

A MADAN MOHAN SINGH AND ORS.  
v.  
RAJNI KANT AND ANR.  
(Civil Appeal No. 6466 of 2004)

B AUGUST 13, 2010

**[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]**

C *U.P. Consolidation of Holdings Act, 1953 – s.9A(2) –*  
D *Objections filed by respondents for inclusion of their names*  
E *in the disputed khata as the deceased Khatedar's heirs –*  
F *Appellants filed cross-objections contending that the mother*  
G *of the respondents, at the most, could be concubine of the*  
H *deceased Khatedar; and being illegitimate children, the*  
*respondents had no right to inherit any share in the disputed*  
*khata – Statutory authorities under the Consolidation Act*  
*concurrently held in favour of the respondents and directed*  
*recording of their names – Order upheld by High Court – On*  
*appeal, held: The live-in-relationship between the deceased*  
*Khatedar and the mother of the respondents continued for a*  
*long time, and thus there was a presumption of marriage*  
*between them which the appellants failed to rebut – Material*  
*placed on record by the appellants not enough to disbelieve*  
*the claim of the respondents and the findings of facts recorded*  
*by the courts below cannot be disturbed on that ground – The*  
*documents placed by the appellants, if accepted, would simply*  
*lead not only to improbabilities and impossibilities but*  
*absurdity also – No special facts and circumstances*  
*warranting further re-appreciation of the evidence by the*  
*Supreme Court – Constitution of India, 1950 – Article 136.*  
*Evidence Act, 1872 – ss.32(5) and 35 – Entry in official*  
*record – Probative value of – Standard of proof required in*  
*such cases.*

*Evidence Act, 1872 – s.114 – Legitimacy of children born*

*to live-in partners – Held: The law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years – However, such presumption can be rebutted by leading unimpeachable evidence.*

**'C', the father of the appellants, was the *Khatedar* of the *Khata* in question. After the death of his wife in 1945, 'C' had live-in-relationship with one 'SH' which continued till his death in 1979. The respondents, who were purportedly born out of this relationship between 'C and 'SH', filed objections under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 claiming that their names be included as the heirs of 'C'. The appellants filed cross-objections contending that the respondents had no right or interest in the disputed *Khata*.**

**The Consolidation Officer i.e. the statutory authority under the Consolidation Act, allowed the objections filed by the respondents and directed that their names be recorded. The order was upheld in appeal before the Settlement Officer as also in revision. The appellants thereafter filed writ petition which was dismissed by the High Court.**

**Aggrieved, the appellants contended before this Court that there was nothing on record to show that their father had married 'SH' in accordance with law; that 'SH', at the most, could be concubine of 'C'; and that being illegitimate children, the respondents had no right to inherit any share in the disputed *khata*. The appellants contended that the concurrent findings of facts recorded by the courts below were perverse and contrary to documents on record placed by them, and therefore the Supreme Court ought to appreciate the evidence itself.**

**Dismissing the appeal, the Court**

A HELD:1. The statutory authorities under the U.P.  
Consolidation of Holdings Act, 1953 enjoy the powers of  
the Civil Court as well as the Revenue Court as all matters  
pending before the Civil Court stand abated once a  
notification of initiation of proceedings under the  
B Consolidation Act is issued. The authorities under the  
Consolidation Act have been conferred powers of the  
Civil Court to adjudicate upon any matter of title or right  
to inherit the property etc. In the instant case, three  
authorities under the Consolidation Act recorded  
C concurrent findings of facts after appreciating the entire  
evidence on record, which were affirmed by the High  
Court. [Paras 6, 7] [39-A-D; 40-B-C]

2.1. In the instant case, the documents placed on  
record by the appellants are School Leaving Certificates,  
D School Registers, Voter Lists and other documents  
prepared by the authorised persons in exercise of their  
official duty. There is so much inconsistency that these  
documents cannot be read together. The said  
documents, if taken into consideration, would simply lead  
E not only to improbabilities and impossibilities but  
absurdity also. It is most unfortunate that none of the  
courts below had analysed these documents in this  
manner while taking them into consideration and none  
of the lawyers have thought it proper to bring these most  
F glaring facts to the notice of the courts. [Paras 8, 9 and  
12] [40-G-H; 41-E-F; 42-E-F]

2.2. A document may be admissible, but as to  
whether the entry contained therein has any probative  
value may still be required to be examined in the facts  
and circumstances of a particular case. Even if the entry  
was made in an official record by the concerned official  
in the discharge of his official duty, it may have weight  
but still may require corroboration by the person on  
whose information the entry has been made and as to  
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whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases. The entries made in the official record, by an official or person authorised in performance of official duties, may be admissible under Section 35 of the Evidence Act, 1872 but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entry in School Register/School Leaving Certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases. For determining the age of a person, the best evidence is of his/her parents, if it is supported by un-impeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the un-impeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded. If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein. [Paras 14, 16, 17, 18] [43-D-G; 44-B-C; 44-D-G]

*State of Bihar & Ors. v. Radha Krishna Singh & Ors.* AIR 1983 SC 684; *Ram Prasad Sharma v. State of Bihar* AIR 1970 SC 326; *Ram Murti v. State of Haryana* AIR 1970 SC 1029; *Dayaram & Ors. v. Dawalatshah & Anr.* AIR 1971 SC 681; *Harpal Singh & Anr. v. State of Himachal Pradesh* AIR 1981 SC 361; *Ravinder Singh Gorkhi v. State of U.P.* (2006) 5 SCC 584; *Babloo Pasi v. State of Jharkhand & Anr.* (2008) 13 SCC 133; *Desh Raj v. Bodh Raj* AIR 2008 SC 632; *Ram*

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A *Suresh Singh v. Prabhat Singh @Chhotu Singh & Anr. (2009)*  
 6 SCC 681; *Brij Mohan Singh v. Priya Brat Narain Sinha &*  
*Ors. AIR 1965 SC 282; Birad Mal Singhvi v. Anand Purohit*  
 AIR 1988 SC 1796; *Vishnu v. State of Maharashtra (2006) 1*  
 SCC 283; *Satpal Singh v. State of Haryana JT 2010 (7) SC*  
 B 500; *Updesh Kumar & Ors. v. Prithvi Singh & Ors. (2001) 2*  
 SCC 524 and *State of Punjab v. Mohinder Singh AIR 2005*  
 SC 1868, relied on.

C *Mohd. Ikram Hussain v. The State of U.P. & Ors. AIR*  
 1964 SC 1625; *Santenu Mitra v. State of West Bengal AIR*  
 1999 SC 1587, referred to.

D 3.1. The courts have consistently held that the law  
 presumes in favour of marriage and against concubinage,  
 when a man and woman have cohabited continuously for  
 a number of years. However, such presumption can be  
 rebutted by leading unimpeachable evidence. [Para 21]  
 [45-C-D]

E 3.2. In the instant case, the material placed on record  
 by the appellants cannot be termed enough to disbelieve  
 the claim of the respondents and the findings of facts  
 recorded by the courts below cannot be disturbed on that  
 ground. The appellants' case was that the respondents  
 were born prior to 1960 i.e. prior to the year 'C' started  
 F living with 'SH'. As per the Electoral Rolls, 'SH' was born  
 near about 1941. If the documents filed by the appellants  
 are taken to be true, one will have to record a finding of  
 fact that 'SH' gave birth to her two daughters when she  
 was only 5-6 years of age and in case, the Certificate of  
 G respondent no.1 (Certificate for practicing Unani medicine  
 wherein his date of birth is shown) is taken to be true and  
 is considered in the light of the documents contained in  
 Electoral rolls, it was arithmetically clear that 'SH' had  
 given birth to respondent no.1 even prior to her own birth.  
 H If all the documents placed on record by the appellants  
 are accepted, they would simply lead not only to

improbabilities and impossibilities but absurdity also. None of the courts below had analysed documents in correct perspective. In the instant case, the live-in-relationship, if continued for such a long time, could not be termed as “walk in and walk out” relationship and there was a presumption of marriage between them which the appellants failed to rebut. There are no special facts and circumstances which warranted further re-appreciation of the evidence as the appeal was based on totally unreliable/contradicting documents. [Paras 22, 23] [45-F-H; 46-A-C]

*S.P.S. Balasubramanyam v. Suruttayan @ Andali Padayachi & Ors.* AIR 1992 SC 756; *Mohabbat Ali Khan v. Mohd. Ibrahim Khan* AIR 1929 PC 135; *Gokalchand v. Parvin Kumar* AIR 1952 SC 231; *S.P.S. Balasubramanyam v. Suruttayan* (1994) 1 SCC 460; *Ranganath Parmeshwar Panditrao Mali v. Eknath Gajanan Kulkarni* (1996) 7 SCC 681 and *Sobha Hymavathi Devi v. Setti Gangadhara Swamy & Ors.* (2005) 2 SCC 244, relied on.

*S. Khushboo v. Kanniammal & Anr.* (2010) 5 SCC 600 and *Lata Singh v. State of U.P. & Anr.* AIR 2006 SC 2522, referred to.

Case Law Reference:

AIR 1983 SC 684	relied on	Para 13
AIR 1970 SC 326	relied on	Para 14
AIR 1970 SC 1029	relied on	Para 14
AIR 1971 SC 681	relied on	Para 14
AIR 1981 SC 361	relied on	Para 14
(2006) 5 SCC 584	relied on	Para 14
(2008) 13 SCC 133	relied on	Para 14

A	AIR 2008 SC 632	relied on	Para 14
	(2009) 6 SCC 681	relied on	Para 14
	AIR 1964 SC 1625	referred to	Para 15
B	AIR 1999 SC 1587	referred to	Para 15
	AIR 1965 SC 282	relied on	Para 17
	AIR 1988 SC 1796	relied on	Para 17
C	(2006) 1 SCC 283	relied on	Para 17
	JT 2010 (7) SC 500	relied on	Para 17
	(2001) 2 SCC 524	relied on	Para 18
D	AIR 2005 SC 1868	relied on	Para 18
	(2010) 5 SCC 600	referred to	Para 19
	AIR 2006 SC 2522	referred to	Para 19
E	AIR 1992 SC 756	relied on	Para 20
	AIR 1929 PC 135	relied on	Para 21
	AIR 1952 SC 231	relied on	Para 21
F	(1994) 1 SCC 460	relied on	Para 21
	(1996) 7 SCC 681	relied on	Para 21
	(2005) 2 SCC 244	relied on	Para 21

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6466 of 2004.

G From the Judgment & Order dated 14.8.2003 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 19334 of 2003.

Mahabir Singh, V.K. Singh, T.N. Singh for the Appellants.

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Abhay Kumar for the Respondents.

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The Judgment of the Court was delivered by

**DR. B.S. CHAUHAN, J.** 1. This appeal has been preferred against the judgment and order dated 14.8.2003 in Civil Misc. Writ Petition No.19334 of 2003 passed by the High Court of Judicature at Allahabad by which the High Court dismissed the writ petition of the appellants in view of the concurrent findings recorded by the three statutory authorities under the Statute.

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2. Facts and circumstances giving rise to this case are that one Chandra Deo Singh was recorded as the khatedar of Khata Nos.485, 620, 146 and 66 of Village Bhojapur and Khata No.21 of Village Kanshari. The respondents in appeal, Rajni Kant and Anjani Kumar claimed themselves to be the sons of said Chandra Deo Singh and filed objections under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'Consolidation Act') and they asked for inclusion of their names as his heirs. Another objection was filed by the appellants in the disputed khata submitting that the said respondents had no right or interest in the suit land, not being the sons of late Chandra Deo Singh and the appellants were his only legal heirs. The Consolidation Officer having framed large number of issues and having provided full opportunity of hearing to both the parties to lead evidence and make submissions, passed an order dated 8.11.2000, allowing the objections filed by the respondents and further directing to record their names. Being aggrieved, the appellants preferred the appeal before the Settlement Officer which had been dismissed vide judgment and order dated 16.2.2001. Being aggrieved, the appellants preferred Revision No.958 under Section 48 of the Consolidation Act which also stood dismissed vide judgment and order dated 15.3.2003.

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3. The appellants further agitated the issue, challenging the said judgments and orders by filing Writ Petition No.19334/

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A 2003 which has also been dismissed vide judgment and order dated 14.8.2003. Hence, this appeal.

B 4. Shri Mahabir Singh, Ld. Senior counsel, appearing for the appellants, has submitted that mother of the appellants, Smt. Sonbarsa died in 1945. Chandra Deo Singh, father of the appellants remained in Jail as a Freedom Fighter from 1945-47. There is nothing on record to show that appellants' father got married with the mother of the respondents Smt. Shakuntala in accordance with law. At the most she could be concubine of C Chandra Deo Singh and being illegitimate children, the respondents have no right to inherit any share in the suit land. More so, the respondents were born prior to having started live-in-relationship between Chandra Deo Singh and said Smt. Shakuntala as is evident from the School Register and School leaving certificate produced by the appellants before the D statutory authorities as well as before the High Court and this Court. The said documents had not been properly appreciated by any of the authorities. The findings of facts recorded by the statutory authorities are perverse being contrary to evidence on record produced by the appellants. The High Court did not E make any attempt to appreciate the evidence at all. Findings so recorded, are perverse, being contrary to the evidence on record. The appeal has merit and thus, deserves to be allowed.

F 5. Per contra, Shri Abhay Kumar, Ld. Counsel appearing for the respondents has submitted that three statutory authorities under the Consolidation Act have recorded the concurrent finding of fact that Chandra Deo Singh and Smt. Shakuntala were living together for a long time. Their relationship as husband and wife had been accepted by the Society as well as the family members. In many official documents, name of G Chandra Deo Singh has been shown as the father of the respondents. In the beginning, Chandra Deo Singh did not disclose the relationship with Smt. Shakuntala because of social conditions that the Society may not accept their relationship even after the death of his wife Smt. Sonbarsa. H

Both the respondents were born out of their relationship. Appeal lacks merits and is liable to be dismissed. A

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

In fact, statutory authorities under the Consolidation Act enjoys the powers of the Civil Court as well as the Revenue Court as all matters pending before the Civil Court stand abated once a notification of initiation of proceedings under the Consolidation Act is issued. Authorities under the Consolidation Act have been conferred powers of the Civil Court to adjudicate upon any matter of title or right to inherit the property etc. B  
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Undoubtedly, there are concurrent findings of facts recorded by three authorities under the Consolidation Act after appreciating the entire evidence on record. The authorities have recorded following findings of facts:- D

- (I) Chandra Deo Singh was having relationship with Smt. Shakuntala for long time;
- (II) After the death of his wife Sonbarsa in 1945, Chandra Deo Singh had live-in-relationship with Smt. Shakuntala and started living as husband and wife; E
- (III) Chandra Deo Singh started living with Smt. Shakuntala in a different village namely, Murdah in 1960-1961. F
- (IV) Their relationship continued till the death of Chandra Deo Singh on 31.12.1979 and therefore, they lived together as husband and wife for a long period; G
- (V) The respondents and other four daughters were born out of this relationship between Chandra Deo Singh and Smt. Shakuntala; and H

A (VI) Their relationship as husband and wife had been  
accepted not only by the Society but also by the  
family members.

B 7. The aforesaid concurrent findings of facts recorded by  
the authorities under the Consolidation Act have been affirmed  
by the High Court though without having full-fledged  
appreciation of evidence. The High Court reached the  
conclusion that findings of facts recorded by three courts below  
did not require re-appreciation of evidence and further that no  
interference was required with same in exercise of writ  
C jurisdiction.

D 8. Shri Mahabir Singh, learned Senior counsel appearing  
for the appellants persuaded us to have recourse to the unusual  
procedure submitting that in spite of concurrent findings of facts  
by courts below, this Court must appreciate the evidence itself  
for the reason that findings of facts so recorded are perverse.  
He has placed a very heavy reliance on the documents the  
appellants have submitted and contended that the said  
documents are admissible under Section 35 of the Indian  
E Evidence Act, 1872 (hereinafter called the 'Evidence Act') and  
mere reading of those documents would not leave any doubt  
that the findings recorded by the courts- below are contrary to  
the evidence on record. In order to substantiate his submission,  
he has placed reliance on large number of judgments of this  
F Court.

G However, before entering into any law, we would like to  
examine the documents which are so heavily relied by learned  
Senior counsel. The documents so placed on record are  
basically School Leaving Certificates, School Registers, Voter  
Lists and other documents prepared by the authorised persons  
in exercise of their official duty. Annexure P-1(Colly) is the copy  
of Electoral Rolls for Legislative Assembly of the three  
consecutive elections. The particulars of Smt. Shakuntala had  
been shown therein as under:-

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Electoral Rolls for year of	S.No.	House No.	Name & Father/ Husband/ Mother's Name	Male/ Female	Age
1975	128	20	Smt. Shakuntala-Saraswati	Female	34
1979	138	20	Smt. Shakuntala-Saraswati	Female	36
1980	157	20	Smt. Shakuntala-Saraswati	Female	41

9. These entries are very relevant to determine the controversy regarding the date of birth of the respondents and other family members. As per the first document in Annex.P-1 (Colly), Smt. Shakuntala should have been born in 1941 as she was 34 years of age in 1975. As per the 2nd list she should have been born in 1943 as she was 36 years of age in 1979. Immediately, after one year in 1980 she became 41 years of age and according to this document she should have been born in 1939.

There is so much inconsistency that these documents cannot be read together for the reason that in 1979 if Smt. Shakuntala was 36 years of age, in 1980 she had been shown 41 years of age. So, after expiry of one year, her age had gone up by 5 years.

10. Annexure P-3 has been filed as the copy of the report prepared by the Tahsildar in view of the order passed by the competent court dated 31.7.1984. According to that Asha Devi, daughter of Smt. Shakuntala and sister of respondents was born on 7.7.1951. Therefore, if Smt. Shakuntala as per the first document was born in 1941, question of giving birth to Asha could not arise at the age of 10 years. If we go by the second document of 1979, Smt. Shakuntala was born in 1943 and she

A could not have given birth to Asha in 1951 at the age of 8 years. According to the third document, Smt. Shakuntala was 41 years of age in 1980. So, at the time of birth of Asha, Smt. Shakuntala was 12 years of age. Same is the position in respect of Savitri, another daughter of Smt. Shakuntala. As per Annexure P-4, B School Leaving Certificate, her date of birth has been recorded as 1.9.1949. If this document is taken to be true and age of Smt. Shankutala is taken from Annex.P-1 (Colly), we will have to record a finding of fact that Smt. Shakuntala gave birth to Savitri at the age of 6 years.

C 11. Now we come to the most material evidence (Annex. P-8) submitted by the appellants in respect of age of Rajni Kant, respondent No.1. The said document is a Certificate for practicing Unani medicine and therein his date of birth has been shown as 15.7.1940. If this document is taken to be true and D compared with the document contained in Annexure P-1 (Colly) wherein Smt. Shakuntala had been shown 34 years of age in 1975 and 36 years of age in 1979, it becomes arithmetically clear that Smt. Shakuntala had given birth to him even prior to her own birth.

E 12. The aforesaid documents placed on record by the appellants and so heavily relied upon by them, if taken into consideration, they would simply lead not only to improbabilities and impossibilities but absurdity also. It is most unfortunate that F none of the courts below had analysed these documents in this manner while taking them into consideration and none of the lawyers have thought it proper to bring these most glaring facts to the notice of and of the courts.

G 13. In *State of Bihar & Ors. Vs. Radha Krishna Singh & Ors.* AIR 1983 SC 684, this Court dealt with a similar contention and held as under:-

H "Admissibility of a document is one thing and its probative value quite another - these two aspects cannot be combined. A document may be admissible and yet may

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not carry any conviction and weight of its probative value may be nil. . . . . A

Where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has "a statutory flavour in that it is given not merely by an administrative officer but under the authority of a Statute, its probative value would indeed be very high so as to be entitled to great weight. B

The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little." C

14. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in *Ram Prasad Sharma Vs. State of Bihar* AIR 1970 SC 326; *Ram Murti Vs. State of Haryana* AIR 1970 SC 1029; *Dayaram & Ors. Vs. Dawalatshah & Anr.* AIR 1971 SC 681; *Harpal Singh & Anr. Vs. State of Himachal Pradesh* AIR 1981 SC 361; *Ravinder Singh Gorkhi Vs. State of U.P.* (2006) 5 SCC 584; *Babloo Pasi Vs. State of Jharkhand & Anr.* (2008) 13 SCC 133; *Desh Raj Vs. Bodh Raj* AIR 2008 SC 632; and *Ram Suresh Singh Vs. Prabhat Singh @Chhotu Singh & Anr.* (2009) 6 SCC 681. In these cases, it has been held that even if the entry was made in an official record by the concerned official in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases. D E F G

15. Such entries may be in any public document, i.e. school register, voter list or family register prepared under the Rules and Regulations etc. in force, and may be admissible under H

- A Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain Vs. The State of U.P. & Ors.* AIR 1964 SC 1625; and *Santenu Mitra Vs. State of West Bengal* AIR 1999 SC 1587.

B 16. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entry in School Register/  
C School Leaving Certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

D 17. For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government  
E Hospital/Nursing Home etc, the entry in the school register is to be discarded. (Vide: *Brij Mohan Singh Vs. Priya Brat Narain Sinha & Ors.* AIR 1965 SC 282; *Birad Mal Singhvi Vs. Anand Purohit* AIR 1988 SC 1796; *Vishnu Vs. State of Maharashtra* (2006) 1 SCC 283; and *Satpal Singh Vs. State of Haryana* JT 2010 (7) SC 500).  
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G 18. If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50,51,59,60 and 61, etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein. (Vide: *Updesh Kumar & Ors. Vs. Prithvi Singh & Ors.*, (2001) 2 SCC 524; and *State of Punjab Vs. Mohinder Singh*, AIR 2005 SC 1868).

H 19. In *S. Khushboo Vs. Kanniammal & Anr.* (2010) 5 SCC

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600, this Court, placing reliance upon its earlier decision in *Lata Singh Vs. State of U.P. & Anr.* AIR 2006 SC 2522, held that live-in-relationship is permissible only in unmarried major persons of heterogeneous sex. A

20. In *S.P.S. Balasubramanyam Vs. Suruttayan @ Andali Padayachi & Ors.* AIR 1992 SC 756, this Court held that if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under Section 114 of the Evidence Act, that they live as husband and wife and the children born to them will not be illegitimate. B.

21. The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (Vide: *Mohabbat Ali Khan Vs. Mohd. Ibrahim Khan*, AIR 1929 PC 135; *Gokalchand Vs. Parvin Kumar*, AIR 1952 SC 231; *S.P.S. Balasubramanyam Vs. Suruttayan*, (1994) 1 SCC 460; *Ranganath Parmeshwar Panditrao Mali Vs. Eknath Gajanan Kulkarni*, (1996) 7 SCC 681; and *Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy & Ors.*, (2005) 2 SCC 244). C D E

22. In view of the above, the kind of material placed by the appellants on record cannot be termed enough to disbelieve the claim of the respondents. The findings of facts recorded by the courts below cannot be disturbed on this material. The appellants' case has been that the respondents were born prior to 1960 i.e. prior to the year Chandra Deo Singh started living with Smt. Shakuntala. As per the Annexure P1 (Colly), Smt. Shakuntala was born near about 1941. If the documents filed by the appellants are taken to be true, we will have to record a finding of fact that Smt. Shakuntala gave birth to her two daughters, namely, Asha and Savitri, when she was only 5-6 years of age and in case, the Certificate of Rajni Kant-respondent no.1, contained in Annexure P8 is taken to be true F G

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- A and is considered in the light of the documents contained in Annexure P1 (Colly), it could be arithmetically clear that Smt. Shakuntala had given birth to Rajni Kant, respondent No. 1 on 15.7.1940, i.e., even prior to her own birth in 1941. If all the said documents are accepted, they would simply lead not only to
- B improbabilities and impossibilities but absurdity also. It is most unfortunate that none of the courts below had analysed documents in correct perspective. The live-in-relationship if continued for such a long time, cannot be termed in as "walk in and walk out" relationship and there is a presumption of
- C marriage between them which the appellants failed to rebut.

23. In view of the above, the appeal does not present special facts and circumstances which may warrant further re-appreciation of the evidence as the appeal is based on totally unreliable/contradicting documents and not worth placing any
- D reliance. It is accordingly dismissed. No cost.

B.B.B.

Appeal dismissed.