).

3. Validity of Will dated 01.06.1982.

The same are being discussed turn by turn.

1. General allegations of undue influence and fraud are without any particulars as required by law in terms of Order 6 Rule 4 CPC.

(i). The plaintiff has challenged the Will on the ground that it is the result of misrepresentation, undue influence and

fraud played upon Raja Harinder Singh. Reference has been made to para Nos.12 to 14 of the plaint. Perusal of the aforesaid paragraphs would show that the plaintiff has failed to plead necessary particulars of undue influence, misrepresentation and fraud. According to Order 6 Rule 4 CPC, in all cases of misrepresentation, fraud and undue influence, necessary particulars are required to be pleaded. An obligation is cast upon the plaintiff to state the necessary particulars of misrepresentation, fraud and undue influence in the pleadings.

(ii). No such particulars have been pleaded in the plaint, nor any evidence has been led by the plaintiff. The parties must set forth full particulars and the case can only be decided on the particulars as laid in the foundation. There cannot be any departure from this requirement. General allegations are insufficient. Reference can be made to ***Bishundeo Narayan Dev Narayan vs. Seogeni Rai, AIR 1951 SC 280***; ***Ladli Prasad Jaiswal vs. The Karnal Distillery Company Ltd., AIR 1963 SC 1279***; ***Subhash Chandra Das Mushib vs. Ganga Prasad Dass Mushib, AIR 1967 SC 878*** and ***Ranganayakamma vs. K.S. Prakash, 2008(15) SCC 673.***

(iii). General allegations do not amount to averment of fraud on which any court ought to take notice, however strong

language in which they are couched may be and the same thing applies to undue influence and coercion also. It is true that undue influence, fraud and misrepresentation are cognate *vices* and may, in part, overlap to some extent in some cases, but in law they are distinct categories. They are required to be separately pleaded with all precision in view of Order 6 Rule 2 read with Order 6 Rule 4 CPC. The ratio of ***Afsar Shaikh vs. Soleman Bibi, AIR 1976 SC 163*** can be referred to a greater extent. The case can only be decided on the basis of particulars laid as a foundation.

(iv). General allegations are insufficient and that requirement does not absolve the plaintiff from providing specific particulars of fraud and undue influence in the pleadings. Fraud has to be pleaded and proved like in a criminal case. Reliance can be placed upon ***Mrs. Lynette Fernandes vs. Mrs. Gertie Mathias, 2018(2) R.C.R. (Civil) 724 (SC)***; ***Surta Singh vs. Mohinder Singh, 2009 (48), R.C.R. (Civil) 799*** and ***Kamlesh vs. Kutumb, 2018(3) PLR 170***. On the basis of aforesaid precedents, it can be appreciated that the allegations contained in the plaint do not correspond to the material requirement of Order 6 Rule 2 read with Order 6 Rule 4 CPC and the Court cannot be called upon to give a finding on fraud, misrepresentation and undue influence.

2. Effect of Will dated 22.05.1952 (Ex.PX-132/Ex.D-20).

Mr. Ashok Aggarwal, Senior counsel assisted by Mr. Mukul Aggarwal, Advocate submitted that in the light of Will dated 22.05.1952 (Ex.PX-132/Ex.D-20), the plaintiff is not entitled to any property of deceased Raja, even if the Will in question dated 01.06.1982 (DW2/B) is ignored. Learned Senior counsel made the following references:-

(a) Earlier on 11.03.1950 (Ex.PX-132), Raja Harinder Singh executed a Will in favour of all his three daughters.

(b) Rajkumari Amrit Kaur solemnized marriage on 20.05.1952 i.e. the date when she attained majority with Sardar Harpal Singh Sekhon, an Ex. Employee of Raja Harinder Singh against the wishes of her parents, particularly the Raja Harinder Singh. Marriage was not an arranged marriage.

(c) Plaintiff has admitted in her cross-examination dated 19.05.2012 that she did not attend the marriage of her sister Deepinder Kaur (defendant No.1) in Raj Mahal, Faridkot. Marriage party came from Calcutta. She has also admitted that her

marriage was not performed in Raj Mahal, Faridkot and she was 18 years of age at the time of her marriage. She further admitted that she has one son and two daughters. She further admitted that her father i.e. late Raja Harinder Singh did not attend marriage of any of her children. She also admitted that her father did not attend her marriage which took place in the year 1952. At the time of her marriage, her husband was already married and was having living wife and two children. There is age difference of 10 years between her and her husband.

(d) Defendant No.1 Maharani Deepinder kaur appeared in the witness box as DW-3 and in her cross-examination dated 06.04.2013 she stated that the relations of the plaintiff Rajkumari Amrit Kaur got strained with her father, when she married with Sardar Harpal Singh.

(e) Raja Harinder Singh by virtue of Will dated 22.05.1952 (Ex.PX-132/Ex.D-20) revoked the earlier Will dated 11.03.1950 with a specific recital i.e.

"*this new Will has been necessitated by the fact that I do not now want to leave any property by Will in favour of my daughter Rajkumari Amrit Kaur Sahiba. I*

have considered the future of my all relations and taking all the circumstances into consideration, I have made this my last Will in favour of my two daughters Rajkumari Deepinder Kaur Sahiba and Rajkumari Mahipinder Kaur Sahiba only in equal shares."

(f) Under the Will of 1952, the other two daughters have been given certain properties. Therefore, the Raja was not happy with the plaintiff and her fate with regard to all the properties was sealed by the Raja by virtue of Will dated 22.05.1952**,** which was never revoked thereafter. The aforesaid Will was neither modified, nor revoked at any point of time.

(g) Under the Will in question dated 01.06.1982 (Ex.DW-2/B)**,** the other two daughters do not get any property in individual capacity. In the aforesaid Will dated 01.06.1982, a specific recital has been made that all natural heirs have been excluded from the natural succession. In 1952, Raja Harinder Singh was conscious of the fact that large number of properties including the property recited in Will dated 01.06.1982 had vested in him in his individual capacity by virtue of the Covenant for which approval was given by the Government of India**,** through

Rajpramukh, therefore, in his consciousness, he excluded plaintiff from all his estates under the Will dated 22.05.1952.

(h) Factum of Will dated 22.05.1952 (Ex.PX-132/Ex.D-20) has been admitted by the parties, therefore, by virtue of Section 58 of the Evidence Act, the fact admitted need not be proved. Section 58 of the Evidence Act has an overriding effect on Section 68 of the Act. If execution of the Will is not disputed, its execution need not be proved as per Section 68 of the Evidence Act as Section 58 of the Act overrides Section 68 of the Evidence Act. Section 68 of the Evidence Act relates to those documents which required to be proved at the trial of a suit. If by any rule of law or of pleadings, such proof is not required then Section 68 of the Act cannot operate to insist on formal proof by calling an attesting witness, therefore, Section 58 of the Act has to be read as overriding Section 68 of the Act and as obviating the necessity for calling an attesting witness, unless the execution of Will or attestation is in dispute. In the absence of any such plea, it will be too technical and useless to insist on examination of attesting witness, before a

Will could be used as evidence. Under Order 8 Rule 5 CPC, execution of Will is to be admitted in the absence of any denial thereof. Examination of attesting witness is, therefore, unnecessary, when the parties have not joined issue on the validity of the Will. Reliance can be placed upon ***Thayyullathil Kunhikannan vs. Thayyullathil Kalliana, AIR 1990 Kerala 226***; ***Velluri Jaganmohini vs. Kooparthi, AIR 1994 AP 284***; ***Gurpyari Singh vs. Kamaldeep Singh, 2017(2) Law Herald 1501***; ***Kamla Nijhawan vs. Sushil Kumar, 2015(1) CCC 453*** and ***Neelam Sehgal vs. Seema Mehra, 2018(1) CCC 435***. Therefore, in the light of aforesaid precedents, the plaintiff is not entitled to any property of late Raja in terms of Will dated 22.05.1952 (Ex.PX-132/Ex.D-20). Under Will dated 01.06.1982 no natural heir of Raja is the beneficiary, rather, it is a Trust of which Maharani Deepinder Kaur is one of the Trustees/Chairperson.

3. Validity of Will dated 01.06.1982.

(i). Will dated 01.06.1982 was executed by late Raja Harinder Singh to alter the natural mode of succession. The

purpose of execution of Will dated 01.06.1982 is to interfere with normal line of succession. In the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If the testator intends to pass over the property to his natural heirs, then there is no necessity for execution of any Will. Execution of Will intends to disentitle natural heirs from their entitlement. Deprivation of the natural heirs by the testator cannot be viewed with suspicion as the whole idea behind it, is to interfere with the normal line of succession. Reliance can be placed upon ***Rabinder Nath Mukherjee vs. Panchanan Banerjee, AIR 1995 SC 1684***; ***Air Vice Marshall Mohinder Singh Rao vs. Narinder Singh Rao, 2010(3) R.C.R. (Civil) 508 (Punjab and Haryana)***; ***Rama Bhai Padmakar Patil vs. Rukmanibhai Vishnu, 2003(4) R.C.R. (Civil) 92 (SC)***; ***Krishan Kumar Birla vs. Rajender Singh Lodha, 2008(2) R.C.R. (Civil) 835 SC***; ***Savitri vs. Karthyayani Amma, AIR 2008 SC 300***; ***Gurdev Singh vs. Shakultla, 2005(3) R.C.R. 353 (Civil)(Punjab)*** and ***Bhajan Singh vs. Santokh Singh, AIR 2017 Punjab 47,*** in support of aforesaid contentions.

(ii). The Will in question was executed on 01.06.1982 (Ex.DW2/B). The same was signed by late Raja Harinder Singh on each and every page. The testator claimed the Will to be his holograph/Will. The Will was executed by Raja of his free Will

without any influence. The Will begins with the recital that the testator is ex-ruler of former Faridkot State and aged about 67 years. Thereafter further details of movable and immovable properties held by the Raja have been given. In para No.II, the testator has given narration that he is married to her highness Rani Narinder Kaur Sahiba. Out of the wedlock, four children took birth namely Rajkumari Amrit Kaur Sahiba, Rajkumari Deepinder Kaur Sahiba, Tikka Harmohinder Singh and Rajkumari Mahipinder Kaur Sahiba. It has been added that Tikka Harmohinder Singh had unfortunately died on 13.10.1981, who was the only son of the testator. The testator also revoked of his previous Will, codicils, testamentary depositions made by him in favour of Tikka Harmohinder Singh or any other person. In para No.III, it has been referred that all three daughters have been duly provided for under the Faridkot Family Trust held by Grindlays Bank (Private) Ltd., Saint Jame's Street, London as the sole Trustee. It further added that two elder daughters are married and are living with their husband(s) and the youngest daughter Rajkumari Mahipinder Kaur is still unmarried. In para IV, it has been referred that the testator voluntarily and out of free will shall bequeath his landed, movable and immovable properties and all other entire movable and immovable properties, personal estate and properties of other descriptions

wheresoever situated and whatsoever owned or held or possessed by the testator at the time of his death in the manner as given in the Will.

(iii). The testator at the first instance has devised that his estate shall dwell in case he is blessed with male child, begotten from his loins, out of existing wedlock or from future matrimonial alliance like surrogate marriage or contractual companionship, duly notified under registered deed and the paternity of the child so born duly certified by the testator in writing shall alone inherit all his properties as referred in the Will and all other heirs shall stand excluded from inheritance in that event. The Will also refers in case of more than one male child, then succession to the estate will be according to the Rule of Primogeniture.

(iv). The Will further adds that in case of a female child, a flat in New Delhi, Hyderabad or Chandigarh be provided for her exclusive use as residence and Rs.24,000/- per annum as maintenance allowance for life. The Will further adds that she will be provided a Moped at the age of 14 years, Scooter at the age of 16 years and Indian made motorcar of her choice at the age of 18 years as conveyance and revolver, shortgun and rifle be placed at her disposal for self-protection. Efforts be made to obtain arms licence from the appropriate authorities. The Will

further adds that Rs.50,000/- be also provided for effecting her marriage expenses. Similar provision was made if second male child or other female child is born out of such union.

(v). The Will further refers to the intention of the Testator that in case no child is born from the loins of the Testator, subject to the provisions for the female child etc., the entire properties of the Testator shall be inherited by a Trust to be known as Maharwal Khewaji Trust comprising of Board of Trustees as mentioned in the Will which included Badhurani Deepinder Kaur as Chairperson, Rajkumari Mahipinder Kaur (3rd daughter of the testator) as Vice Chairperson. Serving member of Board of Administration of the Testator's personal estate known as His Highness Personal Estates, Faridkot. One member of Mehmuana family by rotation of five years in order of seniority from each branch namely the descendants of Sardar Bahadur Kartar Singh Brar, S. Gurdial Singh and Sardar Raghbir Singh. The first incumbent shall be major Gurdeep Inder Singh son of Sardar Bahadur Kartar Singh followed by Rajinder Singh son of Gurdial Singh. Thereafter Bhupinder Singh son of Sardar Raghbir Singh and then Bir Devinder Singh son of Sardar Rajinder Singh. Thereafter the Will provides for the functioning of board of trustees in the manner as provided.

(vi). The Will further refers that Badhurani Deepinder Kaur

shall be chairperson for life. Rajkumari Mahipinder Kaur shall be vice chairperson for life. After the death of Badhurani Deepinder Kaur, Rajkumari Mahipinder Kaur shall be the chairperson of the Board of Trustees and after her death, it shall go to the senior most male descendant of Bhadrani Deepinder Kaur for her life only and after her, it would go to senior male child of Rajkumari Mahipinder Kaur, if she happens to marry in any family of former ruler of Indian States for life only.

(vii). The Will further makes special provision for the office of Chief Executive. The Will refers that Sardar Umrao Singh Dhaliwal shall be the Chief Executive of the Board of Trustees till he attains the age of 85 years or is incapacitated of effectively carrying out his duties whichever is earlier. If Sardar Umrao Singh Dhaliwal relinquishes, then the Chairperson and Vice Chairperson shall select any other member of Board of Trustees or member of Board as Executors as replacement. The tenure of which shall be decided by them.

(viii). The Will further refers about the voting rights of Board of Trustees that every important decision to be taken by the Trust shall be first referred to Board of Executors for scrutiny and opinion. Thereafter it will be placed before the Board of Trustees, whose majority decision shall be final. The Will also makes provision for appointment and removal of members of

Board of Trustees in a particular manner. The main objects of the Trust are also stated in the Will.

(ix). The Will also makes provision of Rajkumari Mahipinder Kaur. The testator in the Will wished that his youngest daughter Rajkumari Mahipinder Kaur shall be provided a suitable residential accommodation for her lifetime and she will have the choice to choose for her residence. Flat No.33 in Riviera Apartment, The Mall, Delhi or Flat No.13 in Nandan Buildings, Hyderabad or for building a four bedrooms new small house to be built on the site of Edelweiss, Mashobra.

(x). The testator also made provision for his wife that his wife Her Highness Rani Narinder Kaur Sahiba shall be prepaid her allowance of Rs.36,000/- annually payable in equal prepaid installments in the months of April and October every year throughout her life. She shall have exclusive and undisputed possession of Faridkot house, I Nayya Marg, Chanakyapuri, New Delhi for her personal residential use throughout her life. The testator also made provision for salary to be paid to the members of Board of Trustees as well the Board of Executors. The Will also refers that all the other natural heirs or those having any claim of being heir or heirs of the testator in any manner shall stand excluded from the succession to the estate and property of the Testator and the property of the Testator

shall be inherited only in the manner as devised and bequeathed in the Will.

(xi). It makes crystal clear that the Testator who was at his times a sovereign authority had voluntarily devised in a very transparent manner, the mode of inheritance of his properties which would be left by him at the time of his death. At the first instance, the Raja made preference to his male child, if born before his death. As a last resort, he has created a testamentary Trust known as 'Maharwal Khewaji Trust', which shall inherit the estate of the Testator in case, no male child is born to the Raja during his life time and shall maintain the Trust properties with the objects given in the Will itself.

(xii). For the maintenance of Qila Mubarik, Faridkot, the Testator intended that this historic monument should be preserved for posterity for public good as a measure of advancement of general public utility. The maintenance of Qila Mubarik is not useless object as sought to be narrated in the plaint. The income of the Trust has been dedicated to make provision for its maintenance as a measure of great public utility and for preserving historical monument for posterity keeping in view its historic importance and the legends associated with it.

(xiii). Similarly provision was also made for Sarkari

Samadhan, Faridkot, Maintenance of Surajgarh Fort at Manimajra, Publication of suitable books about ruling family, Museum for seeing rare jewellery stones and personal articles in order to advance knowledge of public at large, who may go to see such rare pieces of jewellery, rare costumes, dresses of great historical and artistic value, Nursing home/hospital in charity and management of H.H. Personal Estates.

(xiv). The execution of the Will is to be proved in terms of Section 68 of the Evidence Act read with Section 63 of the Indian Succession Act. Bare perusal of the aforesaid provisions would make it evident that the Will is required to be attested by two or more witnesses, each of whom has seen the Testator signing or affixing his mark on the Will or has seen some other person signing the Will in the presence and by the direction of the Testator or has received from the Testator a personal acknowledgment of the signature or mark or his signature or the signature of such other person and that each of the witnesses has signed the Will in the presence of the Testator. Section 68 of the Evidence Act is against the use of a Will in evidence unless one attesting witness has been examined to prove the execution. A cardinal principle in construing a Will is to ascertain the real intentions of the Testator. The intention has to be gathered primarily from the language used in the document

which has to be read as a whole without applying any conjecture or speculation as to what the Testator would have done, if he had been better informed or better advised. The Hon'ble Apex Court in ***Gnambal Ammal vs. T. Raju Ayyar, AIR 1951 SC 103*** highlighted well established parameters for construing the Will i.e.:-

> *(a) For purposes of finding out the intended meaning of words actually employed the fundamental rule is to ascertain the intention from the words used, the surrounding circumstances are to be considered.*
>
> *(b) For arriving at a right construction of the Will and to ascertain its language when used by that particular testator, the Court is entitled to put itself into the testator's armchair and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship and the probability that he would use words in a particular sense.*
>
> *(c) For arriving at true intention of testator, the Will has to be read as a whole with all its provisions and ignoring none of them. No importance should be attached to isolated expressions given therein.*
>
> *(d) In arriving at construction every expression would be given some effect rather than to make any of the expressions as inoperative. All the circumstances under which the testator make his Will are to be taken into account. Where one of the two reasonable constructions leads to intestacy, that should be discarded in favour of a construction which does not create any*

such hiatus.

(e) To the extent that it is legally possible, effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. Of course, if there are true repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the Will.

(xv). The statement of Sardar Brijinder Pal Singh Brar, Advocate would show that he was examined as DW-1 in order to prove the valid execution of the Will. The witness was examined at length and was cross-examined by the learned counsel for the plaintiff in both the suits. Besides, examining Brijinder Pal Singh Brar as DW-1, Maharani Deepinder Kaur herself stepped into the witness box as DW-3 and she was also fully examined and cross-examined. The Will is registered. The Will in question was itself presented by the Testator before the Sub-Registrar for its registration. The Sub-Registrar upon presentation of the Will by late Raja, did necessary compliance and after registration of Will, gave his certificate on it that same was read over to the executant and admitted by him. Genuineness of Will is proved and the doubts as to its genuineness are dispelled. The particulars were endorsed by

the Sub-Registrar along with his seal and signature and the date of document. The presumption under Section 114 of the Evidence Act is attached to the document and after registration of the Will, a certificate of registration in terms of Section 60 would come after making endorsement by the Registering Officer. By putting the word 'registered' together with the number and page of the book in which the document has been copied. The consciousness of the Court has to be satisfied by the propounder of Will by adducing evidence so as to dispel any suspicion or unnatural circumstances attached to a Will. Law does not permit conjecture or suspicion having the place of legal proof, nor permit them to demolish a fact, otherwise proved by convincing evidence. Well founded suspicion may be a ground for closer scrutiny of evidence, but suspicion alone cannot form the foundation of a judicial decision on both sides. Reference can be placed upon ***Madhukar D. Shende vs. Tarabai Aiba Shedage, AIR 2002 SC 637.***

(xvi). The Will was duly registered with the signatures of the registering officer and of the attesting witnesses. The deposition of the attesting witness has met all the requirements of law and it would serve as a sufficient material to satisfy the conscience of the Court that the Will was duly executed. Sub-Registrar has recorded the date, hour and place of presenting of

document for registration. On the basis of aforesaid, the Will has qualified the ingredients of Section 68 of the Evidence Act read with Section 63 of the Indian Succession Act. Reliance can be placed upon ***Rabinder Nath Mukherjee's case*** (supra). Registration of Will is a strong circumstance to prove its genuineness. Registerion will dispel the doubt as to the genuineness of the document. The certificate of Registration Officer under Section 60 of the Registration Act is a relevant piece of evidence for proving execution of the Will. Initial onus that testator had a disposing mind and Will was the result of his own volition lies on the propounder of Will. Once the aforesaid feature is proved that Will was executed by a person of competent understanding, the burden of proving that Will was invalid for any reason shifts on a person, who challenges the same. Reference can be made to ***Piara vs. Fattu, AIR 1927 Lahore 711 (DB)***; ***Kartar Kaur vs. Bhagwan Kaur, 1993(1) R.R.R. 246 (Punjab)***; ***Daljinder singh vs. Harbans Kaur, 2001(2) R.C.R. (Civil)294 (Punjab)***; ***Davinderjit Kashyap vs. Bhupinderjit Kahsyap, 2011(5) R.C.R. (Civil) 608 (Punjab)*** and ***Chander vs Nihali, 1992(2)R.R.R. 106 (Punjab).***

(xvii). Since the testator had put his signature in the presence of Sub-Registrar, who also signed the endorsement, therefore, Sub-Registrar shall have to be taken to be an

attesting witness and in view of Section 60 of the Registration Act, the contents of the endorsement are admissible in evidence and shall have to be taken to be true. The endorsement was executed in accordance with law and all the persons putting their signatures would make the Will to be genuine. The reference can be made to ***Naranjan Singh vs. Parsa Singh, 1971 Current Law Journal, 195, (Punjab)***.

(xviii). Registration of the Will removes all suspicion. The Court may presume that the signatures of the testator are in his own handwriting and the document was duly executed and attested. Presumption under Section 90 of the Act covers due execution as well. Certificate of Registration Officer under Section 60 of the Act would prove the execution of a document which raises a presumption that all official acts were validly done at the time of registration of the document. Registered document shall be presumed to be genuine unless proved to be otherwise by way of cogent evidence. It cannot be simply ignored on conjectures. Genuineness of a registered Will cannot be left to the mercy and support of attesting witnesses. The suspicious circumstance should be real having sound foundation. It cannot be merely on the basis of conjectures and surmises. Reference can be made to ***Sant Ram vs. Brij Mohan, 2006(2) R.C.R.(Civil) 769***; ***Jasbir Singh vs. Mohan***

Singh, 2010(3) R.C.R. (Civil) 654; ***Pratibha vs. Nandi Devi, 2019(2) R.C.R. (Civil) 11***; ***Bant Singh vs. Didar Singh, 2018(1) PLR 327;*** and ***Mohan Swaroop vs. Rajeshwar Saroop, 1997(2) R.C.R. (Civil) 426***.

(xix). Raja Harinder Singh died after more than 7 years of execution and registration of the Will in question, but he took no steps to cancel or revoke the same. This fact also adds to the genuineness of the Will in question. The Will being a registered document and the testator died many years after its execution without revoking the same would make the Will genuine. Reliance can be placed upon ***Satyapal Gopal Dass vs. Smt. Panchu Bala, AIR 1985 SC 500***; ***Kartar Kaur vs. Bhagwan Kaur, 1993(1) R.R.R. 246***; ***Jeeto vs. Dalip Singh, 1993(3) R.R.R. 354*** and ***Usha Rani vs. Lakhbir Singh, 2012(5) R.C.R. (Civil) 691***.

(xx). The Will in question has been produced and proved in various Courts in different litigations and the Courts have upheld the Will. Various judgments and decrees of the Courts (Ex.D-21 to Ex.D-34) have been relied in this context. Reference to the aforesaid evidence, would show that this is a strong circumstance in favour of the defendants and would give high probative value to the evidence, even though the previous

decisions are not inter-parties, but the evidence will be valuable piece of evidence. Reliance can be placed upon ***Atma Ram vs. Smt. Parsini, AIR 1979 Punjab 234***; ***Sohan Singh vs. Murti Rani, 2008(3) R.C.R. (Civil) 448***; ***Tirumala Tirupati vs. SKM Krishnaiah, 1998(3) R.C.R. (Civil) 6 (SC)*** **and** ***Sri-Niwas vs. Narayan, AIR 1954 SC 379***.

(xxi). Subsequent acknowledgment of the Will dated 01.06.1982 by Raja Harinder Singh himself proves the genuineness of the Will to the hilt and free from all suspicions. After execution of the Will dated 01.06.1982, the Raja himself acknowledged the Will in the documents i.e. Trust Deed dated 29.01.1987 (Ex.DX-6), Trust Deed dated 29.01.1988 (Ex.PX-122) and Trust Deed dated 30.01.1989 (Ex.PX-123) that he would be succeeded by an organization, which will administer his estate after his death. The clause incorporated in the aforesaid Trust Deeds would advance the acknowledgment of the creation of Trust in question which would succeed the Raja/Testator. The clause reads that:-

> *"In case of death of any trustee or, if he is becoming mentally and physically incapable of performing duties, the Executor or his successor and after him his surviving daughters and representatives of the Personal Estates of the Executor or any successor organization which may in future be the controlling*

authority to administer these Estates shall by majority appoint a new trustee."

The Trust Deeds (Ex.DX-6 and Ex.PX-123) bear signature of the plaintiff Rajkumari Amrit Kaur at the time of execution and registration of the same before the Sub-Registrar. Plaintiff also acknowledged the validity of Will in question and, therefore, the plaintiff cannot be heard to say that Will is illegal. The acknowledgment of the Raja in the registered document removes all doubts regarding the execution of Will. Report of Expert Dr. Jassy Anand, PW-5 looses significance. Number of documents were registered in the Raj Mahal and the manner of registration of the documents viz. general power of attorney dated 04.11.1966, all the three Trust Deeds (Ex.D-6, Ex.PX-122 & Ex.PX-123), general power of attorney dated 16.02.1989 (Ex.DX-2), general power of attorney dated 14.05.1984 (Ex.DX-3), general power of attorney dated 27.08.1987 (Ex.DX-4), and general power of attorney dated 29.01.1988 (Ex.DX-5) in question is the same, therefore, this fact cannot give rise to any suspicion.

(xxii). One of the attesting witness of the Will i.e. Jagir Singh had also attested all the three Trust Deeds of the aforesaid documents and that would advance the genuineness of the Will. The other attesting witnesses Brijinder Pal Singh had

also attested general power of attorney (Ex.DX-2) which would also demonstrate that Raja Harinder Singh had confidence in the witness. The locations of the signatures appended by the Raja is on the left side of the document and the signatures on the endorsement made by the registering authority is in the middle. The pattern is the same as in the Will in question. Subsequent execution and registration of documents by Raja himself i.e. subsequent to the execution of Will, proves that the Raja was having sound and disposing mind at the time of execution of Will.

(xxiii). Raja himself never prosecuted any case. The prosecution of the cases was only through attorneys duly appointed in that regard. Raja never contested any case himself directly, rather he appointed his attorney to litigate on his behalf. No evidence has been led by the plaintiff to show that Raja himself signed any document for court purpose or was examined as the witness in the Court. There was no occasion for the Court to observe that the signatures of the testator on the blank papers cannot be ruled out. The observation is totally without any basis and does not arise from the record.

(xxiv). The Will in original, the second original Will in the office of Sub-Registrar and the Punjabi translated copy of Will, bear 33 signatures (including the endorsements) of the Raja in

total. The theory of obtaining signatures of Raja on blank papers cannot be inferred in view of this fact alone.

(xxv). Sardar Umrao Singh Dhaliwal was the close confidant of Raja Harinder Singh. In the year 1966, he was given Signal Honour of Tazeem which means 'next to the immediate members of the Ruler's own family'. Sardar Umrao Singh Dhaliwal was the controller of His Highness Personal Estates and has been designated as CEO of the Trust created under the Will in question. He is also signatory to all three Trust Deeds and general power of attorney dated 16.02.1989 (Ex.DX-2).

(xxvi). The initial onus to prove due execution of Will has been discharged by the defendants in accordance with law. Thereafter, burden of proving that the Will was executed under undue influence heavily rests on the other party, who alleges the same. Reference to Sections 101, 102 and 103 of the Evidence Act would suffice to show it. The burden of proof that the Will was executed under undue influence is on the party, who alleges the same. The plaintiff has not led any evidence to prove the allegations that the attesting witness Brijinder Pal Singh Brar (DW-1) had derived any benefit under the said Will. Reference to the following case laws would be necessary:-

Naresh Charan Dass Gupta vs. Parekh Charas Dass Gupta, AIR 1955 SC 363; Surinder Pal vs. Dr. Mrs. Sarawati Arora, AIR 1974 SC 1999 and ***Babu Singh vs. Ram Sahai, AIR 2008 SC 2585***.

(xxvii). On 11.03.2013, learned counsel for the plaintiff Rajkumari Amrit Kaur stated that the defendants should produce the account books before further cross-examination of Sardar Brijinder Pal Singh Brar DW-1. Defendants produced all the account books of the Trust on 17.03.2013. Plaintiff inspected the same before the Local Commissioner and on the next day, certified copies of the account books were produced at the residence of learned counsel for the plaintiff and thereafter cross-examination of Brijinder Pal Singh Brar was done. No question was put to him about any amount paid to him by the Trust, or any other benefit was advanced to him i.e. AW of the Will.

(xxviii). Plaintiff has not given any particulars of undue influence in the pleadings, nor has adduced evidence to that effect. Plaintiff has not pleaded and proved as to how said Brijinder Pal Singh Brar was in a position to dominate the will and wisdom of Raja Harinder Singh. Plaintiff has not pleaded and proved, the manner in which Brijinder Pal Singh Brar

exercised his influence and how the influence was undue and as to what benefit was derived by him by exercising that undue influence. Witness was not in a dominating position. Raja Harinder Singh was in a dominating position, therefore, plea of the plaintiff is not legally sustainable.

(xxix). The plaintiff has also failed to plead and lead any evidence as to the kind of misrepresentation made to Raja Harinder Singh, nor the plaintiff has led any evidence as to what fraud and how the alleged fraud was played upon late Raja Harinder Singh. Plea of undue influence, misrepresentation and fraud cannot be decided on conjectures and surmises without any foundation laid in the pleadings and evidence led to that effect. In view of statement of Brijinder Pal Singh Brar (DW-1) and Maharani Deepinder Kaur (DW-3), genuineness of Will being validly executed is proved to the hilt.

(xxx). Similarly, the plaintiff has not given any particulars with regard to the coterie around the Raja. Particulars as regards number of persons forming the alleged coterie have not been given, nor the plaintiff has given particulars about the names of the persons and their status. Plaintiff has not given any particular with regard to the relations with the said members of the coterie. Plaintiff has also failed to prove as to how the said members of the coterie were in dominating position over

Raja and how they used their position to obtain alleged benefit under the Will. Raja was mentally very much alert and never remained in the state of depression, nor lost any balance of mind. He was not dependent upon such coterie around him, in fact, there was no coterie around the Raja, nor anyone capitalized and exploited any alleged vulnerability of the Testator. The allegations are claimed to be baseless. No particulars have been furnished, nor any evidence has been adduced in order to prove these allegations of undue influence, misrepresentation and fraud. Pleas of undue influence and forgery are mutually self destructive. If case of undue influence is made out, there cannot be any forgery and *vice-versa*. Reliance can be placed upon ***Nandadulal Dey vs. Smt. Mira Das, AIR 1981 Calcutta 83 (DB).***

(xxxi). In view of aforesaid factual and legal position, the Will cannot be vitiated on account of undue influence, where the relations between the parties are such that one of them is in a position to dominate the will of other and he used his position to obtain unfair advantage over other. In the present case, there is neither any pleading, nor any evidence to show the exercise of undue influence, fraud and misrepresentation in any manner. During cross-examination of DW-3 Maharani Deepinder Kaur, the plaintiff has put suggestion to DW-3 that the influence was

used by Sardar Ranjit Singh Wahniwal through Brijinder Pal Singh, Advocate. There is no such plea taken in the plaint, nor the plaintiff made any such statement while appearing as PW-1. Therefore, an attempt has been made on an afterthought story, for which there is no foundation in the pleadings, nor in the evidence. Plaintiff has alleged that Ranjit Singh Wahniwal, Advocate, who is legal advisor to late Raja Harinder Singh and is also legal Advisor to contesting defendants exercised undue influence upon Raja and derived benefit from the execution of the Will as he is the controlling authority of the Trust. Learned counsel for the plaintiff also gave suggestion to DW-1 on 19.03.2013 which are beyond pleadings of the plaintiff.

(xxxii). It is clear from Resolution No.1 dated 20.10.1989 (Ex.DW3/1) that with the assent of Executors, Trustees had taken over possession, control and management of the entire Estate left by Raja Harinder Singh including land, buildings, cash balances and thereafter entire management vested in the Board of Trustees. The Executors have nothing to do with it. The Executors have not derived any benefit under the Will. They washed their hands from the possession, control and management of the estate of Raja Harinder Singh and no allegations can be raised against them that they had taken personal benefit under the Will. According to Section 332 of

Indian Succession Act, assent of Executors is necessary to complete the legacy title to the legatee. Under Section 333 of Indian Succession Act, assent of Executors for vesting the legacy in the legatees is sufficient to divest the executor's interest in the legacy, when they transferred the subject matter of legacy to the legatee. The Resolution No.1 is duly signed by all the Executors, therefore, no allegation can be made against the Executors including Sardar Ranjit Singh Wahniwal. Even the Will does not contain any such recital that S. Ranjit Singh Wahniwal shall be the member of the Board of Executors. Infact, the Will says that he is legal and income tax advisor, His Highness Personal Estate, Faridkot shall be the member of the Board of Executors. Plaintiff has not proved as to whether Sardar Ranjit Singh Wahniwal, was legal and income tax advisor of His Highness Personal Estate, Faridkot in the year 1982, when the Will in question was executed. The plaintiff would succeed only on the basis of his pleadings and evidence brought on record. The maxim of law **"***scundum allegata at probate"* would apply to the hilt. The plaintiff cannot appropriate and reprobate and cannot go beyond the pleadings.

(xxxiii). Under Order 7 Rule 1 CPC, in the absence of pleadings, the plaintiff is estopped from raising the plea. The reference can be made to ***Bhag Singh vs. Nek Singh, 1994***

PLJ 449 (DB); ***Bondar Singh vs. Nihal Singh, 2003(2) R.C.R. (Civil) 222 (SC)***; ***Jit Singh vs. Bhupinderpal Kaur, 1993(1) R.R.R. 225***; ***Ram Naraian Singh vs. Smt. Gurinder Kaur, 1997(2) PLR 1*** and ***Darshan Singh vs. Santokh Singh, 1997(2) PLR 158 (P&H)***. On the strength of aforesaid precedents, it can be appreciated that the plaintiff has utterly failed to prove the plea of undue influence, misrepresentation and fraud. Allegation that late Raja Harinder Singh was mentally upset at the time of execution of the Will is equally unfounded. It is a settled position of law that Will is executed by a person only to disturb natural line of succession. Presumption of law is that the testator is presumed to be sane and having the mental capacity to make the valid Will unless contrary is proved. Execution of Will is duly proved. Defendant-Trust has discharged the onus of proving the same, therefore, late Raja was having sound, disposing mind and was capable of making rational approach. Even in the statement of DW-1 Brijinder Pal Singh Brar, the mental capacity of late Raja has been exhibited on affidavit. In para No.II of the affidavit the witness has categorically stated that late Raja was physically and mentally fit and was capable of making rational judgment and he voluntarily executed the Will in question without any undue influence. Even DW-1 has not been cross-examined with regard to mental

condition of late Raja Harinder Singh. The defendant-Trust has discharged the onus of proving mental capacity of the testator and, thereafter onus is shifted upon the plaintiff to prove the allegations that the testator was mentally upset and remained under depression on account of death of his only son Tikka Harmohinder Singh. Plaintiff has not produced any medical evidence on record to show that Raja was not having sound mental condition. Plaintiff herself has produced documents executed by late Raja after the death of his son, which shows that late Raja was mentally and physically fit till his death and was capable of making rational judgments.

(xxxiv). Statement of DW-1 is proved beyond shadow of any doubt that the column of date in the Will in question was filled by testator himself in his own handwriting. The original Will is typed in English, but due to Punjabi being official language, translated copy of Will was prepared in Punjabi which was also duly signed by the testator and witnessed by attesting witnesses. It was also presented to Sub-Registrar along with original Will for the purpose of official record, therefore, the allegation that the space in date in the Will was kept blank, though the whole Will is duly typed, is not of suspicious circumstance by itself to doubt the genuineness of the Will. Reference can be made to ***Gurdial Singh Mann vs. Kulwant Kaur and others, 1989(2) RRR 142***

(Punjab). The will bears signatures of late Raja Harinder Singh. It is not the case of the plaintiff in the plaint that Will in question does not bear the signature of late Raja Harinder Singh. In other words, signatures of late Raja are not denied in the pleadings. It has been alleged by the plaintiff that the Will was made on the existing signatures of the Testator.

(xxxv). The plaintiff cannot go beyond the pleadings, nor can put questions in cross-examination beyond pleadings. In order to show genuineness of the signatures of the testator upon the Will, the defendant-Trust has got the Will examined from document Expert Sh. Dewan K.S. Puri and Sh. Navdeep Gupta, who gave the report Ex.DW2/1 dated 21.01.1995 that disputed and standard signatures are in the hand of one and the same person. The standard signatures have been taken from the registered power of attorney dated 04.11.1966, 14.05.1984 and 16.02.1989 which are exhibited (Exs.DX/1 to DX/6) Independence and integrity of Sh. Dewan K.S. Puri have been highlighted with reference to the observations made by the High Court to show that the Expert can give his opinion against the party, who called him. Even the reputation of Navdeep Gupta is also claimed to be of high value. Despite lengthy cross-examination, the report of expert could not be rebutted. The report prepared by both the document experts namely Dewan

K.S. Puri and Navdeep Gupta prove that signatures on the Will are that of late Raja Harinder Singh. The plaintiff sought to rebut the report of document experts by examining Dr. Jassy Anand, who gave her report that signatures on the Will are copying forgery. The report itself is in utter contrast to the suggestion given by learned counsel for the plaintiff to Brijinder Pal Singh, Advocate that the signatures of testator were already existing, when the Will was fabricated upon the existing signatures.

(xxxvi). Reputation of Dr. Jassy Anand has been questioned in various Courts in various cases. In the plaint, there is not an *iota* of whisper with regard to the signatures of the testator and the witnesses. Plaintiff was handed over the copy of Will in question on 26.10.1989 on the last rites/Bhog ceremony of late Raja Harinder Singh and the plaintiff in the plaint has not disputed signatures of the testator on the Will. Even in the cross-examination of the plaintiff dated 19.05.2012 she has admitted the factum of delivery of copy of Will to her by S. Umrao Singh Dhaliwal after two days of Bhog ceremony and the plaintiff after going through the same decided to contest. Prior to filing of the suit, the plaintiff had examined the Will from every angle and, thereafter opted to challenge the same on the grounds as mentioned in the plaint, but she did not dispute the signatures of the testator on the Will. It is an established

position of law that science of handwriting is not an accurate science. Opinion of expert cannot override positive evidence of the party. Section 45 of the Evidence Act, 1872 shows possibility of errors creeping in the evidence of handwriting expert, therefore, the evidence of such Expert should be received with caution. The opinion of Expert cannot override positive evidence of attesting witnesses. The Court must be cautious while evaluating expert evidence, which is a weak type of evidence and is not substantive in nature. It may not be safe to solely rely upon such evidence. The Court may look for cogent and reliable corroboration of the facts of the case. Expert evidence is not a conclusive proof of due execution of a Will. Reliance can be placed on ***Shashi Kumar vs. Subodh Kumar, AIR 1964 SC 529***; ***Prem Chand vs. Phulma, 2003(1) R.C.R. (Civil) 302***; ***Chennadi Jelapathi Reddy vs. Badampratapa Reddy, 2019(4) CCC 79 SC***.

(xxxvii). As regards provision having not been made in the alleged Will for the plaintiff, her mother and her grandmother, it can be appreciated that in the Will itself late Raja has mentioned that his two daughters are married and are living with their husbands. Raja has made provision for his wife i.e. Her Highness Rani Narinder Kaur by making a provision of Rs.36,000/- annually payable in two equal installments payable

in the month of April and October during her life time and she was given exclusive possession of Faridkot House, I Nayya Marg, Chankyapuri, Delhi for her personal residential house during her life time. The house is situated in posh locality of Delhi and is well furnished house. The provision of Rani Narinder Kaur Sahiba is neither meager nor paltry, keeping in view her position and status in life. No role in the functioning of Trust was assigned to Rani Narinder Kaur keeping in view her old age and physical weakness. Raja Bhagwan Singh of Bhareli State, District Ambala was the father of Rani Narinder Kaur Sahiba. He was very rich. He owned and possessed vast movable and immovable properties, huge cash and jewellery at the time of his death in the year 1960. Rani Narinder Kaur Sahiba along with her three step brothers and step sisters and her own mother and her real sister succeeded to his fabulous estate. Rani Narinder Kaur also succeeded to the half share of her mother. Other half share went to her younder sister Rajkumari Palinder Kaur. After death of Rani Kuldeep Kaur, Rani Narinder Kaur, younger sister of Rani Narinder Kaur also died issueless. Her property was also devolved upon the plaintiff and her younger sisters defendants No.1 and 2. Rani Narinder Kaur resided separately from her daughters since 1953 and she was regularly paid Rs.3,000/- per month as maintenance

allowance. Same facilities and maintenance allowance were given in the Will and the same were made to continue. Therefore, Rani Narinder Kaur was not ignored or denied. Adequate provisions were made for her maintenance according to her position and status in life.

(xxxviii). As regards mother of the testator and grandmother of the plaintiff, a maintenance of Rs.3,000/- per month was fixed for her from Punjab State being mother of the Ruler of the Faridkot State and she was regularly drawing Rs.3000/- per month as maintenance allowance from Punjab State during her life time. She was possessed of very valuable jewellery and cash. She was having investment in UK from which she was getting regular income. She was income tax and wealth tax assessee. She built a palacious house in four kanals in Sector 9, Chandigarh. She had been residing separately in her own house for the last many years. She was aged 84 yeas at the time of execution of Will. The testator never hoped that she would survive him. Moreover she was regularly getting maintenance allowance from the Government and was living separately from the testator for the last more than 25 years from the date of execution of Will. There is no scope for making any provision for her as she was not dependent upon Raja Harinder Singh. Maharani Mohinder Kaur was also informed about the

execution of Will by the Raja Harinder Singh, but she never objected to it during her life time, therefore, the allegation that no provision has been made by the testator with regard to his mother Maharani Mohinder Kaur is not tenable.

(xxxix). Raja Harinder Singh made specific mode of delivering succession of Her Highness Rani Narinder Kaur and Tikka Harmohinder Singh. On account of demise of Her Highness Rani Narinder Kaur Sahiba, late Raja created two Trusts deeds namely Rani Kuldeep Kaur Sahiba of Bhareli Religious and Charitable Trust vide registered Trust Deed dated 29.01.1987 (Ex.DX/6). Perusal of this Trust would show that Her Highness Rani Narinder Kaur Sahiba during her last days made an oral Will in the presence of Sh. Harbans Singh Uppal and her sister Palinder Kaur Sahiba to the effect that she wanted to create a Trust in the memory of her mother Rani Kuldeep Kaur to be known as Rani Kuldeep Kaur Religious and Charitable Trust to be founded by late Raja Harinder Singh and she also wished that late Raja Harinder Singh would act as Executor of her oral Will and Her Highness Rani Narinder Kaur also handed over Rs.12,50,000/- to said Harbans Singh Uppal for being further given to Raja Harinder Singh from the corpus of the Trust to be created by him in accordance with her directions and wishes and to be utilized as desired by her mother for the

maintenance of Akal Takht Sahib, Amritsar. Late Raja in pursuance of desire of his wife made the Trust Deed known as Rani Kuldeep Kaur Sahiba of Bhareli Religious and Charitable Trust with Board of Directors namely Maharani Adhirani Deepinder Kaur of Burdwan, Rajkumari Amrit Kaur Sahiba of Faridkot, RajKumari Mahipinder Kaur of Faridkot, Harbans Singh Uppal, Ex.-officio, Controller His Highness Personal Estate, Representative of Shrimoni Gurudwara Prabhandhak Committee, Amritsar and Representative of Bank holding the account. Late Raja Harinder Singh also created Trust known as Rani Narinder Kaur Sahiba Memorial Trust, Faridkot vide registered Trust Deed dated 29.01.1988 (Ex.PX/122) having Board of Directors i.e. Maharani Adhirani Deepinder Kaur of Burdwan, Rajkumari Amrit Kaur Sahiba of Faridkot, Rajkumari Mahipinder Kaur of Faridkot, Harbans Singh Uppal, Ex. Officio, Controller His Highness Personal Estate, Representative of Shrimoni Gurudwara Prabhandhak Committee, Amritsar and Representative of Bank holding the account. Similarly, late Raja also created a Trust namely Tikka Harmohinder Singh Charitable Trust vide registered deed dated 30.01.1989 which has been produced by the plaintiff on record as Ex.PX/123, having the same Board of Directors as in case of Trust deed dated 29.01.1988. On the basis of aforesaid Trust Deeds,it can

be seen that the Testator had great inclination and passion for creating Trusts. Mere exclusion of some of the natural heirs in the Will by itself is no suspicious circumstance. The defendants have dispelled the allegations raised by the plaintiff.

(XL). As regards reason for disinheriting the plaintiff, it would be seen from the record that Rajkumari Amrit Kaur contracted marriage with Sardar Harpal Singh Sekhon on 20.05.1952 against the wishes of Raja Harinder Singh. Sardar Harpal Singh Sekhon was an ex-employee of Raja Harinder Singh. The marriage was not an arranged marriage. In the cross-examination on 19.05.2012, the plaintiff has admitted that she did not attend the marriage of her sister Deepinder Kaur in Raj Mahal, Faridkot. The marriage party came from Calcutta. She further admitted that her marriage was not performed in Raj Mahal. She was aged 18 years at the time of her marriage. She further admitted that she has three children, one son and two daughters. Her son is the eldest namely Jaskaran Singh. His marriage took place in Chandigarh. Her daughter is Income Tax Commissioner married in Delhi and her second daughter is married at Chandigarh. She further admitted that Raja Harinder Singh did not attend the marriage of her children. Raja Harinder Singh did not attend her marriage which took place in the year 1952. She further admitted that at the time of her marriage, her

husband was having living spouse and two children. There is a difference of 10 years between her age and age of her husband. Even defendant No.1 Maharani Deepinder Kaur while appearing as DW-3 has admitted in her cross-examination dated 06.04.2013 that the relation of the plaintiff Rajkumari Amrit Kaur got strained with her father, when she got married to S. Harpal Singh Sekhon. In addition to the aforesaid, it has been pointed out that Registered Will dated 22.05.1952 (Ex.D/20) executed by late Raja in which the Raja disinherited the plaintiff as she had contracted marriage against the wishes of late Raja. The Will is solemn document and came into operation only after the death of the Testator. The Will is always to disturb natural line of succession. If the natural line is not be disturbed, then there is no question of executing any Will. In view of aforesaid circumstances, Raja disinherited the plaintiff as he was unhappy for the act and conduct of the plaintiff. Mere exclusion of some of the natural heirs cannot be considered to be suspicious circumstance regarding genuineness of the Will.

[XLI]. As regards late disclosure of the Will, it can be appreciated that the observations made by the Courts to the contrary are untenable. The observations are contrary to the record. The Will was never kept in dark and the same was disclosed to all concerned on 26.10.1989 on the day of Bhog

ceremony of late Raja Harinder Singh. The defendants in their written statement have categorically pleaded in para No.15 that the Will in question was announced on 26.10.1989 in Qila Mubarik, Faridkot at the time of Bhog and last rites of the testator in a well attended gathering, where plaintiff and his family members were also presented. The Will was proclaimed and read out from ramparts of historic Qila Mubarik on the Bhog and last rites of the Testator in the presence of the plaintiff and her husband. She was given a photocopy of the Will duly attested by Chief Executive S. Umrao Singh Dhaliwal on demand of the plaintiff after conclusion of Bhog ceremony. The plaintiff never raised little finger against the Will, but rather acquiesced and assented to the taking over of the Estate of testator by the Trust. The plaintiff in her cross-examination dated 05.05.2012 has admitted that the last rites were performed at Qila Mubarik at Faridkot. At the time of last rites Sh. Karnail Singh Doad was present. She also volunteered that an announcement was made regarding the Will in question. On the next day of Bhog ceremony and last rites, S. Umrao Singh Dhaliwal gave her some papers which he called the same as Will of late Raja Harinder Singh, which is now under challenge. On the basis of aforesaid facts, it is apparent that Will was never kept in dark and the same immediately came to light on the

death of Testator.

[XLII]. So fas as the custody of Will is concerned, it is wrong to say that the Will has come from the custody of Sardar Umrao Singh Dhaliwal after opening the Safe of Raja Harinder Singh, therefore, it created doubt in respect of due execution. The Courts below have ignored the fact that S. Umrao Singh Dhaliwal was given the honour of Tazeem by Raja Harinder Singh in the year 1966 and he was taken to be a person of stature which would be next to the members of the royal family. As per Farman of Raja (Ex.D/18) S. Umrao Singh Dhaliwal was the man of Raja Harinder Singh, who was also the controller of His Highness Personal Estates which can be seen from the Will dated 22.05.1952. The custody of the Will has been duly explained by the witness DW-3.

(XLIII). The findings recorded by the Courts below with regard to the attesting witness DW-1 Brijinder Pal Singh being relative of one of the Executors are beyond pleadings and evidence led by the plaintiff. Reference can be made to the cross-examinations dated 27.02.2013, 11.03.2013 and 19.03.2013. The findings recorded in respect of suspicious circumstances are also wrong. The Courts below have given finding that DW-1 is the relative of one of the Executors. This finding is wrong and against the record. The list of Executors

with reference to the role of Executor in law and the facts of the present case would make the things clear. Bare perusal of the Will would show that the office of the Executor is shown by designation. S. Ranjit Singh Wahniwal, Advocate was not an Executor in his individual capacity and is not a beneficiary of the Will. He was merely a legal and Income Tax Advisor at that time. No evidence has been led to show that the Executor was having any interest or he was given any benefit under the Will. Vide Resolution No.1 dated 20.10.1989 Ex.DW3/1, the Trustees had taken over the possession, control and management of the entire Estate left by Raja Harinder Singh. According to Section 332 and 333 of the Indian Succession Act, vesting the legacy in the legatee is sufficient to divest any interest of the Executor in the legacy. Therefore, in view of the aforesaid, it cannot be said that the Executor was having any benefit under the Will. It is no-where mentioned in the Will that R.S. Wahniwal shall be the Member of the Board of Executors. Infact the Will shows that the Legal and Income Tax Advisor to His Highness Personal Estates, Faridkot shall be the member of Board of Executors. Plaintiff has failed to show as to whether Ranjit Singh Wahniwal was legal and Income Tax Advisor of His Highness Personal Estates in the year 1982, when the Will was executed.

(XLIV). As regards use of different ink at the time of

attestation of Will and at the time of registration of Will is of no significance. The Witness DW-1 in his cross-examination dated 22.02.2013 stated that on the Will in English in the Sub-Registrar copy on the back of first page of the Will, the witness put his signatures with the Pen of Sub-Registrar on the endorsement page. All the signatures of Sub-Registrar on the endorsement of the Will in English are in green ink, whereas on the Will in Punjabi there are signatures of Sub-Registrar in green ink on the Will in Punjabi above the stamp. He volunteered that the endorsement written are in black, whereas signatures of the Sub-Registrar are in green ink. In view of aforesaid, there is no such significance attached to the use of different ink pens at the time of attestation and registration of the Will.

(XLV). As regards use of word 'harrowgraph', the Courts below have erred in observing that wrong recital of the Will as using of word “Harrowgraph Will” or “Holograph Will.” It is mere a spelling mistake. The meaning of Holograph Will is a Will which is written by the Testator himself. In the instant case, since the Will has been drafted and got typed on the typewriter by the Testator himself, hence he has mentioned the term “Harrowghraph Will” on the top of the document. The said fact further stands established from the testimony of DW-1 Brijinder

Pal Singh Brar, wherein, he stated that late Raja told both of them/AWs that he himself has drafted and got typed the Will and he himself is the author of the Will. The Will was his holograph Will. The witness has been cross-examined on the said aspect, where the witness stated that Maharaja showed him the Will and stated that he has already drafted and got typed the Will himself.

(XLVI). As regards other related allegations i.e. (a) relationship of Raja with DW-1 attesting witness were not very cordial and were of formal nature; (b) nature of typing of the Will, size and thin quality of the paper etc.; (c) number of copies of Will and 3rd copy of Will i.e. in Punjabi language; (d) First and second copy of Will being on different typewriters (format of Will are different); (e) registration of Will at Raj Mahal by the Sub-Registrar and (f) reason for exclusion of the plaintiff, it can be noticed from the record that the Courts below have gone wrong on the point that the relationship of Raja with attesting witness was not cordial and were of formal nature. This view is wholly misplaced. The attesting witness DW-1 Brijinder Pal Singh deposed in his affidavit that he is collateral of Raja Harinder Singh being descendent of Dal Singh. His grandfather was Zaildar of Faridkot State and was assessor in session trial. Morever in the cross-examination of DW-1 dated 27.02.2013, he

answered to the question put by learned counsel for the plaintiff that Raja Harinder Singh came to the marriage of his sister in April 1983 at Faridkot and he also attended the wedding of his cousin sister in March 1978. Apart from that the witness has been meeting with the Raja on social functions in Raj Mahal, when he invited him. In the affidavit, the attesting witness also stated that he had social relations with late Raja and has been attending social functions in Raj Mahal during his life time. With reference to the aforesaid, it can be seen that relation between the attesting witness DW-1 and Raja were cordial and the witness always remained in the list of invitees of late Raja. In the general power of attorney dated 16.02.1989 attesting witness DW-1 Sh. Brijinder Pal Singh Brar is also a witness. The Courts below have ignored the fact that in cross-examination dated 14.02.2013, DW-1 has not admitted nature of typewriter of the typist. The Courts below have ignored the fact that when the witness reached Raj Mahal, the Will in question was already typed and the Punjabi translation was already with Raja Harinder Singh. Bare perusal of the Will would show that the paper on which the Will has been executed contains water mark of rising sun.

(XLVII). As regards number of copies of Will and 3rd copy of Will (Punjabi translation), the Courts have concluded that the

witness has stated the fact regarding two copies of Will which were attested by him and then the Will in Gurmukhi script came to light. Reference to the cross-examination of DW-1, would show that he put his signature on the Will in Punjabi at that very time when he signed the other copies of Will in English. When he signed the Wills, he signed the Wills which were in English as well as in Punjabi translation. He signed on all the three Wills in the presence of Maharaja Harinder Singh. He signed before the Sub-Registrar on the two copies in English and one copy in Punjabi. As regards first and second copy of Will are on different typewriters, the Courts below have wrongly held that the original Will and certified copy of Will in the record of the registering authority speaks volume that the format of both the Wills is different and both the Wills are typed on different typewriters. This observation is not tenable as the reading of both the Wills even with naked eyes would show that the same have been typed from the same typewriter. It was specifically brought to the notice of the Courts below by referring to certain instances in both the Wills that these have been typed from the same typewriter because of identical strokes and alphabets in both the Wills.

(XLVIII). As regards registration of Will at Raj Mahal by the Sub-Registrar, it can be seen that the Will was got registered on

commission because late Raja Harinder Singh was former ruler of Faridkot State. He never executed even a single document by putting his personal appearance in the office of Sub-Registrar. There are number of documents executed and got registered by late Raja Harinder Singh on commission in Raj Mahal i.e. Ex.DX/1 to Ex.DX/6, Ex.D/20, Ex.PX/122 and Ex.PX/123. All the aforesaid documents would show that there was nothing unnatural in getting the Will in question registered by Raja on commission at Raj Mahal. Moreover, the testator was former ruler of erstwhile Faridkot State, who has remained sovereign power during his regime/reign and having such a stature, he never attended the office of Sub-Registrar personally for getting documents registered and all the documents executed by Raja Harinder Singh were registered on commission. On this score, the Will in question cannot be disbelieved.

(XLIX). As regards mentioning of date by hand in the body of Will is concerned, the same would prove the genuineness of the Will and its execution. This is a strong circumstance in favour of the defendant-Trust. The testator himself presented the Will before the Sub-Registrar and got it registered in accordance with law of Registration Act. It is not the result of any undue influence or fraud. The testator remained alive thereafter for a period of more than 7 years and the Will was never revoked. It

clearly speaks volume about the genuineness of the Will. The column of the date was filled by the testator in his own handwriting. This fact itself strengthens the genuineness of the Will. The grammatical error/typing difference and other minor errors are not suspicious circumstance and do not affect the validity of the Will. Various letters produced by the plaintiff herself are also having the same description/variations in various letters/alphabets, typographical mistakes, grammatical mistakes, use of typewriter, handwriting of the Raja for letter **'N'** and word **'of',** period of these letters and purpose of these letters was limited i.e. for acquisition of land of Raja by BSF. On the basis of aforesaid narration of facts, it can be appreciated that grammatical error in the Will has to be ignored. Such errors could not be regarded as only piece of evidence to discard the Will. Reliance can be placed upon ***Bakul Banerjee vs. Binoy Krishana Banerjee, 2010(50) R.C.R. (Civil) 462 (Calcutta)***; ***Gurdial Singh Mann vs. Kulwant Kaur, 1989(2) RRR 412***; ***Bhushan Kumar vs. State, 2000(3) R.C.R. (Civil) 722*** and ***Jagjit Singh vs. Pritam Singh, 1994(2) RRR 6***. The intention of the Testator expressed in Will could well be understood on reading of the recital. The allegations of obtaining signatures on blank paper are not tenable.

(L). There is no adverse effect of the suit filed by

Rajkumari Mahipinder Kaur. Plaintiff has relied upon one suit filed by Rajkumari Mahipinder Kaur i.e. Civil Suit No.210/01.05.1969 (Ex.P-50) which was filed by her against the trustees and executors in which, she herself claimed that the translated Will as well as the Trusts are invalid. She claimed that she is owner of 1/3rd share.

(LI). Rajkumari Mahipinder Kaur held the office as Vice Chairperson of the Trust and accepted her designation and exercised powers given to her under the Will. This fact is apparent from Resolution No.10, 11 and 26 (Ex.D-7 to Ex.D-9) passed by the Trust and other resolutions which are part of resolutions produced by the plaintiff herself as Ex.PX/100. She has been participating in the affairs of the Trust and she cannot later on denounce the Trust as Trustee, nor she claim that Trust is invalid. The Trustee cannot denounce after acceptance, except with the permission of Principal Civil Court of original jurisdiction or if the beneficiary is competent to contract, with his consent or by virtue of special power in the instrument of Trust. As per Section 14 of the Indian Trust Act, a trustee cannot set up title adverse to the beneficiaries. Mahipinder Kaur signed various resolutions and was representing the Trust during her life time. She never surrendered her position of Vice Chairperson, nor has she resigned from the Trust. It was in the

last days, she was coaxed by the plaintiff to denounce the Trust. In this manner, the suit filed by Rajkumari Mahipinder Kaur in no way affects the Will and moreover, the suit was never decided on merits, rather stood abated on the death of Rajkumari Mahipinder Kaur.

With the aforesaid submissions, learned Senior counsel assisted by Mr. Mukul Aggarwal for the defendants/Trust prayed for acceptance of the appeal on behalf of the Trust and for dismissal of the suit filed by the plaintiff Rajkumari Amrit Kaur.

[105]. As against the aforesaid submissions made on behalf of the defendants/Trust, Mr. M.S. Khaira, Senior Advocate assisted by Mr. B.S. Sewak, Advocate appearing on behalf of the plaintiff-Rajkumari Amrit Kaur has argued on the question of validity of Will by dividing his arguments on number of points.

Mr. Vivek Bhandari, learned counsel appearing on behalf of appellant in RSA No.2176 of 2018 has adopted the arguments of Mr. M.S. Khaira, Senior Advocate on behalf of the plaintiff-Rajkumari Amrit Kaur.

Mr. M.S. Khaira, Senior Advocate submitted as under:-

A. Requirement of Order 6 Rules 2 & 4 CPC and

Order 6 Rules 10 and 13 CPC, where the plaintiff need not to plead as to how, when and by whom fraud was committed.

(i). Plaintiff Rajkumari Amrit Kaur has pleaded the Will dated 01.06.1982 to be forged, fictitious and fabricated. Necessary pleadings made in the plaint, if read in conjunction with Order 6 Rules 10 and 13 CPC would prove the Will be to forged and fabricated document which is surrounded by suspicious circumstances and is the result of fraud. In view of Order 6 Rules 10 and 13 CPC, plaintiff need not to plead as to how, when and by whom fraud was committed particularly when the burden to prove genuineness of the Will is on the Defendants/Trust. Burden of proving the Will is on the defendants/Trust as per law and as per issue No.6 framed by the trial Court. Defendants/Trust has miserably failed to dispel suspicious circumstances surrounding the Will for the reasons narrated in the subsequent part of judgment.

(ii). Necessary pleadings have already been made by the plaintiff Rajkumari Amrit Kaur in para No.8 of the amended plaint, wherein it has been pleaded that the Will is fictitious and is forged and fabricated document, which does not vest any right, title or interest in anybody, nor it can divest the plaintiff and defendants No.1 and 2 of the properties. In para No.9 of the

amended plaint, it has been pleaded that the Will is surrounded by suspicious circumstances and in para No.11 of the amended plaint, it has been recited that the Will set up by defendants No.1 to 3 and 10 as already stated is forged, fictitious and fabricated and does not inspire confidence and its execution is full of suspicious circumstances. In view of aforesaid pleadings, Order 6 Rules 10 and 13 CPC would make things different for the defendants/Trust to harp upon the requirement of Order 6 Rules 2 and 4 CPC. In terms of Rule 13 of Order 6 CPC, neither party need in any pleading allege any matter of fact, which the law presumes in his favour or as to which the burden of proof lies upon the either side unless the same has been specifically denied.

(iii). In case of Will, the plaintiff is only required to allege the fraudulent intention and behaviour of the defendants with reference knowledge and their mindset. The defendants have to prove due execution of Will by dispelling all the suspicious circumstances.

(iv). Will is not a bilateral document like a contract in which both the parties are involved in execution and both parties are aware about the execution of the document. If there is any fraud, both the parties are in the position to explain the time, nature and person by whom fraud is committed. Plaintiff

Rajkumari Amrit Kaur did not participate in making or execution of the alleged Will, therefore, she could not explain all the details. Plaintiff is a housewife and not an expert. Fraud did not happen in front of her, otherwise she would have stopped it there and then. Plaintiff did not know which day Will was forged and at what time and by whom. She has pleaded in para Nos.8, 9 and 11 of the amended plaint that Will is a forged and fabricated document. She was given only a photocopy of the alleged Will after the Bhog ceremony of late Raja Harinder Singh. Her cross-examination dated 05.05.2012 is to the following effect:-

> *"xx xx xx. On the next day of last rites ceremony of my father, S. Umrao Singh gave me some papers which he called the Will of my father which is now under challenge. xx xx xx"*

(v). Raja Harinder Singh died in the night of 16.10.1989 in Batra Hospital at Delhi. The suit was filed by the plaintiff Rajkumari Amrit Kaur challenging the alleged Will on 14/15.10.1992. Original Will was not produced by the defendant along with the written statement filed on 28.04.1994 on behalf of defendants No.1 to 3 (1, 2, 3, 5, 7) and 5. Written statement on behalf of other defendant(s) No.3 (4, 6, 9) was filed on 29.04.1994. Plaintiff filed an application dated 11.11.1994 for

production of Will by the defendants in Court. Vide order dated 06.01.1995, the trial Court directed the defendants to produce the Will within 15 days of framing of issues. Issues were framed on 04.12.2006, but the defendants did not produce the Will as per the directions of the Court dated 06.01.1995. The Will was produced by the defendants only on 02.11.2012 i.e. after 20 years of filing of the suit and after the plaintiff's evidence in affirmative was closed on 02.06.2012. Original Will was not put to the plaintiff in her cross-examination. In view of these circumstances without seeing the original Will, how could the plaintiff tell about the nature of forgery and fabrication done by the defendants in the Will.

(vi). The Will was produced by the CEO of the Trust namely Sh. Lalit Mohan Gupta on 02.11.2012, but he was not examined on oath by the defendants, so that the plaintiff's counsel may not cross-examine him. A specific objection was raised by the plaintiff, which is recorded in the zimni order dated 02.11.2012 that counsel for the plaintiff Rajkumari Amrit Kaur wants to cross-examine Sh. Lalit Mohan Gupta, so he should be examined on oath. A categoric question was put to DW-3 Maharani Deepinder Kaur, Chairperson of the Trust with regard to custody of the Will that in whose custody Will was from 20.10.1989 till date, to which she answered that earlier Will was

with S. Umrao Singh Dhaliwal. After his death, it was with Sh. Lal Singh Sra and now it is with Sh. Lalit Mohan Gupta, present CEO of the Trust, but it was never in her custody. Relevant portion of cross-examination dated 20.04.2013 is to the following effect:-

> *"xx xx xx. It is further incorrect to suggest that I am deposing falsely. The original Will remained in custody of Miya Umrao Singh till he remained the Chief Executive of Maharwal Khewaji Trust and I do not remember the period and date upto which Umrao Singh remained the Chief Executive of the Maharwal Khewaji Trust. After Umrao Singh, the Will remained in the custody and control of S. Lal Singh, successor Chief Executive. xx xx xx"*

(vii). On the one hand, defendants argued that the plaintiff has not given details of fraud, when, how and by whom it was played. On the other hand, defendants did not allow plaintiff to see the original Will even after 20 years of filing of the Suit, when it was produced in Court on 02.11.2012. The defendants filed an application for sealing of the original alleged Will (Ex.DW2/B) in the Court on 02.11.2012, the same day when they produced the Will in Court which is also reflected in zimni order dated 02.11.2012. The Will was produced by the

defendant only after plaintiff's evidence was closed, therefore, the plaintiff could not lead evidence in affirmative. The Will remained sealed in court record even after rebuttal evidence by the plaintiff, which is also evident from the zimni order. On 10.11.2012, an application was filed by the plaintiff that the plaintiff's Handwriting Expert and Criminologist Dr. Jassy Anand may be allowed to take photographs. The application was allowed on 01.12.2012. Seal of the envelope was opened and Will was examined in the presence of defendants counsel and was sealed immediately on the insistence of defendants. The plaintiff had an option to lead evidence only in rebuttal regarding forgery of Will, which she did. She got examined the Will by an Expert namely Dr. Jassy Anand and the Expert has given detailed report by which the nature of forgery of the Will has been exposed.

(viii). Dr. Jassy Anand (PW-5) has been examined at length on her report Ex.PW5/1 and photographic charts Ex.PW5/2 to Ex.PW5/19. Secondly the other source available with the plaintiff was that the evidence regarding forgery of Will could come from the cross-examination of witnesses produced by defendants which was done by the plaintiff's counsel and lot of suspicious circumstances have come forth and established on record.

(ix). The plaintiff of the connected suit i.e. Kanwar Manjit Inder Singh through Bharat Inder Singh did not lead any evidence regarding forgery of the Will, whereas plaintiff Rajkumari Amrit Kaur brought certified copies of more than 100 documents from various places, Government offices, District Courts and High Court etc. and confronted the witnesses DW-1, DW-2 and DW-3 in their cross-examinations which are exhibited and are instrumental in exposing the fraud. Plaintiff Rajkumari Amrit Kaur got examined the Will from Expert Dr. Jassy Anand, who has been examined in rebuttal as PW-5 and proved the forgery in the Will vide a detailed report (Ex.PW5/1) and photographic charts (Ex.PW5/2 to Ex.PW5/19).

(x). Throughout learned counsel for the plaintiff in the connected suit i.e. Kanwar Manjit Inder Singh through LR Bharat Inder Singh adopted the arguments of learned Senior counsel appearing on behalf of plaintiff Rajkumari Amrit Kaur. Para 64 of the judgment dated 05.02.2018 passed by the first Appellate Court is relevant to be quoted in this context. The same reads as under:-

> *"64. It has been argued by Mr. Bhandari, Advocate for the appellant in two appeals No.1054 of 2013 titled "Bharat Inder Singh Versus Maharwal Khewaji and others" and Civil Appeal No.1062/2013 "Bharat Inder Singh Vs Meharwal Khewaja Trust and others" that with*

regard to the validity of the Will he adopts the arguments advanced by Mr. Khaira, the ld. Sr. Advocate with the additions that one of the executor Mr. R.S. Wahniwal Advocate was in the official capacity of the advisor in the Will but he got impleaded himself as a party in the case and not only appeared as witness in the case but also cross-examined the witnesses of the plaintiff. This itself shows the vested interest of the executor whose role was to end only with delivery of the property to the rightful beneficiary as per Will. Once he himself has come forward at every stage of litigation it shows that in fact it was a fictitious Will which has been prepared to grab the property."

(xi). The written statement dated 28.04.1994 filed by defendants No.1 to 3 and 5 would show that there is an admission by defendants regarding Raja's command over English language and legal terms. Para No.12 of the written statement is precisely drafted in this context to show that the testator was well read, wide awake and intelligent. He subscribed to all the newspapers, Indian and foreign journals and was in the habit of reading books on every subject. He had been ruler of Faridkot State from 1934 to 1948. During this period, he introduced many reforms in civil and judicial administration. Faridkot State progressed very much during his regime. He established Arts and Science College, Commerce College, B.Ed College, Agriculture College. He established

primary schools in every village and two high schools in his State. He built hospital, roads, planted trees on both sides of the road. He introduced judicial reforms and established Courts on British pattern. At the time of Bhog and last rites, his sketch was published in Daily Tribune dated 26.10.1989 by two renowned scholars.

(xii). The aforesaid pleadings would show that the Raja was a dominating personality and there is no question of his being influenced by anyone. He was a man of his own independent views. In para No.15 of the written statement, the pleadings as regards the exclusion of grandmother of the plaintiff i.e. Maharani Mohinder Kaur Sahiba i.e. mother of the Testator have been made. She was aged about 84 years at the time of execution of Will. The testator never hoped that she would survive him. The justification given by the defendants for the Raja disinheriting his mother that testator never hoped that she would survive him is so inhumane, uncaring, unnatural and could not be attributed to the Raja as her son.

(xiii). The pleadings in the written statement further highlighted that the Testator bequeathed entire estate for noble and laudable objects mentioned in the Will. Pleadings are further to the extent that the objects of the Trusts are public utility objects. It is provided in the Will that corpus and income of

the Trust property of every description shall be held upon the Trust by the Trustees for the following public utility purposes:-

(i) Maintenance of buildings namely Faridkot Fort, Sarkari Samadharn and Surajgarh Fort, Manimajra (UT);

(ii) Study and research in great depth and detailed history of Ruler's, dynasty of former Faridkot State and publication of suitable books and journals about life of Rulers and the family members of former Faridkot State and their ancestors;

(iii) To display heirloom jewellery and personal articles of testator in Museum;

(iv) to convert and run Balbir Hospital and Nursing Home with all modern facilities and amenities for the benefit of general public;

(v) To run and manage personal Estates of the testator known as His Highness Personal Estates; and

(vi) Provision for suitable residence of Rajkumari Mahipinder Kaur Sahiba and maintenance of Rani Narinder Kaur Sahiba is also made in the Will.

(xiv). As on date status of all the aforesaid properties has fallen down. No maintenance has been done. No research has been made. No museum has been made. Maintenance of Surajgarh Fort has not been done. Museum has not been made from 1989 till date. Even in respect of running of Balbir Hospital and Nursing Home, Rajkumari Mahipinder Kaur, who was designated Vice Chairperson of the Trust created by alleged Will, challenged the alleged Will by filing civil suit No.210 of 1998 (Ex.PW/2) in which she has stated that Balbir Hospital is still a dispensary in 1998. Even after 9 years of death of Raja on 16.10.1989, trustee's just to cover their fraud after 1998 have built some buildings and employed few persons, just to befool public at large. The suit filed by Rajkumari Mahipinder Kaur was dismissed in default on the day of her death on 26.07.2001. Even as per alleged Will there is no charitable intent, rather everything is being looked from commercial point of view. The recital of the Will in terms of para Nos.3(c) and 7 would show that very commercial intent. There was no charitable intent for Balbir Hospital, but once the trustee's realized that as per Trust law, this Trust was illegal, they have attempted and failed to get it register as a charitable Trust, which was rejected by Commissioner of Income Tax, Jalandhar vide letter dated 30.12.2013 (Ex.PX160). The Trust created under the Will is not

a validly executed Trust.

(xv). The provision for residence of Rajkumari Mahipinder Kaur and maintenance of Rani Narinder Kaur Sahiba were not complied with. Residential accommodation was not given to Rajkumari Mahipinder Kaur in her own right, but both Deepinder Kaur and Ranjit Singh Wahniwal have stated that she was in permissive possession. As stated in the written statement, no role was assigned to Rani Narinder Kaur Sahiba in the Trust, owing to her old age and weak health. She was quite old, frail and physically weak and was residing at Delhi. If Narinder Kaur wife of Raja was too old, frail and physically weak at the fag end of her life, then how Raja could expect a child from her at the age of 67 years. This is also claimed to be one of the suspicious circumstances. Reference to the aforesaid features as contained in the written statement, would make the pleadings sufficient to meet lawful criteria of challenging the Will on the ground of its being forged, fabricated and shrouded with suspicious circumstances.

B. No Effect of Will dated 22.05.1952 (Ex.D-20) made by late Raja Harinder Singh on the rights of plaintiff Rajkumari Amrit Kaur.

On the aforesaid point, Mr. M.S. Khaira, Senior Advocate with Mr. B.S. Sewak, Advocate on behalf of the

plaintiff-Rajkumari Amrit Kaur submitted as under:-

(i). There was no effect of Will dated 22.05.1952 (Ex.P-133/Ex.D-20) on the rights of the plaintiff. Plaintiff Rajkumari Amrit Kaur was having strong and cordial relations with her father and other family members. In 1950 and 1952**,** when Wills (Ex.PX-132 & Ex.PX-133) were executed by Raja, only Muslim, Parsi and Christian women could inherit properties one way or the other through natural succession. No other religion or community gave its female right to succeed to any property in any manner whatsoever that is why there arose a necessity of making a provision by Will by the Raja in favour of his daughters.

(ii). In 1950, Will (Ex.PX-132) was made by Raja in favour of all the three daughter to provide residential accommodations and some money in their favour as all the daughters were unmarried at that time. Situation changed in the year 1952, when the plaintiff was married and she acquired right of maintenance in her matrimonial family. Raja revoked his earlier Will of 1950 (Ex.PX-132) and executed new Will dated 22.05.1952 (Ex.PX-133/Ex.D-20) after the marriage of plaintiff Rajkumari Amrit Kaur. At that time two younger daughters namely Deepinder Kaur and Mahipinder Kaur were unmarried and they were solely dependent upon their father. At that time

daughters had no right of inheritance to any property. Raja Harinder Singh had a son Tikka Harmohinder Singh, who was to inherit all the properties. For providing decent residence and maintenance for his daughters to avoid any unfortunate eventuality on account of his untimely demise, Raja made the aforesaid Will on 22.05.1952. At the time of execution of both the Wills, Raja's son Tikka Harmohinder Singh was alive and was about 15/16 years of age. Raja could not think that his son will pre-deceased him. All the properties of Raja would have gone to his son 100% without anybody having any right of ownership in view of provisions of The Raja Faridkot Estate Act, 1948.

(iii). Will dated 22.05.1952 has no relevance in the present case, because the properties to which Will dated 22.05.1952 refers were not part of Raja's estate on the date of his death on 16.10.1989 and even the alleged Will dated 01.06.1982 does not mention those properties. Therefore, the Will dated 22.05.1952 has no relevance regarding the properties mentioned in the alleged Will dated 01.06.1982. The exact words used by the testator in the Will dated 22.05.1952 are that:-

> "*I do not now want to leave any property by Will in favour of my daughter Rajkumari Amrit Kaur Sahiba*".

This clearly does not deny her inheritance through a non-testamentary succession, such as The Raja of Faridkot's Estate Act, 1948 or Hindu Succession Act, 1956.

(iv). Plaintiff Rajkumari Amrit Kaur was having strong and cordial relationship with her father and other family members being the eldest of four children of Raja Harinder Singh. She was born a few months before her father was bestowed with full ruling powers. The Raja had ascended the Faridkot throne as an infant on the death of his father in 1918.

(v). The Raja established five Trusts during his life time. Plaintiff Rajkumari Amrit Kaur was the beneficiary in the two family Trusts namely (i) The UK based, Faridkot Family Settlement Trust in 1955 and (ii) The Faridkot Ruling Family Housing Trust in 1968. In these Trusts Raja acquired property for his daughters in 1968, 1977 and 1989 i.e. nine months prior to his death. In UK Trust of 1955, there were two components of the property. Half share went to son and half share went to three daughters. In the remaining three Trusts also plaintiff Rajkumari Amrit Kaur was appointed as Trustee and after her, her children were to be given preference for appointment as Trustees. These Trusts are (i) Rani Kuldeep Kaur Sahiba Religious and Charitable Trust (Ex.DX-6) in the year 1987; (ii) Rani Narinder Kaur Sahiba Religious and Charitable Trust

(Ex.PX-122) in 1988 and (iii) Tikka Harmohinder Singh Sahib Bahadaur Charitable and Memorial Trust (Ex.PX-123) in the year 1989.

(vi). The Trust based in UK provided income for life to all the four children which was divided into two equal portions. One portion went to Raja's son and second portion went to three daughters to be shared equally by them. Plaintiff Rajkumari Amrit Kaur was included as beneficiary in this Trust which proves that her relation with Raja remained strong throughout his life. Even in the cross-examination of DW-9 Maharani Deepinder Kaur, factum of Trust in UK and the income derived there from in favour of four children has been admitted. She has also admitted that after the demise of their brother, his share is paid to the plaintiff Rajkumari Amrit Kaur on the basis of her being the eldest and by the application of Law of Primogeniture by the Court at UK. The cross-examination of DW-3 dated 12.03.2013 is relevant in this context. Maharani Deepinder Kaur contested that Rajkumari Amrit Kaur should not get the share of their brother and the Bank referred the matter to the Court in UK which decided that the Law of Primogeniture was applicable and the Bank then started to pay the income to Rajkumari Amrit Kaur. She also admitted that the Bank sought the opinion of High Court of Justice Chancery Division on the basis of letter.

Copy of the order is Ex.DX-25 and judgment is Ex.PX-26. The judgment has attained finality.

(vii). Raja had established Faridkot Family Trust in the year 1968 of which Raja was sole Trustee and all his three daughters were beneficiaries including plaintiff Rajkumari Amrit Kaur. This fact has been admitted by DW-3 Maharani Deepinder Kaur in her cross-examination. In 1968, it was orally made but the same was registered on 12.07.1989. DW-3 has admitted that now she is the sole Trustee. One of the properties in the above said Trust is Nandan Apartment, Hyderabad and second is Riviera Apartments, New Delhi and Fairy County at Faridkot. She has further admitted that property known as Fairy Cottage (County Club) situated in Bir Chahal, Tehsil and District Faridkot, Flat No.32 Riviera Apartments, The Mall Delhi and one property stands vested in a declaratory Trust known as Faridkot Family Housing Trust created by late Raja Harinder Singh. The beneficiaries of this Trust are all the three daughters of the settler. In view of aforesaid, what was the need for the Raja to get the oral Trust registered on 12.07.1989, when these properties were mentioned in the disputed Will, if he had made it at all.

(viii). Raja had a very cordial relation with his daughter i.e. Rajkumari Amrit Kaur even after her marriage in 1952. This fact

is proved when Rajkumari Amrit Kaur was made the beneficiary in the UK Trust set up by the Raja in the year 1955 and further she was made beneficiary in the Housing Trust established by Raja in 1968 and even after 1968, Raja had added properties in the years 1977 and 1989 in this Trust. Rajkumari Amrit Kaur continued to have strong cordial relation with her father and remained important part of Raja's life. The cross-examination of DW-3 Maharani Deepinder Kaur dated 23.04.2013 becomes relevant in this context, when she admitted acquisition of property of Raja in the name of the plaintiff Rajkumari Amrit Kaur as well, in 1968, 1977 and 1989. When the properties were acquired in the years 1968 and 1977 in the name of Faridkot Royal Family Housing Trust, then how could they be made a part of alleged Will by Raja when the Will was at all made by Raja himself.

(ix). Raja created three more Trusts in the year 1987, 1988 and 1989 on his birthday in the name of his mother-in-law Rani Kuldeep Kaur, wife Rani Narinder Kaur and his son Tikka Harmohinder Singh. In all these Trusts, plaintiff Rajkumari Amrit Kaur is a trustee and in the event of her demise, her children were to be given preference for appointment as Trustees. This is also an admitted fact in the cross-examination of DW-3 Maharani Deepinder Kaur on 06.04.2013. Once again it shows

that plaintiff Rajkumari Amrit Kaur and her father were on good terms and she was very much part of his life and remained as such throughout of his life.

(x). Numerous letters Ex.P-2 to Ex.P-29 and Ex.P-56 to Ex.P-70 are in the context that Raja and his eldest daughter Rajkumari Amrit Kaur and other family members were in continuous correspondence with each other throughout Raja's life. 28 letters Ex.P-2 to Ex.P-29 were written by Raja to the plaintiff for the period 1976 to 1979. All these letters are before making the alleged Will dated 01.06.1982. Letters Ex.P-56 to Ex.P-66 are from period 1985 to 1989 i.e. after making of alleged Will dated 01.06.1982, the exhibiting of letters Ex.P-56 to Ex.P-66 was opposed by the defendants for the reasons best known to them. Plaintiff has also referred to some letters Ex.P-31 to Ex.P-34 written by Rani Narinder Kaur, Ex.P-35 to Ex.P-41 and Ex.P-43 written by Rajkumari Mahipinder Kaur, who was made Vice Chairperson by the alleged Will, but on disclosure of fraud, she challenged the alleged Will. Ex.P-55 written by grandmother Maharani Mohinder Kaur, Ex.P67 written by Massi Palinder Kaur, Ex.P-68 written by mother Rani Narinder Kaur, Ex.P-69 written by DW-3 Maharani Deepinder Kaur, Chairperson of Trust created by the alleged Will and Ex.P-70 written by Uncle Manjitinder Singh. Reference to the

aforesaid documentary evidence would clearly show that the plaintiff had very close and harmonious relationship with her father and also with other family members.

(xi). Plaintiff Rajkumari Amrit Kaur attended her father during his illness and took care of him. This fact has been admitted by Deepinder Kaur in her cross-examination dated 09.04.2013. Raja died in Batra Hospital at Delhi, where the plaintiff and Deepinder Kaur attended him.

(xii). Reference to the opinion of the Expert Dr. Jassy Anand, would show that the plaintiff has explained the letters Ex.P15 and Ex.P-4 and also the spelling mistakes in 41 letters on record. There are only six mistakes in 41 letters as pointed out on record and these are minor typographical mistakes.

On the basis of aforesaid submissions, learned Senior counsel submitted that the execution of Will dated 22.05.1952 (Ex.PX-133/Ex.D-20) has no effect on the rights of the plaintiff and the said Will has no relevance in the present case.

C. Alleged Will dated 01.06.1982 is proved to be forged, fabricated and shrouded with suspicious circumstances on the basis of statement of DW-1 Brijinder Pal Singh Brar, who is one of the attesting witness of the Will.

On the aforesaid point, Mr. M.S. Khaira, Senior Advocate with Mr. B.S. Sewak, Advocate on behalf of the plaintiff-Rajkumari Amrit Kaur submitted as under:-

(i). Reference to the statement of DW-1 Brijinder Pal Singh Brar, would show that the aforesaid witness five times in his cross-examination has stated that there were two copies of alleged Will dated 01.06.1982 and he and Maharaja Harinder Singh signed both copies of the Will. In the cross-examination dated 14.02.2013, DW-1 has admitted in the following manner:-

(i) **"**I was called by Maharaja to become witness and went to the Raj Mahal. We sat in the drawing room. .... 'There were two copies of Will'..... ....**"**

(ii) I do not know whether it was computer typing or from ordinary typewriter. Both the copies were taken as a print out.

(iii) As far as I remember there was no document with the Maharaja except the copies of the Will. The Maharaja signed both the copies of the Will;

(iv) and then myself and Jagir Singh witness put our signatures on the said two copies of the Will.

(v) I do not remember whether the Sub-

Registrar took away both the copies of the Will along with him or left the same with the Maharaja."

(ii). The aforesaid statement of DW-1 that he signed two copies of the alleged Will is falsified when he was confronted with the register from the office of Sub-Registrar, Faridkot summoned by the plaintiff in which the alleged Wills in English and Gurmukhi were pasted. The witness changed his story thereafter and put a new version that he had signed three copies of the alleged Will at the same time. His cross-examination dated 22.02.2013 recorded the aforesaid changed version to the effect that the witness signed on all the three Wills in presence of Maharaja Harinder Singh and the witness signed before the Sub-Registrar as well on the three copies i.e. two copies of Will in English and one copy in Punjabi. Both the Wills in English and Punjabi were original one and signed by the executant as well as the witnesses. The aforesaid story of DW-1 of signing three copies of Will at the same time is falsified, when he could not explain, why the date is hand written on the last page of the two copies of English Will (Ex.DW2/B and Ex.PX-2) but the date is typed on the last page of Punjabi Will (Ex.PX-2). In the cross-examination, the witness faltered, when he submitted that the translation of the Will in Punjabi contains typed date at page 8, whereas in the Wills in English, the date is

written with Pen with hand in blank spaces. The translation in Punjabi of the Will was already with Maharaja Harinder Singh and the witness cannot say as to how the date 01.06.1982 has been typed in the translated Will. It is incorrect to suggest that the date 01.06.1982 in the translated Will in Punjabi was typed subsequently and translated Will was not with Raja Sahib when he brought two copies of Will typed in English. Witness (DW-1) stated that all the three Wills were signed at the same time, but this story is falsified, because the date is typed on the Punjabi Will, but handwritten on two English Wills. If these documents were signed at the same time, then either all three should have handwritten date or all three should have typed date. This anomaly proves that the three documents were not executed and registered in one meeting.

(iii). The story of registration is falsified from the fact that DW-1 initially stated that he has not signed on any blank page. The witness thereafter stated that he has not signed on any blank page so far as these Wills are concerned, but when confronted with the record of Sub-Registrar, he admitted that his signatures, signatures of Maharaja and those of Jagir Singh are on the blank page which is the endorsement page (reverse of page No.1) of Punjabi Will (Ex.PX-2) pasted in the Register of the Sub-Registrar. The witness admitted in his cross-

examination dated 22.02.2013 that he did not sign on any blank paper, nor the other witness. He never signed on any blank paper so far as these Wills are concerned. In the Will which is in Punjabi translation on the back of second page of the Will brought by HRC, there are my signature, signature of the witness and signature of Maharaja Harinder Singh and there are signatures of the Sub-Registrar, otherwise nothing is written on the page. The signatures of the Sub-Registrar are on the pasting. The witness has stated that first endorsement was written by the staff of Sub-Registrar, whereas, the Raja signed the endorsement following which the Sub-Registrar signed the endorsement. Thereafter, below the endorsement, other formalities of the registration were completed i.e. stamps and seals were put and then Raja signed for the second time followed by the Sub-Registrar and the two witnesses. But, from the endorsement page of Punjabi Will on which there is no endorsement made by the staff of Sub-Registrar above the first signature of Raja and there are no stamps and seals above the second signature of the Raja and the signatures of the two witnesses. It proves that signatures of the Raja were forged on the English Wills and then endorsement and registration were completed. Moreover, the two signatures of the Raja on the blank endorsement page of the Punjabi Will and signatures of

both witnesses are in the same place and pattern as on the endorsement page of the two English Wills above which the endorsement and formalities of registration have been completed on the two English Wills. In view of the aforesaid, it is sufficient to conclude that no execution and registration of alleged Will took place and the Will is proved to be forged and fabricated.

(iv). Suspicious circumstances surrounding the making of alleged Will is proved from the evidence of DW-1 Brijinder Pal Singh i.e. attesting witness of the alleged Will in so many words. Brijinder Pal Singh, attesting witness is not an ordinary attesting witness. He is a lawyer with 44 years of practice from 1968 onwards. He is fully aware of art of cross-examination. When he was cross examined in 2012 and 2013, each suspicious circumstance was brought to the hilt, through his cross-examination. Brijinder Pal Singh (DW-1) never witnessed the execution and registration of alleged Will for the following reasons:-

(a) The witness did not know whether the Will is computer typed or typed on typewriter before seeing the Will, but on seeing the Will, he immediately admits that it is typed on typewriter;

(b) On asking about the kind of (petition or legal) paper used on which Will was prepared, he states that he does not know whether it was petition paper or any other, but on seeing the Will he admits that it is on petition paper;

(c) He stated that there was no cutting in the Will, but when confronted, he admits that there are cuttings;

(d) He did not know how many copies of Will were prepared/executed by Raja and witnessed by him. Initially, he states that there were two copies of Will, both copies were taken as print-out, there was no other document with Raja, except two copies of Will, and Maharaja, and other witness signed on two copies of Will, he does not remember whether Sub-Registrar took away both copies of Will with him or not. But, after a week when record of Sub-Registrar was summoned and DW-1 was confronted with English and Gurmukhi Wills pasted in Sub-Registrar's register, he changed his stand and stated that there were three copies of Will and he signed on all the three Wills at the same time.

(e) The witness DW-1 is a practicing Lawyer and had practice of 44 years, when he was cross-examined in the year 2012. He stated that he has never signed on blank papers. He further stated that he has never signed on blank papers regarding these Wills. But when, confronted with record of the Sub-Registrar, showing the pasted endorsement page of Punjabi Will on which signatures of Raja with witnesses were present on the blank page, then DW-1 was forced to admit his and Raja's signatures on the blank page. This blank endorsement page of Punjabi Will is reverse of Page No.1 pasted on the Sub-Registrar's register. The signatures of Raja and two witnesses were exactly at the same places in the same pattern and same manner above which endorsement for registration was written and formalities regarding registration were completed on the two disputed English Wills.

(v). From the aforesaid features appearing in the statement of DW-1, it is proved that attesting witness (DW-1) of the Will is not a trustworthy witness. Both the Courts below have highlighted the evidence of DW-1 in so many words. Trial Court in para Nos.64 and 65 of its judgment noted the aforesaid

variances and the lower Appellate Court has recorded the same in para No.87 of its judgment. DW-1 did not know whether the Will was typed on computer or on ordinary typewriter. Further he did not know whether it was on petition paper or on the other paper. Before seeing the alleged Will, DW-1 stated in his cross-examination that he does not know whether it was computer typed or from ordinary typewriter. Both the copies were taken as a print out. It is pertinent to mention that computers were not there in India in the year 1982. So print out could not have been taken and all the typing used to be done on typewriters. If more than one copy was required, these were taken as carbon copies. The alleged English copy (Ex.PX-2) of alleged original Will (Ex.DW2/B) is neither print out, nor a carbon copy. DW-1 states that he cannot tell whether the Will in question is on legal size paper or on petition paper without seeing the Will. On being shown the original Will (Ex.DW2/B), during his cross-examination on 14.02.2013, the witness immediately stated that the Will is on petition paper and is a typed one. DW-1 also stated that he did not know whether the other copy of Will (Ex.PX-2)/Sub-Registrar's English copy is on petition paper or not. The contradictions in the statement of DW-1 can be summed up as under:-

(a) Before being shown the alleged Will, DW-1

stated that he did not know whether it was computer typing or from ordinary typewriter. Both the copies were taken as a print out.

(b) He further states that he cannot tell whether the Will in question is on legal size paper or on petition paper without seeing the Will;

(c) On seeing the original Will (Ex.DW2/B), DW-1 states that the Will is on the petition paper and is typed one.

(d) He further stated that he does not know whether the other copy of Will (Ex.PX-2) Sub-Registrar's English copy is on petition paper or not.

(vi). From the aforesaid contradictions, it can be concluded that the above admissions made by DW-1 proved that the witness has only signed on blank papers and execution of the Will never took place and further version regarding registration of Will in the same sitting is also false. Both the Courts below have given specific findings in this regard i.e. in Para No.66 of the judgment by the trial Court and in para No.88 of the judgment by the lower Appellate Court. The witness DW-1 when cross-examined on 14.02.2013, admitted that Raja and the witnesses signed only two copies of the Will and that the

Raja had no other document with him, however on 22.03.2013, when he was confronted with the record of Sub-Registrar in which the English and Gurmukhi copies were pasted, he changed the story claiming that he signed on three copies. Perusal of the aforesaid evidence would show that DW-1, who claims to be witness of alleged Will is not aware of the number of copies of alleged Will and how many copies of Wills were signed by the Raja and the alleged witnesses. On being confronted, the witness seems to have been caught by surprise and then he claimed that he signed all the three Wills in the presence of late Raja. This very contradiction confirmed that there was no such meeting and DW-1 had signed on blank papers. That is how the witness is not aware about the number of copies of alleged Will. The signatures on blank paper is further established in his cross-examination which is explained in the preceding paras of the judgment. Both the Courts below have elaborated on this point in para No.66 of the trial Court and paras No.81, 82 and 88 of the lower Appellate Court.

(vii). Firstly DW-1 has admitted that he has never signed on blank papers. Secondly, he admitted that he has never signed on any blank paper so far as these Wills are concerned. Thirdly, after the aforesaid admission, on being confronted with the summoned record of the office of Sub-Registrar, the witness

admitted his signature and signatures of other witness namely Jagir Singh are at one place and alleged signature of the Raja Harinder Singh at two places on blank page which is endorsement page of Punjabi Will i.e. reverse side of page No.1 of Gurmukhi Will (Ex.PX-2). Suggestion regarding forging of signature of Raja and fabrication was put to the witness at the time of cross-examination. The witness has admitted that on the reverse page No.1 i.e. endorsement page of the Will of Gurmukhi is blank and nothing is written except the alleged signatures of Raja Harinder Singh at two places and of the witnesses at one place each. From the aforesaid evidence, it can be pleaded that the endorsement paragraph in both the disputed English Wills have been written above the pre-existing first signature readable as Harinder Singh as on the blank page of Gurmukhi Will. The other legal processes regarding the registration of two disputed English Wills have been completed in the similar blank places as on the blank page of the Gurmukhi Will between first and second signature readable as Harinder Singh. Similarly other formalities have been completed in English Wills in the blank places as on the blank page of the Gurmukhi Will between the signatures of both the witneses and second signature of Raja Harinder Singh. This proves the fact that first signatures of Raja were prepared on blank papers and

then the Will was typed on those blank papers and, therefore, it proves that the Will is forged and fabricated.

(viii). The aforesaid anomalies have also been opined in the report of Dr. Jassy Anand in detail. The witness while appearing as PW-5 has not been cross-examined on this front and her statement has gone unrebutted. The typed matter overlapped signatures of Raja on the Will by typed matter on last page of the alleged Will Ex.DW2/B proves the forged nature of alleged Will. It is visible even with the naked eyes that typing is overlapping the signatures of Raja . This is also clear from the Chart, but the witness DW-1 has deliberately denied the suggestion put to him in his cross-examination. The typed dot is above the last stroke of the signature on original of the alleged Will, which is even evident with a naked eye, as his admission would have proved the forged and fabricated nature of the alleged Will. In Chart No.5 which has already been submitted shows that typing is overlapping the signatures of the Raja on the last page of both the English i.e. Ex.DW2/B. On the said aspect, the Expert PW-5 has given detailed report. Similarly overlapping of signatures of Raja Harinder Singh by typing on the disputed Gurmukhi Will (Ex.PX-2) also concluded that the Will in question is forged and fabricated. On the last page 8 of Gurmukhi Will in the office of Sub-Registrar (Ex.PX-2), the

disputed signatures of Raja Harinder Singh present on the last page i.e. page No.8 shows the embellishment being overlapped by type line, which means signatures were prepared on blank paper and typing was done afterwards, which proves forged and fabricated nature of Will. This fact has also been observed by PW-5 Dr. Jassy Anand in her detailed report and in the opinion. The witness DW-1 has deliberately denied this fact, when confronted in the cross-examination. Chart No.5 already submitted also showed that typing is overlapping the signatures of Raja on the last page of Punjabi Will. The expert opinion has made all the difference.

(ix). The Expert i.e. Dr. Jassy Anand has compared the handwriting, ink and pen used by the clerk of the Sub-Registrar to write the Punjabi above the signatures of Raja and two witnesses on the endorsement page of all the three Wills which includes Punjabi written above signatures of Raja and the witnesses on the blank page of Punjabi Will i.e. the endorsement page on the back of first page and confirmed that endorsements were written by the same hand, pen and ink. The Expert has commented upon each alphabet written in Punjabi by the clerk and gave her detailed observations. Vide the said detailed report, it is proved that Sub-Registrar and his staff are involved in the act of forgery of the Will. DW-1 in his cross-

examination dated 22.02.2013 has admitted that Clerk of the Sub-Registrar wrote the name in Punjabi above the signatures of the witnesses. The Clerk also wrote their names in Punjabi before the witnesses put their signatures. Though the witnesses denied that they put the signatures before the endorsement was written. In this way, DW-1 has admitted in his cross-examination that the Clerk of Sub-Registrar wrote their names in Punjabi above vide endorsement page of all the three Wills. This included their signatures on the blank page as well.

(x). The Expert Dr. Jassy Anand has opined that the endorsements in Punjabi have been written by the same person using the same pen and ink. This fact has been proved that the Clerk prepared endorsement and completed other formalities of registration above the blank signatures of Raja. The detailed report of the Expert as contained in para No.14 of her affidavit has gone unrebutted as she was not specifically cross-examined on this aspect. Only a weak suggestion was given to her that whole of the report is a false report. Chart No.3 has also been submitted on record on which endorsement pages of all the three Will are pasted. The chart shows that endorsement written in Punjabi above the signatures of Raja and both the witnesses on all the three Wills including the endorsement page of Punjabi Will are written by same person with same pen and

ink. The Expert Dr. Jassy Anand has also given her report on this aspect. Initially the witness DW-1 denied that there were cuttings in both English Wills (Ex.DW2/B and Ex.PX-2) on 14.02.2013, but when he was confronted with Will Ex.DW2/B on 22.02.2013, he admitted the same to be correct. On 14.02.2013, DW-1 stated that as far as he remembers there were no cuttings on the Will at that time on both the copies, however on 22.02.2013, he admitted that it is correct that Will (Ex.DW2/B) at page 8, there is a typed cutting and above that it is 12.00 p.m and this is not signed or initialled by the Testator or any witness or by the Sub-Registrar. The opinion of the Expert Dr. Jassy Anand has also shown the aforesaid fact. In view of above it can be seen that the disputed Wills have not been executed and registered at the same time as the witnesses have signed last page of Wills with blue ink pens and registration/endorsement page with black ink pens. False averments made by the witness DW-1 regarding putting his signatures on the endorsement page with pen of Sub-Registrar and later when shown the signatures of Sub-Registrar, he admitted that these were in green ink. The use of two different blue ink pens by the two witnesses to sign the last page of all three disputed Wills (Ex.DW2/B and Ex.PX-2) and two different black ink pens to sign the reverse page I, i.e. the endorsement page of all the

three disputed Wills proves the suspicious nature of the Wills. It also proves that the Wills and endorsements have not been signed at the same time as claimed by defendants. On the other hand, in the standard Will (Ex.D-20), the witnesses have signed on the attesting and endorsement page with the same pen and ink. From the aforesaid evidence, false statement of DW-1 came to fore regarding his version that he has signed the endorsement page with pen of Sub-Registrar, whereas it is proved that DW-1 has signed with different blue ink pen on the last page of the Will and with black ink pen on the endorsement page. DW-1 has himself admitted on seeing the both disputed English Wills that the Sub-Registrar has signed with green ink pen. Even after admitting the aforesaid incriminating facts in his cross-examination, the witness DW-1 deliberately denied the suggestion put to him. In chart No.1, it has been shown that both witnesses signed on the last page of all the three Wills with blue ink pen and with black ink pen on the endorsement pages. Report of Dr. Jassy Anand has also observed in this manner. Letter 'Rara' is of small size above the alleged signature of Raja Harinder Singh on the endorsements page below the endorsements so as to adjust on signatures on blank page is also a suspicious circumstance in the execution of Will.

(xi). The cross-examination of DW-1 would show that it is

incorrect to suggest that letter 'RARA' in Punjabi was written in small size because signatures of Maharaja Harinder Singh were coming in the way as per Will brought by HRC. The Expert Dr. Jassy Anand has reported that letter 'RARA' in Gurmukhi of Raja Harinder Singh has been shortened to accommodate the writings in Gurmukhi above the alleged signatures readable as Harinder Singh. All other 'RARAS' occurring in the said portions written in the endorsement are of normal size. That letter 'RARA' existing in the word Harinder Singh i.e. the first 'RARA' existing after letter 'AARA' has been shortened and this is clearly overlapping the last stroke of alleged signatures readable as Harinder Singh. Further this letter 'RARA' as compared to all other letters written above, the pre-existing signature readable as Col. Harinder Singh are of bigger size as compared to these letters 'RARA' existing at two places i.e. one in the word Col. and other in the word Harinder existing in Gurmukhi above the pre-existing alleged signatures. Above mentioned points clearly prove that the forged signatures readable as Harinder Singh were already present on the blank paper and the endorsement and writings in Gurmukhi have been made thereafter above the pre-existing signatures.

(xii). The Chart No.6 is submitted in order to show shortened 'RARA' in endorsement above the signatures of Raja

Harinder Singh to accommodate pre-existing signatures in the Sub-Registrar copy of English Will while all the other 'RARAS' in the endorsement of both the English Wills are of normal size. Handwritten date on the two English Wills i.e. (Ex.DW2/B and Ex.PX-2) are in different hand as are clearly visible even to the naked eyes. DW-1 even deliberately denied the same in his cross-examination dated 22.02.2013. Even the suggestion put to him in his cross-examination on 11.03.2013 was also deliberately denied by the witness which shows the frame of mind even to deny a thing which is visible to the naked eyes. The dates in two disputed Wills are written in hand i.e. **'**1st June 1982**'** appear to have been written by different persons and it has been wrongly claimed by the defendants that they are written by Raja. All the digits and alphabets of **'**1st June of 1982**'** are written differently by different person in both the aforesaid Wills. Digits and alphabets of **'**1st of June 1982**'** of both the Wills do not resemble the standard writing (SA to SM) of Raja. Suggestion put to DW-1**,** has been deliberately denied. The Expert PW-5 Dr. Jassy Anand compared all the numericals and alphabets with the standard writing and with each other and thereafter, the Expert has drawn rightful conclusion in her report.

(xiii). The Chart No.4 already submitted shows the date **"**1st

of June 1982" written in different hands in both the disputed English Wills (Ex.DW2/B and Ex.PX-2), pointing out the differences in all the digits and alphabets. The manner in which digits and alphabets were written by the Raja can be seen by examining his handwritten letters (Ex.P-7, Ex.P-60 and Ex.P-61) written to the plaintiff. The trial Court has dealt with the issue specifically in para No.66 of the judgment.

(xiv). Witness DW-1 could not explain as to why the date was typed in Punjabi Will and the date is not typed in two English Wills i.e. the original (Ex.DW2/B) and Sub-Registrar's copy (Ex.PX-2). Very strangely the witness DW-1 claimed that all the Wills were signed at the same time by the Raja and both the witnesses. The witness has not been able to explain as to how there was typed date in Punjabi Will (Ex.PX-2) in the record of Sub-Registrar, while the date is written with pen in Wills in English (Ex.DW2/B and Ex.PX-2). If three Wills were executed at the same time and on the same day, then why date is handwritten on two Wills and typed in one Will. This material fact falsifies the stand that the Will was executed in the manner as suggested by the defendants, rather, it proves that the Will is forged. DW-1 has claimed that execution and registration of the Wills were done at the same time, but the fact that the date is typed on the Punjabi Will and handwritten on two English Wills

proves that the execution and registration did not take place on the same day at one sitting. The entire story put forward by the defendants casts doubt as to the execution of Will on 01.06.1982.

(xv). In all the registered and exhibited documents on record which have been executed by Raja from the year 1952 to 1989, the date is typed, but the date is handwritten on two disputed English Wills. In Ex.D-20 i.e. Will of 1952, Trust Deed Ex.DX/6, Trust Deed Ex.PX/122, Trust Deed Ex.PX/123, GPA Ex.DX/1, GPA Ex.DX/2 and GPA Ex.DX/4 date is typed. Date is handwritten on the two disputed Wills, which is an exception and the presence of typed date on Punjabi Will allegedly executed on the same date and time, casts doubt as to the veracity of Will dated 01.06.1982.

(xvi). The torn pages No.27 to 60 of the Register (Book No.3) of Sub-Registrar, Faridkot and page No.41 on which disputed Wills in English and Gurmukhi are pasted, while other page Nos.1 to 26 and 61 to 100 of Register (Book No.3) are untorn and complete, which shows that pages in the Register have been changed and the same is in violation of Sections 58 and 60 of the Punjab Registration Manual. The witness DW-1 admitted in his cross-examination on 22.02.2013 that the pages on which Will Ex.PX-2 is pasted in Sub-

Registrar's register are torn and there is no page No.41, whereas all other pages are complete. Cross-examination of the witness has given vital clue with regard to the forgery and tampering done in the official record. From the aforesaid, it can be concluded that the pages in the Register have been changed in order to introduce falsehood. Page Nos.27 to 60 in the Register (Book No.3) of Sub-Registrar are torn on which the disputed Wills in English and Gurmukhi are pasted, while other pages No.1 to 26 and 61 to 100 are complete and untorn, which raises suspicion and looks probable that the pages in the Register have been changed. There is no page No.41 printed on the Register (Book 3) which is in violation of Section 58 and 60 (Ex.PX166 to Ex.PX168) of the Punjab Registration Manual. These suspicious circumstances cast doubt as to the genuineness of the alleged Will.

(xvii). The Expert witness PW-5 Dr. Jassy Anand in her opinion has specifically observed the aforesaid facts. Despite the two certificates marked as G1 and G2 given by the two Sub-Registrars on the beginning page and last page of the Register that the Register contains consecutive number of printed pages, the examination of the Register revealed that there is no page No.41 printed after page 40. It was also noted that on all the printed forms on which the documents are pasted in the register

are complete except those on which disputed Wills are pasted. The printed form on which the Wills are pasted are torn. This is indicative of the fact that pages in the register on which disputed Wills are pasted, have been changed.

(xviii). Unsynchronized pinpricks on all the nine pages of the disputed Will (Ex.DW2/B) admitted by DW-2 i.e. Expert of the defendants and proved by Expert of the plaintiff (PW-5), but the same have been deliberately denied by DW-1 witness of the Will, after seeing the Will. Navdeep Gupta handwriting expert of the defendants while appearing as DW-2 has admitted in his cross-examination on 02.03.2013 that it is correct that number of pin holes are not synchronizing on all the pages of the Will. The Expert of the plaintiff i.e PW-5 Dr. Jassy Anand has confirmed that the presence of a number of unsynchronized pinpricks on all typed pages of the disputed English Will means that the pages have been taken from different stacks with which they were previously pinned. Despite this factual position on record, DW-1 in continuation of his evil design, deliberately denied the aforesaid position which amply proves the dishonest nature of his testimony and adds weight to the findings of his being an unreliable witness.

(xix). The Raja had excellent command over English language, but the opening words of the alleged Will are

'Harrowgraph testament'. The word 'Harrowgraph' does not exist in English language which means that the Raja had not made the Will. DW-1 has admitted in his cross-examination on 14.02.2013 that he drafted his own affidavit which he has produced in evidence. It is correct that whatever contents he mentioned in the affidavit, those were given with full understanding. Whatever terminology he has used in the affidavit, he has completely understood the same. In the examination-in-chief, the witness has stated that Col. Sir Harinder Singh Brar told both of them that he himself has drafted and got typed the Will and he himself is author of the Will and stated that it was his 'holograph' Will. The term 'Holograph' means hand written document. The Raja could not have ever said this to DW-1 as he knew its meaning because he had an excellent command over English language. The Raja did not use the term "holograph" in the typed Will of 1952 (Ex.D-20). Also, Raja could not have used the term 'harrowgraph' because it does not exist in English language. This is an admitted fact even in the testimony of DW-3 Maharani Deepinder Kaur that Raja was highly educated having studied at Aitchison College, Lahore and was well conversant with English language. The opening of different institutes by Raja has already been mentioned in the preceding part of judgment. The

explanation given by the witness DW-1 in respect of holograph Will is totally illegal, particularly when the witness is a lawyer with 44 years of experience in the legal profession. The witness has admitted that there is no 'harrowgraph Will', but volunteered on the question that the word has been mentioned due to typographical mistake. The witness could not explain the typographical mistake with reference to the existence of letter 'R', 'L' and 'O' and 'A' are not near to each other on the keyboard of the typewriter. From the aforesaid facts, it can be concluded that the witness DW-1 has wrongly stated before the Court when he claimed to have understood the meaning of everything he had written in his examination-in-chief. He attributed to the Raja the use of the term 'harrowgraph' instead of acknowledging the fact that Raja had a strong command of English language and that the Raja was familiar with judicial and legal terminology having exercised sovereign authority prior to 1947. It is difficult to believe that he could have used it to describe the typed alleged Will as such. Raja could not have used the term 'harrowgraph' to describe his Will as he would have known that such a term does not exist in the English language. The affidavit was not drafted by DW-1, but he merely signed the same without understanding the contents which proved that the Will is forged and fabricated document.

(xx). The affidavit given by DW-1 in his examination-in-chief (Ex.DW2) and Ex.PX1 given to counsel of the plaintiff on 31.10.2012, for preparing cross-examination contained references to exhibit markings that had still to be brought on record as the original Will (Ex.DW2/B) and yet to be tendered in the Court. DW-1 admitted in his cross-examination on 14.02.2013 that the copy of his affidavit was supplied to the plaintiff under his signatures i.e. Ex.PX/1. The witness also admitted in his cross-examination on 27.02.2013 that the affidavit which is Ex.PX/1 was sworn by him and the copy of the same was supplied to the counsel for the plaintiff before Sh. Lalit Mohan Gupta appeared before the Local Commissioner and got the Will exhibited in the evidence recorded before the Local Commissioner. From the aforesaid fact, it is proved that DW-1 is not an independent witness, otherwise there was no occasion for him to have mentioned the contents which were not still before the Court. DW-1 was not an independent witness, but he played part to assist his mentor in the process of forging Will of Raja. The credibility of witness is shattered on the following facts as well:-

(a) How DW-1 knew before hand while giving an affidavit Ex.PX1 on 31.10.2012 that original Will will be produced on 02.11.2012.

(b) How DW-1 knew that Will will be produced by Sh. Lalit Mohan Gupta on behalf of defendant, when Lalit Mohan Gupta was not even defendant in the suit on 02.11.2012.

(c) How DW-1 knew that Will would be exhibited as Ex.DW2/B on 02.11.2012.

(d) How DW-1 knew about the marking of points 'A', 'B' and 'C' Ex.DW2/B as mentioned by DW-1 in para nos.8 and 10 of his examination-in-chief by way of affidavit (Ex.DW-2).

(xxi). All the aforesaid facts prove that DW-1 has not prepared his affidavit independently as claimed by him, rather the affidavit would show that the same was prepared under the instructions of his mentor with whom he was having joint legal practice since 1968 and all the defendants are hand in glove in putting up false and fabricated Will. Evidently, the command of English and legal acumen of Raja cannot be doubted. Reading of standard Will (Ex.D-20) i.e. Will of 1952 would show that the same did not have any spelling/grammatical mistake at any point. The same is a very precise and clear document, whereas in the Will in question, the same is full of spelling mistakes, grammatical and language errors and number of sub numbering

errors in the two alleged English Wills which proved that the Raja was not author of these documents. Different letters are raised in the two disputed English Wills (Ex.DW2/B and Ex.PX-2**)** which shows that both the documents are typed on two different typewriters and at two different times and by two different persons/typists. DW-1 in his cross-examination dated 22.02.2013 has answered to the question that he does not know about that. According to him one is the true copy of the other. The question was put to him whether both the Wills were typed at different times and with different typewriters. The answer was so evasive and nothing could be explained by him in the answer.

(xxii). Nomenclature of different letters in Ex.DW2/B and Ex.PX-2 would show that the glaring pattern where the letters are raised. Placement of specific alphabet in registered copy viz-a-viz. original copy would make the difference. It can only be done by the use of different typewriters. Wrong numbering and and sub-numbering on page Nos.6, 7, 8 of English Will are unusual and create suspicious circumstance**,** particularly when the Will is of a very highly educated person**,** who had got Godley Medal in English Essay Writing in 1931 while studying in Aitchison College, Lahore. DW-3 Maharani Deepinder Kaur has admitted that her father was having good command over

English. The wrong numbering and sub-numbering of paragraphs have also been observed by the Expert PW-5 Dr. Jassy Anand. It is also note worthy, if the Will was made by Raja in the year 1982, then he must have made amendments/changes of events in his Will before his death in the year 1989, particularly with regard to his wife, who was beneficiary under the Will and had died in the year 1986. Witness (DW-1) has admitted in his cross-examination dated 27.02.2013 that wife of Raja Harinder Singh died prior to his death. She died after the Will in question. As regards the Rani being the beneficiary under the Will, the witness has evasively answered the question.

(xxiii). On the one hand, witness DW-1 claims in his affidavit to be a collateral of the Raja and having social relations with him, but on the other hand when cross-examined, he displayed utter lack of knowledge about the Raja and admitted that he had no idea of the education, training and social circle of the Raja. He has admitted that he never had any one to one meeting with Raja. The witness did not know that Raja throughout his life in free India was faced with huge litigations. He further admitted that he was never engaged by Raja for any legal work and was never consulted by Raja on any legal matter. If the witness DW-1 had the social relations with the Raja, then he would have

been aware that Raja had his own secretarial staff and administrative offices. The witness admitted in his affidavit that he had been chosen as a witness to the Will by the Raja because he was his collateral being a descendent of Dal Singh. Plaintiff has proved on record that the ancestors of witness DW-1 and that of Raja were enemies due to cross murders. The witness has admitted in his cross-examination that he was not aware about the education and training of the Raja and he had no social relations with Raja, but only formal relations. His meeting with Raja was on formal functions when invited. He used to attend functions such as Basant Panchmi, Birthday of Gurus and Raja's birthday. Normally the gathering used to be of 100-200 guests and the witness was having only formal relations with the Raja. The witness DW-1 is not aware about the social circle of the Raja Harinder Singh. Whether such circle was of political, senior military officers including the ministers or prime ministers. According to DW-3 Deepinder Kaur, Raja was having life style in consonance with his stature and he used to meet senior politicians, officers of high ranking civil and army and upto the Prime Minister. Mostly in summer season, Raja used to stay at Mashobra and in the remaining part of the year, he used to stay in Faridkot and Delhi. Raja used to travel to foreign countries including UK and had so many friends in UK.

He used to arrange parties at Mashobra for the elite of the town.

(xxiv). The witness DW-1 despite being a lawyer is not aware about the litigation of Raja, nor engaged in any matter which shows that he was never ever consulted formally or informally regarding any legal matter. The witness has admitted in his cross-examination dated 14.02.2013 that he was never professionally engaged by the Maharaja in any matter. He did not know whether Raja was having huge litigation during his life time. The witness is not even aware about the staff of Raja despite his assertion that he was having social relations with Raja. The witness does not know whether Raja has any type of staff or not. The witness also falsely claimed regarding mental state of Raja Harinder Singh, particularly when he had no one to one meeting with him. Families of the witness and Raja had history of cross-murders, therefore, the claim of DW-1 regarding good relations with Raja being his collateral stands falsified. The inimical history between the families was mentioned by Lipin H. Griffin, Writer in the Book of Rajas of Punjab. This fact is mentioned in Ex.PX-209 at page No.609 in the Book of Rajas of Punjab. The witness has denied the inimical relations with a very evasive answer.

(xxv). From the aforesaid facts, it can be concluded that DW-1 and Raja did not have such relations so as to repose

confidence by making him as an attesting witness of the Will. DW-1 came across the Raja in the formal occasions at Faridkot and they never had one to one conversation on any occasion. In this way, DW-1 had no occasion to judge whether Raja had a sound and disposing mind at the time of execution of alleged Will. Witness DW-1 being a practicing Advocate for 44 years claims that he does not know the meaning of **'**initial**'.** The aforesaid stand is nothing but an evasive stand and exposes his lack of credibility of a witness.

(xxvi). All the the documents on record executed by the Raja from the year 1952 to 1989 are registered during the office hours, whereas the Will in question is registered after the office hours which has been admitted by the witness DW-1 and mentioned in the endorsement itself. The previous documents had the recital of registration between a particular time period, but the endorsement page of disputed Will shows that Sub-Registrar visited Raj Mahal after the office hours between 5.00 to 6.00 p.m. This fact has been admitted in the cross-examination of witness DW-1 that the Sub-Registrar came to Raj Mahal after office hours. There are so many differences between alleged Will (Ex.DW2/B) and Sub-Registrar's copy. The Sub-Registrar's copy (Ex.PX-2) is not the exact copy of the alleged Will (Ex.DW2/B), therefore the aforesaid anomaly is

violative of Section 103 of Punjab Registration Manual which prescribes for authentication of entries in Register books. Every entry made in Book 1, 3 and 4 shall be an exact counterpart of the original and shall be carefully compared with it, all interline-actions, blanks erasers or alterations which appear in the original shall be shown in the copy so entered in the Register. The registering office shall satisfy himself that this has been done, verifying by his signature or initial, any correction rendered necessary by mere errors of transcriptions. Such corrections should in all cases be made in red ink and never by erasure. The witness DW-1 admitted in his cross-examination dated 22.02.2013 that in the Will brought by HRC in the beginning, the spellings of 'Harrow' are 'Harro', whereas in the Will (Ex.DW2/B) also the errors in the spellings are admitted. The witness in his cross-examination dated 27.02.2013 admitted to a question that the questioned note can be observed by the Court as the Wills were not typed in his presence. Spelling differences between the two Wills, other differences between the two English Wills and unattested cuttings in DW2/B and no cutting in Ex.PX-2 would make the Will doubtful. Initially the witness DW-1 denied on 14.02.2013 that there were cuttings in both the English Wills (DW2/B and Ex.PX-2), but on 22.02.2013, when he was confronted with Will

(Ex.DW2/B), he was forced to admit the same as a matter of fact. So in view of aforesaid position it can be concluded that the registration is invalid and there are number of differences between original Will (Ex.DW2/B) and copy of Sub-Registrar (Ex.PX-2) and the cuttings are unattested. The same are in violation of Section 103 of Punjab Registration Manual.

(xxvii). The witness DW-1 claimed that Raja read over all the copies of Will to him i.e. two in English and one in Punjabi. This fact is falsified on the face of it. If Raja got the Will typed himself after self dictating, then there was no need to read the Will before the witnesses. The attestation is only regarding the signatures of all the three persons (i.e. the executant and the witnesses) in the presence of each other and not regarding the contents of the Will. If Raja knew that English Will was a copy of original Will, then there was no need to read it again. Further, if at all the Wills are read, then why apparent errors were not corrected. The word 'Harrowgraph' is not a word recognized in English language and on the Will (Ex.DW2/B), it is written as 'Harrowgraph' and on the other English copy of Will Ex.PX-2, it is written as 'Harrograph'.

(xxviii). The witness DW-1 in any case could not have been chosen as witness by the Raja being from the line of enemies

collaterals (Dal Singh). It would be wrong to allege that no suggestions were put to DW-1 in respect of forging of signatures of Raja on blank papers and for forging and fabricating the Will. The cross-examination of DW-1 dated 19.03.2013 and 27.02.2013 would show that such suggestions were made in respect of forging of signatures of Raja and fabrication of Will was put to DW-1. The witness DW-1 was not sure whether staff of Sub-Registrar brought the register, but subsequently insisted that the seals and endorsement entries were made in his presence. This itself raises a doubt on the testimony of the witness as it does not explain, how the registration entries could have been made in the absence of register. The cross-examination of the witness dated 14.02.2013 has highlighted the aforesaid position when the witness stated that he does not remember whether the Staff of Sub-Registrar brought any register alongwith them and he does not know whether the Sub-Registrar made any entry in the Register regarding the registration of the Will at that time. The witness was not sure whether staff of the Sub-Registrar brought any register along with him for the purpose of registration of document. The witness does not remember whether the official of the Sub-Registrar made any entry in the register while sitting in Raj Mahal in respect of registration of Will. The seals,

endorsement and entries were made in the Raj Mahal in the presence of the witnesses.

(xxix). The witness has also highlighted certain incriminating features which would falsify the execution of the Will to the hilt. The witness has admitted in his cross-examination on 22.02.2013 that he does not remember whether lastly the Sub-Registrar put his signatures because the Will was pasted in the Register or afterwards. He does not remember that the Will was pasted in the register in his presence. From the aforesaid evidence of DW-1, suspicious circumstances have emerged. Whether the Wills were taken away by the Sub-Registrar or left with Raja. The witness is not even aware whether Sub-Registrar took all the Wills along with him or he left any of it with Raja after registration. The witness is not aware whether register of registration was brought by the official of the Sub-Registrar along with him/them for the purpose of registration of the document. If the register was not brought, then how come seal of registration has been put, thereby mentioning page nos.27 to 60 of register on which the Wills are pasted. The witness DW-1 has stated that the Sub-Registrar came in Raj Mahal when he was already present in Raja Mahal and the Sub-Registrar left the Raj Mahal while DW-1 was still present. It is impossible that if the register of registration was not there, then how come the

page Nos.27 to 60 on which pages of Wills are pasted are mentioned in the seal and the date is also given as 01.06.1982, whereas DW-1 has admitted in his cross-examination that Wills were not pasted in his presence and the register was also not there and further he also did not know whether Sub-Registrar took all the Wills with him or left any one with Raja.

(xxx). The factum of joint practice with Ranjit Singh Wahniwal, executor of the Will has been proved by voluminous record. The joint vakalatnamas 70 in number, covering the period of 37 years proved that he was in joint practice with Sh. Ranjit Singh Wahniwal, executor of the Will. Finally, DW-1 owned the aforesaid fact. From the cross-examination of witness DW-1, it can be concluded that the witness has admitted that he along with Ranjit Singh Wahniwal were practicing jointly in some cases. When the witness was confronted with a sample of 63 joint printed vakalatnamas covering the period from 1973 to 2007, he submitted that he was in partnership with Ranjit Singh Wahniwal. He also submitted that they sit in the same Chamber ever since he started practice in 1968. Sh. R.S. Wahniwal is *fuffad*/mentor of the witness DW-1 and he learnt his profession from him. The witness has admitted that Sh. R.S. Wahniwal was Raja's legal advisor till demise of the Raja in the year 1989. In the alleged

Will, R.S. Wahniwal was named as one of the Executors of the Will and is drawing salary from the Trust. Denial to certain facts by the witness is deliberate and only to mislead the Court. The witness DW-1 and his mentor Sh. R.S. Wahniwal are Controlling the Raja's estate as per clauses inserted in the alleged Will. The role of executors is permanent and they act as super body to control the Raja's Estate.

(xxxi). The witness DW-1 has tried to conceal his partnership with R.S. Wahniwal, Advocate because he is the attesting witness of the alleged Will in which role of the Executor has been given to R.S. Wahniwal, Advocate. As per clause in the Will, the role of Executors is like a super body imposed upon the Board of Trustees and they have more powers than the Trustees, even to remove them. The witness on being confronted with 75 copies of power of attorney of DW-1 with R.S. Wahniwal in decided cases spreading over to a period of 37 years, was forced to admit his partnership with R.S. Wahniwal, Advocate. The vakalatnamas have been exhibited as Ex.PX-27 to Ex.PX-97. Powers given to Executors under the alleged Will assumes significance in view of such partnership between DW-1 (attesting witness) and Sh. R.S. Wahniwal (one of the Executors) of the Will. The clauses in the Will provide for an ongoing role for the Board of Executors. The alleged Will

gives more powers to the Executors than to Trustees. The Executors alone have the power to remove the Trustees. Every important decision has first to be approved by the Board of Executors, before the Trustees can even consider it. There is no clause in the Will under which any Executor can be removed, suspended or dismissed. Role of Executors is permanent. The Trustees could at the most recommend removal of an Executor, but final decision to dismiss the Executor is with the Board of Executors. Referring to the clauses in the alleged Will, would show that Sh. R.S. Wahniwal being legal advisor to the Trust, controlled the Board of Executors and no one had power to remove him as he could veto any such move.

(xxxii). The witness DW-1 Brijinder Pal Singh has admitted in his cross-examination that he does not know whether the role of Executors comes to an end when the properties is handed over to the Trustees. He pleaded ignorance about the provision under the law that the Executors will supervise functioning of the Trust. As per Indian Succession Act, role of Executors comes to an end when the Will is executed and possession and control of the property is handed over to the trustees. In the instant case, there is ongoing role of Executors of the Will since 1989 and will remain as such till the Will is set aside. The defendants have admitted in their written statement Ex.PX130 filed in the suit of

Gurdev Singh that role of Executors finishes once the Trust is formed and the ownership and possession of the Trust properties are handed over to the Trustees. Sh. R.S. Wahniwal, Advocate for some of the defendants and for himself as defendant in the case, aided the attesting witness of the alleged Will i.e. DW-1 Brijinder Pal Singh by prompting him with answers to the questions put to him by the counsel for the plaintiff. In order to stop this misuse, plaintiff's counsel filed an application requesting the Court that the proceedings thereafter be videographed. The application dated 25.03.2013 filed by the plaintiff is in the context of video recording of the proceedings i.e. recording of evidence in the Court by the Local Commissioner. The said application was contested by way of filing reply dated 26.03.2013. The defendants opposed the video recording of evidence. The said reply was signed by Sh. R.S. Wahniwal, Advocate himself. The Court passed an order dated 30.03.2013 and dismissed the application as the evidence was being recorded by the Local Commissioner, who is impartial person. This situation arose in view of the earlier stand taken by DW-1, wherein existence of 3rd Punjabi Will was denied. Sh. R.S. Wahniwal, Advocate kept on assisting the attesting witness at every juncture, so that he may not go astray on material grounds and the alleged Will may not go out of their hands.

D. Alleged Will dated 01.06.1982 is proved to be forged, fabricated and shrouded with suspicious circumstances on the basis of statement of DW-2 Naveep Gupta, Handwriting Expert.

On the aforesaid point, Mr. M.S. Khaira, Senior Advocate with Mr. B.S. Sewak, Advocate on behalf of the plaintiff-Rajkumari Amrit Kaur submitted as under:-

(i). The suspicious circumstances surrounding the making of alleged Will are also proved from the evidence of defendants handwriting Expert Navdeep Gupta DW-2. Handwriting Expert Navdeep Gutpa DW-2 has failed to prove genuineness of signatures of Raja which he claims to have examined Q-1 to Q-11 only. A false assertion has been made by Navdeep Gupta (DW-2) in his report (Ex.DW2/1), affidavit (Ex.DW2/A) and statement given in Court. Out of 33 disputed signatures of Raja on three alleged Wills (Ex.DW2/B and Ex.PX2), DW-2 claims to have compared only 11 signatures. On the other hand defendants/trustees have claimed that all the 33 signatures of Raja are genuine on the three disputed Wills. It has not been disclosed which all the signatures of Raja are Q-1 to Q-11. DW-2 has admitted that he did not mark any of the signatures Q-1 to Q-11 on the Wills, but marks Q-1 to Q-33 were already made in 2012 by Dr. Jassy Anand, when she

inspected the file and original alleged Will (Ex.DW2/B) after permission of the Court and took photographs after opening the sealed envelope containing the Will in presence of counsel of both the parties as well as on other two copies of Wills in English and Punjabi (Ex.PX2) brought by HRC from the office of Sub-Registrar. These marks Q-1 to Q-33 were put by Dr. Jassy Anand (PW-5) handwriting expert of plaintiff Rajkumari Amrit Kaur after 15 years of the death of Consulting Document Expert Dewan K.S. Puri, who died in the year 1997.

(ii). The cross-examination of DW-2 dated 02.03.2013, would show that the marking along side the signatures marked with Lead pencil as Q-1 to Q-11, Q-12 to Q-13 have not been marked by DW-2, rather these markings were done by Dr. Jassy Anand at the time of inspection of the file in the presence of the parties and their counsel. DW-2 has stated in his report (Ex.DW2/1) that he has taken standard signatures S-1 to S-4 from registered power of attorney dated 04.11.1966 and S-5 to S-8 from another registered power of attorney dated 14.05.1984, S-9 to S-13 from another registered power of attorney of May 1984 and S-14 to S-18 from another registered power of attorney, but the witness has not disclosed from whose registered Attorney given in whose favour, of whom, he had taken the standard signatures. Moreover, he has not disclosed

whether he had seen in 1995 and whether he has put S-1 to S-17 while preparing the report in 1995. The witness has not stated this fact his affidavit (Ex.DW2/A) and in his copy of report (Ex.PX6). The witness has not marked the standard signatures S-1 to S-17 on any of the document in the Court record exhibited or unexhibited nor has he marked the disputed signatures Q-1 to Q-11 on any of the disputed Wills while preparing his report in the year 1995 or when he produced his report (Ex.DW2/1) in the Court on 02.03.2013 in examination-in-chief.

(iii). The witness gave false affidavit (Ex.DW2/A) in his examination-in-chief. Reference to report Ex.DW2/1 would read as under:-

> *"..... we have critically and exhaustively examined the disputed signatures of Sh. Harinder Singh, in English, marked as Q-1 to Q-11 from the registered Will dated 12.08.1995 and compared these disputed signatures with the specimen signatures marked as S-1 to S-4 on the registered general power of attorney dated 04.11.1966, S-5 to S-8 of another registered GPA dated 14.05.1984, S-9 to S-13 of another registered power of attorney in May 1984 and S-14 to S-18 of another registered power of attorney dated 16.09.1989. The marking Q-1 to Q-11 and S-1 to S-17 is on the respective photographs....."*

Perusal of the aforesaid report would show that there

is no such Will dated 12.08.1982. In the year 1995, from where Q-1 to Q-11 came as these were not there in the year 1995. On whose asking the Expert examined Q-1 to Q11. No such person has been examined, who proved those admitted signatures on three power of attorneys and which witness proved the signatures appearing on those power of attorneys. The alleged admitted signatures on these documents have not been proved, nor the execution of these documents has been proved on record. It is relevant to note that Q-1 to Q-11 have not been marked on the three disputed Wills, nor S-1 to S-17 have been marked on the original documents, nor stated whose attorney it is and in whose favour the attorney has been executed. The witness has not stated where were the registered attorneys at that time in 1995 and who has shown them to the witness. He has not stated this fact in his report dated 21.01.1995 and affidavit dated 23.10.2012 (Ex.DW2/A) given in examination-in-chief on 02.03.2012 in the trial Court. Ex.PX6 is a copy of report, which was given to counsel for the plaintiff in February 2013 for preparing his cross-examination. Report of the Expert (Ex.DW2/1) in his examination-in-chief has altered date of alleged Will from 12.08.1982 to 01.06.1982, without the signature of Dewan K.S. Puri, who died in the year 1997.

(iv). DW-2 is the only associate document expert, who

examined the Will and took photographs at Faridkot. The witness admitted that consulting document Expert Dewan K.S. Puri was not with him and he has not examined the alleged Will or taken the photographs. In his cross-examination dated 02.03.2013, DW-2 has admitted that he examined and took photographs of signatures in the Faridkot Palace. Dewan K.S. Puri was not with him on that day. He does not remember the person, who showed him the Will and allowed him to take photographs. In his affidavit dated 23.10.2012 given in examination-in-chief, the witness stated that we had examined and compared these disputed and specimen/standard signatures with the help of photographs, epidiascope, Universal Dactyloscopic outfit, microscopic lenses, falmer, magnifiers, illuminous magnifiers and other necessary implements The use of word 'we' is deceptive. Mr. Dewan K.S. Puri remained in Patiala and the documents were examined at Faridkot. The report (Ex.DW2/1) was prepared by the Expert DW-2 on 21.01.1995 only regarding the signatures of Raja Harinder Singh on the alleged Will and not regarding its contents. The act of the defendants is highly suspicious as they got the report prepared in the year 1995, when even the issue regarding the alleged Will was not framed. The issue was framed on 04.12.2006. Defendants have claimed that they have taken out

the alleged Will from the locker of Raja as admitted the DW-3 Deepinder Kaur in her cross-examination dated 08.04.2013. It is very strange that even then they were not sure that these were signatures of late Raja on the alleged Will (Ex.DW2/B).

(v). Date of Will mentioned in the report dated 21.01.1995 was altered after supplying the copy to the counsel for the plaintiff in February 2013. Date of alleged Will is mentioned as 12.08.1982 in the copy of report dated 21.01.1995 (Ex.PX6) given to the counsel for the plaintiff in February 2013 to prepare for his cross-examination, but the Expert DW-2 has tendered the original report dated 21.01.1995 (Ex.DW2/1) in Court on 02.03.2013 at the time of his examination-in-chief in which date of Will was altered from 12.08.1982 to 01.06.1982. DW-2 claimed that corrections in the report were made on 21.01.1995. Mr. Dewan K.S. Puri died in the year 1997 and his initials are not there on any alterations in the report. Advance copy of report (Ex.PX6) was handed over to counsel for the plaintiff in February 2013 for preparing his cross-examination upon DW-2. The date of Will mentioned in 3rd line of first page of report (Ex.PX6) given to the counsel for the plaintiff is 12.08.1982. From the aforesaid facts, it can be seen that the date of Will mentioned in the 3rd line of report (Ex.PX6) dated 12.08.1982 was corrected to 01.06.1982 after supplying the advance copy

to counsel for the plaintiff in February 2013. This correction was made 16 years after the death of Dewan K.S. Puri author of the report, who died in the year 1997. It shows that the report is just a fabricated document and aimed to advance the case of the defendants on forged documents. The witness has admitted in his cross-examination dated 02.03.2013 that he has seen the photocopy and identified his signature on the last page of the photostat copy as well as that of late Dewan K.S. Puri with whom he had worked and remained as an Associate Document Expert. The photostat copy of the report is Ex.PX6 and photostat of the photo charts are Ex.PX7 to Ex.PX20. The witness has admitted that there is no Will dated 12.08.1982 and the report has been prepared jointly by him and late Dewan K.S. Puri. The witness pleaded ignorance about the date when correction on the first page was done. He does not know whether at that time Dewan K.S. Puri was alive or not. The witness has not put any date under any correction made by him in the report. From the aforesaid facts, it can be seen that Expert DW-2 stated in his cross-examination dated 02.03.2013 that correction in the original report (Ex.DW2/1) dated 21.01.1995 were made before signing the same on 21.01.1995. The date in the original report (Ex.DW2/1) has been altered from 12.08.1982 to 01.06.1982 without the initials of Consulting

Document Expert Dewan K.S. Puri and and only Navdeep Gupta (DW-2) has initialled it, but in the photocopy of report Ex.PX6 given to learned counsel for the plaintiff in February 2013 for preparing cross-examination, the date mentioned on the first page of the report is still 12.08.1982. He has further admitted that there is no Will dated 12.08.1982 in the present case and the report has been prepared jointly by him as Associate Document Expert with late Dewan K.S. Puri as Forensic Criminologist And Consulting Document Expert. This proves that the date has been altered in the original report (Ex.DW2/1) by Navdeep Gupta DW-2 after February 2013. When the photocopy of Ex.PX6 was supplied to the plaintiff's counsel and at that time Mr. K.S. Puri was no more in the world. A forged and fabricated report (Ex.DW2/1) has been produced and the same is in respect of some other Will dated 12.08.1982 not related to the present case.

(vi). The Consulting Document Expert late Dewan K.S. Puri has neither taken the photographs, nor has seen the alleged Will (Ex.DW2/B). The witness DW-2 Naveep Gupta, does not know who had approached him for examining and taking photographs and who showed him the alleged Will and who made the payment. In his cross-examination dated 02.03.2013, he admitted that he does not remember the name

of the person, who approached him to examine the documents and to prepare the reports. It is correct that when report was prepared, late Dewan K.S. Puri was alive. He took the photographs himself from the original documents. The witness stated that it is correct that on the last page of the report, under signature of Late Dewan K.S. Puri, it is typed as "Forensic Criminologist And Consulting Document Expert". It is correct that under his signature the words are typed as "Associate Document Expert." The witness has volunteered as well as also printed on the first page of the report. A specific question was put to the witness i.e.

Question.

"Is it correct whether the expert, whosoever examines the document and takes the photographs can only prepare the report with correct observation".

Answer to the question was given that:-

"it is wrong. It is wrong to suggest that I am deliberately avoiding to give the correct answer."

The witness DW-2 has further admitted in his cross-examination that he examined and took photographs of signatures in Faridkot Palace. Dewan K.S. Puri was not with him on that day. He does not remember the person, who showed him the Will and allowed him to take the photographs. He was

some executive in the Palace. The payment was also made by the executive. He does not remember whether he was requested to come by him or someone else. He does not remember if it was S. Ranjit Singh Wahniwal or someone else. The expert has misused name of Forensic Criminologist and Consulting Expert Sh. Dewan K.S. Puri. Effort has been made as if the report was prepared by a renowned Expert Sh. Dewan K.S. Puri. The witness DW-2 has admitted that Sh. K.S. Dewan Puri was not with him, when he had gone to examine and took the photographs at the Palace in Faridkot. Since the attempt has been made to show that report has been prepared by Sh. Dewan K.S. Puri which is false and the report cannot be considered at all. DW-2 does not know, who had approached him for examining and taking photographs and who showed him the alleged Will and who, made the payment to him. A bald statement has been made that the payment has been made by the executive. The witness has pleaded ignorance about the aforesaid material facts.

(vii). It is very relevant to note that there is no order of the Court, nor any permission sought from the Court regarding examining and taking photographs of alleged Will. The witness DW-2 has admitted in his cross-examination that he was told by the person, who asked him to examine the Will that the report

was to be presented in the court of Senior Sub Judge, Chandigarh. There was no order of any Court, nor any permission sought from any Court for examining and taking photographs of the Will. It was in the office situated in the Palace, where he examined the document. The witness has also admitted that it is correct that he has not gone through the judicial case file of the present case. He is not aware of the fact that there are letters written by Col. Harinder Singh and the same are available on the judicial file or not. From the aforesaid facts, it can be seen that the witness never obtained any permission from the Court for taking photographs and signatures and he did not verify from the Court about the admitted and disputed signatures and he took the same in the absence of the plaintiff and her counsel. The same is not in consonance with the law. The report itself is having unattested and some partly attested alterations. This fact has been admitted by witness DW-2 that some of additions are in his hand in the report and there are no initials of his and of Dewan K.S. Puri and on some others there are his initials. He has also admitted that on page No.5 in the last line of para 3 and in second last line of para 5, the complete line has been written in his hand bearing only his initials. Even then, he has denied the suggestions that all these additions in his handwriting on the

abovesaid pages have been done without the consent of late Dewan K.S. Puri. From the aforesaid fact it can be seen that DW-2 has admitted that some of the alterations in the report (Ex.DW2/1) are not initialed or attested by anyone, but some alterations have been only initialed by him and not by the Consulting Document Expert Late Dewan K.S. Puri. From this fact also report is proved to be forged and fabricated.

(viii). The witness has not read his affidavit before signing. In his cross-examination, he admitted that he prepared his affidavit and went through the contents before signing the same. He has admitted that it is correct that on page 2 on point 4 of his affidavit he has mentioned that disputed signatures marked Q-1 to Q-11 have been written by the same person, who wrote the specimen/standard signatures mark S-1 to S-17 i.e. both are in the handwriting of one and the same person. He admitted that it is correct in the affidavit on page 2 in point no.5 in line no.6, he has mentioned of standard signatures S-1 to S-11, which is now encircled as Ex.DW2/A/1. The witness has admitted that he has prepared his affidavit himself and went through contents before signing it, but from the evidence, it is clear that he has not read his affidavit before signing. The witness has signed the document in a very casual manner and must have signed the report also without going through the contents. Such a report

cannot be relied. The witness has partially examined the alleged Will and does not tell the name of the person at whose instructions it was partially examined. In his cross-examination, DW-2 has admitted that he does not remember the name of the person, who told him only to examine the signature and not the contents of the Will. It took about one and a half hour for examining the documents including Will in question and to take photographs. Off hand, he cannot examine the contents of the documents now at this stage. The witness has admitted that he does not remember the name of the person, who told him only to examine the signatures and not the contents of the Will. It means that someone on behalf of the Trust instructed him to partially examine the Will only i.e. only the signatures and not the contents. The limited instructions given to the witness is suggestive of the fact that intention of the Trust was not to bring out the truth, but only to obtain a report in order to hide fraud. They chose DW-2 Navdeep Gupta i.e. a person of their liking because of his links with renowned Handwriting Expert Dewan K.S. Puri, with whose reputation, they were hoping that they would hide the fraud. The witness has admitted that he has not examined the contents of the Will, nor the typed matter and so he cannot say whether there is any typed or grammatical mistakes including the sequence and the spellings in it or not.

Even after seeing the points mentioned in the charts mark Ex.PX23 to Ex.PX26 marked by his cross-examiner, he is unable to tell whether or not these are the correct spellings or sequences or grammatical errors or typing errors in the original Will and he had deliberately avoided the correct answer thereof, which is a serious question mark on his credibility, competence and expertise. Being an expert, the witness is unable to examine the casual mistakes in the contents of the alleged Will (Ex.DW2/B and Ex.PX2), nor he attempted to seek any time from the Court for examining the same for giving supplementary report.

(ix). The handwritten date on last page of the alleged Will was not examined by the Expert DW-2. The witness has also admitted that on the last page of the Will there is a handwritten date "1st June" and "1982". It is correct that the sequence of strokes plays a major role in the examination of the documents by an expert. DW-2 admitted that it is correct that there is an ink feathering at the beginning/top of digit '2' in the year '1982' on the last page of the Will. DW-2 admitted that it is correct that he has compared the signatures present on the last page of the Will, photocopy of the same is Ex.DW2/12. The witness has admitted that he cannot tell, who wrote "1st June" and "1982" on the last page of the Will. He has not examined the document

from this angle that who has written **"**1st June**"** and **"**1982**".** From the aforesaid fact, it can be seen that it is highly suspicious that the witness has compared the signatures of the Raja on the last page of the alleged Wills in English Ex.DW2/B and Ex.PX2 and has not compared the handwritten date in the blank on the same page and states that he does not know who wrote the date **"**1st June**"** and **"**1982**"**. The witness could not tell whether the handwritten dated 1st June 1982 was written by Raja himself on the last page of Will and further stated that he has not examined the document from this angle. It is amply clear from the aforesaid that the report has been prepared on the instructions of trustees and DW-2 was engaged by them**,** who has given the report according to their desire.

(x). The witness further admitted that both the witnesses signed the last page of the Will using blue colour ink pen**,**, but on the back side of page 1 (endorsement page) both the witnesses have signed with black ink pen. It clearly shows that the execution of Will and its endorsement/registration has not been done at the same time as alleged by DW-1 Brijinder Pal Singh, Advocate one of the attesting witnesses. The admission of the Expert DW-2 that both the witnesses of alleged Will Brijinder Pal Singh and Jagir Singh, Lambardar have signed with pen of blue colour ink on the last page of alleged Will

(Ex.DW2/B) and with pen of black colour ink on the reverse of page 1 i.e. on the registration side. This shows that registration/endorsement on the reverse of page 1 and signing of last page 9 of the alleged Will has not been done at the same time as has been claimed by the attesting witness of the Will namely Brijinder Pal Singh, Advocate in his examination-in-chief.

(xi). The presence of number of unsynchronized pinpricks on all the 9 pages of alleged English Will (Ex.DW2/B) means that the pages have been taken from different files/stacks with which they were previously pinned. The witness has admitted the fact that he has not examined the condition of paper on which the Will has been typed. The witness admitted that it is correct that in general whenever a set of papers are pinned together, they will remain at similar position unless someone takes out the pin and pin the paper again. To a specific question, the witness answered that it is correct that there are number of pin holes on the left top of all the nine pages of the alleged Will and the pin holes are not synchronizing on all the pages of Will . In view of that the Court can refuse to rely upon the opinion of the Expert which is not supported by valid reasons.

(xii). It is a case of copied forgery of signatures of Raja.

DW-2 has admitted that care free movement is always present in the standard signatures of a person and further admitted that slow and drawn movement may point towards the forged nature of a signature. The witness has completely overlooked this fact while giving his opinion on signatures and thereafter preparing his report. The cross-examination of the witness dated 02.03.2012 can be looked into in this regard. In the aforesaid attending facts and circumstances it can be appreciated that the Expert witness has attempted to prove the signatures of the testator as genuine on the Will in question vide his report (Ex.DW2/1). The report was prepared on 21.01.1995 only regarding signatures of the testator and not regarding its contents. The report was prepared when even issue regarding alleged Will was not framed by the trial Court. The issue was only framed on 04.12.2006 and the defendants have claimed that they took out the Will from the locker of the testator. It is quite unbelievable that the defendants were not sure about the signatures of testator on the alleged Will. There is no Will dated 12.08.1982. The corrections carried out by the witness are proved without the consent of late Dewan K.S. Puri. Detailed reasons have been given in the preceding paras of the judgment. The report submitted by the witness in itself is proved to be suspicious report and such a suspicious report cannot

make the suspicious Will to be genuine. Both the Courts below have commented upon the credibility of the witness DW-2 after appreciating the evidence on record.

E. Alleged Will dated 01.06.1982 is proved to be forged, fabricated and shrouded with suspicious circumstances on the basis of statement of DW-3 Maharani Deepinder Kaur.

On the aforesaid point, Mr. M.S. Khaira, Senior Advocate with Mr. B.S. Sewak, Advocate on behalf of the plaintiff-Rajkumari Amrit Kaur submitted as under:-

(i). A false story regarding discovery of Will of Raja from his personal locker was made on 20.10.1989. The alleged Will was shown to be taken out from the locker by an employee of Raja namely S. Umrao Singh Dhaliwal on 20.10.1989. All the three daughters of the Raja and mother of Raja were present in the same building i.e. Raj Mahal. DW-3 Maharani Deepinder Kaur has admitted in her cross-examination that she does not know whether the keys of the safe used to be with Raja or with S. Umrao Singh Dhaliwal. This was the Safe which Raja Harinder Singh used to operate himself. When Raja was conscious, he did not talk about the Will in question to the witness or to anyone else, Raja handed over some of the keys to the witness after getting the same from Faridkot. He told her

that these keys pertain to the property at Mashobra and Delhi. There was no key regarding anything of Faridkot. The Raja did not tell her about the keys relating to Faridkot. The Raja did not tell her about the details regarding handing over the keys to the witness of Mashobra and Delhi, nor the witness asked him as to why the keys were being handed over to her. The witness did not even question employee of Raja i.e. S. Umrao Singh Dhaliwal why he opened personal Safe of Raja in the absence of natural heirs of Raja, although they were present in the Raj Mahal at the relevant time. The witness even did not ask Umrao Singh Dhaliwal as to from where he got the keys of personal Safe of Raja. She did not question him regarding the other valuables in the Safe, apart from the Will. The witness being Chairperson of the Trust put all the blames on Umrao Singh Dhaliwal, an employee of Raja, who is no more in the world. From the cross-examination of DW-3 Maharani Deepinder Kaur, Chairperson of the Trust, it can be concluded as under:-

> "1. This story of alleged Will taken out by U.S. Dhaliwal employee of the Raja from the locker/Safe which Raja Harinder Singh used to operate himself, this fact has been stated first time and not mentioned in the pleading so far. On 01-04-2013, DW3 has admitted that when Raja was staying at Delhi during

his illness before his death, he used to sign cheques brought by U.S. Dhaliwal and she did not know in that period with whom the keys of Safe were and no knowledge that keys were handed over to U.S. Dhaliwal. But on the other hand DW3 is stating that U.S. Dhaliwal took the alleged Will from the Safe of Raja. Further she has stated that he had not disclosed to her that if there was anything else lying in the Safe other than the Will and she also did not question him regarding opening of Safe for taking out the Will in absence of DW3 and her elder sister (Rajkumari Amrit Kaur, Plaintiff), which is also a suspicious circumstance.

2. It is not possible that Raja who did not even give power to his employee U.S. Dhaliwal to operate the Bank Account, gave him the keys of the Safe in which the alleged Will of the entire Estate of Raja was kept, in preference to his daughters Rajkumari Amrit Kaur and DW3/defendant No.1 Chairperson of the alleged Trust created by the alleged Will who were attending Raja during his illness before his death.This is a highly suspicious circumstance.

3. As per admission of DW3 on 01.04.2013, it is

very strange that Raja handed over some keys to DW3 after getting them from Faridkot, but those keys were pertaining to property of Mashobra and Delhi and there was no key regarding anything at Faridkot. DW-3 has further stated that Raja did not tell her about the details or reasons regarding handing over keys to her of Mahobra and Delhi, nor did DW-3 ask Raja as to why the keys were handed over to her. As she did not think it proper to enquire about that. DW-3 said that after the death of Raja she opened with the keys one room in the House at Delhi and there were only clothes and with the other key she opened another room down stairs and does not even remember whether there was any significant item in the room. Other keys were of the Safe at Mashobra, which she says, she had not opened until opened by Income Tax Department during the raid which occurred in 1994. This statement of DW-3 is unbelievable that the keys were brought from Faridkot and were pertaining to properties at Delhi and Mashobra and not of Faridkot. Further it is not possible that after the death of Raja on 16.10.1989, with those keys she only opened rooms in a house at

Delhi while she did not open the Safes at Mashobra for five years until Income Tax Department raided in 1994 when she had been visiting Mashobra during this period.

4. It is further impossible that the Raja did not give the keys to his daughter DW-3/defendant No.1 of the Safe in Raj Mahal at Faridkot, in which the alleged Will regarding his entire Estate was lying by which he had made DW3 Chairperson of the alleged Trust created by the alleged Will. On the other hand Raja handed over the keys after getting them from Faridkot of rooms of a house at Delhi in which there were old clothes only.

5. When the late Raja was on his death bed he did not inform any one from the family about the alleged Will despite his daughters Maharani Deepinder Kaur and Rajkumari Amrit Kaur were both present in the hospital. This suggests that he had not made the alleged Will because it is natural for one, who knows his days are numbered, to inform his near and dear ones of such important document.

6. If it is to be believed that the Will is genuine then

atleast Raja would have informed Deepinder Kaur as she was the designated Chairperson of the alleged Trust created by the alleged Will.

(ii). There was a definite motive behind conspiracy for forging the Will of late Raja, in which Maharani Deepinder Kaur (2nd daughter of Raja), Legal Advisor Sh. R.S. Wahniwal and other employee Sh. Lal Singh Sra played active roles. All the three forged the Will in question. All three were members of the Trust in different capacity. The second generation of their families have stepped into their shoes after their demise. It appears that DW-3 Maharani Deepinder Kaur had some fear of The Raja of Faridkot's Estate Act, 1948 enacted by her father, wherein she would not be entitled to inherit any property as the eldest daughter would alone inherit the property. This led her to connive with others to forge the Will.

(iii). The declarations were taken on 17.10.1989 from the employees of Raja that now they are employees of the Trust even before discovery of Will on 20.10.1989. The discovery of the Will remained a hidden mystery as to the genuineness of Will. From this fact, it can be seen that Trustees and Executors were having knowledge of the alleged Will. The only conclusion is that the Will was not executed by Raja, rather the same was the handiwork of the Trustees and Executors themselves. The

declarations dated 17.10.1989 sought from employees of the Raja are the circumstances which are sufficient to prove the forgery of the Will. DW-3 Maharani Deepinder Kaur in her cross-examination has admitted that her father died in Batra Hospital at Delhi on 16.10.1989 at about 9.30 p.m. They reached Chandigarh on 17.10.1989 with the dead body to show the face of Raja to his mother Maharani Mohinder Kaur in Sector 9, Chandigarh. After about half an hour they left for Faridkot and reached Raj Mahal. Cremation of the dead body of Raja took place at 7.00 p.m. Bhog ceremony was performed on 26.10.1989. During this period on 20.10.1989, S. Umrao Singh conveyed the fact of Will in a meeting. Prior to 20.10.1989, no one was expected to know the contents of the Will. DW-3 was also not aware of the fact the Trust was created by her father. Nobody from the members present in the meeting talked with her regarding the execution of Will prior to 20.10.1989. In such circumstances, the declarations from the employees of Raja on 17.10.1989 is a mystery and the same makes the Will shrouded with suspicious circumstances. The declaration dated 17.10.1989 part of Ex.130 is signed by Gurdev Singh, Attorney and that finds mention about a registered Will dated 01.06.1982. According to the declaration, the Trustees have taken over the possession, control and management of His Highness Personal

Estate, Faridkot. The executant declared himself to be employee of the Board of Trustees after the death of Raja Harinder Singh. Vide this declaration dated 17.10.1989 taken from the employees of Raja that they are employees of Trust since the death of Raja and the Trust has taken over possession, control and management of Raja's Estate. Very significantly, the Trust was to be come into existence on discovery of Will which was discovered only on 20.10.1989 as per the case set up by the defendants-Trust. If the Trust came into existence only on 20.10.1989, how the alleged Trustees could take declarations on 17.10.1989 from the employees of Raja even before discovery of alleged Will on 20.10.1989. This fact alone makes the Will shrouded with suspicious circumstances. Factual matrix has been admitted by DW-3 in her cross-examination. The declaration taken on 17.10.1989 is alone sufficient to prove the conspiracy between the Executors and Trustees of the alleged Will and forgery of the Will.

(iv). Statement of DW-3 Maharani Deepinder Kaur that declaration was taken from all the employees along with the declaration from Gurdev Singh on 17.10.1989 that the Trustees have taken possession and control of the estate of Raja is sufficient to prove that the Will is forged and fabricated. The alleged original Will was not shown to the plaintiff is also

suspicious circumstance. Some of the important observations and admissions arising from cross-examination of DW-3 Maharani Deepinder Kaur are hereasunder:-

(a) DW3 has admitted in her cross-examination that on 26-10-1989 first time it was discovered that Raja has executed a Will, when Umrao Singh Dhaliwal first opened the personal Safe of Raja in the absence of the mother and all the three daughters-natural legal heirs of the Raja.

(b) DW3 has further admitted that after the discovery of the Will, the meeting of trustees and executors was called on 20-10-1989 and Trust came into existence after passing Resolution No.1 dated 20-10-1989 which was signed by Board of Executors and Board of Trustees and the possession of Raja's estate was handed over by executors to the trustees.

(c) Surprisingly, Trustees have obtained the declaration from all the employees of Raja on 17-10-1989 even before the discovery

of alleged Will on 20-10-1989 vide which Trust was to be created.

And declaration states that the Trust has already taken over the possession, control, management and administration of H.H.'s Personal Estates on 17-10-1989 and all the employees of Raja are employees of Trust.

It is also pertinent to mention that Raja died on the night of 16/17-10-1989 and was cremated on evening of 17-10-1989. Even before cremation of Raja, control of the property had been usurped by the conspirators which is evident from the copy of Declaration (Ex.PX/130).

(d) DW3 has admitted this fact in her cross-examination that this declaration was obtained from all the employees of Raja.

(e) This declaration was obtained on 17-10-1989 on a cyclostyled printed performa on which name of employee/declarant has been left blank, which shows that these

performas were printed even before the death of Raja on the nigh of 16/17-10-1989.

(f) On the one hand Trustees and Executors claimed that Will was discovered on 20-10-1989 and after the first meeting on 20-10-1989 Resolution No.1 passed and Trust came into existence and took over possession of the estate of Raja. Relevant portion of Resolution No.1 is reproduced below:-

> *"..... .... In accordance with the will dated 1-6-82 registered in the office of Sub Registrar Faridkot executed by Colonel Sir Harinder Singh Brar Bans Bahadur, KCSI, Ex. Ruler of Faridkot State, we the following who have been nominated Trustees, Executors and Chief Executive, have assembled and we accept the offices with which we have been invested under the said will. We the trustees have taken over possession, control administration and management of the entire estate left by the deceased."*

On the other hand, Trustees have obtained the declaration from all the employees of Raja on 17-

10-1989 even before the discovery of alleged Will vide which Trust was created on 20-10-1989 and the Trust had already taken over the possession, control, management and administration of H.H.'s Personal Estates since Raja's demise.

(v). Even after discovery of alleged Will on 20.10.1989, plaintiff was not informed, rather a meeting of Executors and Trustees was called on the same day i.e. 20.10.1989, but the plaintiff was not called in the meeting, nor was the Will shown to her, particularly, when the alleged possession and control of Raja's Estate was taken over by the Trustees by passing Resolution No.1 on 20.10.1989 which is part of Ex.PX100. Moreover, Raja's youngest daughter Rajkumari Mahipinder Kaur designated Vice Chairperson of the alleged Trust was also not informed about the Will, nor called to attend the meeting on 20.10.1989. Thereafter from 21st to 25th October 1989, the plaintiff was not informed about the alleged Will, despite her presence in the Raj Mahal. All were interacting with her, but they did not disclose the alleged Will of taking over control and possession of Estate of Raja. Plaintiff came to know about the alleged Will only on 26.10.1989, when it was announced in general public after Bhog ceremony of Raja and a photocopy of alleged Will was handed over to the plaintiff on 27.10.1989 in

Raj Mahal, still the original Will was not shown to her. All these facts have been admitted by DW-3 Maharani Deepinder Kaur in her cross-examination. The original Will was not produced in the Court along with written statement which was filed on 28.04.1994. Despite an application filed by the plaintiff on 11.11.1994 and allowed by the Court on 06.01.1995, the Will was not produced in Court. The same was produced only on 02.11.2012 i.e. after 20 years of filing of the Suit. The defendants examined the Expert which they privately engaged. They themselves doubted the Will, otherwise the statements of scribe and attesting witnesses would have served their purpose. The plaintiff could examine the expert in rebuttal only, when the Will was produced by the defendants at that stage. In 1995, the Trustees secretly got examined the signatures of Raja on the alleged Will from an Expert much before the issues were framed on 04.12.2006. Still the alleged Will was not produced by the defendants despite the directions issued by the Court vide order dated 06.01.1995. Plaintiff appeared as PW-1, but original Will was not put to her during her cross-examination. After closing the evidence of the plaintiff, defendants produced the Will only on 02.11.2012 after 20 years of filing of the suit, but CEO of the Trust, who produced the Will in the Court was not examined on oath despite specific objection raised by learned counsel for the

plaintiff. The said fact is reflected in the zimni order dated 02.11.2012. On 02.11.2012, after production of the Will in the Court, defendants filed an application for sealing of the original Will and the same was immediately sealed. On 10.11.2012, an application was filed by the plaintiff's counsel seeking permission that the plaintiff's Expert may be allowed to examine the Will and the prayer was allowed by the Court on 01.12.2012. After inspection of record/Will by the Expert of the plaintiff, it was again immediately sealed on the request of the defendants. Plaintiff was never given an opportunity to see and examine the original Will, ever after production of the Will in the Court. Every time, it was opened for cross-examination of the defendants' witnesses and it was again sealed on the same day on the request of Sh. R.S. Wahniwal, Advocate, who was himself a defendant and counsel for other defendants also. The zimni orders dated 17.11.2012, 01.12.2012 and 14.12.2012 are relevant to be quoted in this context.

(vi). The Executors did not perform their duties as per Indian Succession Act, but conspired with the Trustees to usurp the estate of Raja. The alleged Will was discovered on 20.10.1989. On 20.10.1989, Resolution No.1 was passed in the first meeting of the Trustees and Executors. Under the provisions of Indian Succession Act, the Executors were duty

bound to make an inventory of the movable and immovable properties of Raja, but instead of undertaking the same, the Executors without demure placed the Raja's estate in the hands of the Trustees with evil design. Infact the Executors signed the declaration (Ex.PX130) on 17.10.1989 that they are employees of the Trust and Trust has taken over possession of estate of Raja since his demise, even before the discovery of Will, constituting the Trust on 20.10.1989. Neither the executors, nor the trustees made any inventory of movable and immovable properties of Raja. Infact they did not want any impediment in their way to plunder the properties at their whims and fancies. All executors, except Sh. R.S. Wanhiwal were dummy. Sh. R.S. Wahniwal was the legal advisor of Raja and thereafter he became executor by forging the Will. He put his nephew and junior Brijinder Pal Singh as one of the attesting witnesses to the alleged Will . Thereafter he installed himself as one of the Trustee. He created such a role for executors with which, he could control the entire estate of Raja and became more powerful, even than the Trustees. He took declarations on 17.10.1989 from the Executors and employees of the Raja that they are now the employees of the Trust even before discovery of the Will on 20.10.1989. The executors were required to make inventory of movable and immovable properties and thereafter

to pay debts of the deceased and recover any amount due to the deceased and only thereafter, they could deliver the properties to the beneficiaries. Under the provisions of Indian Succession Act, an Executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death. The executors did not perform any of their duties as given in Indian Succession Act, but played their part in the conspiracy so as to usurp the estate or Raja. These facts can be appreciated from the evidence extracted from the cross-examination of DW-3 i.e. Maharani Deepinder Kaur.

(vii). DW-3 Maharani Deepinder Kaur, Chairperson of the Trust has admitted that no inventory of movable or immovable properties of Raja was made by the executors, nor handed over to the trustees. Her cross-examinations dated 01.04.2013, 08.04.2013 and 06.04.2013 are apparent on record. It is clear that the Trustees stripped the valuable contents of the properties/houses and burnt them. DW-3 has admitted that the lists of expensive articles were also burnt along with the houses. The trustees intentionally did not make an inventory of movable and immovable properties because they gave them the scope to sell assets for an unaccounted basis and pocket the proceeds, but they were caught, when Income Tax authorities raided the Mashobra estate. They found 4.5 quintals of undisclosed silver

from a Safe which was confiscated, but on the other hand when DW-3 was cross-examined in this regard she stated that she has visited Mashobra couple of time after death of Raja on 16.10.1989, but she had not opened the Safe until Income Tax Department raided in 1994. Raja owned and possessed valuable diamond and gold jewellery, Rubies, pearls, diamonds, loose stones, gold and silver dinner sets, Tea sets, utensils, valuable paintings, carpet and antique decorations pieces etc. There were lockers, Safes and vaults at Fort Faridkot (in 10 acres), Raj Mahal, Faridkot (in 10 acres), Faridkot house Copernicus Marg, New Delhi in 10 acres. Faridkot house, Chankyapuri, Delhi in 1.5 acres, 5 houses at Mashobra, Shimla but DW-3 said that there was not even a ring in the personal Safe of Raja. Raja had considerable and valuable jewellery which is also reflected in the alleged Will. The entire treasury of Raja has been siphoned off by the Trustees and Executors which is evident from the cross-examination of DW-3 Maharani Deepinder Kaur, where she has admitted that Executors and Trustees did not make any inventory of movable and immovable and she does not know whereabouts of jewellery and other valuable items left by her father. Neither in the Will nor in the Trust Act, trustees of alleged Maharwal Khewaji Trust have any power to sell the assets of Raja. The *modus operandi* of the

trustees was only to plunder wealth of the Raja without any impediment. The plaintiff has identified from the evidence placed by the Trustees on record that four aircrafts were sold for a paltry amount of Rs.1 lakhs in the year 1991 vide resolution No.43, when the price of a fiat car was Rs.1 lakh. The trustees have siphoned off crores of rupees and DW-3 has denied knowledge of the amount for which the Trust has sold four aircrafts, but has admitted the resolution No.43 of Ex.PX100. She put burden on Mr. Umrao Singh Dhaliwal, the concerned man, who is no more in the world.

(viii). The trustees claimed that their main objective is to preserve Rajs's estate, but instead of preserving the same, the trustees immediately started selling out the estates within two months of taking over possession, showing on paper a nominal value while pocketing the true value. Within two months of constitution of Trust, the trustees passed Resolution No.16 in respect of 54 acres of agricultural land, airstrip measuring 110 Kanal 13 Marlas and Dhana Kothi measuring 80 Kanals 17 Marlas taking the decision to sell the properties on flimsy reasons of difficulty in managing the land and the land is not yielding any income and there is a danger of its being encroached upon by the neighbours. The reasons are totally untenable. The agricultural land has been sold at a price of

Rs.23,000/- per acre. Airstrip has been sold at the rate of Rs.25,000/- per acre. Residential kothi measuring 80 Kanals in a residential area not sold in square yards, but sold for Rs.40,000/- per acre. The properties have been sold without calling a tender or auction. The sale of properties at Hisar is an example, how the trustees started selling the properties after taking over control of Raja's Estate. They would have continued in selling all other estates of Raja, if the plaintiff had not filed a suit, challenging the alleged Will and got the stay order dated 23.11.1992. Despite the stay, the trustees kept on selling the properties in defiance of the order. They sold the prime property hotel site on plot No.12, Sector 17 Chandigarh measuring 26 Kanals in the year 2009, even though the Trust had no authority to sell the property in terms of the alleged Will dated 01.06.1982. DW-3 even along with other defendants tried to negotiate regarding the sale of property despite injunction order passed by the Court. DW-3 has admitted passing of Resolution No.191 for sale of hotel site despite the stay granted by the Court on 23.11.1992. The trustees illegally withdrew Rs.2.8 crores from bank accounts of Trust after the Will was declared forged and fabricated and the Trust was declared *non est* by the trial Court vide judgment and decree dated 25.07.2013. The complaint was made to the police by the plaintiff in respect of

aforesaid withdrawal of Rs.2.8 crores on 26.07.2013 from different accounts of the Trust at Faridkot. Perusal of the aforesaid incriminating facts and evidence on record would show that DW-3 Chairperson of the Trust in collusion with the executors and other trustees has been running the Maharwal Khewaji Trust in a most dishonest and illegal manner and their *modus operandi* is only to plunder the estate of late Raja Harinder Singh. Even from the cross-examination of DW-3 the Will in question is proved to be forged, fabricated and shrouded with suspicious circumstances.

(ix). In addition to the declaration dated 17.10.1989, filing of suit by defendant No.3, executor of the alleged Will i.e. Gurdev Singh against Maharwal Khewaji Trust (Ex.PX129) and written statement filed by the defendant (Ex.PX130) admitted that they took declaration dated 17.10.1989 from Gurdev Singh employee of the Trust and took control and possession of the Raja's estate are the documents of unimpeachable character, showing the admission of the defendant that Maharwal Khewaji Trust came into existence after discovery of Will on 20.10.1989 which came into being by virtue of Resolution No.1 dated 20.10.1989 and ever since the Trust is being allegedly run by the Trustees. The trial Court passed order dated 27.07.2012 (Ex.PX128) in which power of attorney was filed on behalf of

Maharani Deepinder Kaur DW-3 Chairperson of the Maharwal Khewaji Trust. A statement (Ex.PX131) was got recorded by Sh. Suraj Joshi, Advocate on behalf of Maharani Deepinder Kaur, Chairperson of the Trust, adopting the written statement filed by the other defendants. By resolution No.1 dated 20.10.1989 (Ex.PX100), the Trust took over control and possession of Raja's estate. All these material documents show the collusion of DW-3 with other defendants in usurping the Raja's estate to the hilt. The story put by DW-3 Maharani Deepinder Kaur regarding discovery of alleged Will and the first meeting on 20.10.1989 of trustees and executors in which Will was read over for the first time, is found to be wrong in view of four written statements filed by her, her fellow trustees and executors of the alleged Will in the connected suit titled '*Maharwal Khawaji Trust vs. Maharani Deepinder Kaur*'.

(x). Maharani Deepinder Kaur (Chairperson of the Trust and second daughter of Raja) and Ranjit Singh Wahniwal, Advocate (Legal Advisor of Raja) in conspiracy with others forged the Will of Raja because DW-3 Maharani Deepinder Kaur knew that in view of The Raja of Faridkot's Estate Act, 1948, enacted by her father, she would not be entitled to inherit any property. DW-3 stated that the alleged Will was in an affixed envelope and it was read over for the first time in the 1st meeting

of Board of Executors and Trustees dated 20.10.1989. It would be relevant to see that how before opening the affixed envelope, Umrao Singh Dhaliwal got to know that there was Raja's Will present in the affixed envelope and the same had created a testamentary Trust and who were the named trustees and executors therein and were to be called for first meeting in which possession was to be taken over. The attempt of DW-3 Maharani Deepinder Kaur by putting all the blames on Umrao Singh Dhaliwal (who was an employee of the Raja and now is no more in the world) is just a scapegoat to get rid of her *mala fides* in forging the Will. The cross-examination of DW-3 would further show that the meeting was called for reading out the Will in question and the witness does not know how Umrao Singh Dhaliwal came to know about the persons to be called in the said meeting, without knowing the contents of the Will in advance.

(xi). The written statements dated 03.08.1992/11.08.1992 filed by Deepinder Kaur in civil suit titled '*Kanwar Manjit Inder Singh vs. Maharani Deepinder Kaur and others*', written statement dated 13.08.1992 filed by the executor Ranjit Singh Wahniwal and others in the suit titled *'Kanwar Manjit Inder Singh vs. Maharani Deepinder Kaur'*, the written statement dated 19.12.1992 filed by Executors Gurdev Singh and others in

the civil suit titled '*Kanwar Manjit Inder Singh vs. Maharani Deepinder Kaur and others*' and written statement dated 28.01.1993 filed by defendant No.13 Maharwal Khewaji Trust and and signed by Chairperson present DW-3 Maharani Deepinder Kaur, would show that a specific stand has been taken that after the demise of the testator, the Board of Trustees brought the dead body of the testator to Faridkot from New Delhi. The death of Raja took place on 16.10.1989. The dead body was brought on 17.10.1989 to Faridkot, where cremation was done. The fact of alleged constitution of Board of Trustees was not known to anyone prior to 20.10.1989. How the defendants can plead that on 16.10.1989 and 17.10.1989, Board of Trustees brought the dead body of testator from Delhi to Faridkot is a known mischief which would prove the Will in question to be a farce, forged and shrouded with suspicious circumstances.

F. Whether disinheritance/exclusion of unmarried youngest daughter Rajkumari Mahipinder Kaur, wife Rani Narinder Kaur and mother Maharani Mohinder Kaur are the circumstances making the Will to be forged, fictitious and shrouded with suspicious circumstances.

On the aforesaid point, Mr. M.S. Khaira, Senior Advocate with Mr. B.S. Sewak, Advocate on behalf of the

plaintiff-Rajkumari Amrit Kaur submitted as under:-

(i). Rajkumari Mahipinder Kaur, who was the unmarried youngest daughter of Late Raja has been disinherited, despite having no property or source of income for her maintenance. She was made to starve to death by her elder sister Maharani Deepinder Kaur (DW-3) by forging the Will and usurping the estate of her father. While forging the Will, DW-3 Maharani Deepinder Kaur and Sh. R.S. Wahniwal, Advocate (executor) put such a stipulation that children of Rajkumari Mahipinder Kaur designated Vice Chairperson could not succeed her as trustee or vice chairperson unless, she marries in a family of former ruler of Indian States. On the other hand, there was no provision of even one rupee for her marriage in the alleged Will even to marry an ordinary person. This stipulation in itself is one of the suspicious circumstances, surrounding the making of alleged Will. Rajkumari Mahipinder Kaur died unmarried. It cannot be believed that the Raja would not have made any provision for the marriage and maintenance of his unmarried youngest daughter specially, if he was bequeathing his entire movable and immovable properties in favour of alleged Trust. It is also not believable that on the one hand, the Raja would make such a stipulation that his youngest daughter's son will only succeed her as Vice Chairperson/Vice Chairman, if she

married into a family of former rulers of Indian State, without making suitable provisions for her marriage. No provision was made for such a marriage to be solemnized in a ruler's family. The Will does not even make any provision for her marriage in an ordinary family. Even Maharani Deepinder Kaur's marriage was also not arranged in a former ruler's family which is apparent from her cross-examination. Husband of Maharani Deepinder Kaur was not ruler of any State, but his father had a title of Maharaja Adhiraj of Burdwan. There is a clear contradiction of imposing such a stipulation that one daughter's son would succeed his mother even though he was not from a former ruler's family, while other daughter's son could not. It proves that the Will was not made by the Raja, but the same is the handiwork of some clever mind which is found with DW-3 Deepinder Kaur in collusion with R.S. Wahniwal, who have forged and fabricated the alleged Will of Raja. The witness DW-3 could not reply satisfactorily in the aforesaid context. Admittedly, Rajkumari Mahipinder Kaur did not have any property when the alleged Will was made in the year 1982. The only provision was to give her residential accommodation for her life from the choice of three properties which was also not given to her by DW-3 Maharani Deepinder Kaur, Chairperson of the Trust. The three properties from where choices were to be given

to Rajkumari Mahipinder Kaur are flat at Hyderabad, flat at Delhi and four bedroom house to be built at Edelweiss, Mashobra, Shimla (Raja's estate in 282 bighas having five houses).

(ii). It is relevant to see that the aforesaid properties were already the subject matter of Trust already created by Raja so these properties could not have been offered to Rajkumari Mahipinder Kaur. Infact, she was not given any living accommodation in her own right and this fact has been admitted by DW-3 Maharani Deepinder Kaur in her cross-examination and in the written statement filed by Sh. R.S. Wahniwal (Ex.P44) in Civil Suit No.210 of 1998 filed by Rajkumari Mahipinder Kaur. The suit filed by Rajkumari Mahipinder Kaur was dismissed in default on the day when she died. DW-3 Maharani Deepinder Kaur took evasive stand on a specific question put to her that whether she as a Chairperson of the Trust created by the alleged Will, gave the residential accommodation to her younger sister Rajkumari Mahipinder Kaur as per provision of the alleged Will. Her reply was that Rajkumari Mahipinder Kaur did not respond to written offer given to her and she was residing at Mashobra. In her further cross-examination, she admitted that no option in writing was given to her, rather the same was put to her orally by showing Will. Ultimately, Rajkumari Mahipinder Kaur died at Mashobra. Evidently, as per the alleged options

given to Rajkumari Mahipinder Kaur, she would never reside in Faridkot. Although Rajkumari Mahipinder Kaur was designated Vice Chairperson of the Trust created by the alleged Will and the Headquarter of the Trust was at Faridkot, but she was intentionally given option of stay in places far from Faridkot, so that she could not interfere in the affairs of the so called Trust. Despite huge properties like Raj Mahal in 10 acres, Qila Mubarik at Faridkot in 10 acres, big residential properties, Faridkot House, copernicus Marg, New Delhi in 10 acres, Faridkot House, Chankyapuri in 1.5 acres, she was given option only to stay in a Flat, whereas forts and palaces were kept for DW-3 Maharani Deepinder Kaur and other trustees/executors.

(iii). As per provision in the alleged Will, Rajkumari Mahipinder Kaur was to get Rs.1,000/- per month in her capacity as Vice Chairperson of the alleged Trust which she refused to take after 1993. She left the Trust in the year 1993, when she found that the alleged Will and Trust created by it are the result of fraud upon the estate of her father and the trustees are involved in siphoning off the estate and its income. She refused to take Rs.1,000/- per month after August 1992. She filed Civil Suit No.210/98 (Ex.PW3/2) on 13.06.1998, challenging the Will. In the said suit, she highlighted the factum

of inheritance of Raja's mother, wife, elder daughter and herself in the said suit. She also alleged allegations against the trustees and executors in respect of misappropriating the amount of the Raja's estate. She also questioned the nature of Trust not being of charitable Trust, besides questioning on other parameters as well. She has also explained the circumstances in which written statement was filed in the suit filed by Rajkumari Amrit Kaur as the same was got filed from her by the other defendants. She was only drawing income of Rs.300 pounds of sterling annually which she was getting from the Faridkot Family Settlement Trust's office in UK. The said amount was stopped by DW-3 Maharani Deepinder Kaur, even to grab every penny of Raja's estate. Initially, DW-3 denied having written any letter to the Bank not to disburse the money, but when confronted with letters, she admitted that Chairperson of the Trust got a letter written by CEO to ANZ Grindlays Bank that the payment of interest should not be paid to three sisters. In her cross-examination, she has admitted that Trust wrote letter to the bank authorities in UK that personal money of her father be not given to anyone till the issue of succession is decided. She admitted that it is in her knowledge that correspondence took place between the Trust and ANZ Grindlays Bank that payment should not be made to three sisters. DW-3 Maharani Deepinder

Kaur has admitted that Rajkumari Mahipinder Kaur did not have any property in the year 1982, when the alleged Will was executed, despite the fact that unmarried daughter has been disinherited by the alleged Will. After filing Civil Suit No.210 of 1998 by Mahipinder Kaur challenging the Will on 13.06.1998, DW-3 Maharani Deepinder Kaur and R.S. Wahniwal got registered a new Trust in the name of Maharwal Khewaji Religious and Charitable Trust on 17.07.1998 i.e. within 35 days and removed Rajkumari Mahipinder Kaur as trustee which was against the mandate of the alleged Will. Under the alleged Will no new Trust could have been formed. Maharwal Khewaji Religious and Charitable Trust (Ex.PX135 and Ex.PX136) was registered on 17.07.1998. According to memorandum of Article of this new Trust, Rajkumari Mahipinder Kaur was removed as a trustee/Vice Chairperson and instead Sh. R.S. Wahniwal, Advocate/Executor promoted himself and became a trustee in addition to being an executor. Initially DW-3 denied having registered a new Trust regarding Raja's estate, but on being confronted with documents, she had to admit that the defendants have registered Maharwal Khewaji Religious and Charitable Trust. She further admitted that the objects mentioned in Ex.PX136 are different from the objects mentioned in the alleged Will. Registration certificate of the new Trust is

Ex.PX135 and memorandum of association is Ex.PX136. The new composition of members of Board of trustees has come forth. The reasons for not including the name of Rajkumari Mahipinder Kaur was on account of lame excuse given by DW-3.

(iv). Regarding wife of Raja namely Rani Narinder Kaur, there was no provision in the Will, except Rs.3,000/- per month for her maintenance which is not even the salary of an employee, but DW-3 Maharani Deepinder Kaur tried to justify the same by saying that Rani Narinder Kaur had inherited 1/7th share from the estate of her father, who died in the year 1960. Factually the property was inherited on 12.09.1984 vide Ex.PX/127, but the same was not in her name, when the Will was allegedly executed. There was no provision in the Will as regards maintenance of mother of Raja. DW-3 Maharani Deepinder Kaur has tried to justify that Raja had thought his mother would not survive him. His mother died in the year 1991, two years after the death of Raja. DW-3 and other trustees have tried to give false justification on the aforesaid facts. No role has been given to Rani Narinder Kaur Sahiba in the Trust created by the alleged Will. If Rani Narinder Kaur wife of Raja was so old, frail and physically weak at the fag end of her life, then how Raja could expect a child from her at the age of 67 years. This fact is

also one of the suspicious circumstances. As per the clause in the alleged Will, the Raja was expecting a child from her at the age of 67 years, when she was stated to be weak and frail. Para IV(a) of the alleged Will (Ex.DW2/B) can be referred in this context which states

> "*if I am blessed with a male child begotten from my loins out of existing wedlock or from future matrimonial alliance like a surrogate marriage of contractual companionship duly notified under the registered deed and the paternity of the child so born is duly certified by me in writing shall alone inherit all my properties, estates of every description referred to above*."

(v). There was no provision for maintenance of mother of Raja. Raja was not sure about her longevity, but she died after two years of death of Raja. She got fixed maintenance of Rs.3,000/- per month from the State Government as mother of Ex-Ruler of Faridkot State and she was drawing regularly of Rs.3,000/- per month as maintenance from State Government during her life time. This stand was taken by DW-3 that in addition to the aforesaid amount, she was possessed of very valuable jewellery and hard cash. She had also investments in UK from which she was getting regular income. She was income tax and wealth tax assessee. She got a big palacious house of about 4 Kanals in Sector 9 Chandigarh. She was about 84 years

at the time of execution of alleged Will. Testator never hoped that she would survive him. Even on the basis of aforesaid submissions, the alleged Will in question is found to the result of fraud, fabrication and shrouded with suspicious circumstances.

(vi). If the Raja had made the alleged Will, he would not have included the property i.e. Flat at Riviera Apartments, The Mall Delhi, that he had already transferred to the Faridkot Ruling Housing Trust in 1968. This fact has also been confirmed by Mr. Umrao Singh Dhaliwal in his affidavit dated 10.11.1994 and this fact alone proves that the alleged Will dated 01.06.1982 was not executed by the Raja himself. DW-3 Maharani Deepinder Kaur has admitted in her written statement as well as in the cross-examination that Raja had created the Faridkot Ruling Housing Trust in the year 1968 in which one of the properties is Flat No.32 Riviera Apartments, the Mall Delhi and the same is not owned by Raja. This fact has also been admitted by Mr. Umrao Singh Dhaliwal in his affidavit filed to the application for a receiver filed by the plaintiff Rajkumari Amrit Kaur. According to the stand taken by Maharani Deepinder Kaur in the written statement and the cross-examination, the property known as Fairy Cottage, County Club situated in Bir Chahal, Flat No.32 Riviera Apartments and one another property had vested in a declaratory Trust known as Faridkot Ruling Family Housing

Trust created by late Raja in the year 1968 and the beneficiaries of these Trusts are all the three daughters of the settler. Umrao Singh Dhaliwal has also admitted the aforesaid fact in his affidavit dated 10.11.1994. The mentioning of this property in the alleged Will dated 01.06.1982 is an instance to prove that the Will has not been executed by late Raja. The options of properties from which Rajkumari Mahipinder Kaur was to chose her residential accommodation of her life under the clause of alleged Will were from Flat No.32, Riviera Apartments, the Mall Delhi and Flat No.13 Nandan Building, Hyderabad. These properties were not owned by the Raja at the time of making alleged Will dated 01.06.1982, but were owned by Faridkot Royal Family Housing Trust of which Rajkumari Mahipinder Kaur was also a beneficiary and had a right to reside therein. This also proves that the alleged Will was not executed by late Raja.

(vii). The affidavit of Umrao Singh Dhaliwal dated 10.11.1994 is running into 44 pages, which was filed in reply to the application for appointment of receiver filed by Rajkumari Amrit Kaur. In this affidavit, he has not stated that he took the Will from personal Safe of Raja in the absence of natural heirs and he has also not stated that he called the first meeting of trustees and executors on 20.10.1989 in which he allegedly

opened affixed envelope containing the alleged Will. He has only admitted that the Flat at Hyderabad, Flat No.32 Riviera Apartments, The Mall, Delhi and Fairy cottage were transferred by Raja during his life time to the Trust created by him namely Faridkot Ruling Family Housing Trust and these properties have not been owned by Raja or by Maharwal Khewaji Trust. The aforesaid facts also prove that a falsehood has been introduced even on the story of taking out the alleged Will by Umrao Singh Dhaliwal from personal Safe of Raja in the absence of natural heirs and convening of first meeting of Trustees and Executors on 20.10.1989, in which he allegedly opened an affixed envelope containing the alleged Will.

G. Whether the Will is proved to be forged, fabricated and shrouded with suspicious circumstances on the ground that trustees/executors acted in defiance to the main object of the Trust to preserve the estate of Raja.

On the aforesaid point, Mr. M.S. Khaira, Senior Advocate with Mr. B.S. Sewak, Advocate on behalf of the plaintiff-Rajkumari Amrit Kaur submitted as under:-

(i). The alleged creation of Trust is aimed to plunder the Estates of Raja firstly by forging of Will and to bring the Trust in question. According to the trustees/executors their object is to

preserve the estate of Raja, but they started plundering the estate within two months of taking over. The following examples are necessary to be quoted in the aforesaid context:-

(a) Resolution No.16 dated 22.12.1989 passed for selling airstrip, Dhana Kothi and agricultural land at Hisar for peanuts with an aim to pocket the real proceeds.

(b) Resolution No.43 dated 06.07.1991 for selling four aircrafts including their licences for a paltry sum of Rs.1 lakh total. What to talk about value of the aircrafts, the value of their licences was in crores and duty free import of aircrafts was allowed against the licence. There was no clause in the Will giving any power to the trustees to sell the assets of the estate of Raja.

(c) Vide Resolution No.191 dated 29.01.2009, Hotel site bearing plot No.12 in Sector 17, Chandigarh measuring 26 Kanals was sold in the year 2009 despite stay order dated 30.11.1992 for Rs.109 crores, vide agreement dated 29.09.2009 and payment of Rs.2.2 crores was received in advance. This resolution was signed by DW-3 as well.

(d) Mr. R.S. Wahniwal, Advocate has transferred 103 acres of land in the heart of city which is part of airport (worth Rs.200 crores) in the Maharwal Khewaji Religious and Charitable Trust in which he is a trustee. The aforesaid transfer was made even against the mandate of the alleged Will through which the defendants-Trustee claimed formation of Maharwal Khewaji Trust.

(ii). It is further evident from para No.2 of CWP No.825 of 2011 (Ex.PX157) wherein it has been recorded that the land measuring 828 Kanals 14 Marlas (103 acres 4 Kanals 14 Marlas) situated in the revenue estate of Faridkot is owned and possessed by Maharwal Khewaji (Religious and Charitable) Trust registered at Faridkot (hereinafter referred as petitioner-Trust. A copy of jamabandi for the year 2004 and 2005 showing the ownership of land in question is annexed with this petition as Annexure P-1. The aforesaid Maharwal Khewaji (Religious and Charitable) Trust has been created on 17.07.1998 (Ex.PX135 and Ex.PX136 i.e. registration certificate and memorandum of association respectively). The said act has been done after filing of the present suit. The money and properties have been transferred to this new Trust with a motive to deprive the plaintiff from the fruits of decree in case the suit is decreed and the

defendants have made every effort to retain the properties and the amount by all means whether fair or foul. Filing of objections in this regard is also aimed to involve the plaintiff in unnecessary litigation just on the ground that Trust newly created is not a defendant in the suit. This is nothing but a *mala fide*.

(iii). Again huge land about 300 acres valued worth Rs.100 crores has been transferred to the new Trust namely Maharwal Khewaji (Religious and Charitable) Trust (Ex.PX136) in which Sh. R.S. Wahniwal is a trustee. It is evident from para No.1 of CR No.5200 of 2001 (Ex.PX164) which reads that

> "*that the petitioner Maharwal Khewaji (Religious and Charitable) Trust at Faridkot owns and possesses entire forest area spreading in a area of about 300 acres in the revenue estate of Bir Sikhanwala, Tehsil and District Faridkot along with other agricultural land in that revenue estate. The forest are is enclosed by mudwall about 5/6 feet of height and partly by a barbed wire by the plaintiff-Trust in order to protect the surrounding land from stray cattle and wild animals in the jungle area.*"

(iv). The executors are involved in transferring funds from Maharwal Khewaji Trust by alleged Will to another Trust namely Maharwal Khewaji (Religious and Charitable) Trust (Ex.PX136) in which Mr. R.S. Wahniwal is the trustee and the same has been created even against the mandate of alleged Will. Against

the acquisition of land owned by Maharwal Khewaji Trust, the Land Acquisition Collector, Faridkot Improvement Trust, Faridkot passed an award of Rs.1.33 crores on 31.12.2003 in favour of Maharwal Khewaji Trust. The award was challenged vide reference petition dated 09.02.2004 filed in the name of another Trust i.e. Maharwal Khewaji (Religious and Charitable) Trust (Regd.) vs. Improvement Trust, Faridkot and a award dated 08.09.2010 was passed by the Land Acquisition Collector, Faridkot in favour of Maharwal Khewaji Trust (Registered) by the District Judge exercising the powers of President Land Acquisition Tribunal for Improvement Trust, Faridkot under the Punjab Town Improvement Act, 1922. Mr. R.S. Wahniwal, Advocate himself was counsel for Maharwal Khewaji Trust. The award dated 08.09.2010 was challenged vide CWP No.20814 of 2011 in the name of another Trust namely Maharwal Khewaji (Religious and Charitable) Trust in which R.S. Wahniwal also became trustee by removing Rajkumari Mahipinder Kaur with a motive to transfer properties and money in this Trust. This is 3rd Trust named in this matter, in which detailed facts have been given which are part of CWP No.20814 of 2011 (Ex.PX158). In this way, the trustees are using three different Trusts i.e. (i) Maharwal Khewaji Trust; (ii) Maharwal Khewaji Trust (Registered) and (iii) Maharwal Khewaji (Religious and

Charitable) Trust.

(v). The subject matter of land measuring 217 Kanals 1 Marla bearing Khewat No.1, Khatoni No.1 was situated in Agwar Vanaika in the revenue estate of Faridkot. The award was passed in favour of Maharwal Khewaji Trust by Land Acquisition Collector, Improvement Trust Faridkot on 31.12.2003. Resolution No.147 dated 23.06.2003 was passed by Maharwal Khewaji Trust to file objection petition authorizing CEO Lal Singh Sra, signed by DW-3 Maharani Deepinder Kaur Chairperson, Jai Chand Mehtab Vice Chairman and Lal Singh Sra, CEO and others. Petition dated 28.07.2003 was filed by Maharwal Khewaji Trust through CEO Lal Singh Sra. Award dated 31.12.2003 was challenged vide reference petition dated 09.02.2004. As earlier stated, Resolution No.153 dated 29.01.2004 was passed to challenge the award dated 31.12.2003 in the name of Maharwal Khewaji Trust (Registered) and signed by DW-3 Maharani Deepinder Kaur, Chairperson, Jai Chand Vice Chairman and Lal Singh Sra CEO. Similarly, the award was passed by the District Judge on 08.09.2010 in favour of Maharwal Khewaji Trust (Registered) and the said award was challenged in CWP No.20814 of 2011 in the manner as earlier stated. Vide Resolution No.209 dated 29.01.2011 it was decided to challenge the award dated 08.09.2010 in the name of

Maharwal Khewaji (Religious and Charitable) Trust signed by DW-3 Deepinder Kaur Chairperson, Lal Singh Sra and others. From the aforesaid facts, it can be seen that the estates of Raja which was allegedly given to Trust under the alleged Will, have been siphoned off by way of creating new Trusts by the trustees and executors at their whims and fancies.

H. Whether registration of three Trusts in the year 1987, 1988 and 1989 by the Raja will prove the alleged Will to be forged and fabricated.

On the aforesaid point, Mr. M.S. Khaira, Senior Advocate with Mr. B.S. Sewak, Advocate on behalf of the plaintiff-Rajkumari Amrit Kaur submitted as under:-

(i). There is no recital in the aforesaid three Trusts regarding the alleged Will or Maharwal Khewaji Trust created by the alleged Will in respect of successor to Raja, who was executor of these Trust deeds. It is relevant to point out that date is typed on all the three trust deeds, whereas it is handwritten in the alleged Will. Plaintiff-Rajkumari Amrit Kaur is made a trustee in all three Trust deeds, but disinherited under the alleged Will. After Raja, his daughters including the plaintiff Rajkumari Amrit Kaur were given preference and then their children were to have first preference to be appointed as trustees. Before making all three Trusts, plaintiff was informed

and her due consent was obtained in order to join her as a trustee. At the time of the execution of all the three Trusts, Raja personally called all the persons to whom he appointed as Trustees and obtained their signatures on the Trust deeds along with him and witnesses. If someone, who was appointed as Trustee, but could not remain present due to any reason for signing the trust deed as a trustee, then the reason for his/her absence was specifically mentioned in the Trust deed. In all the three Trust, the daughters of Raja are the trustees and all the Trustees were informed and invited for the execution of Trusts, deed, but on the contrary not a single person knew even the trustees about the execution of alleged Will by Raja.

(ii). The Raja gave all the minute details of the aforesaid Trusts, though the corpus involved therein was very small i.e. Rs.5,000/-, Rs.36,000/- and Rs.1,25,000/- respectively. The Raja has detailed the manner in which corpus is to be preserved and the manner in which it is to be invested to increase it to a significant level and the manner in which the income of corpus is to be used for a specific purpose. There is a provision made regarding maintenance of accounts of the investment, income and expenditure. The provision has also been made for holding annual meetings and maintenance of regular minutes book and recording of deliberations in the minutes book. The succession

of the trustees has also been defined in extenso i.e. after the plaintiff, her children, and after that Kanwar Manjit Inder Singh's family then Mehmuna family. If no one is willing to serve, then any officer of Ist and 2nd Class, who has 10 years unblemished service is to be preferred. A qualitative language has been used in the aforesaid trust deeds, without there being any spelling errors, grammatical errors or errors in numbering or sub-numbering of paragraphs. The quality of typing and typewriter has been maintained besides maintaining pattern of writing the date. All the trust deeds were registered during the office hours, whereas the alleged Will was registered after the office hours. The aforesaid features are missing in the alleged Will which made the same to be highly doubtful and shrouded with suspicious circumstances. Even one of the suspicious circumstance is sufficient to discard the Will which is never probated, nor any counter claim is set up by the defendants-Trust along with the written statement. The Will has been pleaded only in the written statement and no probative value is attached to it. Trust deed dated 29.01.1987 (Ex.D6) is having corpus of Rs.1,25,000/- and the Trust is known as Rani Kuldeep Kaur Sahiba of Bhareli Religious and Charitable Trust. Trust Deed dated 29.01.1988 (Ex.PX122) having corpus of Rs.36,000/- and the Trust is Rani Narinder Kaur Sahiba

Charitable Memorial Trust, Faridkot. The Trust deed dated 30.01.1989 (Ex.PX123) is having corpus of Rs.5,000/- and Trust is known as Tikka Harmohinder Singh Sahib Bahadur Charitable and Memorial Trust, Faridkot. Non-mentioning of alleged Will and Maharwal Khewaji Trust created by the alleged Will in the aforesaid three Trusts would make the Will in question highly suspicious.

Conclusion on validity of Will dated 1.6.1982

[106]. I have considered the submissions made by learned Senior counsel for the parties on the validity of Will dated 01.06.1982 and have also perused the record.

Conclusion qua requirement of Order 6 Rules 2 & 4 CPC and Order 6 Rules 10 and 13 CPC, where the plaintiff need not to plead as to how, when and by whom fraud was committed.

[107]. The plaintiff-Rajkumari Amrit Kaur has pleaded the Will dated 01.06.1982 to be forged, fictitious and fabricated. The Will in question is not a bilateral document. Instinct of fraud remained as a hidden phenomenon. Plaintiff was not party in making or execution of the alleged Will. Therefore, she could not explain the details in the plaint. Fraud did not happen in the presence of the plaintiff. She did not know as to on which date

the Will in question was forged with reference to time and the person. Plaintiff has pleaded in para nos.8, 9 and 11 that the Will is forged and fabricated. She was given only a photostat copy of alleged Will after the Bhog ceremony by S. Umrao Singh Dhaliwal by alleging the same to be the copy of Will. Raja died on 16.10.1989 in Batra Hospital at Delhi. The suit was filed by the plaintiff on 14/15.10.1992 challenging the Will. Original Will was not produced by the defendants along with the written statement which was filed on 28.04.1994 on behalf of defendants No.1 to 3 and 5. Written was filed on behalf of other defendants on 29.04.1994. Plaintiff filed an application on 11.11.1994 for production of Will by the defendants. The application was allowed by the Court vide order dated 06.01.1995 and the defendants were directed to produce the Will within 15 days of framing of issues. Issues were framed on 04.12.2006, but the defendants did not produce the Will even as per direction of the trial Court dated 06.01.1995. The Will was produced by the defendants only on 02.11.2012 i.e. after 20 years of filing of the suit and after the closure of plaintiff's evidence in affirmative. The original Will was not put to the plaintiff in her cross-examination. The original Will was produced by Sh. Lalit Mohan Gupta, CEO of the Trust on 02.11.2012, but he was not examined on oath by the

defendants, so the plaintiff's counsel could not cross-examine him. A specific objection was taken by the plaintiff as per zimni order dated 02.11.2012 that counsel for the plaintiff wants to cross-examine Sh. Lalit Mohan Gupta, so he should be examined on oath. In case of Will, the plaintiff is only required to allege the fraudulent intention and behaviour of the defendants. The defendants have to prove due execution of Will by dispelling all the suspicious circumstances.

[108]. The custody of Will from 20.10.1989 till date also remained a highly contested issue. Earlier the Will was allegedly with S. Umrao Singh Dhaliwal, who brought out the same from the Safe of deceased Raja. After his death it was claimed to be with Sh. Lal Singh Sra and ultimately the same was produced by Sh. Lalit Mohan Gupta, CEO of the Trust. DW-3 has admitted that the Will was not in her custody. In view of this situation, the plaintiff was not in a position to know the details of fraud, whatever she could plead, she has pleaded in the amended plaint with reference to the available details, particularly when Will was not even produced by the defendants even despite directions of the Court. The Will was produced after 20 years of filing of the suit, when the case was fixed at the stage of rebuttal evidence of the plaintiff. The Will remained under seal cover throughout as the same was repeatedly sought to be sealed by

the defendants even at the time when Expert of the plaintiff was allowed to examine and take photographs of the Will.

[109]. The Expert of the plaintiff examined the Will and has given a detailed report vide which nature of forgery has been proved to the hilt. Dr. Jassy Anand, PW-5 Handwriting Expert has been examined on her report (Ex.PW-5/1) and photograph charts (Ex.PW-5/2 to Ex.PW-5/19). The other mode/source available with the the plaintiff was to examine instances of forgery from the evidence/cross-examination of the witnesses of the defendants. From the cross-examinations of witnesses DW-1 to DW-3, the plaintiff has been able to extract incriminating material to show that the Will in question is shrouded with suspicious circumstances. DW-1 to DW-3 have been confronted with numerous documents collected by the plaintiff from different places, offices and the Courts.

[110]. Raja was having legal acumen being highly educated person. He had opened many educational institutions during his regime. He had been ruler of Faridkot from 1934 to 1948. He introduced many reforms in different fields. Raja was a dominating personality and there was no question of his being influenced by anyone. In view of pleadings available on record in terms of requirement of Order 6 Rules 2 & 4 CPC, if the same

are read in conjunction with Order 6 Rules 10 and 13 CPC, then the reading would make the pleadings complete and the plaintiff need not to plead as to how, when and by whom fraud was committed in view of order dated 11.11.1994 vide which the Will itself was ordered to be produced by the defendants in the Court and the same was not produced, rather the same was produced only on 02.11.2012 i.e. after 20 years of the filing of the suit and that too at the stage when the evidence of the plaintiff was at rebuttal stage. Still in the amended plaint, the plaintiff has allegedly pleaded in terms of para Nos.8, 9 and 11 that the Will is forged and fabricated document. Burden of proving the Will is on the defendants/Trust as per Issue No.6 and the defendants/Trust have to dispel all suspicious circumstances surrounding the Will. In terms of Order 6 Rule 13 CPC, neither party need in any pleading allege any fact, which the law presumes in his favour or as to which the burden of proof lies upon the opposite party.

[111]. Law is handmaid of justice. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal, application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat the substantial

rights or to cause injustice. Procedural, a handmaiden to justice, should never be a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exception to this principle are (i) where statute prescribing the procedure, also prescribes specifically the consequences of non-compliance; (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it; (iii) where the non-compliance or violation is proved to be deliberate or mischievous and (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the Court. Reference can be made to ***Varun Pahwa vs. Mrs. Renu Chaudhary, Civil Appeal No.2431 of 2019*** arising out of ***SLP(C) No.2792 of 2019*** decided on 01.03.2019.

[112]. Procedural mechanics necessary to arrive at a just decision must be encouraged. Under Order 13 Rule 10 CPC, it is the duty of the Court to find out truth even by allowing a document to be produced on record which is essential for proving the case by a party, which ordinarily should not be refused. Reference can be made to ***Luxmi and another vs. Chinnammal @ Rayyammal and others, 2009(2) R.C.R.(Civil) 906***. Non-compliance with the procedural requirement relating to pleading under Order 6 Rule 14 CPC

should not entail automatic dismissal unless relevant statute so mandates. Same view was taken by the Hon'ble Apex Court in ***Uday Shankar Triwar vs. Ram Khilawar Prasad Singh and another, 2006(1) R.C.R. (Civil)18.*** Cause of justice can never be allowed to be throttled by any procedural technicalities. Procedural law should not ordinarily be construed as mandatory as it is always subservient and is in aid to justice unless and until the case falls under well recognized exception as highlighted in ***Varun Pahwa's*** case (supra).

In view of aforesaid facts and position this point is hereby decided in view of nature of proceedings available on record, the **requirement of Order 6 Rules 2 & 4 CPC if read together with Order 6 Rules 10 and 13 CPC would not require that the requirement of Order 6 Rules 2 and 4 CPC be pleaded meticulously** with precision where the necessary pleadings are already on record.

Conclusion qua that no effect of Will dated 22.05.1952 (Ex.D-20) made by late Raja Harinder Singh on the rights of plaintiff Raj Kumari Amrit Kaur.

[113]. Will dated 22.05.1952 (Ex.PX-133/Ex.D-20) was executed by the Raja at the time when only Muslim, Parsi and Christian women could inherit the properties through natural

succession. No other religion or community gave its female right to succeed to any property in any manner whatsoever. Therefore, the necessity arose to make a provision in the Will dated 1952. In 1950, Will (Ex.PX-132) was executed by Raja in favour of all the three daughters to provide residential accommodations, some money in their favour as all the daughters were unmarried at that time. There was a change in the situation, when the plaintiff was married and she acquired right of maintenance in her matrimonial family. Raja revoked Will of 1950 (Ex.PX-132) and executed new Will dated 22.05.1952 (Ex.PX-133/Ex.D-20) after the marriage of plaintiff Rajkumari Amrit Kaur. At that time two daughters namely Deepinder Kaur and Mahipinder Kaur were unmarried and they were solely dependent upon their father. At that time daughters had no right of inheritance to any property. Raja Harinder Singh had a son Tikka Harmohinder Singh, who was to inherit all the properties. For providing decent accommodation and maintenance for his daughters in order to avoid any unfortunate eventuality, the Raja made the aforesaid Will on 22.05.1952. Tikka Harmohinder Singh son of the Raja was alive in the year 1950 as well as in the year 1952. Raja could not think that his son would pre-deceased him. All the properties of the Raja would have gone to his son without anybody having any right of

ownership in view of provisions of The Raja Faridkot's Estate Act, 1948.

[114]. The Will dated 22.05.1952 has no relevance in the present case because the properties to which the Will dated 22.05.1952 refers, were not part of Raja's Estate on the date of his death on 16.10.1989. Even in the Will dated 01.06.1982, these properties have not been mentioned, therefore, Will dated 22.05.1952 has no relevance regarding the properties mentioned in the Will dated 01.06.1982. The words used by the testator in the Will dated 22.05.1952 do not deny inheritance of the plaintiff through a non-testamentary succession such as The Raja Faridkot's Estate Act, 1948 and Hindu Succession Act. Subsequently, plaintiff Rajkumari Amrit Kaur was made trustee in all the three Trust Deeds executed by the Raja himself.

[115]. Plaintiff-Rajkumari Amrit Kaur was having cordial relations with her father and other family member being the eldest of four children of Raja. Raja established five Trusts during his regime. Plaintiff was beneficiary in the two family Trusts namely (i) The UK based Family Trust in 1955 and (ii) The Faridkot Ruling Family Housing Trust in 1968. In these Trusts, Raja acquired property for his daughters. In the Trust in UK based Family Trust, there were two components of the

property. Half share went to son and half share went to three daughters. In subsequent three Trusts namely (i) Rani Kuldeep Kaur Sahiba Religious and Charitable Trust (Ex.DX-6) in the year 1987; (ii) Rani Narinder Kaur Sahiba Religious and Charitable Trust (Ex.PX-122) in 1988 and (iii) Tikka Harmohinder Singh Sahib Bahdaur Charitable and Memorial Trust (Ex.PX-123) in the year 1989, the plaintiff Rajkumari Amrit Kaur was appointed as one of the Trustees. This fact has been admitted by DW-3 in so many words.

[116]. DW-3 has admitted that after the demise of their brother, his share is paid to the plaintiff Rajkumari Amrit Kaur on the basis of being the eldest and by the application of law of primogeniture by the Court at UK. DW-3 contested the same on the ground that share of brother should not go to the plaintiff, but the Bank referred the mater which was decided by the UK Court that law of primogeniture was applicable and then the Bank started to pay income to the plaintiff. The judgment of the Court has attained finality.

[117]. Even the alleged Will dated 01.06.1982, the earlier Wills have been cancelled. There was lot of communication between plaintiff and her father showing that plaintiff and her father were having good terms and she was very much part of his life throughout his life. The letters Ex.P-2 to Ex.P-29 and

Ex.P-56 to Ex.P-66 are in the context of cordial relations between plaintiff and Raja and they were in continuos correspondence with each other throughout Raja's life. 28 letters Ex.P-2 to Ex.P-29 were written by the Raja for the period 1976 to 1979. All these letters were before the execution of alleged Will dated 01.06.1982. Letters Ex.P-56 to Ex.P-66 are from the period from 1989 to 1985 i.e. the period after making of the alleged Will dated 01.06.1982. Execution of letters Ex.P-56 to Ex.P-66 were opposed by the defendants for the reasons best known to them. Some letters Ex.P-31 to Ex.P-34 were written by Rani Narinder Kaur. Ex.P-35 to Ex.P-41 were written by Rajkumari Mahipinder Kaur, who was made vice chairperson of the Trust in the alleged Will, but on disclosure of fraud, she challenged the Will itself. Letter Ex.P-55 was written by grandmother Maharani Mohinder Kaur, letter Ex.P-67 by Massi Palinder Kaur, letter Ex.P-68 was by mother Rani Narinder Kaur, letter Ex.P-69 by DW-3 Maharani Deepinder Kaur, Chairperson of Trust created by the alleged Will and Ex.P-70 by Uncle Manjit Inder Singh. The *inter se* communication vide these letters would show that the parties were having cordial relations between them. Even at the time of death of Raja in Batra Hospital at Delhi, Maharani Deepinder Kaur and plaintiff Rajkumari Amrit Kaur were present. Plaintiff remained in the Raj

Mahal even during necessary ceremonies after the cremation of Raja.

Taking into consideration the totality of facts and circumstances of the case, **the Will dated 22.05.1952 (Ex.PX-133/Ex.D-20) has no adverse effect on the right of the plaintiff in the inheritance of Raja's Estate**.

Conclusion on the validity of Will as regards testimony of DW-1 Brijinder Pal Singh, attesting witness of the Will.

[118]. As regards testimony of DW-1 Brijinder Pal Singh, it is a well settled principle of law that a Will can be ignored, if the same is found to be shrouded with suspicious circumstances, even if the execution of Will is proved in terms of Section 64 of the Indian Succession Act and Section 68 of the Evidence Act. The propunder of the Will is under legal obligation to dispel all the suspicious circumstances in making of Will. Statement of DW-1 Brijinder Pal Singh one of the attesting witnesses would show that the witness in his cross-examination, five times stated that there were two copies of alleged Will dated 01.06.1982. He and Maharaja Harinder Singh signed both the copies of the Will. This fact was admitted by the witness on number of times. When the witness was confronted with the register from the office Sub-Registrar, Faridkot summoned by the plaintiff-

Rajkumari Amrit Kaur in which alleged Will in English and Gurmukhi were pasted, then the witness all of sudden changed his story, thereby putting a new version that he has signed three copies of alleged Will at the same time in the presence of Maharaja Harinder Singh and the witnesses signed before the Sub-Registrar as well on the three copies i.e. two copies of Will in English and one copy of Will in Punjabi. Both the Wills in English and Punjabi were original one and were signed by the executant as well as by the witnesses.

[119]. The story put forward by the witness in respect of signing of three copies of the Will at the same time is also falsified, when he could not explain in respect of handwritten date on the last page of two copies of English Will, but the date is typed on the last page of Punjabi Will. He again faltered in his cross-examination, when he submitted that translation of Will in Punjabi contains typed date, whereas in English Wills, date is written with pen by hand in blank place. The translation in Punjabi and all the Wills were already with Maharaja Harinder Singh and the witness could not state as to how the date 01.06.1982 has been typed in the translated version of the Will. Though the witness tried to take evasive stand by denying the suggestions, but the fact remains that there is a contradictory version in the statement of DW-1. If all the documents were

signed at the same time, then either all three should have handwritten dates or all three should have typed dates. The aforesaid anomaly could not be answered by the witness.

[120]. The story regarding registration of Will is also falsified from the fact that the witness DW-1 initially stated that he had not signed on any blank page, nor signed on any blank paper in all the three Wills, but when he was confronted with record of Sub-Registrar, he admitted that his signatures and those of Jagir Singh are on the blank page which is endorsement page (reverse of page 1) of Punjabi Will (Ex.PX-2) pasted in the register of Sub-Registrar. In view of detailed arguments with reference to record noticed in the preceding paras of the judgment, it can be seen that the witness had to admit his signatures on the blank page. In the Will brought by HRC, there are signature of the witness, signature of Maharaja Harinder Singh, signature of Jagir Singh and signatures of Sub-Registrar, otherwise nothing is written on the page. The signatures of Sub-Registrar are on the pasting. DW-1 further stated that first endorsement was written by staff of Sub-Registrar, whereas the Raja signed the endorsement following which the Sub-Registrar signed the endorsement. Thereafter, below the endorsement, other formalities of the registration were completed and then

Raja signed for the second time, followed by Sub-Registrar and the two witnesses including DW-1 on the endorsement page of Punjabi Will on which there is no endorsement written by the office of the Sub-Registrar above the first signature of Raja. There are no stamps and seals above the second signature of Raja and of the witnesses, which proves that the signatures of Raja were forged on the English Wills and then endorsement and registration formalities were completed. Two signatures of the Raja on blank endorsement page on Punjabi Will and signatures of both witnesses are in the same place and pattern, as on the endorsement page of two English Wills. Above which, the endorsement and formalities of registration have been made. All these things would show that the execution of Will is on questionable note and the same is proved to be forged and fabricated.

[121]. DW-1 Brijinder Pal Singh attesting witness is a practicing Advocate having 44 years of experience from 1968 onwards. During his cross-examination, suspicious circumstances came to fore. The witness did not know whether the Will was computer typed or typed on ordinary typewriter before seeing the Will, but on seeing the Will, he immediately admitted that it was typed on typewriter. The witness was ignorant about the kind of petition or legal paper used in the

Will, but on seeing the Will he admitted that the Will is on petition paper. The witness also pleaded that there was no cutting in the Will, but on seeing, he admitted that there were cuttings. The witness was ignorant about number of copies of the Will prepared and witnessed by him. Initially he stated that there were two Wills. Both copies were taken as print out and there was no other document with Raja except two copies of Will. He and other witness signed on two copies of Will. He did not remember whether Sub-Registrar took away those copies of Will with him or not, but on being confronted with the record of Sub-Registrar, DW-1 changed his stand and stated that there were three copies of Will. At the same time, when he was cross-examined in the year 2012, he stated that he never signed on blank paper. On being confronted with record of Sub-Registrar, showing the endorsement pasted on Punjabi Will on which signature of Raja with two witnesses were present on blank paper, then he fairly admitted that he signed on blank paper. This blank paper of Punjabi is at the reverse of page 1 pasted in the register of Sub-Registrar. The signature of Raja and two witnesses were inserted at the same place in the same pattern and in the same manner, above which the endorsement for registration was written and formalities were completed on two copies/disputed Wills. All these material discrepancies would

show that DW-1 is not a trustworthy witness. The Computers were not prevalent in India in the year 1982, so print out could not have been taken. All the typing used to be done on typewriters. If more than one copy was required, then these have to be as carbon copies. The alleged English copy of original Will (Ex.DW2/B) is neither a print out, nor a carbon copy. The aforesaid material coupled with the other circumstances appearing in the statement of DW-1 would make the Will suspicious.

[122]. DW-1 admitted that on the reverse of page No.1, i.e. endorsement of Will in Gurmukhi is blank and nothing is written except the alleged signature of Raja Harinder Singh at two places and of the witnesses at one place each. From the aforesaid fact it can be concluded that the endorsement paragraphs in both the disputed English Wills have been written above the pre-existing signature of Raja Harinder Singh as on blank page of Gurmukhi Will. The other legal processes regarding registration of two disputed Wills have been completed in the similar blank places on the blank page of Gurmukhi Will between first signature readable as Raja Harinder Singh. Similarly other formalities have also been completed in English Wills in the blank place as on the blank page of the Gurmukhi Will between the signatures of both the

witnesses and second signature of Raja Harinder Singh. The aforesaid materials have been pointed out in the report of Dr. Jassy Anand, Handwriting Expert in detail while appearing as PW-5, who has not been cross-examined on this front and the statement of witness to that extent has gone unrebutted. Typed matter overlapped the signatures of Raja on the Will. It is visible even by naked eyes that typing is overlapping the signature of Raja. The witness DW-1 has given evasive reply to the suggestion that the typed 'dot' is above the last stroke of signature on original of the alleged Will. This is even evident with naked eyes. On this front also the Will is proved to be suspicious. By referring to different charts, the report of Dr. Jassy Anand, Handwriting Expert as PW-5 has exposed the aforesaid fact that typing is overlapping the signatures of Raja. Even in the last page of Punjabi Will in the office of Sub-Registrar (Ex.PX-2), there is a disputed signature of Raja Harinder Singh present on the last page which shows the embellishment being overlapped by tabulation/typeline, which shows that the signatures were prepared on the blank paper and typing was done afterwards. Chart 2 has clearly proved that typed dot (forming first word of 'of') though shown as dot 'o' would show that the said dot is above the last stroke of signature on the original of the alleged Will. It appears from the

naked eye that dot has been affixed while writing the whole of the text under **"**executant testator**".** The text is written above the already signed page. Chart 2 of Sub-Registrar's copy of Gurmukhi Will would also show that the typedline underneath the signature of the Raja on the last page of the Will has overlapped with the line appearing under the signature of Raja i.e. the embellishment is overlapped by the line drawn over Punjabi typing underneath the signature of Raja. Overlapping of tabulation/typedline would clearly show that the line in black colour is drawn after the signature of Raja which is clearly overlapping over the blue line appearing under the signature of Raja. This position has been explained in chart 5 *qua* the overlapping mechanism as well as the dot appearing over the last stroke of signature of late Raja on the original of the alleged Will.

[123]. Even with regard to the comparison of handwriting ink and pen used by the Clerk of the Sub-Registrar to write the Punjabi above the signatures of Raja and two witnesses on the endorsement page of the three Wills which includes Punjabi written above the signatures of Raja and the witnesses on the blank page of Punjabi Will and the same confirmed that these were written by the same hand and with the same ink. The expert has commented upon each alphabet written in Punjabi by

the Clerk and gave a detailed observations, proving that the Sub-Registrar and his staff were involved in the act of forgery of the Will. DW-1 even admitted that Clerk of Sub-Registrar wrote the names in Punjabi above the names of the witnesses. The Clerk also wrote their names in Punjabi before their signatures. The endorsement in Punjabi have been written by the same person by using same pen and ink. The detailed report given by the Expert Dr. Jassy Anand has been highlighted in the arguments of learned Senior counsel for the plaintiff-Rajkumari Amrit Kaur with reference to minute details on record, the meticulous analysis of which shows the forged aspect of the Will.

[124]. The anomaly with regard to letters **'**RARA**'** which the expert has reported that the letter has been shortened to accommodate the writing in Gurmukhi is proved to the hilt. All other **'**RARAS**'** occurring in the said portion written in the endorsement are normal in size. PW-5 Dr. Jassy Anand, Handwriting Expert has opined on the subject that the endorsements in Punjabi have been written by the same person using the same pen and ink. This fact has been proved that the Clerk prepared the endorsements and completed the other formalities of registration above the blank signatures of Raja. Detailed report submitted by the Expert as given in para No.14

of her affidavit has gone unrebutted as the Expert was not specifically cross-examined by the defendants on that aspect. Only a weak suggestion was given that whole of the report is false. The Expert has given report in Chart No.3. DW-1 even denied that there were cuttings in both the English Wills, but when he was confronted with Will (Ex.DW2/B) then he admitted the same to be correct. The cuttings were not initialed by the testator or by any witness or by the Sub-Registrar. This is also one of the suspicious circumstances, particularly when Raja was a well read person and earlier documents executed by him did not contain any such clerical/typographical errors. From the opinion of the PW-5 Dr. Jassy Anand, Handwriting Expert, it can be concluded that the disputed Wills have not been executed and registered at the same time as the witnesses have signed the last page of Will with blue ink pen and registration/ endorsement page with black ink pen. DW-1 tried to make false statement regarding putting his signature on the endorsement page with pen of Sub-Registrar, but later on when he was shown the signatures of Sub-Registrar, he had to admit that the same were in green ink. Use of two different blue ink pens by two witnesses to sign the last page of all the three disputed Will and two different black ink pens to sign the reverse page one i.e. the endorsement page of all the three disputed Wills proves

the suspicious nature of the Wills. It is proved from the aforesaid that the Wills and endorsement have not been signed at the same time as claimed by the defendants. It is proved that DW-1 has signed with blue ink pen of last page of the Will and with black ink pen on the endorsement page. This fact has been admitted by DW-1 after seeing the record and he had to admit that both disputed English Wills, the Sub-Registrar has signed with green ink pen. Perusal of Charts 3 and 6 would show that the shortened 'RARA' in endorsement of the Gurmukhi Will is aimed to accommodate pre-existing signature of late Raja, otherwise all other 'RARAS' appearing in the said portion of the endorsement are of normal size. The report of the Expert Dr. Jassy Anand is elaborate and trustworthy being based on Charts 3 and 6.

[125]. The anomalous situation as appearing in Chart No.1 prepared by the Expert is also proved to the hilt. Statement of DW-1, if read in entirety would make the Will to be highly suspicious. Chart No.6 is submitted in order to show shortened 'RARA' in endorsement above the signature of Raja Harinder Singh in order to accommodate pre-existing signatures in the Sub-Registrar's copy of English Will. While all other 'RARAS' in the endorsement in both the English Wills are of normal size. Handwritten date on two English Wills are in different hand

which are visible even with naked eyes. The dates in two disputed Wills are written with hand i.e. 1st of June 1982 appear to have been written by different persons. All the digits and alphabets of 1st of June 1982 are differently placed by different persons in both the Wills. They do not resemble with the standard writing (S1 to S5) of Raja. PW-5 Dr. Jassy Anand, Handwriting Expert has compared all the numericals and alphabets with standard writing and with each other while drawing just conclusion. Similarly, Chart No.4 shows the date 1st June 1982 written with different hands in both the disputed English Wills which pointed out the difference in digits and alphabets. They were also examined by the Expert viz-a-viz. handwritten letters Ex.P-7, Ex.P-60 and Ex.P-61 written to the plaintiff-Rajkumari Amrit Kaur by the Raja. The witness DW-1 could not explain as to why the date was typed in Punjabi Will and the same was not typed in two English Wills, even though he stated that all the Wills were signed by the Raja and both the witnesses.

[126]. In all previously exhibited documents viz. Will of 1952, Trust Deeds and General Power of Attorneys, the date is typed. Date is handwritten only on these disputed Wills which is nothing but an exception which makes the Will doubtful in view of typed date on Punjabi Will allegedly executed on the same

day and time. This itself casts a doubt as to the genuineness of Will dated 01.06.1982. The witness DW-1 has also admitted the torn pages No.27 to 60 of Register (Book No.3) of Sub-Registrar and page No.41 on which disputed Wills in English and Gurmukhi are pasted. Page Nos.1 to 26 and 61 to 100 of Register (Book No.3) are safe and complete. It proves that the pages in the Register have been changed and there is a clear cut violation of Sections 58 and 60 of the Punjab Registration Manual. DW-1 has admitted that the pages on which the Will is pasted are torn and there is no page No.41, whereas all the pages are complete. Page No.41 has been introduced on which disputed Wills in English and Gurmukhi are pasted. The office of Sub-Registrar has not maintained the register in consonance with Sections 58 and 60 of the Punjab Registration Manual which itself is sufficient to discard the Will even on registration aspect of the same. Even the Expert has observed that despite two certificates marked as G-1 and G-2 given by the two Sub-Registrars on the beginning page and on the last page of the register that the register contains consecutive number of printed pages, the examination of register revealed that there is no page No.41 printed after page No.40. The printed form on which the Wills are pasted are torn which is indicative of the fact that pages on the register on which disputed Wills are pasted have

been changed.

[127]. The report of Expert of the plaintiff is also conclusive to which the witness of the defendants has also admitted that, there are unsynchonized pinpricks on all the nine pages of disputed Will. Even the expert of the defendant has also admitted that unsynchonized pinpricks on all the nine pages of disputed Will (Ex.DW2/B). DW-2 very vaguely and deliberately denied it. The Expert of defendants i.e. DW-2 has admitted in his cross-examination that number of pin holes are not synchronized on all the pages of Will. The Expert of the plaintiff i.e. PW-5 Dr. Jassy Anand has confirmed that presence of numbers of unsynchronized pinpricks on all typed pages of disputed English Will show that the pages have been taken from different stacks with which they were previously pinned. Despite this factual position on record, DW-1 exhibited deliberate and mischievous exposure by denying the aforesaid factual position which was even admitted by their Expert DW-2 Navdeep Gupta, Handwriting Expert.

[128]. Even the affidavit filed by DW-1 has been found to be on questionable note. In the examination-in-chief, the witness has stated that Raja Harinder Singh told both of the witnesses that he himself has drafted and got typed the Will and he himself

is the author of the same and stated that it was his 'holograph' Will. The Raja could not have ever said to DW-1 as he knew the meaning because Raja had excellent command over English language. The Raja could not have used the term 'harrowgraph' because it does not exist in English language. Raja did not use this word in the typed Will of 1952 (Ex.D-20). The Raja could not have used the term 'harrowgraph' because it does not exist in English language. Raja was a highly qualified person as has been admitted by DW-3 Maharani Deepinder Kaur. The explanation given by DW-1 in respect of paragraphs of the Will is totally illegal, particularly when the witness DW-1 is a lawyer with 44 years of experience in the profession. He has admitted that there is no 'harrowgraph Will' but volunteered on the question that the word has been mentioned due to typographical mistake. He could not explain the typographical mistake with reference to the existence of letters 'R', 'L', 'O' and 'A' which are not near to each other on the keyboard of a typewriter. The affidavit filed by DW-1 is found to be incorrect, when he claims to have understood the meaning of everything he had written in the examination-in-chief. He attributed use of term 'harrowgraph' to Raja instead of acknowledging the fact that Raja had a strong command in English language, who was also familiar with judicial and legal terminology's as he had exercised

sovereign authority prior to 1947. Raja could not have used the term 'harrowgraph' to describe the Will as he would have known that such a term does not exist in English language. The affidavit was not drafted by DW-1, rather he merely signed the same without understanding the contents which also proves that the Will in question is forged and fabricated.

[129]. In the affidavit given by DW-1 in his examination-in-chief which was given to the counsel for the plaintiff for the purposes of cross-examination, contained reference of exhibit marking that were to be made on record of Will to be brought. Original Will (Ex.DW2/B) was yet to be tendered in Court. Ex.PX1 i.e. the copy of the affidavit was given to learned counsel for the plaintiff on 31.10.2012. DW-1 admitted in his cross-examination that the copy his affidavit was supplied to learned counsel for the plaintiff under his signature i.e. Ex.PX1/1 and he also admitted that on 27.02.2013 i.e. the affidavit which is Ex.PX1 was sworn by him and the copy of the same was supplied to counsel for the plaintiff before Sh. Lalit Mohan Gupta appeared before the Local Commissioner and got the Will exhibited. There was no occasion for the witness to have mentioned the contents which were not still before the Court. How the witness DW-1 knew beforehand while giving an affidavit (Ex.PX1) dated 31.10.2012 that the original Will is to be

produced on 02.11.2012 and how he knew that the same will be produced by Sh. Lalit Mohan Gupta on behalf of the defendants when Sh. Lalit Mohan Gupta was not even defendant in the Suit on 02.11.2012. How the witness DW-1 knew that the Will would be exhibited as DW2/B on 02.11.2012. How the witness knew about the marking of points (a), (b) and (c) as mentioned by the witness in paras of his examination-in-chief by way of affidavit (Ex.DW-2). All these things make it abundantly clear that the Will in question is forged and fabricated and DW-1 is not an independent witness. DW-1 is not trustworthy witness as he has not prepared his affidavit independently, rather the same is proved to have been prepared under the instructions of his mentor with whom he was in joint practice since 1968.

[130]. The story of the witness DW-1 being collateral of Raja and having social relation with him has been proved in negative. In the cross-examination, the witness displayed utter lack of confidence and knowledge. He had no idea about the education, training and social circle of Raja. He had admitted that he never had an occasion of one to one meeting with Raja. He pleaded ignorance that Raja has faced huge litigations. He was never engaged by Raja for any legal work, nor was ever consulted on any legal issue. The social relations of the witness with Raja could not be proved except on few occasions, when

he was invited along with others on some big gatherings. The witness had to admit the inimical line of descendance on the basis of recital in the book written by Lipin H. Griffin, i.e. Book on "Raja's of Punjab" (Ex.PX209) at page 609. Families of the witness and the Raja had a history of cross-murders, therefore, maintaining alleged social relations by the witness is not proved, rather the witness has denied the inimical relations in a very evasive manner, which is contrary to the written text in the book (Ex.PX209). The witness in any case, could not be chosen by the Raja being from the line of enemies colleteral (Dal Singh). The witness DW-1 had no occasion to judge whether Raja had a sound disposing mind at the time of alleged Will. The witness does not even know the meaning of 'initial' despite having experience of 44 years on legal side.

[131]. The testimony of DW-1 is shattered as he could not withstand the rigour of cross-examination. The document was allegedly registered after the office hours. All other documents executed by Raja from the year 1952 to 1989 were registered during office hours. DW-1 was not aware whether Sub-Registrar took all the Wills along with him or left anyone with the Raja after the registration. The witness was also not aware whether register of registration was brought by the official of the Sub-Registrar along with him for the purpose of registration of the

document. If the register was not brought, then how come the seal and registration being put and the pages No.27 to 60 of the register were pasted. The witness simply stated that Sub-Registrar came in Raj Mahal, when he was already present there and the Sub-Registrar left Raj Mahal while DW-1 was still there. It was impossible that if the register of registration was not there, then how come the pages No.27 to 60 on which the seals were pasted. Admittedly, according to the witness DW-1, the seals were not pasted in his presence and the register was not there and the witness pleaded ignorance whether Sub-Registrar took all the Wills along with him or left with Raja. His association with his senior in legal practice could not be denied as 70 joint power of attorneys were exhibited on record in a span of 37 years. Sh. R.S. Wahniwal is one of the executors of the Will. Incriminating information has been extracted from the cross-examination of the DW-1 and it is proved that he was in a joint practice with Sh. R.S. Wahniwal, Advocate and was made attesting witness to the Will at the instance of his mentor. So testimony of the witness DW-1 stood shattered in the cross-examination. **Evasive stand of the witness DW-1 throughout, admission of fact on being subjected to proof and his background would make him interested witness and on the basis of his testimony, the Will in question cannot be held**

to be genuine, rather the same is proved to be forged, fabricated and shrouded with suspicious circumstances which could not be dispelled by the propounder of the Will.

Conclusion on the validity of Will as regards testimony of DW-2 Navdeep Gupta, Handwriting Expert.

[132]. From the testimony of DW-2 Navdeep Gupta, Handwriting Expert, it is found that the Expert has claimed that he has examined Q-1 to Q-11 only. His assertion in the report DW2/1, affidavit Ex.DW2/A and statement given in the Court would give rise to different connotations. There are 33 disputed signatures of Raja on three alleged Wills. DW-2 alleged to have compared only 11 signatures, whereas the defendants/Trust/ trustees have claimed that all the 33 signatures of Raja are genuine on all the three Wills. It could not be pointed out by the Expert DW-2 that which of the signatures of Raja are falling under the ambit of signatures Q-1 to Q-11 on the Will. DW-2 has admitted that he did not mark any signatures Q-1 to Q-11 on the Wills. Marks Q-1 to Q-33 were made by PW-5 Dr. Jassy Anand Handwriting Expert of the plaintiff, when she inspected the file of original alleged Will after permission of the Court and took photographs after opening the seal in the presence of learned counsel for both the parties. The marks Q-1 to Q-33 were admittedly put by PW-5 Dr. Jassy Anand, Handwriting

Expert examined by the plaintiff after 15 years of the death of Consulting Document Expert Late Sh. Dewan K.S. Puri, who died in the year 1997. In cross-examination, DW-2 admitted that markings along side the signatures marked by lead Pencil Q-1 to Q-11, Q-12 to Q-13 have not been done by him, rather these markings were done by PW-5 Dr. Jassy Anand, Handwriting Expert at the time of inspection of the record in the presence of both the parties.

[133]. DW-2 as per his report stated that he took standard signatures S-2 to S-4 from registered power of attorney dated 04.11.1966, S-5 to S-8 from another registered power of attorney dated 14.05.1984, S-9 to S-13 from another registered power of attorney of May 1984 and S-14 to S-18 from another registered power of attorney. The witness could not disclose the nomenclature of aforesaid registered attorneys given by whom in favour of whom. The witness DW-2 has not disclosed whether he had seen the documents in the year 1995 and has put S-1 to S-17 while preparing the report in 1995. The aforesaid feature is missing from the report as well as the affidavit of the witness. The witness has not marked the standard signatures S-1 to S-17 on any of the record of the Court exhibited or unexhibited, nor has he marked disputed signatures Q-1 to Q-11 on any of the disputed Wills while preparing his report in the year 1995 or

when he produced his report Ex.DW2/1 in the Court on 02.03.2013 in his examination-in-chief.

[134]. The affidavit Ex.DW-2/A filed by the witness in his examination-in-chief has its own connotation as the perusal of the same would show that there is no such Will dated 12.08.1982. Marks Q-1 to Q-11 came to be pleaded therein with reference to the year 1995, particularly when even these were not there in the year 1995. It is also relevant to note that on whose asking the Expert DW-2 has examined Q-1 to Q-11. No such person has been examined, who proved those admitted signatures on three power of attorneys and who proved the signatures appearing on those power of attorneys. The alleged admitted signatures on the aforesaid documents have not been proved, nor the execution of these documents has been proved in any manner. Q-1 to Q-11 have not been marked on the original documents. The witness has not stated as to whose attorneys they were and from where such admitted signatures have been drawn. The testimony is silent as to in whose favour the attorneys were executed and what was the factual position of the aforesaid attorneys in the year 1995 and who produced/showed the attorneys to the witness DW-2. The report dated 21.01.1995 is totally silent on the this aspect.

[135]. EX.PX-6 is the copy of report which was given to

learned counsel for the plaintiff in February 2013 for preparing the cross-examination of the witness. In original report of the Expert (Ex.DW-2/1), DW-2 has altered date of alleged Will from 12.08.1982 to 01.06.1982 without consent/initials of Sh. Dewan K.S. Puri, who died in the year 1997. DW-2 was the Associate Document Expert, who had examined the Will and took photographs at Faridkot. Admittedly, consulting document expert Sh. Dewan K.S. Puri was not with him, when DW-2 Expert had examined the alleged Will and took photographs at Faridkot.The witness has admitted that he had examined and taken photographs of the signatures in Faridkot Palace and Dewan K.S. Puri was not with him on that day. The witness has pleaded ignorance as to who showed him the Will and allowed him to take photographs at Faridkot. The witness had examined and compared these disputed and specimen/standard signatures with the help of photographs, epidiascope, Universal-Dactyloscope-outfit, microscopic lenses, falmer, magnifiers, illuminous magnifiers and other necessary implements. The word 'we' has been intentionally incorporated because Sh. Dewan K.S. Puri remained in Patiala and he did not go to Faridkot along with DW-2, when the documents were examined by DW-2 at Faridkot.

[136]. The report (Ex.DW2/1) was prepared by DW-2 on

21.01.1995 only with regard to the signatures of Raja Harinder Singh on the alleged Will and the report did not correspond to the contents of the Will. It is highly questionable as to why the defendants got the report prepared in the year 1995, when even issue regarding Will had not been framed at that time. The issue regarding Will was framed only on 04.12.2006. The defendants took the stand that the Will was taken out from the locker of Raja and still they were not sure about the signatures of Raja on the Will and got the same allegedly compared and took report in the year 1995. The date of Will mentioned in the report dated 21.01.1995 was altered after supplying the copy to learned counsel for the plaintiff in February 2013. The date of alleged Will in the copy of report supplied to learned counsel for the plaintiff was 12.08.1982 (Ex.PX6). This copy of report was given to learned counsel for the plaintiff in February 2013 for preparing his cross-examination upon DW-2. The original report dated 21.01.1995 was tendered by the Expert DW-2 in the Court on 02.03.2013 at the time of his examination-in-chief in which date of Will was altered from 12.08.1982 to 01.06.1982. The witness DW-2 claimed that corrections in the original report (Ex.DW2/1) were made on 21.01.1995. Sh. Dewan K.S. Puri was alive at that time as he died in the year 1997 only and his initials were not appearing on any alterations in the report. The

advance copy of report (Ex.PX6) which was handed over to learned counsel for the plaintiff in February 2013 for preparing cross-examination of DW-2, did not carry any such correction. The date of Will mentioned in the 3rd line of first page of the copy of report (Ex.PX6) given to the counsel for the plaintiff still carried date as 12.08.1982. The date of Will mentioned in 3rd line of original report (Ex.DW2/1) was 12.08.1982, which was corrected as 01.06.1982 after supplying the advance copy of report Ex.PX6 to the counsel for the plaintiff in February 2013. The correction was made 16 years after the death of Dewan K.S. Puri (author of the report), who died in the year 1997. The aforesaid facts would show that the expert report dated 21.01.1995 (Ex.DW2/1) is a fabricated report because till February 2013, date of Will appearing in the report was 12.08.1982. The aforesaid date was corrected as 01.06.1982 only during the period February 2013 to 02.03.2013. By that time the document Expert Dewan K.S. Puri had already died and there were no initials of Dewan K.S. Puri on the altered dates. The alteration in the date is proved to have been made 16 years after the death of Dewan K.S. Puri. This fact proves that the report is just a fabricated document.

[137]. The witness DW-2 has further admitted that he has seen the photostat copy and identified his signature on the last

page of the photostat copy as well as that of Dewan K.S. Puri with whom he had worked as an Associate Document Expert. The photostat copy of report (Ex.PX6) and photostat of the photo charts (Ex.PX7 to Ex.PX20) would show that the witness has admitted that there is no Will dated 12.08.1992 and the report has been prepared jointly. The witness DW-2 has pleaded ignorance about the date when the correction on the first page of the original report was made, even otherwise the date of correction is proved to be after the death of Dewan K.S. Puri and this fact is established from photostat copy of report (Ex.PX6) given to learned counsel for the plaintiff in February 2013 and till such time the date of Will as 12.08.1982 had existed on the photostat copy of report. The original report was tendered in evidence only on 02.03.2013 and at that time the original copy contained altered date on different pages. From the aforesaid facts, it is amply proved that the report (Ex.DW2/1) has been forged by DW-2 by changing the date of Will from 12.08.1982 to 01.06.1982 even after death of Consulting Document Expert Sh. Dewan K.S. Puri, who had not taken photographs, nor saw the person who allegedly showed Will to his associate.

[138]. As per DW-2, he was not sure as to who allowed him to see the Will for taking photographs. He was some executive

in the Palace. The payment was made by the executive, but the witness DW-2 did not remember whether he was S. Ranjit Singh Wahniwal or someone else. Evidently, the expert has misused the name of Forensic Criminologist and Consulting Expert Late Sh. Dewan K.S. Puri. DW-2 has admitted that Dewan K.S. Puri was not with him, when had gone to examine the Will and took photographs at Faridkot. There was no order of the Court, nor any permission was sought from the Court regarding taking of photographs of alleged Will. Even the witness did not say anything about the person, who had approached him for examining and taking of photographs, and showed him the alleged Will and who made the payment. All these grey areas in statement of DW-2 are nothing, but a farce. The witness DW-2 did not remember the name of the person, who approached him to examine the Will. Dewan K.S.Puri, Consulting Document Expert was alive in the year 1995. On the last page of the report under the signature of late Dewan K.S. Puri, it was typed as Forensic Criminologist and Consulting Document Expert. Under the signature of Expert DW-2 words typed are Associate Document Expert. To a specific question, the witness DW-2 has also admitted that on page 5, fourth line of para No.3 and in second last line of para No.5, a complete line has been written in his hand, bearing only his initials. The aforesaid insertion

made in the original report after the demise of late Dewan K.S. Puri would make the report totally fabricated. Some of the alterations have not been initialled or attested by anyone. Some of the alterations have been initialled by DW-2 only and not by the Consulting Document Expert Late Dewan K.S. Puri.

[139]. The witness DW-2 has not read his affidavit before signing despite the fact that in the cross-examination, he has admitted that he prepared his affidavit and signed the same after going through the contents. With reference to the anomaly viz-a-viz. marks Q-1 to Q-11 and S-1 to S-17, the witness admitted that it is correct that in the affidavit on page 2 in point No.5 in sixth line, he has mentioned standard signatures S-1 to S-11 which is now encircled as Ex.DW2/A/1. From this fact, it has been established on record that the witness has not read his affidavit before signing the same. The affidavit has been prepared in a very casual manner and in the same manner the report has been signed by the witness DW-2 without going through the contents. The witness partially examined the alleged Will and did not tell the name of the person at whose instructions, it was partially examined by him. The witness did not remember the name of the person, who told him to examine the signatures and not the contents of the alleged Will. Partial examination of the Will would give rise to an irresistible

conclusion that someone on behalf of the Trust instructed him to partially examine the Will i.e. only the signatures and not the contents and the same is suggestive of the fact that intention of the defendants/Trust was not to bring the truth on record, but only to obtain a report in order to hide the fraud. The defendants/Trust only preferred DW-2 in order to misuse the name of renowned handwriting expert Late Sh. Dewan K.S. Puri.

[140]. Non-examination of the contents of the Will prevented the Expert DW-2 from giving any opinion with regard to any typed or grammatical mistakes in the contents of the Will. The witness could not answer even after seeing the points mentioned in the charts (Ex.PX-23 to Ex.PX-26). The credibility of this witness DW-2 stood shattered. Even on the aspect of handwritten date on the last page of alleged Will, the same was not examined by the Expert DW-2. The witness admitted that on the last page of Will, there is a handwritten date '1st June' and '1982'. The witness has admitted that there is an ink feathering at the beginning/top of digit '2' in the year '1982' on the last page of Will. Inability of the witness to tell, who wrote "1st June" and "1982" on the last page of the Will further aggravated the incapacity of the witness in the context that would make the report highly suspicious. It is highly questionable to see that the

witness has compared the signatures of Raja on the last page of alleged Wills in English, but has not compared the handwritten date in the blank on the same page and states that he does not know, who wrote the date "1st June" and "1982". The witness could not tell whether handwritten date "1st June" and "1982" was written by Raja himself on the last page of the Will and further stated that he has not examined the document from this angle.

[141]. It is amply proved from the aforesaid facts that the report has been prepared on the instructions of the trustees and DW-2 was engaged only for the purposes of obtaining the report. The report of the Expert DW-2 is also questionable viz-a-viz. the signatures of the witness appearing on the last page of the Will using blue colour ink pen, but on the back side of page 1 (endorsement page) both the witnesses have signed with black ink pen. The Expert has admitted that both the witnesses of the alleged Will have signed with pen of blue colour ink on the last page and with pen of black colour ink on the back side of page No.1 (endorsement page) i.e. on the registration side, which is a strong circumstance to show that the execution of Will and its endorsement/registration has not been done at the same time as has been claimed by the attesting witness DW-1.

[142]. Even on the presence of number of unsynchronized pinpricks on all nine pages of alleged English Will, the witness has admitted that he has not examined the condition of the papers on which the Will has been typed. He has admitted that it is correct that in general, whenever a set of papers are pinned together, they will remain at the similar position unless someone takes out the pin and pin the papers again. The witness DW-2 has further admitted that there are number of pin holes on the left top of all the nine pages of the said Will. He also admitted that if the papers are pinned once together then there will be only two holes present. He admitted that number of pin holes are not synchronizing on all the pages of the Will. In view of aforesaid, it can be concluded that presence of unsynchronized pinpricks on all typed pages of the alleged Will means that the pages have been taken from different stacks with which they were previously pinned. DW-2 has admitted carefree movement is always present in standard signature of a person and admitted that slow and drawn movements may point towards a forged nature of signatures. The witness DW-2 has completely ignored the aforesaid fact, while giving his opinion. The report was prepared on 21.01.1995 regarding signature of the testator and not regarding the contents of the alleged Will. The report was prepared when even issue regarding Will was not framed

by the trial Court. The issue was framed only on 04.12.2006. Defendants have claimed that they took out the Will from the locker of the testator, but still they were not sure about the genuineness of signature of the testator on the alleged Will. There was no Will dated 12.08.1982. The corrections in the report were carried out by the witness DW-2 without the consent of late Dewan K.S. Puri. **The report (Ex.DW2/1) needs to be rejected outrightly as the same cannot be treated to be a genuine report from any angle.**

Conclusion on the validity of Will as regards testimony of DW-3 Maharani Deepinder Kaur.

[143]. The entire testimony of DW-3 Maharani Deepinder Kaur would show that a false story regarding discovery of alleged Will from the personal locker of Raja was made on 20.10.1989. The locker was being operated by the Raja personally. The alleged Will was shown to be taken out from the locker by an employee of Raja namely U.S. Dhaliwal, who opened the same on 20.10.1989 in the absence of all the three daughters and mother of Raja. Although daughters namely Maharani Deepinder Kaur and Rajkumari Amrit Kaur were present in Raj Mahal. DW-3 Maharani Deepinder Kaur admitted in her cross-examination that she did not know whether keys of the Safe used to be with Raja or with Sh. U.S. Dhaliwal. The

Safe of the Raja was being operated by the Raja himself. Raja did not tell about the Will in question to anyone when he was conscious. Declarations were got made on 17.10.1989 from employees of Raja that now they are employees of the Trust and the Trust has taken over possession and control of Raja's Estate even before discovery of Will on 20.10.1989. The said declarations were nothing but a forecast from undisclosed sources. By that time, nobody was in knowledge about existence of Trust and the Will in question. The manner in which the declarant got to know about the Will which was not even disclosed on 17.10.1989, remained a hidden mystery and the irresistible conclusion is that the alleged Will was not executed by the Raja, rather the same was the result of evil design of the persons in command, who utilized their resources to plunder the entire Estate of Raja. The alleged Will was not shown to the plaintiff-Rajkumari Amrit Kaur even after discovery of the same on 20.10.1989 by the trustees and the executors till the date when the original Will was tendered in the evidence in the year 2012. This is a suspicious circumstance, making the Will to be suspicious particularly when the production of Will was allowed by the Court on 06.01.1995 on an application dated 11.11.1994 filed by the plaintiff.

[144]. The written statement had already been filed by the

defendants on 28.04.1994. The production of Will in the Court on 02.11.2012 i.e. 20 years after filing of the suit would make the Will suspicious. At that stage, the evidence of the plaintiff had already reached the stage of rebuttal, when the Will was produced by the defendants. The plaintiff has appeared as PW-1. The original Will was not put to her during her cross-examination as the same was available with the defendants at that time. After closing of the evidence of the plaintiff, defendants produced the Will only on 02.11.2012 after 20 years of filing of the suit, when Sh. Lalit Mohan Gupta produced the Will in Court, but he was not examined on oath, despite specific objection raised by learned counsel for the plaintiff. This fact was reflected in the zimni order dated 02.11.2012. After production of the Will, defendants filed an application for sealing of the original Will and the same was immediately sealed. Thereafter expert of the plaintiff was allowed to examine the Will on 01.12.2012 and thereafter again it was sealed on the request of the defendants. Repeated sealings of the Will at the instance of the defendants give rise to a very strong suspicion. Taking out of alleged Will from the Safe of Raja by Sh. U.S. Dhaliwal is a suspicious circumstance as the Raja used to operate the Safe himself. How the keys of the Safe came in the hand of Sh. U.S. Dhaliwal. DW-3 has admitted that when Raja was staying at

Delhi during his illness, he used to sign cheques at Delhi during his illness. Those cheques used to be brought by Sh. U.S. Dhaliwal and there is nothing on record that during that period keys of the Safe were handed over to Sh. U.S. Dhaliwal. Sh. U.S. Dhaliwal did not tell the witness anything else lying in the Safe other than the Will, nor DW-3 enquired from him regarding opening of the Safe for taking out the Will in the absence of herself and her elder sister Rajkumari Amrit Kaur (plaintiff).

[145]. Raja never gave power to his employee Sh. U.S. Dhaliwal to operate the Bank account. It is highly impossible that Raja would give keys of the Safe to Sh. U.S. Dhaliwal in which the alleged Will of the entire Estate of Raja was kept, in preference of his daughters Rajkumari Amrit Kaur and DW-3 Maharani Deepinder Kaur, particularly when both the daughters were with the Raja and were attending him during his illness before his death. Raja gave some keys to DW-3 Maharani Deepinder Kaur after getting them from Faridkot, but those keys were pertaining to the properties at Mashobra and Delhi and were not in respect of anything at Faridkot. Raja did not tell her about the details regarding handing over the keys to her of Mashobra and Delhi properties, nor DW-3 asked as to why the keys were handed over to her. After the death of Raja, DW-3 Maharani Deepinder Kaur opened one room in the House at

Delhi and there were only clothes and with the other key she opened another room down stairs and could not notice any significant item. The other keys were of Safe at Mashobra, which she did not open till the same were opened by Income Tax Department during the raid in the year 1994. Bringing of keys of the properties of Mashobra and Delhi by the Raja himself from Faridkot and handing over the same to DW-3 would make the availability of keys of Faridkot with Sh. U.S. Dhaliwal highly improbable. It is also impossible that Raja did not give keys to DW-3 of the Safe in Raj Mahal at Faridkot in which alleged Will regarding his entire estate was lying by which he allegedly made DW-3 as Chairperson of the alleged Trust created under the alleged Will. It is highly improbable that Raja would not tell about any Will, when he was on the death bed and both the daughters were by his side. This also made the Will to be highly suspicious.

[146]. From the aforesaid situation, it can be culled out that when the Raja was in the last stage of his life, it was natural for him to inform his near and dear about such important document. Even if it is to be believed that the Will is genuine, then at least Raja would have informed DW-3 Maharani Deepinder Kaur as she was designated Chairperson of the alleged Trust created under the alleged Will. Prior to 20.10.1989, no one was

expected to know anything about the contents of the Will. DW-3 Maharani Deepinder Kaur was not supposed to be aware about the Trust allegedly created under the Will by her father. In such circumstances, the declarations made by the employees of the Raja on 17.10.1989 remained a mystery and would make the Will to be highly suspicious. The Trust was to come into existence on discovery of Will which was allegedly discovered on 20.10.1989 as per the case set up by the defendants/Trust. Before this date no trustee could make any declaration without knowing the contents of the Will. The declaration made on 17.10.1989 would make the Will shrouded with suspicious circumstances. DW-3 has admitted the factual matrix of the case in her cross-examination. The alleged Will was not shown to the plaintiff which is also one of the suspicious circumstance.

[147]. The executors did not make any inventory of movable and immovable properties of Raja, nor they performed any obligation mandatorily required under Indian Succession Act, but they conspired to usurp the Estate of Raja. On 20.10.1989, Resolution No.1 was passed and the Trust came into existence and took over possession of Estate of Raja. Rajkumari Mahipinder Kaur, youngest daughter of Raja, who was designated Vice Chairperson of the alleged Trust was also not informed about the Will, nor was called to attend the meeting on

20.10.1989. From 21.10.1989 to 25.11.1989, even plaintiff was not informed about the alleged Will despite her presence in the Raj Mahal. All were interacting with each other, but the Will was kept as secret. Plaintiff came to know about the alleged Will only on 26.10.1989, when it was announced in general public after Bhog ceremony of Raja and a photocopy of the alleged Will was handed over to the plaintiff on 27.10.1989. No original Will was shown to the plaintiff. This fact has also been admitted by DW-3 Maharani Deepinder Kaur in her cross-examination. This is also one of the suspicious circumstances, making the Will to be shrouded with suspicion. The executors and trustees instead of preserving the estate of Raja started selling out the properties. The instances are numerous which have already been detailed in the preceding paras of the judgment. The story put forward by DW-3 Maharani Deepinder Kaur regarding discovery of the alleged Will and by whom calling of the first meeting of trustees and executors in which Will was read for the first time, does not test to reasons in view of different written statements filed by DW-3, her fellow trustees and executors of the alleged Will in the connected suit titled '*Kanwar Manjit Inder Singh vs. Maharani Deepinder Kaur and others*'.

[148]. DW-3 Maharani Deepinder Kaur stated that the alleged Will was in an affixed envelope and was read over in the

first meeting of Board of Executors and Trustees on 20.10.1989. How before opening the affixed envelope, Sh. U.S. Dhaliwal got to know the subject matter of enclosed material is doubtful. The stipulation made in the Will is indicative of the fact that DW-3 Deepinder Kaur and Sh. R.S. Wahniwal, Advocate (Executor) while forging the Will, put such a stipulation that children of Rajkumari Mahipinder Kaur designated Vice Chairperson could not succeed her as trustee or Vice Chairperson, unless she marries in a family of former Ruler of Indian States. The only provision made in the alleged Will for Rajkumari Mahipinder Kaur was to give her residential accommodation for her life from a choice of three properties which was also not given to her by DW-3 Maharani Deepinder Kaur, Chairperson of the Trust. As per the provision in the alleged Will, Rajkumari Mahipinder Kaur was to get Rs.1,000/- per month in her capacity as Vice Chairperson of the alleged Trust which she refused to take after 1993 as stated by her in the suit filed by her (Ex.PW3/2), challenging the Will in question. Except Rs.1,000/- per month honorarium which Rajkumari Mahipinder Kaur was getting as Vice Chairperson of the Trust, she was getting income of about 300 pounds sterling annually from Faridkot Family Settlement Trust based in UK, which was stopped by the action of DW-3 Maharani Deepinder Kaur to grab everything of Raja's Estate.

DW-3 Maharani Deepinder Kaur admitted that Rajkumari Mahipinder Kaur did not have any property in the year 1982, when the alleged Will was executed despite the fact that unmarried daughter has been disinherited by the alleged Will. After Mahipinder Kaur filed a suit, challenging the Will on 13.06.1998, DW-3 Maharani Deepinder Kaur and Sh. R.S. Wahniwal just within 35 days got registered a new Trust in the name of Maharwal Khewaji (Religious and Charitable) Trust on 17.07.1998 (Ex.PX-135 and Ex.PX-136) and removed Rajkumari Mahipinder Kaur as trustee, which is even against the mandate of alleged Will.

[149]. If Raja had made the alleged Will, he would not have included the property i.e. Flat No.32 Riviera Apartment, The Mall, Delhi in the alleged Will as the same property had already been transferred by him to the Faridkot Ruling Family Housing Trust created in the year 1968. Inclusion of the aforesaid property would make the alleged Will highly doubtful and it is proved that it was not made by the Raja. The option given to Rajkumari Mahipinder Kaur was in respect of properties as per clause of the alleged Will including Flat No.32 Riviera Apartment, The Mall, Delhi and Flat No.13 at Nandnam building, Hyderabad. These properties were not owned by the Raja at the time of making of alleged Will on 01.06.1982, but these

properties were owned by Faridkot Ruling Family Housing Trust created in the year 1968 to which Rajkumari Mahipinder Kaur was also a beneficiary and having a right to reside therein.

[150]. Unmarried daughter of Raja, his wife and mother were disinherited under the alleged Will including the plaintiff. The explanation given by DW-3 Maharani Deepinder Kaur and other trustees cannot be accepted. This issue has also been highlighted at number of places in the judgment. This aspect of the case would also make the Will to be highly suspicious.

[151]. DW-3 Maharani Deepinder Kaur has admitted that her father was mentally fit and capable of making rational judgments. She also admitted that her mother was about 67 years of age in the year 1982. The witness could not explain the reason why her father mentioned in the alleged Will regarding possibility of having a male child from his wedlock. On a pertinent question that a man (Raja) with high education, culture and social standing could not use the language and possibility of having a male child from a contractual companionship or hiring a surrogate womb for the possibility of producing a male child, keeping in view his and his wife's age on the date of Will in question. The witness could not comment about working of mind of her father at that particular time, when he made the alleged Will. The credibility of DW-3 Maharani Deepinder Kaur

is a big question mark. Ex.PX-134 i.e. affidavit was submitted by DW-3 in a suit No.211 of 07.11.2001 titled *'Karnail Singh vs. Maharani Deepinder Kaur'* on 20.10.2010. On being confronted with this affidavit, particularly in view of contents of para No.8 where she had stated that the cuttings on the document raises a suspicion regarding its genuineness. The witness has put blame on her counsel which shows that she had verified the said affidavit, but without going through its contents, and thereafter turned around and blamed her counsel, whereas it was her duty to sign the affidavit after understanding the contents. The credibility of DW-3 stood shattered in the cross-examination, wherein she stated that she is giving statement in the present case on the advice of her counsel, which shows the state of mind of the witness. The answers given to the questions put in cross-examination, have not been given by her as per her own consciousness or knowledge and oath taken by her. She stepped into the witness box as a tutored witness and the same raises a serious concern regarding the credibility of DW-3.

[152]. As regards language used in the alleged Will, the witness DW-3 has admitted that her father was highly educated and qualified person having studied in Aitchison College, Lahore and was an excellent student. He got Godley Medal for best Essay writing in English language in the year 1932. He had also

opened schools in Faridkot after coming back from Lahore after completion of his studies and when he took over as Ruler of Faridkot State. The witness also admitted that her father was well accomplished man and used to talk and write in a cultured manner. He used to meet senior politicians, high ranking civil and army officers upto the Prime Minister, but para No.IV(a) of the alleged Will (Ex.DW2/B) shows the language of gutter, which cannot be used by any cultured and highly educated person of stature of Raja which also proves that the Will is shrouded with suspicious circumstances. DW-3 Maharani Deepinder Kaur has admitted that there is no grammatical or spelling mistake in Ex.D-20 i.e. Will dated 20.05.1952 and the language used in that Will is cultured and decent language with all meticulous details. No such decency and standard regarding meticulous details have been maintained in the alleged Will. The witness also admitted that she cannot explain and comment as to wrong spelling, grammatical mistake and quality of typewriter used while preparing the alleged Will. She also admitted that she cannot explain about the difference of spellings and words in the alleged Will present in Court and other pasted in Book No.3 of Sub-Registrar (Ex.PX-2). The witness cannot explain or comment on signatures of witnesses on blank page i.e. reverse of page No.1 of alleged Punjabi Will (Ex.PX-2). There is a

deliberate denial by the witness DW-3 Maharani Deepinder Kaur regarding date written with two different hands on the last page of two alleged English Wills (Ex.DW2/B and Ex.PX-2) which is even evident to naked eyes. The witness has also admitted that the alleged Will (Ex.DW2/B) produced in different Courts, but pleaded ignorance as to the name of the Court and admitted that there is no exhibit number or mark upon the alleged Will, which proves the same is produced in any Court. The witness has further admitted that she cannot explain ink marked on page No.2 of the alleged Will and cannot explain the reasons of the impression of ink encircled as mark 'A' on page 2 on the left top side margin of Ex.DW2/B. The witness is unable to explain the number of unsynchronized pinpricks.

[153]. The witness DW-3 further admitted that she cannot explain the irregular numbering of paras in the alleged Will. The witness is unable to explain the reason for first and last leave of the alleged Ex.DW2/B torn on the top of left margin of the leaves while other seven leaves are intact. She blamed CEO of the Trust. First CEO i.e. Sh. U.S. Dhaliwal, is no more in this world. Second CEO Lal Chand Sra is also no more in this world and 3rd and present CEO Lalit Mohan Gupta produced the Will in Court, but he was not examined on oath despite objection raised by the plaintiff's counsel as he wanted to cross-examine

him on the issue of custody of Will. He was a cited witness in the list of witnesses submitted in the Court by the defendants, but was not examined so as to prevent anyone from questioning regarding custody of Will. From examination-in-chief of and cross-examination of DW-3 a suspicion is raised that her affidavit given in examination-in-chief has not been drafted on her instructions, rather it appears that it has been drafted by someone else. The cross-examination of the witness dated 12.03.2013 would make the aforesaid assertion a reality.

[154]. DW-3 Maharani Deepinder Kaur further admitted that she has not read the documents attached with her affidavit and they have come directly from the office of the Trust and they were handed over to her by Sh. Paramjit Singh, Advocate and Sh. Lalit Mohan Gupta, CEO of the Trust. This fact also raises a serious suspicion as to the fact that even her affidavit has not been drafted on her instructions and it appears that she has blindly tendered the affidavit which has been given to her and the same has been drafted on the instructions of someone else. The witness has admitted in her affidavit that the document having cuttings, without countersigned is forged and fabricated. The cross-examination of DW-3 dated 23.04.2013 proved the aforesaid fact. In any case, DW-3 Maharani Deepinder Kaur has admitted in her affidavit (Ex.PX-134) filed in case of Civil Suit

No.211 dated 07.11.2001 titled *'Karnail Singh vs. Rajkumari Amrit kaur and Deepinder Kaur*, that a document containing cuttings or additions which are not countersigned is forged and fabricated. The alleged Will (Ex.DW2/B) also has cutting on page 8 above which it has been written 1200 P.M., this has not been countersigned by anyone. So, in the light of admission of DW-3 in above mentioned affidavit (Ex.PX-134), the alleged Will is also a forged and fabricated document.

[155]. The admission by DW-3 Maharani Deepinder Kaur that three charitable Trusts (Exs.DX-6, PX-122 and PX-123) registered by the Raja on 29.01.1987, 29.01.1988 and 30.01.1989 respectively in the name of his mother-in-law, wife and son after the alleged Will dated 01.06.1982 were made, in which the specific utilization of fund being earned from investment made is given and they were registered after taking written consent of most of the trustees in these Trusts. From the perusal of all the three Trusts/Deeds, it is found that all three daughters including plaintiff have been made trustees and after them the preference is for their children. The cross-examination of DW-3 Maharani Deepinder Kaur dated 20.04.2013 would make things apparent

[156]. DW-3 Maharani Deepinder Kaur has deliberately

made a wrong statement regarding inheritance of property by Rani Narinder Kaur from her father. The said event took place in the year 1984 only vide Ex.P-126 and Ex.P-127. No property was inherited on or before 01.06.1982, when the alleged Will was executed. Similarly wrong statement was made by DW-3 regarding inheritance of property by unmarried youngest sister Rajkumari Mahipinder Kaur. DW-3 submitted wrong statement that she has not inherited share of her younger sister after her death which came to her from her maternal grandfather.

[157]. Preference of Raja in involving his daughters and their wards/children in the Trusts with very small corpus of Rs.5,000/- (Ex.PX-123), Rs.36,000/- (Ex.PX-122) and Rs.1,25,000/- (Ex.DX-6), raises suspicion regarding genuineness of the Will because in the alleged Will all the legal heirs have been disinherited. It is very strange to note that actual line of inheritance has been disturbed. In all the three Trusts i.e. (a) Rani Kuldeep Kaur of Bhareli Religious and Charitable Trust dated 29.01.1987; (b) Rani Narinder Kaur Charitable Memorial Trust, Faridkot dated 29.01.1988; and (c) Tikka Harmohinder Singh Sahib Bahadur Charitable and Memorial Trust, Faridkot dated 30.01.1989, plaintiff-Rajkumari Amrit Kaur is also one of the trustees. When the plaintiff-Rajkumari Amrit Kaur was given first preference in the aforesaid

Trusts, then how she could be disinherited by the Raja in the alleged Will. Raja has allegedly planned meticulously the use of small corpus of Rs.5,000/- in the Trust set up by him, but he is silent on the use of his huge estate spreading in several States in India. Raja had registered a Charitable Trust (Ex.PX-123) with just a corpus of Rs.5,000/- which was to be kept as a deposit in the bank until it was swallowed upto Rs.1,25,000/-. From the interest amount of Rs.1,25,000/- half of the income was to be used for charitable purpose and the remaining half of the income was to be used for expenses on meetings and functioning of the Trust.

[158]. It creates serious doubt about the genuineness of the Will in question, because the alleged Will is silent regarding the use of his huge Estate spreading in several States in India consisting of thousands of acres of agricultural land, huge buildings spreading in several acres, like Raj Mahal, Faridkot, Forts in Faridkot and Manimajra, two houses in Delhi in several acres, four aircrafts, airfields and Battery of expensive Cars, heirloom jewellery etc. This is the most suspicious circumstance which proves that the alleged Will is forged and fabricated and was not executed by the Raja.

[159]. DW-3 Maharani Deepinder Kaur could not explain

mind of Raja when the alleged Will was executed and why he was not sympathetic towards his wife and on the other hand, he was very considerate towards Board of Trustees. DW-3 is proved to be hand in glove with the executors and other conspirators to depose falsely in the case. Initially in her cross-examination dated 01.04.2013, she stated that she did not appear in the civil suit filed by Rajkumari Mahipinder Kaur i.e. Civil Suit No.210 of 1998 (Ex.PW2/3), challenging the Will in question. She has admitted that the written statement was filed by the Trust with her consent. This fact itself shows that she was hand in glove with the conspirators. The credibility of the witness DW-3 is completely shattered on being confronted with certified copy of her written statement (Ex.PX-134) filed in the Civil Suit No.210 of 1998. DW-3 has given false answers to the questions put to her in a very blatant manner and, therefore, she is not a trustworthy witness.

[160]. One executor namely Shanta Sharma and the designated Vice Chairperson and Trustee Rajkumari Mahipinder Kaur were not informed of the meeting and the trustees took over the properties in their absence. The witness DW-3 could not explain the reason for showing unnecessary haste and what was the urgency of convening such meeting without notice to the Vice Chairperson and the trustees. DW-3 Maharani

Deepinder Kaur has also admitted wrong numbering of pages of register in which Resolution No.1 dated 20.10.1989 onwards have been pasted, while some are photostat and some are original. There are also blank pages. On some of them page no. is printed in red ink while on others in black ink and some of them page nos. are handwritten. This is the main register of the Trust since creation of the Trust and it shows that every record of the Trust is forged and fabricated and the same cannot be relied.

[161]. Similarly, no explanation has come forth regarding Ratifications of Vice-Chairperson Rajkumari Mahipinder Kaur, when resolutions were pasted. It is a mystery how the Ratifications are typed on the pasted pages in the Register at a later stage. The witness has also admitted regarding non-ratification of the Resolutions by the Members or the Trust in Ex.DW3/1, Ex.DW3/2 and Ex.DW3/8. The witness has admitted this fact in her cross-examination dated 20.04.2013. Fabricated and false register of Resolutions is proved on record and DW-3 Maharani Deepinder Kaur has admitted the same that blank page pasted in the Register at unnumbered pages. New register started despite without cancelling the pages from page Nos.193 to 280 in the earlier Register. It shows the Tampering and Fabrication of Resolution Register at certain places. There are

no endorsements and certificate to this effect, showing the number of pages contained in the register with reference to necessary particulars viz. date, signature and places. No names of the persons have been typed therein. DW-3 Maharani Deepinder Kaur has admitted that all the decisions regarding litigation of the Trust are taken by the legal department headed by Sh. R.S. Wahniwal, Advocate. The witness has further admitted that executors of the alleged Will are participating in the meetings of the Trust. Role of the Board of Executors is of the super body, whereas as per provision of Indian Succession Act, the role of executors comes to an end after handing over the control and possession of the property to the beneficiary of the Will. The witness DW-3 has admitted that Sh. R.S. Wahniwal, Advocate is the executor of the Will.

[162]. The witness DW-3 Maharani Deepinder Kaur has further admitted that the defendants have got registered Maharwal Khewaji (Religious and Charitable) Trust (Ex.PX-136). The objects of the said Trust are different than the objects mentioned in the alleged Will. In Memorandum of Association, affairs of the society have been entrusted to the members of Board of Trustees of Maharwal Khewaji Trust to seven persons. Three names have been wrongly written that they are the members of Board of Maharwal Khewaji Trust i.e. Sh. R.S.

Wahniwal, Advocate, Sh. S.K. Kataraia and Dr. N.K. Bhatia and the name of Rajkumari Mahipinder Kaur, who was Vice Chairperson in Maharwal Khewaji Trust has been excluded. The Executors Sh. R.S. Wahniwal and Sh. S.K. Kataria have been made Trustees while ignoring unmarried daughter of Raja in connivance with the witness DW-3 Maharani Deepinder Kaur, Chairperson of the Maharwal Khewaji Trust. In para No.1 of the memorandum, it has been recited that Maharwal Khewaji Trust created by the alleged Will dated 01.06.1982 has been registered as this new Trust. The identity of Maharwal Khewaji Trust created by the alleged Will has been finished, when the new Trust was registered and the two earlier legal advisors namely Sh. R.S. Wahniwal and Sh. S.K. Kataria have become executors of the alleged Will by virtue of their designations. The employees and the witness DW-3 in connivance with each other have been made the Trustees of this Trust, which is controlling the Estate of Raja.

[163]. The blatant lies to deny that Sh. R.S. Wahniwal, Advocate is not trustee in the new Trust and is still an Executor are apparent and the same are contrary to the facts on record, which can be verified from examining the document (Ex.PX-136), wherein it has been shown that Sh. R.S. Wahniwal is the Trustee. The blatant lie on the face of it, makes the witness

totally untrustworthy. DW-3 neither admitted nor denied filing of 19 CWPs and CRs in three different Trusts i.e. Maharwal Khewaji, Religious and Charitable Trust, Maharwal Khewaji Trust Regd. and Maharwal Khewaji Trust marked as Ex.PX-138 to PX-156. She has admitted that Maharwal Khewaji Trust is the correct name of the Trust and different names have been mentioned in different resolutions for the above Trust at the advice of legal advisor namely Sh. R.S. Wahniwal and Sh. S.K. Kataria. The witness DW-3 has further admitted regarding passing of 175 resolutions supplied by the defendants in Ex.PX-100 out of which 89 resolutions are in respect of using name of Maharwal Khewaji Trust and 58 resolutions are in respect of using the name of Maharwal Khewaji Trust (Regd.) and 28 resolutions are in respect of using the name of Maharwal Khewaji (Religious and Charitable) Trust. Similarly, Ex.PX-187 i.e the suit dated 04.03.2003 filed by Maharwal Khewaji (Religious and Charitable) Trust registered vs. Dr. N.K. Bhatia**,** seeking to recover the money advanced to the him as Director of Balbir Hospital would show that the defendants are operating Balbir Hospital in this Trust with a large number of employees.

[164]. The witness DW-3 Maharani Deepinder Kaur has also admitted cuttings in the account books and raised pointed fingers towards Sh. R.S. Wahniwal, his nephew Sh. Brijinder Pal

Singh Brar and others. This fact has been admitted by DW-3 in her cross-examination dated 08.04.2013 with reference to the documents Ex.PX-100 to Ex.PX-121. These document have been attested by the General Manager of the defendant Trust. The cross-examination of the witness has given glaring facts. The witness has not checked the account herself. She has admitted that there might be some mistake and mismatch regarding entries of TDS (Ex.PX-101 to Ex.PX-105 and Ex.PX-106 to Ex.PX-110). The witness could not explain about the entries dated 31.03.2010 in Ex.PX-103 with regard to payment of legal fee to Sh. P.S. Sandhu of Rs.4,93,350/- regarding deduction of TDS on this amount. Same is the explanation qua absence of any mention of TDS deduction of this payment in Ex.PX-103. The witness could not tell regarding deduction of TDS as mentioned in Ex.PX-101 to Ex.PX-105 and non-mentioning of name of all the lawyers, non-mentioning of the deposit of TDS (Ex.PX-106 to Ex.PX-110) for the payments made on different dates i.e. Rs.1,10,100/- on 17.11.2007, Rs.69,820/- on 17.12.2008, Rs.49,850/- on 31.03.2009, Rs.40,000/- on 31.03.2010, Rs.50,000/- on 11.11.2010 and Rs.62,604/- on 02.11.2011. The witness did not comment regarding the payments made and non-deduction of TDS to Kuldeep Singh, Advocate (Rs.22,000/- on 28.02.2009), Uma

Devi (Rs.36,300/- on 31.03.2008), Jagdev Singh Brar (Rs.36,395,/- on 17.12.2008, and Vinod Kataria, Advocate (Rs.36,100 on 31.02.2009). The witness could not comment regarding the amount of court fee of Rs.6,45,982/- on 09.12.2008 which is not supported by any receipt or voucher and the name of the case, but it is only mentioned about the court fee of the case to be filed. Sh. P.S. Sandhu, Advocate has received an amount of Rs.4,93,000/- on 31.03.2010, who is an employee of the Trust in legal branch and was getting a salary of Rs.4,000/- per month along with petrol expenses of Rs.500/- per month. He has taken fee of Rs.4,93,350/- for a case of Supreme Court. It is strange to note that an employee who is getting a salary of Rs.4,000/- per month is also getting such a huge amount towards fee. Earlier he was junior to Sh. R.S. Wahniwal before joining the legal branch which is apparent from joint vakalatnamas with Sh. R.S. Wahniwal i.e. Ex.PX-90 to Ex.PX-96.

[165]. DW-3 Maharani Deepinder Kaur, defendants trustees and executors of the alleged Will are involved in manipulating the accounts in order to draw benefits from the Trust created by the alleged Will which is apparent from the fact that the opposition was made by the trustees and executors to the inspection of accounts of the Trust. The High Court vide order

dated 24.12.2012 (Ex.PX-183) had ordered inspection of accounts of the Trusts by the plaintiff for the period 1989 to 2012. The plaintiff visited Faridkot i.e. at the headquarter of the Trust on 03.01.2013, but she was denied inspection. Defendants gave copies of the account of only one head legal and income tax branch for the period 2007 to 2012. Vide order dated 30.03.2013 (Ex.PX-184) it was directed that despite the plaintiff going to Faridkot as per order dated 24.12.2012, she was not permitted to inspect the record on 03.01.2013, therefore, parties are not supposed to bye pass the order dated 24.12.2012 and the said order be complied with in letters and spirit.

[166]. The defendants are operating three different Trusts and they have not shown full accounts of even one Trust and operation of account which was offered has atleast 200 unattested cuttings. This fact has been admitted by DW-3, therefore, adverse inference on account of non-compliance of the order has to be taken against the witness and other defendants. Plaintiff had filed an application dated 06.05.2013 (Ex.PX-177) to send the alleged Wills for examination from an Independent Agency i.e. Forensic Science Laboratory. The said application was opposed by the defendants. The Court vide order dated 09.05.2013 (Ex.PX-179) observed that the

defendants have opposed the plaintiff's application for an independent 3rd opinion. This is again a very strong suspicious circumstance which would negate the authenticity of the Will.

Over all testimony and admissions made by DW-3 Maharani Deepinder Kaur would destroy the authenticity of the Will to the hilt**.** Hence the **alleged Will dated 01.06.1982 is proved to be forged, fabricated and shrouded with suspicious circumstances** on the basis of statement of DW-3 Maharani Deepinder Kaur.

Conclusion qua disinheritance of Raja's unmarried youngest daughter Rajkumari Mahipinder Kaur, his wife Rani Narinder Kaur and his mother Maharani Mohinder Kaur.

[167]. Disinheritance of Raja's unmarried youngest daughter Rajkumari Mahipinder Kaur, his wife Rani Narinder Kaur and his mother Maharani Mohinder Kaur are the circumstances which would negate the existence of any valid Will and proved that the Will in question is forged, fabricated and shrouded with suspicious circumstances. Rajkumari Mahipinder Kaur was made to starve by her elder sister DW-3 by forging the Will and usurping the entire estate of her father. While forging the Will**,** DW-3 and the executors of the Will incorporated such conditions in the Will that the children of

Rajkumari Mahipinder Kaur (designated Vice Chairperson) could not succeed to the property as trustee or vice chairperson, unless she marries in a family of former ruler of Indian States. No provision was made for her marriage in the alleged Will even to an ordinary person and no nucleus was created for such a marriage. This stipulation itself is suspicious circumstance, surrounding the Will. Rajkumari Mahipinder Kaur died unmarried.

[168]. It is highly imaginary that Raja would not have made any provision for marriage and maintenance of his unmarried youngest daughter, particularly, when he was bequeathing his entire movable and immovable property in favour of alleged Trust. It cannot be digested that Raja would make such a stipulation that his youngest daughter's son only succeed as vice chairperson, if she is married in the family of former ruler of Indian State, without making suitable provision for her marriage. The marriage of Maharani Deepinder Kaur was not arranged in the family of former ruler. Husband of Maharani Deepinder Kaur was not ruler of any State, but her father-in-law was having title of Maharaja Adhiraj of Burdwan. The Will is proved to be handiwork of DW-3 in collusion with executors and the Will is proved to be forged document.

[169]. Admittedly, Rajkumari Mahipinder Kaur did not have any property when the alleged Will was executed in the year 1982. The only provision was made for her residential accommodation for life from the choice of three properties. Evidently, no such property was given to her by DW-3 Maharani Deepinder Kaur, Chairperson of the Trust. Flats at Hyderabad and Delhi, four bedroom house to be built at Edelweiss, Mashora, Shimla were the properties. The said properties were already subject matter of the Trust also created by the Raja, therefore, the said properties could not have been offered to Rajkumari Mahipinder Kaur. Infact she was not given any accommodation in her own right and this fact has been admitted by DW-3 in her cross-examination. Even Rajkumari Mahipinder Kaur filed a Civil Suit No.210 of 1998. The suit was dismissed in default on the day when she died.

[170]. Statement of DW-3 is found to be wrong on the point that offer was made to Rajkumari Mahipinder Kaur in respect of giving accommodation. At one point of time, the reply of DW-3 would show that Rajkumari Mahinpinder Kaur did not respond to written offer given to her and she was residing at Mashobra. In further cross-examination, DW-3 had to admit that no option was given to her, rather option was given to her orally by showing the Will. Ultimately Rajkumari Mahipinder Kaur died at

Mashobra. As per the alleged options, Rajkumari Mahipinder Kaur would never reside in Faridkot though she was designated Vice Chairperson of the Trust created under the alleged Will and the Headquarter of the Trust was at Faridkot. The alleged choices given to her were intended to keep her away from Faridkot, so that she could not interfere in the affairs of the so called Trust. Despite huge properties like Raj Mahal in 10 acres, Qila Mubarik at Faridkot in 10 acres, big residential properties, Faridkot House, copernicus Marg, New Delhi in 10 acres, Faridkot House, Chankyapuri in 1.5 acres, she was given option only to stay in a Flat whereas forts and palaces were kept by DW-3 Maharani Deepinder Kaur and other trustees/executors. Under the alleged Will a provision was made for Rajkumari Mahipinder Kaur of Rs.1000/- per month in her capacity as vice chairperson of the alleged Trust, which was refused by her after 1993 and she left the Trust, when she found that the alleged Will and Trust are the result of fraud upon the estate of her father. The trustees are involved in plundering the estate's income and the assets of Raja.

[171]. Rajkumari Mahipinder Kaur filed a Civil Suit No.210/98 (Ex.P3/2) on 13.06.1998, challenging the Will in question. In the said suit, she highlighted the factum of inheritance of Raja's mother, wife, elder daughter and herself.

She further raised allegations against the trustees and executors in respect of misappropriating the amount of the Raja's estate. She also raised pointed finger towards the Trust not being the charitable Trust. She also explained the circumstances in which written statement was filed in the suit filed by Rajkumari Amrit Kaur in which she was one of the defendants and the same was got filed from her by the other defendants. Rajkumari Mahipinder Kaur was only drawing income of Rs.300 pounds of sterling annually which she was getting from the Faridkot Family Settlement Trust's office in UK. The said amount was stopped by DW-3 Maharani Deepinder Kaur and said fact has been admitted by DW-3 in her cross-examination, when she admitted that Chairperson of the Trust got a letter issued to CEO of ANZ Grindlays Bank that the payment of interest should not be made to three sisters. Evidently, the Trust wrote that letter to the Bank authorities in UK that transfer of her father's money be not given to anyone else till the issue of succession is decided.

[172]. Even in the presence of original Trust in the name of Maharwal Khewaji Trust, three new Trusts came to be formed within 35 days of removal of Rajkumari Mahipinder Kaur as Vive Chairperson/Trustee of the Trust. Mandate of the alleged Will was flouted. No further Trust could have been created under the

alleged Will. Maharwal Khewaji (Religious and Charitable) Trust (Ex.PX-135 & Ex.PX-136) was registered on 17.07.1998. According to memorandum of articles of association of new Trust, Rajkumari Mahipinder Kaur was removed as trustee/vice chairperson and instead one of the executors promoted himself and became trustee in addition to being an executor. New composition of Trust and Board of Trustees came to fore.

[173]. Similarly, Raja's wife Rani Narinder Kaur was also disinherited. There was no provision in the Will except Rs.3,000/- per month for her maintenance which is even not the salary of an employee. An effort was made to justify the provision of Rs.3,000/- on the ground that Rani Narinder Kaur had inherited 1/7th share from the estate of her father, who died in the year 1960. Factually this property was inherited only on 12.09.1984 (Ex.PX-127) and no such inheritance was in existence at the time of making of the Will on 01.06.1982. There was no provision for maintenance of mother of Raja namely Maharani Mohinder Kaur. She has been disinherited on the ground of her age and Raja had a thought that his mother would not survive him. Mother of Raja died in the year 1991 i.e. two years after the death of Raja. DW-3 and other trustees have tried to give false justifications that Raja was of the view that his mother would not survive him according to her age.

[174]. No role has been assigned to Rani Narinder Kaur in the Trust created by the alleged Will. If Rani Narinder Kaur was so old, frail and physically weak at the fag end of her life, then how Raja could expect a child from her at the age of 67 years. This is also one of the suspicious circumstances. As per clause of the alleged Will, Raja was expecting a child from her at the age of 67 years, when she was stated to be weak and frail. Para No.(iv)(a) of the alleged Will can be referred in this context.

[175]. Raja was not sure about the longevity of her mother Maharani Mohinder Kaur. She got maintenance of Rs.3,000/- per month from State of Punjab as mother of former ruler of Faridkot State and she was drawing the amount of Rs.3000/- per month regularly as maintenance from the State of Punjab during her life time. The defendants took the stand that in addition to the aforesaid amount, she was also possessing valuable jewellery and hard cash. She had also investments in UK from where she was getting regular income. She was income tax and wealth tax assessee. She got a big palacious house of about 4 Kanals in Sector 9 Chandigarh. She was about 84 years at the time of execution of alleged Will. Testator never hoped that she would survive him.

This point is answered accordingly on the basis of

incriminating material available on record in the context of disinheritance of the plaintiff, Raja's youngest daughter Rajkumari Mahipinder Kaur, wife Rani Narinder Kaur and mother Maharani Mohinder Kaur. **The Will is proved to be forged, fictitious, fabricated and shrouded with suspicious circumstances on this aspect also.**

Conclusion qua defiance of main objects of Trust under the alleged Will.

[176]. The trustees and executors are proved to have acted contrary to the main objects of the Trust to preserve the estate of Raja. Incriminating material on record would show that the defendants, trustees and executors are involved in plundering the estate of Raja by forging the Will and to bring the Trust in existence. According to the trustees and executors their object was to preserve the estate of Raja, but within two months of taking over, they started behaving in the manner which was not conducive to the objects of the Trust under the alleged Will. Vide Resolution No.16 dated 22.12.1989, Airstrip, Dhana Kothi and agricultural land at Hisar were sought to be sold for a paltry amount with a view to pocket the real proceeds. Vide Resolution No.43 dated 06.07.1991, it was resolved to sell four aircrafts for a paltry amount of Rs.1 lakh total. Value of those was in crores.

The duty free import of aircrafts was allowed against the licence. The value of aircrafts was assessed only Rs.1 lakh in total.

[177]. There was no clause in the Will giving any powers to the trustees to sell estate of Raja. Similarly vide Resolution No.191 dated 29.01.2009, Hotel site bearing plot No.12 in Sector 17, Chandigarh measuring 26 Kanals was resolved to be sold in the year 2009 despite the stay order granted on 30.11.1992 for a sum of Rs.109 crores. The resolution was signed by DW-3 Maharani Deepinder Kaur as well. One of the executors transferred 103 acres of land in the heart of city which is part of airport (worth Rs.200 crores) in the Maharwal Khewaji Religious and Charitable Trust in which he is a trustee. The said transfer was made against the mandate of the alleged Will in which Maharwal Khewaji Trust was created. In CWP No.825 of 2011 (Ex.PX157) it was recorded that the land measuring 828 Kanals 14 Marlas (103 acres 4 Kanals 14 Marlas) situated in the revenue estate of Faridkot is owned and possessed by Maharwal Khewaji (Religious and Charitable) Trust, Faridkot as per jamabandi for the year 2004-05. The aforesaid Trust has been created on 17.07.1998 only after filing of the present suit. Money has been transferred to those new Trusts with a view to deprive the plaintiff from the fruits of decree in case the suit is decreed. Similarly, huge land worth Rs.100 crores has been

transferred to the new Trust namely Maharwal Khewaji (Religious and Charitable) Trust (Ex.PX136) in which one of the trustees of the original Trust is also a trustee. Para No.1 of CR 5200 of 2009 (Ex.PX-164) would show that the area of 300 acres in the revenue estate of Bir Sikhanwala, Tehsil and District Faridkot along with other agricultural land was transferred and the sale proceeds were transferred from Maharwal Khewaji Trust created under the alleged Will to another Trust namely Maharwal Khewaji (Religious and Charitable) Trust (Ex.PX136) in which one of the trustees of original Trust is also a trustee. This was against the mandate of the alleged Will.

[178]. In the acquisition of land owned by Maharwal Khewaji Trust, the Land Acquisition Collector, Faridkot Improvement Trust, Faridkot passed an award of Rs.1.33 crores on 31.12.2003 in favour of Maharwal Khewaji Trust. The said award was challenged in a reference petition dated 09.02.2004 filed in the name of another Trust i.e. Maharwal Khewaji (Religious and Charitable) Trust and an award dated 08.09.2010 was passed by the Land Acquisition Collector in favour of Maharwal Khewaji Trust Registered. Mr. R.S. Wahniwal himself was the counsel for Maharwal Khewaji Trust. The award was challenged in CWP No.20814 of 2011 in the

name of another Trust namely Maharwal Khewaji (Religious and Charitable) Trust. Detailed facts have been given in CWP No.20814 of 2011 (Ex.PX-158). The trustees are using three different Trusts i.e. (i) Maharwal Khewaji Trust; (ii) Maharwal Khewaji Trust Registered and (iii) Maharwal Khewaji (Religious and Charitable) Trust. Qua land measuring 217 Kanals 1 Marla bearing Khewat No.1, Khatoni No.1 was situated in Agwar Vanaika in the revenue estate of Faridkot, an award was passed by the Land Acquisition Collector, Faridkot on 21.12.2003.

All these incriminating facts would go in a long way that the trustees and executors have created subsequent Trusts for siphoning off the proceeds of sale in subsequent Trusts in order to flout the main object of the Trust created under the alleged Will. This point is decided accordingly and **it is proved that the trustees and executors acted in defiance to the main objects of the trust created under the alleged Will** which was to preserve the Raja's Estate.

Conclusion qua registration of three Trusts in the year 1987, 1988 and 1989 by the Raja will prove the alleged Will to be forged and fabricated.

[179]. There is no recital in the three Trusts created in the years 1987, 1988 and 1989 regarding the Trust i.e. Maharwal Khewaji Trust created under the alleged Will dated 01.06.1982.

Raja himself was the executor of these three Trusts. In the three Trust deeds dated 29.01.1987 (Ex.D6), 29.01.1988 (Ex.PX122) and 30.01.1989 (Ex.PX123), the date is typed whereas it is handwritten in the alleged Will. Plaintiff Rajkumari Amrit Kaur was made trustee in all the said three Trust Deeds, but she has been disinherited under the alleged Will.

[180]. After the Raja, his daughters including plaintiff Rajkumari Amrit Kaur were given preference and then their children would be having first preference in appointing them as trustees. Before execution of the aforesaid three trust deeds, plaintiff was informed and her consent was obtained in order to join her as one of the trustees in the aforesaid Trust Deeds. Raja personally called presence of whom he wanted to join as trustees and obtained their signatures on the trust deeds along with him as witness. If someone, who was appointed as Trustee, but could not remain present due to any reason for signing the trust deed as a trustee, then the reason for his/her absence was specifically mentioned in the Trust deed itself.

[181]. In all the three trust deeds, the daughters of Raja are the trustees and all the trustees were informed and invited in the execution of trust deed, but to the contrary no single person knew about the execution of alleged Will by the Raja. The Raja

has given minute details in all the three Trust Deeds though the corpus involved therein was very small. Raja has provided the manner in which corpus is to be preserved and it is to be invested to increase to a significant level. The manner in which corpus is to be used has also been provided. The provision has been made for the maintenance of accounts, investment income and expenditure. Provision has also been made for holding annual meetings, maintenance of regular minutes of meeting, recording of deliberations in the amended book and succession of trustees has also been defined in detail. Provision has also been made in respect of non-willing member to carry on with the Trust. A qualitative language has been used in all the three Trust without there being any errors in respect of spellings and numbering etc.

[182]. All the three Trust Deeds were registered during office hours, whereas the Will in question was registered after office hours. The aforesaid features are missing in the alleged Will which would make the same to be highly doubtful and suspicious.

[183]. The Will in question was never probated nor any counter claim has been set up by the defendants along with written statement. The Will has been pleaded only in the written statement and no probative value is attached to it. The Trust

deed dated 29.01.1987 (Ex.D6) known as Rani Kuldeep Kaur of Bhareli Religious and Charitable Trust is having corpus of Rs.1,25,000/-, Trust Deed dated 29.01.1988 (Ex.PX122) known as Rani Narinder Kaur Charitable Memorial Trust, Faridkot is having corpus of Rs.36,000/- and the Trust deed dated 30.01.1989 (Ex.PX123) and known as Tikka Harmohinder Singh Sahib Bahadur Charitable and Memorial Trust, Faridkot is having corpus of Rs.5,000/-. Since all the three Trusts were executed after the alleged Will, therefore, **non-mentioning of Trust i.e. Maharwal Khewaji Trust created by the alleged Will in question is highly suspicious**. This point is answered accordingly.

[184]. Even if Will is registered that itself is not sufficient to dispel all suspicious circumstances regarding its genuineness. If a Will has been registered that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. Testator in not making provision for maintenance for his depending heirs coupled with other circumstance as highlighted in the preceding paras would make the Will suspicious. Reference can be made to ***Rani Purnima Devi and***

another vs. Kumar Khavendra Narayan Dev and another, AIR 1962 SC 567. In case, where the execution of Will is shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and defendants. Conscience of the Court has to be satisfied by the propounder of the Will that the Will was duly executed by the testator. The defendants/Trust have not led any cogent and convincing explanation of the suspicious circumstances surrounding the making of the Will. It is not as if the burden of proof varies with riches and social prestige of the testator, but habits of life are prone to vary with the means of the man and the privileged few who happen to occupy a high place in the social hierarchy have easy access to competent legal advice. Normally therefore, a genuine Will of a well positioned man in society too, does not suffer from the loopholes and infirmities which may understandably beset testamentary instrument.

[185]. In ***Smt. Jaswant Kaur vs. Smt. Amrit Kaur and others, AIR 1977 SC 74***, it has been held that generally a Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other document, so in the case of proof of Wills, one cannot insist on prove with mathematical certainty. When the execution of Will is shrouded

by suspicious circumstances, it stands on a different footing. A shaky signature, feeble mind and unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which the propounder receives a substantial benefit and such other circumstances raise suspicion about the execution of the Will. That suspicion cannot be removed by the mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the Will was made, or that those like the wife and children of the testator, who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and, therefore, in cases where circumstances attendant upon the execution of the Will excite the suspicion of the Court, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator. It is in connection with the Will, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. The test emphasises that in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is

called upon to decide a solemn question and by reason of suspicious circumstances the Court has to be satisfied fully that the Will has been validly executed by the testator.

[186]. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of Will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter. It is not understandable that a document by which property worth billions of rupees was subject to, has remained a closely guarded secret from the whole world of intimate friends and relatives for along time. Even the same was produced after 20 years from the date of filing of the suit. The testator had left behind him a large property and it was reasonably expected from the propounder of the Will to remove all suspicious circumstances. The Will is proved to be fraudulent, forged, fabricated and shrouded with suspicious circumstances.

[187]. Fraud vitiates all solemn acts. Even the limitation starts from the day on which the fraud is detected. When the fraud is proved to the hilt, then the judgments affirmed upto the

highest court in hierarchy of Courts can be declared *non est* by the feeder Court on the basis of fraud. In view of settled position of law in ***S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853***, ***Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416***, ***A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431*** and ***Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Shri Raghunath Sahi, 2003(2) RCR (Rent) 148,*** a party who played fraud has no equities in law and can be thrown at any stage of litigation.

[188]. Fraudulent action shall render the act in nullity. It would be *non est* in the eyes of law. In ***Indian Council for Enviro-Legal Action vs.Union of India and others, 2011(3) RCR (Civil) 779***, the Hon'ble Apex has commented upon unjust enrichment i.e. benefit obtained from another not intended as a gift and not legally justifiable for which the beneficiary must make restitution. Unjust enrichment arises where there has been unjust retention of a benefit to the lots of another. That occurs when the defendant wrongfully secures a benefit or passively receives the benefit which would be unconscionable to retain. This principle has been accepted in India and the defendants can be called upon to restitute unjust enrichment for which they were not entitled to in law. Since the parties are

daughters of Raja and brother of Raja, therefore, to the extent of their shares in inheritance, they would succeed to the property of deceased Raja as per their shares according to the Hindu Succession Act, 1956. The Act of restitution would lie in the appropriate proceedings in accordance with law.

[189]. Parties would also be entitled to establish facts arising from CWP No.825 of 2011 (Ex.PX-157) in which defendants/Trust have filed affidavit in respect of income and expenditure account of Maharwal Khewaji Trust from the years 1989 to 2011, balance sheet for the year 2011-12 (Ex.PX-117) and to establish all other calculations and accumulations in accordance with law for the purposes of apportioning the proceeds amongst the rightful co-sharers in accordance with law.

[190]. The Appellate Court is empowered to modify any finding in order to meet ends of justice. Under Order 41 Rule 33 CPC, the power may be exercised by the Court, notwithstanding that the appeal is as the part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objections. The Appellate Court may not only grant or refuse relief to the appellant by allowing or dismissing the

appeal, it may give such other relief to the respondents, as the case may require. Reference can be made to ***Bihar Supply Syndicate vs. Asiatic Navitgation and others, AIR 1993 SC 2054***. The object of the Rule is to empower the Appellate Court to do complete justice between the parties.

Thus in view of aforesaid, the **alleged Will dated 01.06.1982 executed by Raja Harinder Singh is found to be forged, fabricated and shrouded with suspicious circumstances and Maharwal Khewaji Trust constituted thereunder is not a legally constituted Trust.**

[191]. Now I would deal with the 4th point i.e. **Whether Civil Suit No.4193 dated 21.08.2010/04.04.1992 titled *'Kanwar Manjit Inder Singh through LR vs. Maharani Deepinder Kaur and others'* is maintainable?**

[192]. Feeling aggrieved by the Will allegedly executed by late Raja Harinder Singh Brar, the plaintiff Kanwar Manjit Inder Singh, younger brother of late Raja Harinder Singh filed a Civil Suit No.75 of 28.03.1992 seeking/claiming succession to late Raja Harinder Singh being younger brother on the ground that pedigree of the royal family started from common ancestor namely Saggar to Raja Harinder Singh. Plaintiff claimed ownership of the property left by deceased Raja Harinder Singh

on the ground of male lineal primogeniture. He also challenged the validity of Will dated 01.06.1982 and the Trust created by the said Will. Plaintiff also sought mandatory injunction with direction to defendants to deliver possession of the property to him. Plaintiff also sought directions against defendant No.11 i.e. M/s ANS Grindlays Bank to deliver Heirloom jewellery. Plaintiff pleaded that Raja Harinder Singh and plaintiff are Jat Sikh Brar and are governed by custom in the matter of succession and inheritance. The property is claimed to be ancestral property and the matter of inheritance and succession with regard to the suit property is governed by the custom and according to which Jat Sikhs in Punjab have no power to alienate the ancestral property by way of gift or by way of Will. According to the custom**,** gift of ancestral property by Will is *void ab initio*. It is further claimed by the plaintiff that in the matter of inheritance and succession, the family of late Raja Harinder Singh is governed by Rule of primogeniture and in the absence of male living child, the brother succeeds to the estate according to the custom. The plaintiff further pleaded that late Raja Harinder Singh was not survived by any son, therefore, plaintiff is legally entitled to inherit the estate left by Raja Harinder Singh. Plaintiff also challenged the Will allegedly executed by late Raja Harinder Singh on number of grounds.

[193]. The suit was contested by the defendants No.1, 3, 5 and 7-trustees by way of filing written statement. The defendants questioned the pedigree table being not correctly given and further pleaded that Rule of Primogeniture was never followed in Faridkot State in matters of succession to Gaddi. Succession has been from Ruler to Ruler obtained by force. There was no Rule of Primogeniture followed in Faridkot State. Defendants further pleaded that the holder of impartible estate can alienate the property during his life time and could also dispose of the same by making testamentary disposition. Raja Harinder Singh was competent to make Will dated 01.06.1982.

[194]. Defendants further pleaded that **"**Gaddi**"** is distinct from the personal property of the Ruler. After merger of the State with Union of India, the Rulers were recognized by clause 22 of Article 366 of the Constitution of India and were paid Privy Purses. The Rulership was abolished by the 26th Constitutional Amendment of 1971 and Article 363-A of the Constitution of India was inserted. Thereafter, Raja Harinder Singh had ceased to be Ruler of Faridkot State and became ordinary citizen. A letter was issued by the Government of India, Ministry of Home Affairs dated 06.09.1970 in the exercise of power under Article 366(22) of the Constitution of India**,** directing that Raja Harinder Singh had ceased to be recognized as Ruler of Faridkot. The

said letter is already exhibited on record as Ex.D-59. Thereafter one more Act was enacted namely 'Rulers of Indian States (Abolition of Privileges) Act, 1972' which was published in the official gazette on 11.09.1972. According to this Act, all privileges guaranteed to the Rulers were stopped. Section 87(D) was abolished. Section 168 of the Representation of People Act, 1951 was abolished. Amendment of Act No.27 of 1957 i.e. Wealth Tax Act in Section 5(I)(a) only one building in occupation of the Ruler was declared exempted as official residence. Exemption of heirloom jewellery of Rulers was guaranteed subject to certain conditions. Similarly other Acts giving privileges to the Rulers were abolished. Thus erstwhile rulers became ordinary citizens. All these Acts were passed before execution of the Will dated 01.06.1982. Therefore, the plaintiff has no right to succeed to the estate of Raja Harinder Singh either under custom or Rule of Primogeniture, because institution of rulership itself was abolished.

[195]. After the Independence, Faridkot State along with other States were included in PEPSU. A detailed discussion has already been made on the Rule of Primogeniture in the earlier part of the judgment to hold that Rule of Primogeniture is no more in existence. Therefore, the remaining issues in this appeal are to be decided on merits.

[196]. The Trial Court vide judgment and decree dated 25.07.2013 dismissed the suit of the plaintiff/appellant. Thereafter, the plaintiff/appellant filed two separate appeals before the lower Appellate Court. Both the appeals were dismissed by the lower Appellate Court vide judgment and decree dated 05.02.2018. That is how the present appeal i.e. RSA No.2176 of 2018 came to be filed before this Court.

[197]. Mr. Vivek Bhandari, learned counsel for the appellant in RSA No.2176 of 2018 submitted as under:-

(i). The suit is maintainable and the same is not barred under the proviso to Section 34 of the Specific Relief Act, 1963 which provides:-

> *"no Court shall make any declaration whether plaintiff being able to seek further relief than a mere declaration for title omits to do so"*

(ii). As per the prayer clause in the suit, the suit shows that a further relief of mandatory injunction has been sought in the suit which could be the only relief because the Maharwal Khewaji Trust is the creation of Will dated 01.06.1982**,** which is under challenge. It would have ceased to exist, if the Will is to be set aside and on setting aside of Will, the trustees would have come into permissive possession of the property and,

therefore, the further relief of mandatory injunction for a direction to deliver the possession has been sought against the trustees. The plaintiff has deposited the entire court fee at the initial stage of the proceedings and, therefore, proviso to Section 34 of the Specific Relief Act is not attracted in the present case.

(iii). Secondly, in view of ***Madhavrao Scindia vs. Union of India, 1971(1) SCC***, the bar of Article 363 of the Constitution of India (Privy Purse case) in respect of the Court having no jurisdiction to try the present case is not attracted.

(iv). In view of judgments (Ex.PX-25 and Ex.PX-26), the conclusion of the UK High Court Justice, Chancery Division in case titled **'***ANZ Grindlays Bank vs. Mrs. Amrit Harpal Singh***'** is illegal as the judgment is an *ex parte* judgment, which was merely for directions to the trustees. Kanwar Bharat Inder Singh was not party to the said proceedings and it was observed therein that the parties would be free to litigate on the issue among themselves and proper Courts for decision on the issue of primogeniture were only the Indian Courts. The said judgment has no legal value and no right flows from the said judgment in favour of Rajkumari Amrit Kaur.

[198]. As against this, Mr. Ashok Aggarwal, learned Senior

counsel appearing on behalf of the defendants/respondents No.1 to 3 in RSA No.2176 of 2018, vehemently submitted as under:-

(i). The suit is barred under the provisions of Section 34 of the Specific Relief Act. Kanwar Manjit Inder Singh had claimed the relief of mandatory injunction, directing the defendants to deliver the possession to him and for permanent injunction. Plaintiff should have filed suit for possession. Admittedly, the plaintiff is out of possession. According to provisions of Section 34 of the aforesaid Act, a person is not entitled to any relief which is not claimed and the suit is liable to be dismissed. Plaintiff has not claimed relief of possession and admittedly he is out of possession, therefore, suit for bare declaration and injunction is not maintainable.

(ii). In ***Ramsaran vs. Smt. Ganga Devi, AIR 1972 SC 2685***; ***Vinay Krishna vs. Keshav Chandra, AIR 1973 SC 957***; ***Venkatarajan vs. Vidne Dourer Adjaperumal, (2014) 14 SCC 502***; ***Executive Officer vs. Chandran (2017) 3 SCC 702***; ***Muni Lal vs. Oriental Fire and General Insurance Co. Ltd., AIR 1996 SC 642***; ***Satwant Singh vs. Chanan Singh, 2018(3) Law Herald 2650 (Punjab)***; ***Damandeep vs. Jaspal Kaur, 2016 (1)R.C.R. (Civil) 730*** and ***Mohinder Singh vs. Shamsher***

Singh, 2010(2) R.C.R. (Civil) 505 it has been held that where the defendant is in possession of some of the suit properties and the plaintiff does not seek possession of those properties, but merely claims declaration that he is owner of the suit properties, the suit is not maintainable in terms of Section 34 of the Specific Relief Act, 1963.

(iii). The possession of the suit property cannot be claimed under the garb of mandatory injunction in view of bar under Section 41(h) of the Specific Relief Act, which provides that an injunction cannot be granted, when equally efficacious remedy can certainly be obtained by any other usual mode of proceedings except in case of breach of trust.

(iv). An efficacious remedy was available with the plaintiff to seek relief of possession under the Specific Relief Act, but the plaintiff has claimed the relief of mandatory injunction which is simply not tenable. Grant of mandatory injunction, is governed by Section 39 of the Specific Relief Act. Two elements have to be taken into consideration before granting a decree for mandatory injunction i.e.

(a) The Court has to determine what acts are necessary in order to prevent the breach of obligation; and

(b) the requisite acts must be such as the court is capable of enforcing.

Mandatory injunction can only be granted in case both the conditions are fulfilled. For the grant of mandatory injunction, there must be an "obligation" or "contract", which is enforceable in law in favour of the plaintiff and against the defendants. Ratio(s) of ***Varun Motors Pvt. Ltd., vs. Maheshwari Plaza Resorts Pvt. Ltd., 1999(3) APLJ 156***; ***Adash P. Jauhar vs. Gulshan Jain, 2014(4) R.C.R. (Civil) 918 (Punjab)*** and ***Ewin Shauk Wa vs. UP Nyun, AIR 1927 Rangoon 257*** can be looked into on the aforesaid requirement of law.

(v). The Court is required to see the obligation and its breach and enforcement in a suit for mandatory injunction. While in a suit for specific performance, the Court is to see the existence of a valid contract. Plaintiff has come on the basis of an agreement, therefore, the plaintiff should have filed a suit for specific performance of agreement and suit for mandatory injunction is not maintainable. Learned Senior counsel placed reliance upon ***State of Punjab vs. Phoola Singh, 2011(5) R.C.R. (Civil) 491 (Punjab)***.

(vi). In view of bar under Article 363 of the Constitution of

India, the Court is precluded from deciding any dispute arising out of or in relation to Covenant or for the enforcement of any term of the Covenant. The claim of the plaintiff/appellant is based on Articles XII and XIV of the Covenant. Enforceability of any right arising therefrom cannot be raked up before the Civil Court in view of bar created by Article 363 of the Constitution of India.

[199]. The present appeal is primarily revolving around Rule of Primogeniture for which adjudication has been made in the earlier part of the judgment. Therefore, the remaining consideration is only confined to maintainability of the suit. Plaintiff has already made good the requisite court fee at the initial stage.

[200]. In the light of case laws discussed on the point of maintainability of the suit, it is found **that simpliciter suit for declaration is barred under the provisions of Section 34 of the Specific Relief Act and relief of possession cannot be claimed under the garb of mandatory injunction in the facts and circumstances of the case as the conditions of Section 39 of the Specific Relief Act are not fulfilled**. In the light of aforesaid facts, it is not necessary to opine anything with regard to Article 363 of the Constitution of India viz-a-viz. case laws on

the subject because necessary consideration has already been made in the preceding part of the judgment.

[201]. While deciding maintainability of the suit filed by Kanwar Manjit Inder Singh through LR, **effect of Will dated 29.03.1990 (Ex.D-10) executed by Maharani Mohinder Kaur mother of late Raja Harinder Singh** is also to be seen.

[202]. It is a settled position of law that the Court can mould the relief on the basis of material available on record. Scope of Order 41 Rule 33 CPC is of wide amplitude, where the powers of the Appellate Court have been defined by the Hon'ble Apex Court to cover such reliefs to the party which have not been claimed, if the same do arise from the material on record. The Rule enables the Appellate Court to make whatever order it thinks fit, not only between the appellant and the respondent, but also as between respondent and respondent. The Appellate Court may not only grant or refuse to relief to the appellant by allowing or dismissing the appeal, which may give such other reliefs to any of the respondents as the case may require. The view expressed by the Hon'ble Apex Court in ***Bihar Supply Syndicate vs. Asiatic Navitgation and others, AIR 1993 SC 2054*** has been consistently followed by different Courts. In ***Koke Singh vs. Smt. Deokabai, 1976 AIR (SC) 654***, the

Hon'ble Apex Court has explained the expression '*which ought to have been passed*' which means '*what ought in law to have been passed*'. Even if the respondent did not file any appeal from the decree of the trial Court that has no bar for the High Court passing a decree in favour of the respondent for the enforcement of a claim arising out of material on record.

[203]. Maharani Mohinder Kaur was mother of late Raja Harinder Singh. She died on 05.03.1991 after the death of Raja Harinder Singh on 16.10.1989. At the time of death of Raja, she was class-I heir of late Raja Harinder Singh. Maharani Deepinder Kaur and other trustees of the Trust have admitted that if the property of late Raja Harinder Singh is to devolve according to Hindu Succession Act, then one share out of the property would go to Raja's mother being his class-I heir on the date of death of Raja on 16.10.1989. Even this ground was set up by the defendant/Trust in order to project the suit of the plaintiff Rajkumari Amrit Kaur to be bad on account of misjoinder and non-joinder of necessary parties. Precisely this ground was taken on the strength of registered Will dated 29.03.1990 (Ex.D-10) executed by late Maharani Mohinder Kaur (mother of the Raja). Vide the aforesaid Will, the Maharani Mohinder Kaur cancelled all her earlier Wills and executed this Will. As per this Will, following recital is necessary to be

quoted:-

> *".....AND WHEREAS the testator is 93 years of old, but all her faculties are active and functioning property. The testator has a sound, disposing mind. This Will is made by her own free Will without any coercion or undue influence from any quarter. The testator is making this Will considering the over all circumstances prevailing in the family.*
>
> *.....AND WHEREAS, the testator had two sons namely Maharaja Harinder Singh, erstwhile ruler of Faridkot and Kanwar Manjit Inder Singh. Testator's eldest son late H.H. Maharaja Harinder Singh was extremely well off and owned huge properties. So far as Kanwar Manjit Inder Singh is concerned, the testator is providing his children namely Rajkumari Devinder Kaur and Kanwar Bharat Inder Singh.*
>
> *.....AND WHEREAS, the grand daughter of the testator Rajkumari Devinder Kaur daughter of Kanwar Manjit Inder Singh is really a deserving person to inherit the bulk of the property of testator. She is serving with testator with utmost devotion and commitment since 1975. She is deeply attached to the the testator. She was in United States, where she was married to a foreigner. She herself was serving in the United Nations. She came to India in 1975 from the United State of America and started residing with the testator and looking after her. She served the testator right from 1975 till date. Unfortunately her marriage has also resulted in divorce. As she has a daughter to be looked after and for all the circumstances, the testator feels that she should be provided adequate relief and hence the necessity of this*

Will.

Now by virtue of this Will, the testator bequeath House No.309, Sector 9-D, Chandigarh in favour of said Rajkumari Devinder Kaur daughter of Kanwar Manjit Inder Singh. She will be the actual owner of the said property and deal with it in any manner she likes.

The testator owns and possess certain piece of jewellery and testator hereby bequeath her entire jewellery in favour of said Devinder Kaur.

Out of amount of the amount of British Government, the half of the maturity value shall devolve on said Rajkumari Deepinder Kaur.

Testator further ordains the said Rajkumari Devinder Kaur shall also be liable to outstanding balances in the accounts the testator in the State Bank of Patiala, Faridkot and Chandigarh and National Grindley Bank, New Delhi subject to the fact that she would be entitled to half of the British Government as mentioned above.

The testator further wishes that half of the amount of British Government shall devolve on the Bharat Inder Singh son of Kanwar Manjit Inder Singh.

Any residue left out of the aforesaid total estates belonging to the testator shall devolve on Rajkumari Devinder Kaur.

.....The testator further ordains that other than the property and estates mentioned above, any property or estate come her way after execution of this Will she inherits or otherwise, those part properties or assets only

are to be divided equally between (i) Kanwar Majit Inder Singh, (ii) Rajkumari Devinder Kaur and (iii) Kanwar Bharat Inder Singh. In the event of demise of testator' son namely Kanwar Manjit Inder Singh his estate is to be divided equally between Rajkumari Devinder Kaur and Kanwar Bharat Singh. The testator expressly wishes that in the event of demise of Rajkumari Devinder Kaur her share shall devolve on minor daughter of Rajkumari Devinder Kaur namely Harvinder Kaur Alexandra Farinakis."

[204]. Plaintiff never challenged the aforesaid registered Will dated 29.03.1990. The aforesaid Will has been produced on record as Ex.D-10 without there being any objection for many side, rather the defendant-Trust had made a ground to challenge the suit on the ground of non-joinder and mis-joinder of the necessary parties in view of beneficiaries of this Will. The issue regarding applicability of Rule of Primogeniture has been decided in the preceding part of the judgment. Applicability of The Raja's Faridkot Estate Act, 1948 has also been negated.

[205]. Maharani Mohinder Kaur (mother of the Raja) was one of the legal heir on the date of death of Raja Harinder Singh on 16.10.1989. She has bequeathed that any share come to her fold after the properties mentioned in the registered Will dated 29.03.1990, the beneficiaries of such share are Kanwar Manjit Inder Singh, Rajkumari Devinder Kaur and Bharat Inder Singh.

Since the parties were in knowledge of the cases against each other, therefore, the factum of registered Will dated 29.03.1990 (Ex.D-10) cannot be left unattended for want of framing of any issue to that effect or pleadings of the parties, particularly when defendant-Trust has made it ground to press maintainability of the suit filed by the plaintiff Rajumari Amrit Kaur on the ground of misjoinder and non-joinder of necessary parties. Plaintiff Rajkumari Amrit Kaur has also not objected to the aforesaid Will despite it is exhibited on record as Ex.D-10.

[206]. The date of death of Maharani Mohinder Kaur on 05.03.1991 is not disputed on record by any of the parties. Rajkumari Amrit Kaur stated in her oral evidence that at the time of death of her grandmother, she visited Faridkot on 05.03.1991. She further stated that through the Will dated 29.03.1990, she got no property. She stated that she can identify the signature on the 3rd page of Will dated 29.03.1990 through which no property was given to her. Will dated 29.03.1990 executed by Maharani Mohinder Kaur Sahiba is admitted by all the parties.

[207]. In view of aforesaid fact, this Court is not precluded from taking judicial notice of inheritance**,** based on the Will of Maharani Mohinder Kaur on the date of death of Raja Harinder Singh on 16.10.1989**,** as the inheritance cannot remain in

abeyance. The lawful share had come to the fold of late Maharani Mohinder Kaur on the basis of succession under Hindu Succession Act. Such qualified share is the subject matter of registered Will dated 29.03.1990 **(**Ex.D-10**)**, which cannot remain in abeyance after the death of Maharani Mohinder Kaur on 05.03.1991. In this way, the beneficiaries of the Will (Ex.D-10) would also be entitled to some share in the estate of Raja Harinder Singh on the basis of inheritance by late Maharani Mohinder Kaur and further inheritance by Kanwar Manjit Inder Singh, Rajkumari Devinder Kaur and Kanwar Bharat Inder Singh on the strength of registered Will dated 29.03.1990.

[208]. The Will under probate was dated 27.01.1997 and that was in respect of movable and immovable properties owned and possessed by Kanwar Manjit Inder Singh as per clause 8 of the aforesaid Will would show the following

> "*that any other movable and immovable property owned by me apart from the above mentioned property shall be inherited by my daughter Rajkumari Devinder Kaur.*"

Perusal of the aforesaid recital would show that apart from the properties mentioned in the aforesaid Will any property owned by Manjit Inder Singh as on 27.01.1997 would be

inherited by Rajkumari Devinder Kaur. Manjit Inder Singh has not recited any inheritance by him, on the strength of Will dated 29.03.1990 executed by Maharani Mohinder Kaur, particularly when she died on 05.03.1991 much before execution of Will dated 27.01.1997 which has been probated in accordance with law.

[209]. In view of aforesaid position, **the rigour of inheritance based on registered Will dated 29.03.1990, has to be honoured as per spirit of Will dated 29.03.1990** executed by Maharani Mohinder Kaur.

[210]. For the reasons recorded hereinabove, the **Will dated 29.03.1990 (Ex.D-10) executed by Maharani Mohinder Kaur has definite bearing on the succession of the parties to the estate of Raja Harinder Singh in accordance with law.**

[211]. Now I would deal with the 5th point i.e. **Whether Civil Suit No.437 dated 23.07.2010/15.10.1992 titled '*Rajkumari Amrit Kaur vs. Maharani Deepinder Kaur and others*' is maintainable?** The same is discussed in the following categories:-

1. **Maintainability of the suit filed by plaintiff-Rajkumari Amrit Kaur.**

2. **Limitation regarding challenge to the Will**

dated 01.06.1982.

3. Limitation with regard to filing of court fee.

1. For deciding maintainability of the suit filed by plaintiff-Rajkumari Amrit Kaur following points need to be adjudicated upon:-

(a) Question of court fee.

(b) Whether the suit is barred under Section 34 of the Specific Relief Act or not?

(c) Non-joinder and mis-joinder of necessary parties.

(d) Relief beyond pleadings.

(e) Assignment of right by the plaintiff in favour of 3rd party.

[212]. On the first two points i.e. (a) court fee and (b) whether the suit is barred under Section 34 of the Specific Relief Act or not**,** Mr. M.S. Khaira, learned Senior Counsel assisted by Mr. B.S. Sewak, Advocate appearing on behalf of plaintiff/appellant Rajkumari Amrit Kaur submitted as under:-

(i). *Ad valorem* court fee is not required to be paid after the suit of the plaintiff decreed for joint possession. Reference is made to ***Surinder Singh vs. Harwinder Singh, (2018) 2 ICC 464***; ***Ram Chander vs. Bhim Singh and others, 2008 (3)***

R.C.R. (Civil) 685; ***Bodha vs. Ami Lal, AIR 1991 SC 663***; ***Sham Lal vs. Sudesh Kumar and another, 2007(5) R.C.R. (Civil) 658***; ***Nemi Chand and another vs. Edward Mills Company Limited and another, AIR 1953 SC 28***; ***Kiran Singh and others vs. Chaman Paswan and others, AIR 1934 SC 340***; ***Mohd. Mahibullah vs. Seth Chaman Lal (dead) by LRs AIR 1993 SC 1241***; ***Manan Lal vs. Chokta Bibi (dead) by LRs, AIR 1971 SC 1374*** and ***Sadhu Ganga Ram Bhagade vs. Special Deputy Collector, Ahmednagar, 1970(1) SCC 685.*** In case of co-sharers in the joint land, every co-sharer would be deemed to be in possession of every inch of land, till the same is partitioned by metes and bounds. Even a co-owner selling land from joint khewat by means of specific khasra numbers would be a sale of share only in the absence of lawful partition. The properties held in common, could be joint properties and the owners thereof would be joint owners. Body of owners is joint, both in possession and in ownership. Every co-owner shall be owner in possession of every inch of joint land. Co-owner in separate possession on different parcel of land and in exclusive possession can oust the other co-sharer on defined parameters till the land is partitioned.

(ii). The Division Bench of this Court in ***Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Punjab***

528 as approved in ***Ram Chander vs. Bhim Singh and others, 2008(3) R.C.R. (Civil) 685 (FB)***, considered the *inter-se* rights and liabilities of co-sharers in the following manner:-

> *"(1) A co-owner has an interest in the whole property and also in every parcel of it.*
>
> *(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.*
>
> *(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*
>
> *(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.*
>
> *(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.*
>
> *(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.*

> *(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition."*

(iii). For determining proper court fee, it depends on the nature of relief claimed. The body of the plaint has to be seen in order to construe the real prayer. Since, the plaintiff has claimed declaratory decree, therefore, plaintiff is not required to pay *ad valorem* court fee. Provisions of Section 7(iv)(c) of the Court Fees Act are applicable. The memorandum of appeal, as provided in Article 1 of Schedule 1 of the court fees Act**,** the same has to be stamped according to the value of the subject matter in dispute in appeal. In other words, the relief claimed in the memorandum of appeal determines the value of appeal for purposes of court fee. The only relief claimed in the memorandum of appeal was the first one mentioned in the plaint. This relief being purely of a declaratory character, the memorandum of appeal was properly stamped under Article 17 of the Second Schedule. Actual assessment of the value depends either on arithmetic calculations or upon a valuation by an expert and the evidence led in the case**,** while the decision of the question of category is one of law and may well be said to be an independent question antecedent, but not relating to

valuation. The expression 'valuation' interpreted in its ordinary meaning of 'appraisement' cannot be said to necessarily include within its ambit, the question of category which is a matter of law. The question of determination of valuation or appraisement only arises after it is settled in what class or category it falls.

(iv). The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. The defendant in the suit seeks to utilize the provisions of the Act, not to safeguard the interest of the State, but to obstruct the plaintiff. The plea advanced at the stage of Regular Second Appeal is mis-conceived. The decree passed cannot be interfered in all cases as a matter of course, but only when prejudice is proved to have been caused to the defendant.

(v). Sections 107(2), 149 and Order 7 Rule 11 CPC have to be harmoniously construed in the event of finding that memorandum of appeal had not sufficiently stamped. Liberty should have been given by the Court to the appellant to make good the deficiency within the time to be indicated and if there is failure to comply with the direction of the Court, the memorandum of appeal should be dismissed. No such situation has arisen in the instant case.

(vi). The form of a memorandum laid down in Order 41 Rule 1 CPC has to be stamped in accordance with the Court Fees Act. In case of deficiency, the Court has power to allow the time for the purposes of making deposit of the court fee. Even where limitation is about to expire and the time is too short to enable the party to make good the deficiency, the Court may allow the litigant time for the purpose.

(vii). Question of court fee is between plaintiff and the State. Once the question of court fee is decided against the defendant then he has no right to move to the upper Court. The issue of court fee is squarely falls within the domain of the Court. Reference can be made to ***Sri Rathnavarmaraja vs. Smt. Vimla, 1961 AIR (SC) 1299*** and ***CR No.5104 of 2017*** titled ***'Mohinder Kumar vs. Baldev Kumar'*****, decided vide order dated 29.11.2017**.

(viii). The original plaint was filed on 14.10.1992. First amended plaint was filed on 18.11.1993. Final amended plaint in pursuance of statement dated 09.11.1995 was filed on 16.11.1995. There were three different plaints on record and their comparative chart with reference to prayers made therein would show material things. Final amended plaint was filed in pursuance of statement dated 09.11.1995 given by Sh. Naresh

Prabhakar, Advocate for the plaintiff. The said statement is Ex.D-15 on record. In view of above statement, the trial Court was pleased to pass the order Ex.D-16. Final amended plaint was filed on 16.11.1995 which was duly signed by Sh. Naresh Prabhakar, Advocate for the plaintiff. The decision of the trial Court on the question of the court fee in terms of order dated 30.08.1997 can be appreciated, which reads as under:-

> *"Thus it is clear that in this case, the plaintiff seeks declaration that registered Will dated 01.06.1982 and the Trust are illegal, void and ineffective qua the rights of the plaintiff. The plaintiff virtually seeks setting aside of the said Will which is an impediment in her way and, therefore, according to Section 7(iv)(c) as amended by Punjab Court Fee Act, court fee is payable on the market value of the property and if the plaint is not properly valued, then the Court has no other alternative but to reject the plaint."*

(ix). The High Court vide order dated 08.10.2001 upheld the aforesaid order in CR No.4212 of 1997. The order of the trial Court was also upheld by the Hon'ble Apex Court on 17.08.2005, when the order of the High Court was challenged before the Hon'ble Apex Court in SLP No.1214 of 2002. The suit was processed on the basis of amended plaint dated 18.11.1993, written statements of the defendants dated 28.04.1994 and replication dated 07.09.1995. The issues were

framed on the basis of these pleadings. In the meanwhile on 09.11.1995, the statement (Ex.D-15) was recorded. There was no power of attorney on record authorizing Mr. Naresh Prabhakar, Advocate to make such statement. There was an alleged amended plaint dated 16.11.1995. This plaint was neither signed, nor verified by the plaintiff, nor signed by her counsel. It was signed by someone writing for the Advocate. There was word "sd/-" at the place where plaintiff was required to sign which showed that it was meant to be filed in Court and was introduced by someone by mistake or otherwise. It could not treated as plaint or even as a proposed plaint and the same cannot form basis of any argument. Neither there was any order of the Court allowing or taking on record the alleged amended plaint dated 16.11.1995, nor any application under Order 6 Rule 17 CPC for making amendment by the plaintiff was filed as was done when the plaintiff filed an application dated 18.11.1993 under Order 6 Rule 17 CPC for amendment of the plaint, which was also allowed by the Court on 19.02.1994 and amended plaint dated 18.11.1993 was taken on record. Therefore, there was no question of any written statement being filed by the defendants, nor the same was filed to the alleged amended plaint dated 16.11.1995. On the other hand, an application under Order 6 Rule 17 CPC dated 17.11.1995 was filed by the

defendants for striking out pleadings in the amended plaint dated 18.11.1993, alleging that such striking out was required in view of statement dated 08.11.1993 (Ex.D-15) made by learned counsel for the plaintiff. Headnote of the application dated 17.11.1995 under Order 6 Rule 16 CPC was to the following effect:-

> *"Application under Order 6 Rule 16 CPC for striking out the pleadings of the plaintiff of amended plaint dated 18.11.1993 as per statement of plaintiff's counsel dated 09.11.1995."*

(x). The issue regarding giving up consequential relief and possession can be looked into in view of the fact that after the amended plaint dated 18.11.1993 was allowed on 19.02.1994, Mr. Naresh Prabhakar, Advocate made statement dated 09.11.1995 (Ex.D-15), giving up the relief of consequential relief wherever occurring in the headnote and prayer clause of amended plaint dated 18.11.1993. The defendants sought adjournment on 09.11.1995 to argue the case. The objection with regard to non-maintainability of simpliciter suit for declaration on this ground was not sustainable. Perusal of the record would show that the original plaint was filed on 14.10.1992. Thereafter an application was filed for amendment of the plaint accompanied by the proposed

amended plaint of even date duly signed by the plaintiff herself. The defendant filed the reply on 02.02.1994 to the application for amendment. The trial Court allowed the application dated 18.11.1993 vide order dated 19.02.1994. The application was allowed and amended plaint was taken on record. Defendants also filed their written statement to the amended plaint on 28.04.1994.

(xi). Replication was also filed by the plaintiff on 07.09.1995. The supplementary written statement was filed on 30.03.1995. It was on the suit, the written statement dated 28.04.1995 and replication dated 07.09.1995, the issues were framed by the trial Court. It was also part of the record that on 09.11.1995, statement (Ex.D-15) was recorded but the amended plaint dated 16.11.1995 which has come on record was neither signed, nor verified by the plaintiff, nor by her counsel. It was signed by someone writing for the Advocate. The word **"sd/-"** appeared at the place where plaintiff used to sign. Therefore, it cannot be treated as a plaint or even proposed plaint and cannot form the basis for arguments that consequential relief was given up. The amended plaint would show that the same was filed along with application under Order 6 Rule 16 CPC moved by the defendants. There was neither any order allowing or taking on record the amended plaint dated

16.11.1995, nor any application under Order 6 Rule 17 CPC for making the amendment by the plaintiff was done when the application dated 18.11.1993 was allowed by the trial Court.

(xii). The application under Order 6 Rule 16 CPC was filed on 17.11.1995 by the defendants for striking out the pleadings in the amended plaint dated 18.11.1993 with a plea that such striking out was required in view of statement. Headnote of the application dated 17.11.1995 under Order 6 Rule 16 CPC would show that it was filed by the defendants. In this way the applicants of the application under Order 6 Rule 16 CPC were having no authority to file the amended suit after the statement of Mr. Naresh Prabhakar, Advocate. It was only the plaintiff, who could have filed the amended plaint, if at all she had wished to file the same. Once the amended plaint was not filed by the plaintiff and it was not specifically allowed by the Court, therefore, consequences arising out of statement of Mr. Naresh Prabhakar, Advocate would not mean that the relief of consequential relief was waived off. The trial Court has rightly concluded that once the deletion of relief was not specifically allowed and the amended plaint was not filed by the plaintiff, then, it cannot be said that after the statement of the counsel, it stood automatically deleted. Even after making statement by the counsel, Mr. Naresh Prabhakar, the defendants sought

adjournment on 09.11.1995 to argue the effect of the statement and the case was adjourned for 08.12.1995 and thereafter on 03.02.1996. In the meanwhile it was the defendants, who filed an application under Order 6 Rule 16 CPC on 17.11.1995 for striking the pleadings of the amended plaint dated 18.11.1993. From 03.02.1996, the case was adjourned to 20.04.1996 for filing reply and arguments. Reply was filed on 20.04.1996 and the case was adjourned to 07.06.1996 for consideration. Thereafter the case was adjourned from time to time and on 21.02.1997, the order was passed for filing written arguments and the case was adjourned to 14.03.1997. After filing the written arguments regarding application under Order 6 Rule 16 CPC, the trial Court passed the order for making up the deficiency of court fee on market value.

(xiii). Civil Revision No.4212 of 1997 filed by the plaintiff was decided by the High Court on 08.10.2001. SLP(C) No.1214 of 2002 filed by the plaintiff before the Hon'ble Apex Court was decided on 17.08.2005, wherein order of the High Court was modified. In pursuance of the order dated 17.08.2005, plaintiff filed an application on 16.09.2005 along with court fees of Rs.15,43,550/-. The objections were filed by the defendants to the said application, but the application was allowed and the objections were dismissed on 23.12.2005. The trial Court

clarified that the issue will be framed on the question of court fee. A revision petition was filed by the defendants challenging the order dated 23.12.2005, but the same was dismissed by the High Court on 16.12.2011 and the trial Court was directed to decide the case within six months.

[213]. Per contra, Mr. Ashok Aggarwal, learned Senior counsel duly assisted by Mr. Mukul Aggarwal, Advocate strongly put forward his arguments as follows:-

(i). Firstly**,** the suit titled **'***Rajkumari Amrit Kaur vs. Maharani Deepinder Kaur and others***'** was barred under the provisions of Section 34 of the Specific Relief Act, 1963. The original suit No.473/10 titled '*Rajkumari Amrit Kaur vs. Maharani Deepinder Kaur and others'* was filed on 14.10.1992 seeking declaration to the effect that plaintiff is owner to the extent of 1/3rd share in the properties along with consequential relief of joint possession with defendants No.1 and 2 and for permanent injunction. On 18.11.1993, an application was filed for amendment of the plaint vide which the plaintiff sought to challenge the Will as well. Along with the said application, amended plaint was also filed. The trial Court allowed the application for amendment of the plaint vide order dated 19.02.1994 by keeping the issue of limitation open. On 28.04.1994, the written statement was filed by the defendants

alleging that defendants No.1 and 2 are not in possession of the suit property as natural heirs and, rather, Trust is in possession of the suit property. Reference was made to the aforesaid in para No.15 of the written statement. It was also stated in the written statement that land measuring 31 Kanals 15 Marlas in Khasra No.43/6 situated in village Kaimbwala, UT, Chandigarh is in possession of UT Administration, Chandigarh. Remaining land (except 12 Kanals comprising in Rectangle No.27, Killa No.24/2/2 and Killa No.25) is also in possession of Forest Department, UT, Chandigarh. The land in village Mauli Jagran measuring 13 Kanals 1 Marls is recorded as *shamlat deh* under Gram Panchayat or in the name of the members of the village proprietary body. Land in Ballabhgarh i.e. Khasra Nos.156, 157 & 158 is in possession of District Board/Zila Parishad and PWD Department of Haryana Government. Land in revenue estate of village Ballabhgarh in Khasra No.158 measuring 1 Kanal 15 Marlas has been sold and its vendees are in possessio of the same. Land in revenue estate of village Ballabhgarh in Khasra No.133 is in possession of Pujari of the Mandir i.e. Moolchand and his descendants. Land in revenue estate of village Dhana, bulk of which has been declared surplus under the Punjab Land Tenure Act, 1953 vide order dated 01.05.1979 passed by Special Collector and the Haryana Government has taken

possession of the same in pursuance thereof. Part of screw factory area is in possession of Faridkot District Red Cross Society, Faridkot, who has built Amar Ashram thereupon. Land in revenue estate of Masobra measuring 87 Bighas 8 Biswas comprising in Khasra No.37/1/50, 52, 60/265/1 and 77 has been declared as surplus by Collector, Agrarian, Himachal Pradesh vide order dated 28.04.1985 and the appeal against the said order has been dismissed by the Financial Commissioner. The aforesaid incriminating facts were pleaded in para Nos.2(a) to 2(f), 7 and 8 of the written statement.

(ii). On 01.06.1994, an application was filed by the defendants under Order 7 Rule 11 CPC as the plaint was filed with deficient court fee. A reply was fled by the plaintiff on 28.04.1995 on the ground that only declaratory relief has been sought and, therefore, no further court fee is required to be paid. On 09.11.1995 a statement (Ex.D-15) was given by Mr. Naresh Prabhakar, learned counsel for the plaintiff to the following effect that:-

> "*I give up the relief of consequential relief wherever claimed in the headnote of the plaint and also in the relief clause*".

The order (Ex.D-16) was passed by the trial Court on 09.11.1995 on the basis of statement of the Advocate. The

order reads as under:-

> *"Learned counsel for the plaintiff Sh. Naresh Prabhakar has today made statement giving up the relief of consequential relief wherever occurred in the headnote and prayer clause of the amended plaint. Learned counsel for the defendants seeks adjournment to argue on this statement on the value of the suit for the purpose of court fee and jurisdiction.*
>
> *To come up for arguments on 08.12.1995."*

(iii). On 19.04.1996, an application under Order 6 Rule 16 CPC was filed by the defendants (Ex.D-41) for striking of the pleadings in view of the statement dated 09.11.1995 made by learned counsel for the plaintiff. Para 7 of the said application reads as under:-

> "*7. That on 09.11.1995 during the course of arguments, the plaintiff counsel made a statement in the Court stating that he was giving up the relief of consequential relief wherever occurring in the headnote and prayer clause of the amended plaint. Then, the case was adjourned for consideration of the effect of the said statement.*

(iv). Reply to the aforesaid application under Order 6 Rule 16 CPC was filed by the plaintiff to the following effect:-

> *"It is a matter of record. Once the consequential relief had been given up, its effect is obvious and nothing further remained for consideration of*

this Hon'ble Court"

(v). On 30.08.1997, an order was passed by the trial Court in the application under Order 7 Rule 11 CPC directing the plaintiff to pay court fee on the market value on or before 18.11.1997. The said order of the trial Court was challenged by the plaintiff in CR No.4212 of 1997. The High Court vide order dated 08.10.2001**,** disposed off the said revision petition. It was contended by the plaintiff before the High Court that the plaintiff is in joint possession of the property and has claimed simpliciter declaration regarding deemed joint possession of the property in question. The said contention of the plaintiff was negated by the High Court and the order of the trial Court was upheld. However, in the said order, the contention of learned counsel for the plaintiff was noticed that the plaintiff be allowed to amend the plaint to give up the consequential relief. Upon such statement, High Court held that if such an application is moved by the plaintiff, the same would be allowed. The order of the High Court was further challenged before the Hon'ble Apex Court. The Hon'ble Apex Court vide order dated 07.08.2005 passed in SLP No.1214/2002 modified the order of the High Court to the extent that:-

"we modify the direction of the learned Single Judge of the High Court that "it shall allow the plaintiff to

amend his plaint" and instead direct that in case the plaintiff files an application for amendment of the plaint, the same shall be considered by the trial Court in accordance with law. The defendants would be at liberty to raise their objections and the trial Court shall pass appropriate orders.

(vi). The plaintiff while appearing as PW-1 has admitted in her cross-examination that she was not in possession of any of the above referred land after the demise of her father. She also admitted in her cross-examination that the Trust must be in possession of agricultural land of Maharaja, Bhainsa Tibba, land at Faridkot, land at Ballabhgarh and other places. She volunteered that the Trust was in possession fraudulently and she has challenged the Will for the same reason. She further stated that Maharaja Harinder Singh could not think in these terms which have been incorporated in the Will. She was cross-examined on 12.05.2012.

(vii). The observations made by the trial Court in para Nos.74 to 78 i.e. the statement of the counsel was never considered and was kept open and the order does not suggest that the Court allowed him to give up consequential relief. In fact, the case was adjourned to argue on the point with regard to the effect of statement of the counsel for the plaintiff.

(viii). Para No.100 of the lower Appellate Court i.e.

once the amended plaint has not been filed by the plaintiff and it has not been specifically allowed by the trial Court to the effect that after the making of statement by Mr. Naresh Parbhakar, Advocate all the consequences arising out of the statement shall follow, it cannot be said that the relief of consequential relief has been deleted.

(ix). In pursuance to the order dated 17.08.2005 passed by the High Court, the plaintiff filed an application dated 16.09.2005 along with court fee of Rs.15,43,555/-. Objections were filed by the defendants to the said application, but the application was allowed and objections were dismissed vide order dated 23.12.2005.

(x). Since the consequential relief was given up by the plaintiff, therefore, the suit being simpliciter for declaration is not maintainable in view of the mandate of Section 34 of the Specific Relief Act. A perusal of the statement dated 09.11.1995 made by learned counsel for the plaintiff makes it abundantly clear that the consequential relief of deemed joint possession was given up by the plaintiff and, therefore, the suit now being simpliciter suit for declaration is not maintainable in view of Section 34 of the Specific Relief Act.

(xi). In ***Ram Saran vs. Smt. Ganga Devi, AIR 1972 SC***

2685; ***Vinay Krishna vs. Keshav Chandra, AIR 1993 SC 957***; ***Executive Officer vs. Chandran, (2017) 3 SCC 702***, ***Venkatarajan vs Vidne Dourer Adjaperumal, (2014) 14 SCC 502***; ***Muni Lal vs. Oriental Fire and General Insurance Company Limited, AIR 1996 SC 642***; ***Satwant Singh vs. Chanan Singh, 2018(3) Law Herald 2650; Damandeep vs. Jaspal Kaur, 2016(1) R.C.R. (Civil) 730*** and ***Mohinder Singh vs. Shamsher Singh, 2010(2) R.C.R. (Civil) 505,*** it has been held that where the defendant is in possession of some of the properties and the plaintiff does not seek possession of those properties, but merely seeks declaration in respect of ownership, then the suit is not maintainable in terms of Section 34 of the Specific Relief Act, 1963. Reference to the statement of Sh. Naresh Prabhakar (Ex.P-15) dated 09.11.1995 giving up all the consequential reliefs would prove it. The statement is reflected in the order of the Court dated 09.11.1995 (Ex.D-16). Admittedly, the statement of counsel and order of the Court were never assailed by the plaintiff in any forum and the same have attained finality. There is a specific and categoric admission of the plaintiff in reply to para No.7 of the application under Order 6 Rule 16 CPC that consequential relief was given up by the plaintiff and its effect is obvious and nothing more is required to be considered.

(xii). Grant of mandatory injunction is governed by Section 39 of the Specific Relief Act which contains two important elements. These two elements have to be considered before granting a decree for mandatory injunction. The Court has to determine what acts are necessary in order to prevent the breach of obligation and secondly the requisite act must be such as the Court is capable of enforcing. It is only after fulfillment of the aforesaid conditions, a decree for mandatory injunction can be granted. There must be an obligation which is enforceable in favour of the plaintiff against the defendants. In view of ***Varun Motors Private Limited vs. Maheshwari Plaza Resorts Pvt. Ltd.,1999(3) APLJ 156***; **Adarsh *P. Jauhar vs. Gulshan Jain, 2014(5) R.C.R. (Civil) 918*** and **Ewin Shauk wa vs. *U Po Nyun, AIR 1927 Rangoon 257*** in a suit for mandatory injunction, the Court is required to see the obligation and its breach and enforcement**,** whereas in a suit for specific performance**,** the Court is see the existing valid and enforceable contract. In ***State of Punjab vs. Phoola Singh, 2011(5) R.C.R. (Civil) 491***, suit for mandatory injunction is held to be not maintainable.

(xiii). Order 23 Rule 1(4) CPC permits the plaintiff to abandon any claim any time and for the said purpose neither the permission of the Court is required, nor there is any

necessity to amend the plaint. As per provisions of Order 23 Rule 1 clause (4) CPC, where the plaintiff abandons any claim or part of claim, he shall further be precluded from instituting any fresh suit in respect of said subject matter or said part of the claim. In view of above, it is clear that once the plaintiff abandons the claim, the plaintiff cannot thereafter say that he/she intends to revive the same as the plaintiff is also precluded from filing any fresh suit in respect of said claim. Reference can be made to ***Karnail Singh vs. Bhajan Singh, AIR 2005 Punjab and Haryana, 207***; ***Duggempudi Rama Krishna Reddi vs. Duggempudi Veera Reddi, AIR 1946, Madras 126***; ***Ajcon Capital Markets Limited vs. Maya Rasayan Ltd., 2003(4) ICC 196 (DB) (Bombay)***; ***Sicom Limited vs Prashant S. Tanna, AIR 2004 Bombay 186 (Full Bench)***; ***Raisa Sultana vs. Abdul Qadir, AIR 1966 Allahabad 318 (DB)*** and ***Amalgamated Electricity Company Ltd. vs. Kutubuddin Rajesaheb, AIR 1970 Mysore 155*** to show that order Order 23 Rule 1 CPC specifically provides that at any time after the institution of a suit, the plaintiff may as against all or any of the defendants can withdraw the suit or abandon a part of the his/her claim. The aforesaid right is absolute and no permission is required for that purpose. The Court can only award such costs as may be deemed fit against the defendant

against whom the claim has been abandoned or suit is withdrawn. Thereafter the plaintiff is precluded from instituting any fresh suit against the aforesaid defendants against whom the claim has been abandoned. Under the aforesaid provision, plaintiff has a right to relinquish part of his/her claim in order to bring it within the court fee paid. Neither permission of the Court, nor an application for amendment of the plaint is necessary for that purpose. If the plaintiff abandons part of his/her claim, he/she has only to intimate the fact to the Court and the Court has only to note the same on the plaint. Therefore, where before the expiry of the period fixed for payment of deficit court fee, the plaintiff filed a memo stating that plaintiff gave up her/his claim to certain items of the properties specified in the plaint in order to bring the suit within the court fee paid, the Court cannot reject the plaint on the ground that as no application for amendment was filed within the time fixed, the abandonment of part of claim was invalid and the plaint remained at large as a document on which the required court fee had still to be paid.

(xiv). The perusal of the aforesaid provision would show that if the plaintiff wants to give up or abandon a part of the claim made in the suit he/she can do so at any time and it is not necessary to seek permission of the Court to do so. Leave of

the Court for abandoning a part of the claim becomes necessary if the plaintiff intends to institute a fresh suit for the abandoned claim in the suit which is pending before the Court. If the plaintiff does not desire to institute a fresh suit for the abandoned claim, then the plaintiff can give up or abandon without seeking any permission or leave from the Court. The provision does not contemplate even an application being filed by the plaintiff in such a situation. The application would be necessary only in case when the plaintiff wants the Court to grant leave for filing a fresh suit on the same cause of action i.e. for the abandoned claim. The abandonment of part of the claim can be done by the plaintiff voluntarily by an unilateral act. In such a situation, the only procedure to be followed would be that the plaintiff makes statement before the Court that he/she abandons the part of the claim and the Court records that statement. Merely for abandonment of part of the plaint, no amendment in the plaint is necessary and no permission is required to be granted by the Court. This is an unilateral act to be done solely by the plaintiff. Only an information is to be given to the Court that the suit has been withdrawn. As soon as this information is given in respect of withdrawal of the suit, the same would become **"***fate accompli***"** and the suit has been withdrawn from that moment onwards. Where the defendant is in possession of some of the

suit properties and the plaintiff does not seek possession of those properties, merely claims declaration that plaintiff is owner of the suit properties the suit is not maintainable in view of Section 34 of the Specific Relief Act.

(xv). The trial Court has overlooked the words **"***that the defendant has sought adjournment to argue on the effect of the statement on the value of the suit for the purpose of court fee and jurisdiction*.**"** The stand of the plaintiff before the High Court was that she would give up consequential relief**,** by amending the suit. Since as per statement dated 09.11.1995 of the counsel for the plaintiff**,** the consequential relief was already given up**,** therefore**,** there was no further necessity to seek amendment of plaint for that purpose in view of legal position as explained above. The finding of the lower Appellate Court that since the amendment has not been sought to that effect by the plaintiff, therefore, it cannot be deemed that plaintiff gave up the consequential relief is patently unfounded. Even if**,** the consequential relief of declaration of deemed joint possession with defendants No.1 and 2 was not given up by the plaintiff**,** the consequential relief as sought by the plaintiff cannot be granted in view of admission of the plaintiff herself that Trust is in possession of the suit properties. No relief of possession from the Trust has been sought by the plaintiff. Therefore, bar of

Section 34 of the Specific Relief Act would make the suit not maintainable. Plaintiff being out of possession was required to seek specific relief of possession from Trust, which has not been sought for, therefore, the suit is not maintainable. In the absence of pleadings for relief of possession from Trust, no question of granting consequential relief arises. Fixation of tentative court fee would not *ipso facto* make the suit maintainable in the absence of relief of possession. Plaintiff being not in possession does not seek relief of possession from Trust, therefore, suit filed by the plaintiff is not maintainable.

(xvi). Only a tentative court fee was affixed by the plaintiff. No independent valuer was appointed for ascertaining the market value of the immovable property as observed by the trial Court in its order dated 23.12.2005. Reference to the statement of Madan Mohan Devgan as DW-5, would show that the witness was the oldest employee of late Raja Harinder Singh, who gave his affidavit Ex.DW-5/E. He brought the original register starting from 1936 A.D., relating to Toshi Khana, Faridkot. True copy of the register was in Punjabi and the same was marked as 'A'. Exhibiting of this document was kept open. The record of ornaments of royal family and their market value at the relevant time would also become material. According to rough estimate, the market value of the jewellery was Rs.3,000 crores as

purchasing power of rupee has fallen down greatly. The witness was in the service of his Highness's personal estate since 1956. Witness also referred to other record showing *khata* of different types of ornaments from where value of jewellery would be calculated as Rs.8,32,443.2 annas 6 paisas in the year 1936. The jewellery was valued according to weight of gold. The witness also referred to the market rate of gold with reference to the years 1993-94 and 1995. There were antique cars. DW-4 Jagroop Singh, Head Mechanic of His Highness's personal estate appeared and deposed on affidavit with reference to different cars and their approximate value. Though in his cross-examination the witness had baffled, but the plaintiff had not examined any expert witness in rebuttal to assess the value of the cars contrary to the value projected by DW-4. In the application for appointment of receiver filed by the plaintiff on 21.04.1993, it was pleaded in the following manner:-

> *"A fleet of more than 80 vehicles are being used. Some of them are antique and negotiation are on to sell many of these under-value price with cash payment being made for the remaining."*

[214]. After hearing learned Senior counsel for the parties in view of assertion and denial made by the parties, I find that the suit cannot be dismissed on the question of payment of court

fee as affixed by the plaintiff, particularly when the challenge made by the defendants against the order dated 23.12.2005 passed by the trial Court was dismissed by the High Court in CR No.124 of 2006 on 16.12.2011. Even in the light of concept of co-sharership as defined in ***Sant Ram Nagina Ram's*** case (supra), this point would depend upon validity of Will as the question of payment of *ad valorem* court fee in a suit for declaration filed by co-sharer would strike to its basis. Since the Will dated 01.06.1982 allegedly executed by Raja Harinder Singh is found to be shrouded with suspicious circumstances, therefore, plaintiff would also succeed to the estate under Hindu Succession Act and maintainability of suit would be of no consequence as the inheritance cannot remain in abeyance.

[215]. Even as per ratio of ***Manohar vs. Shivarajan and others, 2014(4) SCC 163***, the plaint cannot be rejected because of inability of the plaintiff to pay the court fee in the present facts and circumstances of the case. It is the duty of the Court to see that justice is meted out to the people irrespective of their socio-economic and cultural rights or gender identity. Article 39-A of the Constitution of India provides for holistic approach in imparting justice to the litigating parties. It not only includes providing free legal aid via appointment of counsel for the litigants, but also includes ensuring that justice is not denied

to litigating parties due to financial difficulties. Therefore, in the light of legal principles laid down by the Hon'ble Apex Court in the aforesaid judgment, the waiver in respect of court fee (if any) can be appreciated and the plaint cannot be rejected on this score alone. Even otherwise issue of court fee exclusively lies under the domain of the court and the plaintiff in view of law laid down in ***Sri Rathnavarmaraja vs. Smt. Vimla, 1961 AIR (SC) 1299*** followed in ***CR No.5104 of 2017*** titled '***Mohinder Kumar vs. Baldev Kumar***' decided on 29.11.2017. The issue of court fee is answered accordingly.

[216]. Evidently, the application under Order 6 Rule 16 CPC was filed by the defendants on 17.11.1995 for striking out the pleadings in the amended plaint dated 18.11.1993. The application was accompanied by amended suit for which defendants were having no authority to file amended suit after the statement of Mr. Naresh Prabhakar, Advocate. It was only the plaintiff, who could have filed the amended plaint. Once the amended plaint was not filed by the plaintiff and the same was not specifically allowed by the Court, therefore, consequence arising out of statement of Mr. Naresh Prabhakar, Advocate would not mean that the consequential relief had been waived off. The abandonment of relief was not specifically allowed and amended plaint was not filed by the plaintiff, therefore, the

statement of the learned counsel would not automatically delete the relief which was not done so by the Court.

[217]. Even after making statement by learned counsel for the plaintiff, the defendants sought adjournments from 09.11.1995 onwards. No amended plaint was filed by the plaintiff in pursuance of statement of learned counsel for the plaintiff. It was only defendants, who filed an application under Order 6 Rule 16 CPC accompanied by amended plaint. On 09.11.1995, defendants sought time to argue on the effect and the case was adjourned to 08.12.1995 and then to 03.02.1996. In the meantime, the application under Order 6 Rule 16 CPC came to be filed on 17.11.1995. From 03.09.1996 the case was adjourned to 20.04.1996 for filing reply to the application. Reply was filed. Thereafter the case was adjourned till passing of order regarding making up the deficiency of court fee.

[218]. In view of aforesaid facts and circumstances on record, **non-maintainability of suit on the ground of bar under Section 34 of the Specific Relief Act cannot be appreciated**.

(c) Non-joinder and mis-joinder of necessary parties.

[219]. On the point of non-joinder and mis-joinder of

necessary parties, Mr. Ashok Aggarwal, learned Senior Counsel assisted by Mr. Mukul Aggarwal, Advocate appearing on behalf of appellants in RSA No.1418 of 2018 submitted as under:-

(i). The registered Will was executed by Raja Harinder Singh on 01.06.1982. The testator expired on 16.10.1989 leaving behind his mother Maharani Mohinder Kaur and his three daughters. On 05.03.1991 mother of the testator (Maharani Mohinder Kaur) also died. Three daughters of her deceased son i.e. Raja Harinder Singh (testator) and her younger son Kanwar Manjit Inder Singh were alive at the time of death of Maharani Mohinder Kaur. Maharani Mohinder Kaur had executed a registered Will dated 29.03.1990 (Ex.D-10) in favour of Kanwar Manjit Inder Singh (son), Rajkumari Devinder Kaur (grand daughter/daughter of Kanwar Manjit Inder Singh) and Bharat Inder Singh (grand son) son of Kanwar Manjit Inder Singh. This Will dated 29.03.1990 (Ex.D-10) has come on record and the same has not been disputed by any of the parties. Original civil suit No.473/2010 titled '*Rajkumari Amrit Kaur vs. Mohinder Kaur*' was filed on 14.10.1992 seeking declaration along with consequential relief of joint possession and injunction to the effect that plaintiff is owner to the extent of 1/3rd share in the properties. Though Kanwar Manjit Inder Singh was impleaded as defendant No.5, but neither Rajkumari

Devinder Kaur daughter of Kanwar Manjit Inder Singh, nor Bharat Inder Singh son of Kanwar Manjit Inder Singh were impleaded as defendants though they were necessary parties as they have succeeded to the share of mother of testator (Raja Harinder Singh). Defendants No.1 to 3 in their written statement dated 03.05.1993 have detailed in para Nos.3(a) to 3(f), 7 and 8 by alleging that land measuring 31 Kanals 15 Marlas in Khasra No.43/6 situated in village Kaimbwala (UT) is in possession of UT, Administration, Chandigarh. Remaining land (except 12 Kanals comprising in Rectangle No.27, Killa No.24/2/2 and Killa No.25) is in possession of Forest Department, UT, Chandigarh. Land situated in village Mauli Jagran measuring 13 Kanals 1 Marla is recorded as *shamlat deh* by Gram Panchayat. Land situated in Ballabhgarh comprising of Khasra Nos.156, 157 and 158 is in possession of District Board/Zila Parishad and PWD Department of Haryana Government. Land situated in revenue estate of Ballabhgarh measuring 1 Kanal 15 Marlas is in possession of the vendees after sale. Land situated in revenue estate of village Ballabhgarh forming part of Khasra No.133 is in possession of Pujari of the temple. Land situated in village Dhana, bulk of which has been declared as surplus vide order dated 01.05.1979 passed by Special Collector is in possession of Haryana Government. Part of screw factory area is in

possession of Faridkot District Red Cross Society, Faridkot and Amar Ashram has been constructed thereupon. Land situated in revenue estate of Mashobra measuring 87 Bighas 8 Biswas comprised in Khasra no.37/1/50, 52, 60/265/1, 77 has been declared surplus by the Collector, Agrarian, Himachal Pradesh vide order dated 28.04.1985 and the appeal against the said order has been dismissed by the Financial Commissioner. Despite moving an application for amendment of the plaint by the plaintiff on 18.11.1993, no prayer for addition of the aforesaid necessary parties was made by the plaintiff. The trial Court allowed the application for amendment on 19.02.1994**,** keeping the issue of limitation open. The objection with regard to the non-joinder of the parties was taken in the written statement filed by the defendants No.1 to 3 on 28.04.1994. In para nos.3, 9, and 11, it was stated that the trustees have not been impleaded.

(ii). In para no.86 of the judgment of the trial Court**,** it has been mentioned that in the absence of necessary parties, the suit is liable to be dismissed. The trial Court while deciding issue No.9 has held in the aforesaid paragraph no.86**,** that the suit is bad for non-joinder of the necessary parties, but still decreed the suit without appreciating the provisions of Order 1 Rule 9 CPC. The issue of mis-joinder and non-joinder was specifically

decided in favour of the defendants and against the plaintiff. Rajkumari Devinder Kaur and Bharat Inder Singh, who inherited the share from mother of the testator had not been impleaded though subsequently the said persons were brought on record, only in the capacity of legal representatives of Kanwar Manjit Inder Singh and not in their substantive and individual capacity. Various authorities/ tenants/vendees are in possession of different lands and they have not been impleaded.

(iii). In view of precedents viz. ***Usha Rani vs. Lakhbir Singh, 2012 R.C.R. (Civil) 691, Punjab and Haryana***; ***Ved Parkash vs. Mst Lajwanti, 996(2) PLR 257 Punjab and Haryana***; ***Gopi Bhai Manak Lal vs. Mohd. Hussain, AIR 1993 MP 21***; ***Punjab Wakf Board vs. Harbans Singh, 1997(4) R.C.R. (Civil) 603***; ***Kartara vs. Smt. Phulpati, 2011(3) PLR 216*** and ***Executive Officer vs. Chandran, 2017(3) SCC 702*** in the dispute relating to inheritance, all the legal heirs as per the Schedule to the Hindu Succession Act, 1956 are required to be impleaded as necessary parties, otherwise the suit would not be maintainable. The objection as to the non-joinder was taken at the earliest opportunity and the same was pressed throughout. The trial Court in para no.86 has held that the suit is bad for non-joinder and mis-joinder of the necessary parties, still decreed the suit. The suit was not properly constituted and the

defect was fatal and the same cannot be remedied now. Even if the plaintiff is afforded with an opportunity to rectify the defect as to the non-joinder of the necessary parties at this belated stage, the suit would fail on the ground of limitation. In view of above, the suit is bad for non-joinder of necessary parties.

(iv). The Trust was registered only on 17.07.1998 (Ex.P-31). Prior to it the Trust was not a legal entity and as such all the trustees were required to be impleaded in their individual capacities. The Trust was impleaded through all the trustees. All the trustees have not been impleaded in their individual capacities, therefore, in view of Order 31(2) CPC, the suit without impleading all the trustees is not maintainable. Reliance can be placed on ***Homi Nariman Bhiwandiwala vs. The Zorostrian co-operative Credit Bank Limited, AIR 2001 Bombay 267*** and ***Sh. Golesh Kumar vs. M/s Ganesh Dass Chawla Charitable Trust, 2006(31) R.C.R. (Civil) 594 (Delhi) DB.*** The suit without impleading all the trustees/members of the Trust would not be maintainable.

[220]. Per contra, Mr. M.S. Khaira, learned Senior Counsel assisted by Mr. B.S. Sewak, Advocate appearing on behalf of plaintiff/appellant Rajkumari Amrit Kaur submitted as under:-

(i). The Addl. District Judge, Chandigarh in para No.55 of

the judgment has discussed on the issue of non-joinder of necessary parties, wherein it has been recorded that with regard to non-impleadment of the Government Department and Panchayat etc., once the declaration for ownership has been sought, then the interested parties should have come forward and it was not the plaintiff, who was required to implead the Government Departments. Even the defendants were not aware as to which ground they want to take with regard to non-joinder of necessary parties. In the written statement dated 28.04.1994, it was pleaded that the Trust is not legal personality and members of board of trustees should have been impleaded personally. Whereas in para no.13, it was pleaded that the plaintiff is not entitled to sue the trustees and the members personally for the accounts. The plaintiff has no right to claim accounts from them. Maharani Mohinder Kaur was alive, when the alleged Will was executed, but she died in the year 1991 before the suit was filed by the plaintiff on 14.10.1992. Her legal heir i.e. her son Kanwar Manjit Inder Singh was impleaded as party vide interlocutory order dated 10.03.1995 and three daughters of her first son Raja Harinder Singh namely Rajkumari Amrit Kaur, Maharani Deepinder Kaur and Rajkumari Mahipinder Kaur were already parties on record. In view of vague objection raised by the defendants, the plaintiff cannot be

dislodged on the ground of non-joinder and mis-joinder of the parties. Mere declaration of ownership would be enough for the Government Departments to treat the decree holder as owner, thus Government Departments and Panchayat were not interested as to who owns the properties and in what capacity. They would simply abide by the decree in the case and in any case, it was for them to take objection, if any, and not by the defendants.

(ii). The case laws cited on behalf of the defendants are not applicable as all the natural heirs were impleaded in the present case. All the trustees that could be known to the plaintiff were impleaded and it has not been pointed out by the defendants which trustee has not been made party. It has been held that the Will under which the Trust was allegedly created, has been held to be forged documents and Trust has been held to be non-existent. The trustees, who were functioning at the time of filing of the suit have been impleaded and the defendants/trustees have not taken any objection on the point that the trustees have not been impleaded.

[221]. Perusal of the record would show that issue no.9 was not pressed before the trial Court, still the trial Court proceeded to record that suit is bad for non-joinder and mis-joinder of necessary parties. As such, the issue is decided against the

plaintiff, but while deciding the suit the same is partly decreed. The lower Appellate Court upheld the judgment and decree of the trial Court. In the written statements, the defendants took contradictory pleas. Firstly, it has been stated that the Trust is not a legal person and the members of board of trustees should have been impleaded. At the same time in para no.13 of the written statement, it has been objected that the plaintiff is not entitled to sue the trustees for accounts and the plaintiff has no right to claim accounts from the trustees. The suit itself was filed after the death of Maharani Mohinder Kaur. All the three daughters of Raja Harinder Singh were already impleaded. Even Kanwar Manjit Inder Singh was impleaded as party defendant vide order dated 10.03.1995. Estate of late Raja Harinder Singh was duly represented by all the legal representatives and the dispute is not such which would fall under the ambit of Order 22 Rules 4 and 5 CPC. Mere declaration of ownership would be sufficient. If the Government Departments and Local Bodies have perfected their title under the orders of the Court then that part of properties would be subject to right of the plaintiff, if any available in the executory mechanism in accordance with law. The Govt. Departments and the Local Bodies would set their record right according to title if any left with the plaintiff in law. Trust and the known trustees

have been impleaded. It is only the estate which has to be represented by the legal representatives during trial. The *inter se* dispute amongst the heirs/LRs cannot be decided. In view of peculiar facts on record, particularly the production of Will after 20 years of filing of the suit and Will being forged and fabricated, the issue no.9 cannot be stretched to mean that the suit is bad on this account. The onus of this issue was on the defendants and the defendants did not press this issue before the trial Court.

In view of above, I have no hesitation to hold that **suit is not bad on account of non-joinder of necessary parties. Since the validity of Will dated 01.06.1982 has been discarded, therefore, this issue would also go to its fold and the inheritance cannot remain in abeyance** even in the absence of a suit.

(d) Relief beyond pleadings.

[222]. Mr. Ashok Aggarwal, learned Senior counsel duly assisted by Mr. Mukul Aggarwal, Advocate with regard to the relief beyond pleadings submitted that mother of the testator was class-I heir and share of the mother cannot be ignored. The decree of half share granted in favour of the plaintiff is totally illegal. Plaintiff herself has not claimed her share and, therefore,

there is no justification for the Courts to grant such a relief which is apparently beyond pleadings. Learned Senior counsel by relying upon ***Gulab Rao Balwant Rao vs. Chhabubhai Balwant Rai, AIR 203 SC 160***; ***Bharat Amrat Lal vs. Doshu Khan Samad Khan, AIR, 2010 SC 475***; and ***S.K. Mashad vs. S.K. Rehman, 2013(24) R.C.R. (Civil) 692*** submitted that the Courts below have erroneously held that the plaintiff is entitled for half share.

[223]. On the other hand, Mr. M.S. Khaira, learned Senior counsel assisted by Mr. B.S. Sewak, Advocate submitted that the relief can be granted**,** even if the same is not claimed in the plaint**,** but if the same is clear and apparent in view of pleadings and evidence on record. No doubt as a general rule**,** the plaintiff is not entitled to relief for which no foundation has been made in the plaint. If the parties knew the case of each other and on the basis of pleadings, issues and evidence, the relief is apparent, then the general rule does not apply because it is the duty of the Court to grant relief in the facts and circumstances of the case. The rules of procedure are intended only to advance the cause of justice, rather then to impede the same on technicalities. Learned Senior counsel by relying upon ***Karan Dass and another vs. Som Parkash, AIR 1986 Punjab and Haryana, 89***; ***Raminder Singh and another vs. Sham Lal and another, AIR***

1984 Punjab and Haryana, 145; ***Partap Singh vs. Ram Charan, AIR 2011(30) R.C.R. (Civil) 256*** and ***Sant Lal Jain vs. Avtar Singh, AIR 1985 SC 857*** submitted that under Order 7 Rule 7 CPC, the relief which is not specifically claimed in the plaint can be granted by the Court to do substantial justice between the parties, if the same has emerged from the pleadings, issue and evidence adduced by the parties.

[224]. After hearing learned Senior counsel for the parties, I am of the view that **the Court can grant relief to the parties which has emerged from the record**. **Validity of Will dated 01.06.1982 has been discarded. Effect of undisputed Will dated 29.03.1990 (Ex.D-10) has also been noticed by this Court, therefore, the parties would succeed to the estate of late Raja as per The Hindu Succession Act, 1956. The lawful shares of the parties would be quantified and thereafter all will succeed in accordance with law**. The Court can take even judicial notice of any admitted fact in order to impart justice and to achieve ends of justice.

(e) Assignment of right by the plaintiff in favour of 3rd party.

[225]. Mr. Ashok Aggarwal, learned Senior Counsel assisted by Mr. Mukul Aggarwal, Advocate appearing on behalf

of appellants in RSA No.1418 of 2018 with regard to the assignment of right by the plaintiff in favour of 3rd party submitted as under:-

(i). During the pendency of suit, the plaintiff by virtue of assignment deed dated 14.02.1996 (Ex.D-12) has assigned her rights in favour of 3rd parties, therefore, no right to sue survives on her behalf. The suit is liable to be dismissed particularly when the assignees have not been brought on record during the course of trial. Plaintiff has sold all her rights, title and interest which were to be determined in the Civil Suit No.228/92 in favour of second parties in the assignment deed dated 14.02.1996 by receiving an amount of Rs.65 lakhs and further keeping right of 20% as described in para 4 of the assignment deed (Ex.D-12). However, symbolical deemed possession has been given to the second party consisting of persons namely Kuldeep Singh Lamba, Gajjan Singh, Harinder Pal Singh, Satnam Singh, Anup Singh, Gurmeet Singh, Ms. Sanchatra Singh and Satpal Grover. Para 5 of the assignment deed reads as under:

> *"Subject to above, the symbolical deemed possession on the basis of 'AS IS WHERE IS' deemed to have been passed on to the second party today."*

(ii). The aforesaid deed was executed through Satpal

Grover. According to which the plaintiff has received Rs.50 lakhs and Rs.15 lakhs i.e. total Rs.65 lakhs as mentioned in the assignment deed. Plaintiff has transferred all her rights in the suit and even all litigations in their favour vide the aforesaid assignment deed. She has also executed power of attorney dated 15.02.1996 (Ex.D-13) in favour of Satpal Grover before the Sub-Registrar giving all powers to prosecute the above suit on her behalf. Plaintiff has also executed memorandum of understanding dated 16.04.2000 (Ex.D-14), whereby some of the persons shown as second party in the assignment deed have sold their 16.5% to one Surinder Singh for a total sale consideration of Rs.1,17,80,000/-. The plaintiff in her cross-examination dated 02.06.2012 before the Local Commissioner admitted the aforesaid fact that she had executed the assignment deed dated 14.02.1996 and general power of attorney dated 15.02.1996 (Ex.D-12 and Ex.D-13 respectively). Copy of memorandum of understanding (Ex.D-14) has also been admitted. Factum of receiving two demand drafts worth Rs.50 lakhs and Rs.15 lakhs has also been admitted.

(iii). Once the plaintiff has assigned her rights in favour of assignees, she cannot pursue the case as she was not left with any interest in the suit. It was incumbent upon the assignees to come forward to pursue the case which has not been done in

the instant case. The Courts below have not dealt with the aforesaid facts and has not given any finding despite being raised.

[226]. Having heard learned Senior counsel for the parties, I find that assignment deed dated 14.02.1996 (Ex.D-12) is proved on record. Execution of Power of Attorney dated 15.02.1996 (Ex.D-13) and MOU dated 16.04.2000 are also admitted. Assignees have not come forward by seeking leave to contest the suit or to pursue the suit on behalf of the plaintiff. No issue has been framed by the Court. Whether the effect of Assignment would take away the right of the plaintiff to contest the suit, is a question to be appreciated. No findings have been recorded by the Courts below. Admittedly, the plaintiff has not passed over any title in favour of the assignee by way of any sale deed or any other lawful disposition. Only passing of consideration (whether adequate or inadequate) has come forth. Whether the assignee's can claim any title/right on the basis of the aforesaid payment of amount is a question which lies under the domain of the law. Admittedly the plaintiff is out of possession. Assignees have not obtained any possession of property. At the most, the Assignment is an agreement under which some money has been paid to the plaintiff. The enforceability of agreement is a bilateral issue, rather it is

contingent in this case. **Will dated 01.06.1982 has been discarded, therefore, this question pales into insignificance and has no bearing in the case as the plaintiff has contested the case throughout and represented the estate of the deceased in her capacity as one of the heirs.**

[227]. The Court can take judicial notice of subsequent events as well. The aforesaid question has been decided in the manner as discussed above. The validity of Will dated 01.06.1982 executed by Late Raja Harinder Singh discarded by the Courts below including this Court, therefore, this issue in no way affects the maintainability of suit. The inheritance of the parties as per the Hindu Succession Act, 1956 is not dependent upon maintainability of the suit, because even in the absence of any suit, the inheritance cannot remain in abeyance. So this question is decided accordingly.

2. Limitation regarding challenge to the Will dated 01.06.1982.

[228]. Mr. Ashok Aggarwal, learned Senior Counsel duly assisted by Mr. Mukul Aggarwal, Advocate submitted as under:-

(i). The original Suit No.228/92 was filed by Rajkumari Amrit Kaur on 14.10.1992 for declaration that she is owner of 1/3rd share of the properties as shown in Annexure A-1 attached

with the plaint along with consequential relief of joint possession with defendants No.1 and 2. Plaintiff further sought relief of injunction restraining defendants from alienating the suit property by way of mortgage and exchange etc. Plaintiff moved an application under Order 6 Rule 17 read with Section 151 CPC dated 18.11.1993 in the Court on 25.11.1993 for amendment of the plaint in order to add additional relief in the headnote of the plaint and for adding para nos.5 & 5-A in the body of the plaint and also to amend the prayer clause in the same terms as claimed in the headnote and body of the plaint. The application was contested by the defendants on the preliminary objection that the proposed amendment is time barred by limitation and that the amendment would introduce the reliefs which are mutually destructive and are not permissible in law. It was also objected that the amendment would change the entire nature and character of the suit altogether and was intended to withdraw the admissions made by the plaintiff in the original plaint. The application was allowed by the trial Court vide order dated 19.02.1994 and the question of limitation was left upon to be ascertained after leading evidence by the parties. The operative part of the order reads as under:-

"As regards this objection of the defendants that

Will cannot be challenged as time to challenge the Will has already expired. It is pointed out that this point cannot be ascertained without leading evidence by the parties regarding this as to when the plaintiff came to know about the alleged Will."

(ii). The limitation for seeking declaration that the Will is invalid, void and unenforceable is of three years from the date of knowledge, according to Limitation Act. Admittedly, Bhog ceremony of Raja Harinder Singh was held on 26.10.1989 and the plaintiff came to know about the execution of Will in the said Bhog ceremony. Even the plaintiff in her cross-examination dated 19.05.2012 has admitted that last rites of her father were attended by her along with her husband and daughter. Last rites were performed at Qila Mubarik at Faridkot. At that time, Sh. Karnail Singh Doad was present and an announcement was made by him in respect of Will in question. Copy of Will in question was given to the plaintiff by Sardar Umrao Singh after two days of Bhog ceremony of the father of plaintiff. Plaintiff after having gone through the Will, decided to contest the same. Section 58 of the Limitation Act, 1963, prescribes period of limitation of three years, when the right to sue first accrues. According to statement of the plaintiff, right to sue accrued to her on 26.10.1989, when the Will was announced in the Bhog ceremony of late Raja Harinder Singh and a copy was given to

her by Sardar Umrao Singh after two days of Bhog ceremony. The limitation to challenge the Will expired on 26.10.1992. However the Will was sought to be challenged by way of amendment vide application dated 18.11.1993 and on the date of filing of the application, the relief sought was time barred.

(iii). In view of ***State of Punjab vs. Gurdev Singh, 1991(4) SCC 1*** the words 'right to sue' ordinarily mean right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, i.e. the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or there is a clear and unequivocal threat to infringe that right of the defendant against whom the suit is instituted.

(iv). While enacting Article 58 of the Limitation Act, 1963, the Legislature has designedly made a departure from language of Article 120 of 1908 Act. The word 'first' has been used between the words 'sue' and 'accrue'. This would mean that if the suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrued. To put it differently, successive violation of the right will not give rise to fresh cause of action for filing the suit. The suit will be liable to be dismissed, if it is filed beyond the

limitation from the day when right to sue first accrued to the plaintiff. Reference can be made to ***Khatri Hotels (P). Ltd., vs. Union of India, 2011(9) SCC 126***; ***Board of Trustees of Port of Kandla vs. Hargobind Jasraj, 2013(1) SCC 182*** and ***LC Hanumanthapa vs. HB Shivakumar, 2016(1) SCC 332***.

(v). Under Article 58 of the Limitation Act, 1903, the period of limitation is to be computed for filing a suit from the date when right to sue has first arisen and there is an infringement or a clear/unequivocal threat to infringe that right. Reliance can be placed upon ***State of Punjab vs. Bal Kishan, 2006(12) SCC 709***; ***Rajinder vs. Harbans Singh, 2018 SCC Online Bombay 549***; ***Shri Jahangir vs. Smt. Maureen, 2017(6) MhLJ 270***; ***Vimal Chand Jiain vs. Sushila Rani, 2016 SCC Online Delhi 2332***; ***Amarjit Kaur vs. DDA, 2014 SCC online Delhi 1097***; ***Rajabhai Kasnabhai vs. Ismail Bhai, 2014 SCC online Gujarat 14547***; ***Prem Narayan vs. Sudama Lal, 2014 SCC Online MP 2583***; ***Mukesh Kapil vs. Parag P Tripathi, 2013(15) R.C.R. (Civil) 812***; ***MMTC Ltd. vs. Raj Rani Gulati, 2013 SCC online Delhi 4906***; ***Ram Gupta vs. ICICI Ltd., 2012 SCC online Delhi 4334***; ***Throw Ball Federation vs. Union of India, 2012 SCC online Delhi 4167***; ***Shashi Bhushan vs. Sushil Kumar Pal, 2018 SCC online Calcutta***

5627; ***Sharan Pal Kaur Anand vs. Parduman Singh Chandok, 2016 SCC online Delhi 2434***; ***Trilok Singh vs. Vijay Kumar Sabharwal, 1996(8) SCC 367***; ***TL Madhu Krishna vs. Lalita Ramchandra Rao, 1997(2) SCC 611***; ***MV X-press Annapurana vs. Gitanjali Woolens Private Limited, 2011(8) R.C.R. (Civil) 2403***; ***Shri Lal vs. Mangu Lal, 2013, SCC online MP 7631***; ***Atma Ram vs. Charanjit Singh, 2016 SCC online Punjab and Haryana 3774***; ***Abdul Hussain vs. Smt. Kalsum, 2000(2) R.C.R. (Civil) 200 (Punjab)***; ***Sunder Lal vs. Kishan Lal, 2014(39) R.C.R. (Civil) 547***; ***Salinder Kaur vs. Kundan Singh, 2004(4) R.C.R.(Civil) 483***; ***Vishwambhar vs. Laxmi Narayan, 2001(6) SCC 163***; ***Venkatagiriyappa vs. Kamalamma, 2010 SCC online Karnataka 2687***; ***Kirpal Singh vs. Jitender Pal Kaur, 2017 SCC online Punjab and Haryana 302***; ***Satnam Singh vs. Dev Kaur, 2015(8) R.C.R. (Civil) 365***; ***State of Gujarat vs. Kothari and Associates, 2016(14) SCC 761***; ***Dhanna Singh vs. Singhar Singh, 2015(8) R.C.R. (Civil) 365***; ***Mangli vs. Gaya Prashad, AIR 1947 Audh 235***; ***M/s J.K. Luxmi Cements Ltd. vs. M/s Namit Plastic (P) Ltd., 2009 SCC online Delhi 162;*** ***Nina Garments Pvt. Ltd. vs. Unitech Ltd., 2012(132) DRJ 360***; ***Girdhari Lal Houshi Lal vs. Rannoo Raghoji Marathe, AIR 1944 Nagpur 37***; ***Lala Uttam***

Chand vs. Mosammat Thakur Devi, AIR 1922 Lahore, 39 and ***Jago vs. Mahadev, AIR 1921 Nagpur 94***. On the strength of aforesaid precedents, it can be appreciated that the period for limitation for filing suit for declaration would be three years from the date, when the cause of action to sue first accrues. Plaintiff has sought a decree for declaration and the suit ought to have been filed within three years of right to sue first accrued. The right to sue first accrued to the plaintiff on acquiring knowledge regarding Will as per Article 58 of the Limitation Act. The crucial date for ascertaining the limitation is the date on which the application for amendment was allowed. Suit challenging the Will filed beyond the period of limitation of three years is barred by limitation. Once the cause of action starts running, it cannot be stopped. Any excuse like unavailability of certified copy of the document has no legal basis and the same in any case cannot extend the period of limitation. Article 58 of the Limitation Act would apply to the amended plaint in which the plaintiff sought to add the relief of declaration of title to the already existing prayer. Regarding amendment of plaint, doctrine of relation back would not apply for the reason that the Court which allowed the amendment expressly allowed it subject to plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the

doctrine of relation back applying so that a legal right that had accrued to the defendant should be taken away.

(vi). In ***LC Hanumanthapa***'s case (supra), it has been held by the Hon'ble Apex Court that while enacting Article 58 of 1963 Act, the Legislature has designedly made a departure from the language of Article 120 of 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrued. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued. The doctrine of relation back would not apply to the facts of the case for the reason that the Court which allowed the amendment expressly allowed the same subject to plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant may not be taken away. The amendment would not relate back to the date of filing of the suit, when the amendment is sought after expiry of three years. The amendment had to be taken into consideration from that date

and it would not relate to filing of the suit. In case the plaintiff is able to prove the alleged claim itself was beyond limitation, it shall be treated from the date of allowing the application and not from the date of filing of the suit. Plea of limitation being a legal plea can be raised at any stage. Order 7 CPC prescribes the date of institution, when the plaint is presented in its form. Order 4 Rule 1 clause 3 CPC lays down that the plaint shall not be deemed to be instituted unless it complies with clauses 1 and 2. Order 7 Rule 6 CPC clearly provides, where, but for some ground of exemption from law of limitation, a suit would be *prima facie* barred by limitation. It is necessary for the plaintiff to show in the plaint such ground of exemption. If no ground is shown in the plaint, it is liable to be rejected under Order 7 Rule 11 CPC. In the instant case, the plaintiff came to know about the Will in question on the date of last rites of her father, but the declaration in respect of Will being invalid, void and unenforceable was sought after expiry of period of limitation vide application for amendment dated 18.11.1993.

[229]. Per contra, Mr. M.S. Khaira, learned Senior counsel duly assisted by Mr. Balbir Singh Sewak, Advocate appearing on behalf of the plaintiff submitted as under:-

(i). The suit of the plaintiff is within limitation as Article 65 of the Limitation Act is applicable, because it is a suit for

possession on the basis of title/inheritance. According to learned Senior counsel both the Courts below have given categoric findings that the suit of the plaintiff is within limitation as Article 65 of the Limitation Act is applicable in the present case, therefore, period of limitation for filing suit of is of 12 years.

(ii). Para No.81 of the trial Court judgment would show that Article 65 of the Limitation Act is applicable for a suit based on inheritance and recovery of possession. Admitted case of the parties is that Raja Harinder Singh died on 16.10.1989 and the succession to the Estate of Raja was opened on the date of his death i.e. 16.10.1989. Plaintiff came to know about the execution of Will on 16.10.1989 and the suit was filed on 15.10.1992.

(iii). Para no.102 of the judgment of lower Appellate Court would show that the suit was filed on 15.10.1992 i.e. within three years from the date of death of testator on 16.10.1989. Succession opened on 17.10.1989 and the last rites of the testator were conducted on 26.10.1989. On 27.10.1989 Umrao Singh Dhaliwal, CEO of the Trust handed over a copy of Will to the plaintiff which had been announced in the *Bhog* ceremony of the testator. The application for amendment was filed on 18.11.1993 which was allowed on 19.02.1994. Once the

amendment was allowed which will relate back to the date of filing of suit, unless it is specifically ordered by the Court to be operative from the date of allowing the application, but that is not so in the present case and, therefore, the amendment would relate back to the date of filing of the original suit.

(iv). There is not an issue regarding the limitation framed by the trial Court and in this way the only inference is that the defendants did not press the point of limitation. The suit is for possession on the basis of title, being natural heir of the deceased. The limitation of 12 years under Article 65 of the Limitation Act would be applicable, subject to when the possession of the defendants become adverse to the plaintiff. Possession of the defendants becoming adverse to the plaintiff is a question of fact and the same requires to be pleaded and proved by the party alleging it. Raja Harinder Singh, last male holder of the property died on 16.10.1989. Appellant/plaintiff became owner of the property being natural heir of her father. Possession of the property vested in her along with title. The defendants remained in permissive possession of the property ostensibly, because they were employees of late Raja and in that capacity they continued to be in possession till 20.10.1989, when the Will was announced and even thereafter, when the mutation was got sanctioned in the name of the Trust, without

proving the alleged Will. Thereafter non-existent Trust was created by way of forged Will and the Trust started claiming possession. Plaintiff filed the suit and Article 65 of the Limitation Act is applicable. The suit was within limitation. Defendants neither took the plea of adverse possession, nor they had any right to do so.

(v). Reference can be made to ***Mohinder Singh and another vs. Kashmira Singh, 1985 PLJ 82*** and ***Ganpat and another vs. Laxman and others, (2008)2 PLR 624*** to show that the limitation to claim by adverse possession is to continue for 12 years under Article 65 of the Limitation Act to mature into right of ownership. It is a well established principle of law that inheritance does not remain in abeyance and the heirs after the death of last male holder succeed to the property in accordance with law. In ***Mohinder Singh and another's*** case (supra), the view expressed in ***Nagender Singh's case, 1983 Crl. LJ 432*** was over ruled and it was held that no period of limitation was prescribed for filing suit for possession on the basis of inheritance. The suit is on the basis of title which immediately vested in the plaintiff after the demise of Raja. It was for the defendants to claim inheritance or title on the basis of Will within limitation and the same was never done.

(vi). Further reference can be made to ***State of Haryana***

vs. Raj Kaur, AIR 2001 Punjab and Haryana 322; ***Gurcharan Singh and others vs. Surjit Kaur and others, AIR 2006 Punjab and Haryana 18***; ***Swarna Devi and others vs. Mahant Nath Ram Sharma, (2005)140 PLR 623***; ***State of Maharashtra vs. Parveen Jethalal Kamdar (dead) by LRs, AIR 2000 SC 1099*** and ***Peru vs. Balbir Singh and others, (2008) 149 PLR 655*** to highlight the fact that the suit was filed in the year 1992, but the Will was produced by the defendants only in the year 2012 during evidence. CEO of the Trust Mr. Lalit Mohan Gupta, who produced the Will was not examined on oath, even after insistence by learned counsel for the plaintiff and, therefore, he could not be examined. In the zimni order dated 02.11.2012, it is so recorded and the same was also observed by the first Appellate Court in para No.57 of the judgment. Suit based on the title would make all the difference in order to bring out the case from the ambit of Article 58 of the Limitation Act and the same would be covered under the fold of Article 65 of the Limitation Act. The suit of the plaintiff is also for injunction on the basis of title of inheritance and Article 65 of the Limitation Act is applicable. According to Article 65 of the Act, the limitation is of 12 years from the date, when the possession of the defendants became adverse to the plaintiff. Raja Harinder Singh died on 16.10.1989. Suit was filed by the plaintiff on 14.10.1992/

15.10.1992. Application for amendment was filed on 18.11.1993 and the same was allowed on 19.02.1994 which is within five years from the date of death of Raja Harinder Singh. The Trust has not claimed or proved its adverse possession. The doctrine of relation back would apply in the instant case as the suit itself was filed within limitation. Filing of Application for amendment and acceptance thereof vide order dated 18.02.1994 was also within limitation as per Article 65 of the Limitation Act. Even the question of possession of defendants becoming adverse does not arise, nor any such plea has been set up by them.

[230]. As against the aforesaid submissions, Mr. Ashok Aggarwal, learned Senior counsel appearing on behalf of the Trust refuted the arguments of Mr. M.S. Khaira, learned Senior counsel in rebuttal on the grounds that:-

(i). The doctrine of relation back has no relation as the trial Court in its order dated 19.02.1994**,** while allowing the application for amendment kept the objection of limitation alive by saying that the same cannot be ascertained without leading evidence by the parties. The aforesaid feature makes the present case distinct from the normal rule where it is said that the amendment normally relates to the date when the suit was filed in view of ratio of ***Aseem Sethi vs. Meena Sethi, 2015(4) R.C.R.(Civil) 807*** and ***LC Hanumanthapa***'s case (supra) *stricto*

sensu.

(ii). The prayer clause of the instant case would show that the only declaratory relief had been sought by the plaintiff and no relief of possession was prayed for. Even consequential relief was given up by the plaintiff by making statement on 09.11.1995, therefore, by no stretch of imagination, it can be said that relief of possession was claimed by the plaintiff. The consistent case of the plaintiff before the trial Court was that of declaration and no relief of possession was sought, therefore, Article 65 of the Limitation Act is not attracted. Even the said Article gives only the relief of possession and not declaratory relief. The declaration with regard to validity of registered Will dated 01.06.1985 was originally sought and the same was sought by way of amendment dated 18.11.1993 i.e. much beyond the prescribed period of limitation. The doctrine of relation back would not apply for the reason that application for amendment was allowed by the trial Court vide order dated 19.02.1994, subject to plea of limitation. The trial Court expressly held that the objections of the defendants with regard to limitation could not be ascertained without leading evidence by the parties as to when the plaintiff came to know about the alleged Will. Photocopy of the Will was supplied to the plaintiff on 26.10.1989, therefore, the declaration sought with regard to

the Will is clearly time barred.

[231]. Having heard the submissions made by learned Senior counsel for the parties, I find that the basic question is the applicability of relevant provision of law in terms of Limitation Act. It is relevant to observe that the Will was produced by the defendants only in the year 2012**,** during the evidence by Lalit Mohan Gupta, CEO of the Trust. The witness, who produced the Will was not examined on oath even after insistence of learned counsel for the plaintiff. Witness could not be cross-examined. This fact is apparent from the interlocutory order dated 02.11.2012. The suit based on title does not attract any limitation of three years. The defendants have not claimed or proved their adverse possession by way of leading any evidence. There cannot be any dispute with regard to the proposition based on Article 58 of the Limitation Act, however question which is to be determined is whether the case in hand is governed by Article 58 or 65 of the Limitation Act. The proposed challenge to the Will by way of amendment is virtually a challenge to the document on the basis of title. Such a prayer does not attract any such limitation of three years. Even the filing of application and acceptance thereof vide order dated 19.02.1994 would fall within the period of five years from the date of death of Raja Harinder Singh. The Will was produced by

the defendants only in the year 2012. Even there was no such correct knowledge available with the plaintiff prior thereto. The Trust has not claimed or proved its adverse possession.

In view of aforesaid factual matrix of the case, **I deem it appropriate to hold that the suit has been preferred within limitation.**

3. Limitation with regard to the filing of Court fee

[232]. This aspect has already been discussed in earlier part of the judgment, but Mr. Ashok Aggarwal, learned Senior counsel assisted by Mr. Mukul Aggarwal on behalf of the defendants/Trust pressed this point for the purposes of limitation also. He submitted as under:-

(i). The suit was filed on 14.10.1992, wherein prayer was made for passing of decree to the effect that the plaintiff is owner of 1/3rd share in the property with consequential relief of joint possession along with defendants No.1 and 2. On 28.11.1993, an application for amendment of the plaint was filed. On 19.02.1994, the trial Court allowed the aforesaid application by keeping the plea of limitation open. In the application for amendment of plaint the declaration was sought declaration that the Will dated 01.06.1982 is invalid, void and not enforceable and the Trust is illegal and the action taken by

the Trust is *void, ab initio*. On 30.08.1997, an order was passed on the application filed by the defendnats under Order 7 Rule 11 CPC, vide which the trial Court directed the plaintiff to pay the court fee on the market value. Plaintiff was required to first correctly assess the market value of the suit property and then make up the deficiency of the court fee on or before 18.10.1997. The order dated 30.08.1997 was challenged by the plaintiff in the High Court in CR No.4212 of 1997. The said revision petition was disposed of by the High Court on 08.10.2001. The order of the trial Court was upheld. The aforesaid order was further assailed in the Hon'ble Apex Court in SLP No.1214/2002. The Hon'ble Apex Court also upheld the order of the trial Court. Thereafter on 16.09.2005, an application was filed by the plaintiff before the trial Court for depositing a tentative court fee of Rs.15,43,550/-. In the said application, the plaintiff herself stated that since the market value of the immovable properties cannot be ascertained, therefore, a fixed court fee of Rs.13 is deposited. The plaintiff undertook to pay remaining court fee as and when the same is quantified at the time of passing of final decree. The trial Court allowed the application on 23.12.2005. Tentative court fee paid by the plaintiff to the tune of Rs.15,43,550/- was taken on record. The aforesaid order was challenged by the defendants in the High

Court by way of CR No.124 of 2006 and the same was dismissed by the High Court on 16.12.2011.

(ii). In terms of Order 4 read with Order 7 CPC, the date of institution of plaint is the date on which plaint is presented with the requisite court fee. In the present case, in pursuance of order passed by the trial Court on 30.08.1997, the requisite court fee was paid by the plaintiff only on 16.09.2005 and, therefore, the suit is barred. The payment of court fee would not relate back to the date of original filing of the suit, as the plaintiff was specifically directed to deposit the court fee on or before 18.10.1997. No extension of time was ever sought by the plaintiff to pay the court fee, rather an application was filed on 16.09.2005 for deposit of tentative court fee of Rs.15,43,550/-. Even in the said application, no prayer was made and the same was only for quantification of tentative court fee. The Order 7 Rule 6 CPC provides that where a suit is barred by limitation, it is necessary for the plaintiff to show in the plaint, the ground of exemption from the limitation. If no such ground is shown in the plaint, the plaintiff cannot be heard for claiming the exemption.

[233]. Per contra, Mr. M.S. Khaira, learned Senior counsel assisted by Mr. B.S. Sewak, Advocate on behalf of the plaintiff contended as under:-

(i). The suit of the plaintiff was never dismissed for want of sufficient court fee. The court fee regarding declaration was paid on 15.10.1992 along with the plaint. Zimini order dated 15.10.1992 states that the court fee is sufficiently paid. On 18.11.1993, an application for amendment of the plaint was filed and the same was allowed on 19.02.1994. As per zimini order dated 17.08.1994, deficiency in court fee has been made good in the amended plaint. An application under Order 7 Rule 11 CPC was filed by the defendants for dismissal of the suit on the ground of insufficiency of court fee as *ad valorem* court fee has not been paid by the plaintiff. The said application was allowed on 30.08.1997 and the plaintiff was directed to pay *ad valorem* court fee by 18.10.1997. Plaintiff filed an application on 18.10.1997**,** seeking extension of time for paying court fee and to challenge the order dated 30.08.1997 in the High Court. The trial Court vide order dated 18.10.1997 allowed the time to the plaintiff to pay the court fee by 05.12.1997. Plaintiff filed CR No.4212 of 1997 in the High Court against the order dated 30.08.1997. Stay was granted by the High Court vide order dated 03.12.1997. Trial Court vide order dated 05.12.1997 acknowledged the factum of passing of order by the High Court and staying the proceedings qua payment of court fee. The proceedings were stayed in the civil suit by the High Court vide

order dated 04.08.1998 while admitting CR No.4212 of 1997. Thereafter vide order dated 13.08.1998, the trial Court adjourned the case *sine die*.

(ii). CR No.4212 of 1997 filed by the plaintiff was decided by the High Court on 08.10.2001 and against this SLP No.1214 of 2002 was preferred which was decided on 17.08.2005. According to which court fee of Rs.15,43,550/- was deposited in view of the application filed by the plaintiff on 16.09.2005. Defendants filed reply to the application dated 16.09.2005 on 25.11.2005 objecting to payment of *ad valorem* court fee of Rs.15,43,550/- by the plaintiff. The *ad valorem* court fee of Rs.15,43,550/- was deposited by the plaintiff vide application dated 16.09.2005 which was allowed by the trial Court vide order dated 23.12.2005. The trial Court directed that an issue be framed regarding sufficiency of court fee and after leading evidence, final amount of court fee would be decided. CR No.124 of 2006 was filed by the defendants against the order dated 23.12.2005**,** allowing deposit of *ad valorem* court court fee of Rs.15,43,550/-. The said revision petition was dismissed by the High Court vide order dated 16.12.2011. The said order has not been assailed by the defendants in any forum and the same has attained finality.

[234]. Having taken note of aforesaid factual position, the

defendants cannot be allowed to raise plea of limitation with regard to filing of the court fee at this stage, particularly when the order dated 23.12.2005 was unsuccessfully challenged by the defendants. The onus of original issue No.10 was on the defendants. Payment of court fee was as per the assessment done by the plaintiff. Defendants failed to prove market value of the properties, rather did not give exact and correct market value of the properties which are to be inherited by the plaintiff, despite the onus having been laid upon the defendants. **Since the Will has been declared null and void, therefore, this point has become nugatory.**

[235]. For the reasons recorded hereinabove, RSA No.2006 of 2018 titled **'***Rajkumari Amrit Kaur vs. Maharani Deepinder Kaur and others***'** is dismissed.

The claim with regard to succession to the estate of late Raja Harinder Singh on the basis of The Raja of Faridkot's Estate Act, 1948 is not sustainable.

[236]. RSA No.1418 of 2018 titled '*Maharani Deepinder Kaur and others vs. Rajkumari Amrit Kaur and others***'** is totally devoid of merits. The same is dismissed.

Will dated 01.06.1982 is found to be forged, fabricated and shrouded with suspicious circumstances.

Therefore, the same has been rightly discarded by the Courts below and the Trust created thereunder is also held to be unfounded.

[237]. RSA No.2176 of 2018 titled '*Bharat Inder Singh (since deceased) though his LR Kanwar Amarinder Singh Brar vs. Maharwal Khewaji Trust through its Boards of Trustees and others*' is dismissed with the following observations:-

The **claim with regard to succession to the estate and private properties of deceased Raja Harinder Singh on the basis of Law of Primogeniture is dismissed,** however the appellant would succeed to proportionate share of late Maharani Mohinder Kaur on the basis of registered Will dated 29.03.1990 executed by her. Maharani Mohinder Kaur (mother of Raja) was alive at the time of death of Raja on 16.10.1989 and she being one of the first class heirs of Raja would have succeeded share in the estate/properties of late Raja. Therefore**, on the basis of deemed succession/inheritance by Maharani Mohinder Kaur on 16.10.1989 and thereafter to the extent of share conferred by late Maharani Mohinder Kaur upon the appellant by virtue of aforesaid Will dated 29.03.1990 (Ex.D-10), the appellant would succeed to the said proportionate share in the estate of late Raja** in accordance

with law.

[238]. All other pending misc. applications are accordingly disposed of.

June 01, 2020 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**