

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RSA No. 173 of 2008**

**Reserved on: 07.03.2026**

**Date of Decision: 09.04.2026**

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Kailash Chand

...Appellant.

Versus

Deepa Devi & Ors.

...Respondents.

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*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

***Whether approved for reporting?<sup>1</sup> Yes***

For the Appellant : Mr Raman Jamalta, Advocate.

For the Respondents : Mr Vivek Singh Thakur, Advocate.

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**Rakesh Kainthla, Judge**

The present appeal is directed against the judgment and decree dated 29.12.2007 passed by the learned Additional District Judge, Fast Track, Kullu (learned Appellate Court) vide which the judgment and decree dated 19.07.2007 passed by the learned Civil Judge, Sr. Division, Kullu (learned Trial Court) were upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court for seeking a declaration that defendant No.1. has no right to proclaim herself to be the legally wedded wife of the plaintiff, no marriage as per custom was solemnized between plaintiff and defendant No.1, and the document produced by the defendant is forged and fictitious, which is not binding upon the plaintiff. A consequential relief of permanent prohibitory injunction for restraining the defendants from visiting the house of the plaintiff and defendant No.1 from proclaiming herself as plaintiff's wife was also sought. It was asserted that the defendants used to visit the house of Nimo Devi, who had an inimical relationship with the plaintiff. The defendants asked the plaintiff and his parents to solemnise a marriage between the plaintiff and defendant No. 1. The plaintiff did not accept this proposal. The defendant No.1 started proclaiming herself as the wife of the plaintiff. She also produced a document showing that a marriage was solemnised between the plaintiff and her. These claims are false. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objections regarding lack of maintainability, the suit having not been properly valued for Court fees, and the plaintiff having concealed the material facts from the Court. The contents of the plaint were denied on the merits. It was asserted that the parties are governed by the local agricultural customs of District Kullu. Defendant No.1 and the plaintiff solemnised a love marriage. The plaintiff's parents subsequently performed a marriage between the plaintiff and defendant No.1 on 04.05.2005 as per the local custom. They put a Thipu (Dupatta) on the head of defendant No.1 before their deity and organised a feast for the villagers and their relatives. Defendant No.1 started residing with the plaintiff in his house as his wife. The plaintiff maltreated defendant No.1 and turned her out of her matrimonial home in January 2006. She made a complaint to the police. The plaintiff compromised the matter with defendant No.1 in the presence of Pradhan, Gram Panchayat Katrain and undertook to keep defendant No.1 in his house. Defendant No.2 never visited the house of Nimo Devi or the plaintiff. Therefore, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaintiff was filed.

5. The learned Trial Court framed the following issues on 03.08.2006: -

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to the relief of a permanent prohibitory injunction, as prayed for? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether the plaintiff has concealed the material facts from the Court, if so, its effect? OPD.
5. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPD
6. Whether the defendants are entitled to special costs under Section 35-A CPC? OPD
7. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined himself (PW1) and Jagan Nath (PW2). Defendant No.1 examined herself (DW1), Nathu Ram (DW2), Badri Parkash (DW3) and Subhash Chand (DW4).

7. The learned Trial Court held that the defendants had failed to prove that the marriage was solemnised as per the custom of the area. However, the plaintiff and defendant no. 1 resided together, which would make it probable that they were

married to each other. The document produced on record also corroborated the version of defendant No.1. The suit was maintainable and properly valued for Court fees and jurisdiction. Hence, the learned Trial Court answered issue Nos. 1 to 6 in negative and dismissed the suit filed by the plaintiff.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal, which was decided by the learned Additional District Judge, Fast Track Court, Kullu (Learned Appellate Court). Learned Appellate Court held that, as per the question No.16 of tribal custom, a marriage could be solemnised by giving meals to the marriage party and the execution of the agreement. The evidence proved that meals were provided to the marriage party, and Ganesh Pooja was performed. Therefore, the marriage was solemnised as per the custom. This version was also duly corroborated by the undertaking (Ext.DW3/A) executed by the plaintiff admitting the relationship between the parties. Cohabitation between a man and a woman openly leads to an inference of a valid marriage, and the burden was upon the person denying the marriage to rebut this presumption. The plaintiff had failed to rebut the presumption, and his suit was rightly dismissed by the learned

Trial Court. Hence, the appeal preferred by the plaintiff was dismissed.

9. Being aggrieved by the judgments and decrees passed by the learned Courts below, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law on 24.06.2009:-

1. Whether the Courts below erred in holding that there had been a marriage according to customary law without proving the same, as the customary law is not only to be pleaded but is required to be proved like any other matter?
2. Whether the learned Courts below erred in placing reliance on Ext.DW3/A, considering the same as agreement of marriage, especially when the appellant had denied his signature on the same?
3. Whether the alleged compromise Ext.DW3/A could be treated as an agreement when it is not signed by both the parties to the agreement?
4. Whether the learned Courts below misread, misappreciated both oral and documentary evidence on record and the findings are based on mere conjectures and surmises?

10. I have heard Mr Raman Jamalata, learned counsel for the appellant/plaintiff and Mr Vivek Singh Thakur, learned counsel for the respondents/defendants.

11. Mr Raman Jamalta, learned counsel for the appellant/plaintiff, submitted that the learned Courts below erred in holding that the marriage was solemnised according to the customary law. There was no proof of the customary law, and the requirements provided in answer to Question No.16, as noticed by the learned Appellate Court, were not fulfilled. The marriage could not have been solemnised by executing the document. The presumption regarding the marriage can only be drawn by long co-habitation and cohabitation for a few months was not sufficient to raise the presumption. Therefore, he prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside. He relied upon the judgments in *S.P.S. Balasubramanyam vs. Suruttayan @ Andali Padayachi and others* (1994) 1 SCC 460, *Ranganath Parmeshwar Panditrao Mali and another vs. Ekna Gajanan Kulkarni and another* (1996) 7 SCC 681 and *Madan Mohan Singh and others vs. Rajni Kant and another* (2010) 9 SCC 209 in support of his submission.

12. Mr Vivek Singh Thakur, learned counsel for the respondents/defendants, submitted that the learned Courts below have consistently recorded findings of fact regarding the

solemnization of the marriage. This finding is supported by the material on record and the document executed by the plaintiff. There is no perversity in the findings recorded by learned Courts below, and this Court should not interfere with a pure finding of fact while deciding a regular second appeal. Hence, he prayed that the present appeal be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

**Substantial Questions of Law No.1:-**

14. The defendants pleaded in para 3 of the written statement that the marriage between plaintiff and defendant No.1 was solemnised as per the custom of District Kullu known as *Riwaj-e-Aam*. The parents of the plaintiff performed the marriage and put a Thipu (Dupatta) on the head of defendant No.1 before their deity, and in this way completed the marriage of plaintiff and defendant No.1. Thereafter, plaintiff and his parents gave a feast to the villagers and their relatives in their house. It was laid down by this Court in *Lachhmi vs Bali Ram 1997 (2) Shim. LC 145* that the custom has to be proved by citing instances. It was observed:

“11. It is well settled that custom is a fact which must be pleaded and proved by authoritative pronouncements or by instances in which it has been followed or by some other evidence. It cannot be established by dialectics.

12. It is equally well settled that a custom to be legally binding must be ancient, certain and invariable, and the onus lies heavily upon a party setting up a special family custom at variance with the general custom and personal law of the parties, and it must be proved by clear and cogent evidence.”

15. It was laid down by this Court in *Sardar Mohammad v Hosityara and others ILR 1988 HP 226*, that a custom has to be specifically pleaded and proved. It was observed:

“8. Now, it is settled law that a custom, to have the force of law, must be ancient, certain, reasonable, continual, peaceable, consistent, legal, moral and not opposed to public policy. So far as custom as a rule of law applicable to a particular or defined locality, that is, local custom, is concerned, it must be shown also that it is compulsory in the sense that it is a customary right vested in the inhabitants of a particular locality and that it is not optional to every person to follow it or not. It is also well established that in the matter of custom, a party has to plead in specific terms as to what is the custom that he is relying on, and he must prove the custom pleaded by him. He cannot be permitted to prove a custom not pleaded by him. The reason for this rule is obvious. Anybody who puts forward a custom must prove by satisfactory evidence the existence of the custom pleaded, its continuity and the consistency with which it was observed. A party against whom a custom is pleaded must have notice as to what case he has to meet. The opposite party, apart from rebutting the evidence adduced by the plaintiff, may be able to prove that the custom in question was not invariably followed. He cannot get ready with

that evidence without knowing the nature of the custom relied upon by the plaintiff (see: *Kochan Kani Kunjuraman Kani etc. v. Mathevan Kani Sankaran Kani and others, etc.*, AIR 1971 SC 1398)

16. This position was reiterated in *Shakuntala & Ors. Vs. Surinder Chand & Ors.* AIR 2006 HP 108: 2006 SCC OnLine HP 8, wherein it was observed:-

“19. In order to prove custom, it is necessary for the party who alleges custom to prove it to be ancient, certain, reasonable and having been followed constantly without deviation. The custom has to be construed strictly. The custom, as pointed out in *Ramalakshmi Ammal v. Sivanatha Perumal*, (1872) 14 Moo Ind App 570, *Siromani and another v. Hemkumar and others*, AIR 1968 SC 1299, *Harihar Prasad Singh and others v. Balmiki Prasad Singh and others*, AIR 1975 SC 733, must be proved by the party who alleges such custom by clear and unambiguous evidence as it is only by such evidence that Courts can be assured of its existence and the fact that it possesses the condition of antiquity and certainty on which alone their legal title to recognition depends. It is a settled position of law that wherever the evidence shows the custom alleged was not allowed, uniformly, the custom cannot be said to be proved. Mulla, in his Principles of Hindu Law, observed:

"A custom derives its force from the fact that it has, from long usage, obtained the force of law."

Mulla further observed :

"All that is necessary to prove is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule of a particular locality."

17. This position was reiterated in *Laxmibai v. Bhagwantbuva*, (2013) 4 SCC 97: 2013 SCC OnLine SC 101, wherein it was observed at page 105:

“12. Custom is an established practice at variance with the general law. A custom varying general law may be a general, local, tribal or family custom. A general custom includes a custom common to any considerable class of persons. A custom which is applicable to a locality, tribe, sect or a family is called a special custom. Custom is a rule, which, in a particular family, a particular class, community, or in a particular district, has, owing to prolonged use, obtained the force of law. Custom has the effect of modifying general personal law, but it does not override statutory law, unless the custom is expressly saved by it. Such custom must be ancient, uniform, certain, continuous and compulsory. No custom is valid if it is illegal, immoral, unreasonable or opposed to public policy. He who relies upon custom varying general law must plead and prove it. Custom must be established by clear and unambiguous evidence.

13. In *Surajmani Stella Kujur v. Durga Charan Hansdah* [(2001) 3 SCC 13: 2001 SCC (Cri) 1305: AIR 2001 SC 938], this Court held that custom, being in derogation of a general rule, is required to be construed strictly. A party relying upon a custom is obliged to establish it by way of clear and unambiguous evidence. (Vide *Salekh Chand v. Satya Gupta* [(2008) 13 SCC 119] .)

14. A custom must be proved to be ancient, certain and reasonable. The evidence adduced on behalf of the party concerned must prove the alleged custom and the proof must not be unsatisfactory and conflicting. A custom cannot be extended by analogy or logical process, and it also cannot be established by a priori method. Nothing that the courts can take judicial notice of needs to be proved. When a custom has been judicially recognised by

the court, it passes into the law of the land and proof of it becomes unnecessary under Section 57(1) of the Evidence Act, 1872. Material customs must be proved properly and satisfactorily, until the time that such a custom has, by way of frequent proof in the court, become so notorious that the courts take judicial notice of it. (See also *Effuah Amissah v. Effuah Krabah* [(1936) 44 LW 73: AIR 1936 PC 147], *T. Saraswathi Ammal v. Jagadambal* [(1953) 1 SCC 362: AIR 1953 SC 201], *Ujagar Singh v. Jeo* [AIR 1959 SC 1041] and *Siromani v. Hemkumar* [AIR 1968 SC 1299] .)

15. In *Ramalakshmi Ammal v. Sivanantha Perumal Sethurayar* [(1871-72) 14 MIA 570] it was held : (MIA pp. 585-86)

It is essential that special usage, which modifies the ordinary law of succession, is ancient and invariable; and it is further essential that such special usage is established to be so, by way of clear and unambiguous evidence. It is only by means of such evidence that courts can be assured of their existence, and it is also essential that they possess the conditions of antiquity and certainty on the basis of which alone their legal title to recognition depends.

16. In *Salekh Chand* [(2008) 13 SCC 119], this Court held as under : (SCC pp. 130-131, paras 23 & 26-27)

“23. Where the proof of a custom rests upon a limited number of instances of a *comparatively recent date*, the court may hold the custom proved so as to bind the parties to the suit and those claiming through and under them....

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26. ... All that is necessary to prove is that the usage has been acted upon in practice for such a long [Ed. : The word “long” is emphasised in original as well.] period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule of a particular locality.

27. A custom may be proved by general evidence as to its existence by members of the tribe or family who would naturally be cognizant of its existence, and its exercise without controversy....” (emphasis supplied)

17. In *Bhimashya v. Janabi* [(2006) 13 SCC 627] this Court held : (SCC pp. 635-36, paras 25 & 28-29)

“25. A custom is a particular rule which has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm. ... it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.

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28. Custom is authoritative, it stands in the place of law, and regulates the conduct of men in the most important concerns of life; fashion is arbitrary and capricious, it decides in matters of trifling import; manners are rational, they are the expressions of moral feelings. Customs have more force in a simple state of society.

29. Both practice and custom are general or particular but the former is absolute, the latter relative; a practice may be adopted by a number of persons without reference to each other; but a custom is always followed either by imitation or prescription; the practice of gaming has always been followed by the vicious part of society, but it is to be hoped for the honour of man that it will never become a custom.”

(See also *Ramkanya Bai v. Jagdish* [(2011) 7 SCC 452 : (2011) 3 SCC (Civ) 736: AIR 2011 SC 3258] .)

18. In the present case, the defendants failed to plead and prove any instances of custom. Defendant No.1 Deepa Devi stated in para 4 of her proof affidavit (Ext.DA) that the parties

were governed by the local agriculture custom of District Kullu. They follow a local custom known as Riwaj-e-Aam in case of marriages and death. The marriage between plaintiff and defendant No.1 was solemnised as per the local custom, and the parents of the plaintiff put a Thipu (Dupatta) on her head before their deity and completed the marriage by organising a feast. She has not cited any instance when any such marriage was held and recognised by the society. Her witness, Nathu Ram, has also not deposed that any such custom is prevalent in the area. Learned Trial Court noticed that the burden was upon the defendants to prove that customary marriage was prevalent in the society, and no evidence was led to this effect. Learned Appellate Court noticed question No. 16 of the tribal custom of Kullu as under:

17. It may be relevant here to Question 16 of Tribal Custom (Riwaj-e-Aam) of Kullu Sub Division, which reads as follows:-

“Question 16. Ceremonies of marriage- with what ceremonies at a marriage celebrated and what ceremonies at a marriage celebrated and what ceremonies make the marriage binding? Is it customary to execute a writing to that effect?”

Ans. (i) All the tribes reply that marriages in the whole of the Sub-Division, excluding Waziri Lahaul and Spiti, are performed by giving meals to the marriage party. In very few cases amongst high-classed Brahims, Khattris and Rajputs, Vedic rites

are performed but generally it is only completed with Ganesh Puja. Amongst poorer people, it is only performed by the execution of a deed. Agreement deeds are usually executed in Tehsil Kullu, whereas in Sub-Tehsil Seraj, Rupi and Lahaul, this custom exists, but rarely.”

19. Learned Appellate Court held that Manikaran was part of Rupi. No agreement was tendered in evidence, nor was the same stated to have been executed. Testimony of Deepa Devi revealed that Ganesh Pooja was performed. Therefore, the marriage between the plaintiff and defendant No.1 was solemnised as per the local custom known as Riwaj-e-Aam.

20. The findings recorded by the learned Appellate Court cannot be sustained. Defendant No.1 never pleaded that the Ganesh Pooja was performed. Her case was that the marriage was solemnised by putting a Thipu (Dupatta) on her head before the deity. The answer to question No.16 does not recognise any such custom. She stated in her cross-examination that Ganesh Pooja was solemnized, but this was never pleaded or deposed by her in her examination-in-chief. Further, she specifically stated that there was no Brahman at the time of Ganesh Pooja, which makes her statement regarding the performance of Ganesh Pooja highly doubtful. It was not suggested to the plaintiff in his cross-examination that Ganesh Pooja was solemnised at the time of

marriage between the plaintiff and defendant No.1. It was only suggested to him that the parents of the plaintiff had put a Thipu (Dupatta) on the head of defendant No.1 and accepted her as the plaintiff's wife. Thus, the findings recorded by the learned First Appellate Court that the marriage was solemnised as per the custom are contrary to the pleading and proof.

21. The learned Courts below proceeded on the basis that plaintiff and defendant No.1 had resided together as husband and wife, which suggested a valid marriage. Defendant No.1 stated that the love marriage was solemnised on 04.05.2005, and she was turned out of her home in January 2006. Thus, as per defendant No.1, she had resided in the house of the plaintiff only for about 7-8 months. It was laid down by the Hon'ble Supreme Court in *Chowdamma v. Venkatappa*, 2025 SCC OnLine SC 1814, that a presumption arises regarding the legality of the marriage between a man and a woman when they have lived together for long years as husband and wife. It was observed:

**“PRESUMPTION OF MARRIAGE**

34. At this juncture, it becomes imperative to address the question as to whether the relationship between the deceased Dasabovi and the plaintiffs' mother can be presumed to be a valid marital union, in the absence of formal documentary proof.

35. It would be beneficial to refer to *Badri Prasad v. Dy. Director of Consolidation (1978) 3 SCC 527*, wherein this Court held as follows:

“... A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. The law leans in favour of legitimacy and frowns upon bastardy. ...”

36. Similarly, in *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy 1927 SCC OnLine PC 51*, wherein the Privy Council observed that:

“...where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage”.

37. In *Mohabbat Ali Khan (Plaintiff) v. Mahomed Ibrahim Khan (Defendants) 1929 SCC OnLine PC 21*, the Privy Council observed that:

“... The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years. ...”

38. The foregoing authorities indicate that the legal position enunciates a presumption in favour of a marriage where a man and woman have engaged in prolonged and continuous cohabitation. Such a presumption, though rebuttable in nature, can only be displaced by unimpeachable evidence. Any circumstance that weakens this presumption ought not to be ignored by the Court. The burden lies heavily on the party seeking to question the cohabitation and to deprive the relationship of legal sanctity.”

22. A similar view was taken in *S.P.S. Balasubramanyam* (supra), *Ranganath Parmeshwar Panditrao Mali* (supra) and *Madan Mohan Singh* (supra).

23. In the present case, the cohabitation between plaintiff and defendant No.1, as per the case of defendant No.1, was not long, which would justify the drawing of the presumption.

24. In any case, there is no evidence of cohabitation between the plaintiff and defendant No. 1. Plaintiff Kailash Chand denied in his cross-examination that he and defendant No.1 resided together as husband and wife. Jagan Nath (PW2) also denied in his cross-examination that defendant No.1 resided as the plaintiff's wife in his house. He specifically stated that he had never seen defendant No.1 in the plaintiff's house. Nathu Ram (DW2) stated in his cross-examination that plaintiff and defendant No.1 resided as husband and wife for about one year, which is contrary to the admitted case of defendant No. 1 that she and the plaintiff had resided together for about 7-8 months. Thus, the evidence on record was insufficient to show a long cohabitation between the plaintiff and defendant No.1, and

the presumption could not have been drawn regarding the marriage.

25. Therefore, the learned Court below erred in holding that plaintiff and defendant No.1 were bound by the customary law and the marriage between them was solemnised as per the customary law. Hence, this substantial question of law is answered accordingly.

**Substantial Question of Law No.2:-**

26. Nathu Ram (DW2) stated in his proof affidavit (Ext.DB) that Deepa's parents and some other person came as there was some dispute between the plaintiff and defendant No.1. The plaintiff's parents called him (Nath Ram) for a compromise. A compromise was effected between the parties. Deepa stayed in the house of Kailash Chand as his wife and the parents of Deepa and other persons left. He admitted in his cross-examination that Khushi Ram, the uncle of the plaintiff, had contested the election against him. He admitted that he had not conducted any written proceedings regarding the dispute. The cross-examination of this witness shows that the relationship between him and the plaintiff's uncle was strained.

His statement that plaintiff and defendant No.1 were residing together as husband and wife for more than one year shows that he has improved upon the case of defendant No.1. Therefore, his testimony could not have been accepted.

27. Badri Prakash (DW3) stated that an agreement dated 08.01.2006 was written at the instance of plaintiff Kailash Chand, which was read over and explained to him, and he signed the agreement in the presence of Satish Chand (Pradhan) and Subhash Chand (witness). Subhash Chand (DW4) stated that the agreement was written in the shop of Badri Prakash between 11 and 12. Significantly, it was Sunday on 08.01.2006, and there is no explanation as to why the shop of Badri Prakash should be open on a Sunday, and he should be carrying out the business of stamp vending on a Sunday, which is a notified holiday.

28. The document (Ex. DW3/A) mentions that defendant No.1 had left her matrimonial home once/twice, and the matter was reported to Police Post PatliKuhhal and Pradhan Gram Panchayat Katrain. Therefore, the agreement was being executed to ensure that defendant No.1 would be treated

properly, and in case of maltreatment, defendant No.1 would have a right to approach Pradhan, Gram Panchayat or the Police.

29. There is no material on record to corroborate the contents of the document (Ext.DW3/A). Defendant No.1 did not state in her affidavit that she had left her matrimonial home once or twice due to some misunderstanding. She claimed that a complaint of beating was lodged with the police in January, 2006. However, the agreement (Ext.DW3/A) mentions that the complaint was made regarding leaving the matrimonial home. Hence, the learned Courts below were not justified in relying upon the undertaking to conclude the marriage.

30. In any case, it was rightly submitted on behalf of the plaintiff/appellant that the marriage can be solemnised as per the custom and not by the acknowledgement. Therefore, even if the plaintiff had admitted that defendant No.1 is his wife, it would not be sufficient to prove that the plaintiff and defendant No.1 were legally married, especially when the custom pleaded has not been proved. Hence, this substantial question of law is answered accordingly.

**Substantial Question of Law No.3:-**

31. Document (Ext.DW3/A) was an undertaking made by the plaintiff and not an agreement executed between the parties. An undertaking can amount to an admission, and there is nothing in law that requires that the undertaking should be signed by both parties. Therefore, this substantial question of law is answered accordingly.

**Substantial Question of Law No.4:-**

32. Learned Trial Court held that the custom was not proved but relied upon the presumption of marriage, which was not attracted to the present case because of the absence of proof of long cohabitation. Learned Appellate Court held that the custom was proved, but the custom held to be proved by the learned Appellate Court was never pleaded. Therefore, both the learned Courts below misappreciated the evidence on record, and the findings recorded by them are not sustainable. Hence, the substantial question of law is answered accordingly.

**Final Order:**

33. In view of the above, the present appeal is allowed and judgment and decree passed by learned Additional District

Judge (Fast Track) Kullu, dated 29.12.2007 in Civil Appeal No. 35/2007 and the judgment and decree of the learned Civil Judge (Senior Division) Kullu in Civil Suit No. 55 of 2006, decided on 19.07.2007 are ordered to be set aside and the suit of the plaintiff is ordered to be decreed for declaration that defendant no. 1 is not the legally wedded wife of the plaintiff and for permanent prohibitory injunction for restraining defendant no. 1 from proclaiming herself to be the wife of the plaintiff and the defendants from entering the plaintiffs house.

34. Hence, the present appeal stands disposed of and so are the pending miscellaneous application(s), if any.

35. Records of the learned Courts below be returned forthwith.

**(Rakesh Kainthla)**  
**Judge**

**9<sup>th</sup> April, 2026**  
*(Nikita)*