IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 49 of 2008
Reserved on: 01.09.2026
Date of Decision: 11.09.2026

Rajesh Bhatia (since deceased)
through his LRs & others ...Appellants

Versus

Ram Rattan (since deceased) through
his LRs & others ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes

For the appellants : Mr R.K. Bawa, Senior Advocate, through VC with Mr Ajay Kumar Sharma, Advocate.

Name of appellant no.1 deleted vide order dated 28.06.2017.

For the respondents : Mr Tek Chand Sharma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 13.11.2007, passed by learned District Judge (Forest), Shimla, District Shimla (learned appellate Court), vide

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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which the judgment and decree dated 01.04.2005, passed by learned Civil Judge (Jr. Division) Court No. 5, Shimla (learned trial Court), were set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

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 redemption of the mortgaged property mentioned in para one of the plaint. It was asserted that the plaintiff's predecessor had mortgaged the property in favour of the defendants. The defendants remained in possession of the suit property since the date of the mortgage. It was agreed that the net profit of the property would be applied for the payment of the interest and any surplus would be used to liquidate the principal. The whole mortgage amount was satisfied by the profits earned from the property. The plaintiffs were willing to pay any amount found due after the settlement of the account. Hence, the suit was filed for seeking the redemption.

3 The suit was opposed by filing a written statement, taking preliminary objections regarding lack of locus standi,

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cause of action and maintainability, the plaintiffs having suppressed the material facts from the Court, and the plaintiffs being estopped from filing the suit by their act, conduct, acquiescence, etc. It was admitted that Kanshi Ram, the predecessor- in-interest of the plaintiffs, had mortgaged the building existing on khasra No. 407/365/1, situated in Village Majthai, Tehsil and District Shimla in the year 1965. It was asserted that Kanshi Ram had entered into an agreement with the defendant on 15.07.1966 for the sale of the mortgaged property for a consideration of ₹3,500/-. He received ₹500/- as earnest money. The mortgage amount of ₹1,500/- was deducted from the sale consideration. Kanshi Ram executed a sale deed in favour of the defendants on 02.02.1968, which was duly registered in the office of the Sub-Registrar, Shimla, District Shimla, H.P. The defendants improved upon the property and raised further construction on it by spending more than ₹10,00,000/-. The defendants are in possession of the suit property continuously with the plaintiffs' knowledge since the year 1966. Plaintiffs had no right, title or interest over the suit property. Therefore, it was prayed that the suit be dismissed.

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4. A replication denying the contents of the written statement and affirming those of the plaint was filed. It was asserted that two biswas of land were sold to the defendants, but the mortgaged property was never sold to the defendants. Therefore, it was prayed that the suit be decreed.

5. Learned Trial Court framed the following issues on 13.11.2002.

1. Whether the plaintiffs are entitled to the mortgage amount of Rs. 3000/- or any other amount due on account of interest? OPP
2. Whether the plaintiff has got no locus standi to file the present suit? OPD
3. Whether the plaintiff has got no cause of action against the replying defendant? OPD
4. Whether the present suit is not maintainable? OPD
5. Whether the defendant is owner in possession of the property in dispute? OPD
6. Whether the plaintiffs are estopped from filing the present suit due to their own acts, deeds, conduct and acquiescence? OPD
7. Whether the plaintiffs are entitled for redemption of the above suit property without payment or on payment? OPD
8. Relief.

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6. The parties were called upon to produce the evidence. The plaintiffs examined Ram Rattan (PW-1). The defendants examined Pawan Sharma (DW-1) and Rajesh Bhatia (DW-2).

7. Learned trial Court held that the defendants' version that the suit property was sold by Kanshi Ram to the defendants was duly corroborated by the registered sale deed (Ext.PW-1/A). The sale deed did not mention any khasra number, but there is no requirement to do so. The plaintiffs had lost title after the execution of the sale deed. Hence, the learned trial Court answered issue Nos. 4 and 5 in the affirmative, the rest of the issues in the negative and dismissed the suit.

8. Being aggrieved by the judgment and decree passed by the learned trial Court, the plaintiffs filed an appeal which was decided by the learned District Judge (Forest), Shimla, District Shimla, H.P. (learned appellate Court). The learned appellate Court held that the sale deed mentioned the property by boundaries and not by Khasra numbers. There was no evidence to connect the property mentioned in the sale deed to the mortgaged property. The copies of jamabandies mentioned two mutations regarding the sale made by Ram Gopal etc. in

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favour of Gur Parshad, but they were not connected to the suit property. Learned trial Court erred in holding that the suit property was sold in favour of the defendant. Therefore, the appeal was allowed, and the judgment and decree passed by the learned trial Court were set aside.

9. Being aggrieved by the judgment and decree passed by the learned appellate Court, the defendants have filed the present appeal which was admitted on the following substantial questions of law on 08.12.2008: -

1. Whether the learned first appellate court has committed grave illegality by ignoring the admission of the plaintiff, i.e. PW-1, during the course of his statement before the court wherein he has admitted that Sh. Gur Parshad (deceased defendant) and his children (present appellants) are absolute owners in possession of the disputed land/property since 1968?
2. Whether the learned first appellate court has erred in law by not appreciating that the sale deed Ext. DW-1/A has been proved in accordance with law, and it has been established that respondents have no right, title and interest in the suit property?
3. Whether the learned first appellate court has erred in law by not appreciating that the jamabandies i.e. Ext DW-2/A, DW-2/B and attestation of mutation No. 1146 and 1147 in favour of appellants/defendants have been proved in accordance with law and such revenue record and mutation entries are made by public servant in the discharge of their official duties and are relevant in evidence and clearly establish the right,

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title and interest of the defendants/appellants over the suit properly?

10. I have heard Mr R.K. Bawa, learned Senior Advocate, assisted by Mr Ajay Kumar Sharma, learned counsel for the appellants/defendants and Mr Tek Chand Sharma, learned counsel for the respondents/plaintiffs.

11. Mr R.K. Bawa, learned Senior Advocate, for the appellant/defendants, submitted that the learned appellate Court erred in holding that the property mentioned in the sale deed was not connected to the suit property. There is no requirement to mention the khasra numbers in the sale deed, and there was sufficient evidence to connect the suit property to the property mentioned in the sale deed. Plaintiffs never disputed the execution of the sale deed. The sale deed was duly proved by examining the official from the office of the Sub-Registrar. The sale deed was executed more than 30 years ago, and a presumption of its due attestation and execution would be available under Section 90 of the Indian Evidence Act. Therefore, he prayed that the present appeal be allowed and judgment and decree passed by the Learned Appellate Court be set aside and

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those passed by the learned trial Court be restored. He relied upon the following judgments in support of his submissions:

- ***Jagan Nath and others vs. Rex 1949 SCC OnLine Ajm 45; and***
- ***Rajagopala Ayyar and another vs. Avadai Velar and others: 1960 SCC OnLine Mad 141***

12. Mr Tek Chand Sharma, learned counsel for the respondents/plaintiffs, submitted that whether the same deed was connected to this property or not is a pure question of fact and cannot be adjudicated while deciding the regular second appeal. The plaintiffs had specifically denied the sale of the suit property in the replication filed by them, and it was for the defendants to prove that the suit property and the property mentioned in the sale deed (Ext.DW1/A) are the same. The defendants have not filed the mutations, and the reliance could not have been placed upon the entries in the jamabandis. Therefore, he prayed that the present appeal be dismissed.

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

Substantial question No.1

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14. Ram Rattan (PW-1) admitted in this cross-examination that Gur Prahsad and his children are the absolute owners of the disputed property since 1968. He volunteered to say that they were residing in it. Thus, the plaintiffs had not made an unequivocal admission acknowledging the ownership of the defendant Gur Prahsad, but he had qualified it by saying that the defendants and his family members were residing in it. It was laid down by the Hon'ble Supreme Court in ***Mohd. Koya v. Muthukoya*, *(1979) 2 SCC 8: 1978 SCC OnLine SC 235,*** that the admission has to be read as a whole. It was observed at page 28:

> "**41.** .....It is well settled that an admission, unless it is separable, has to be taken as a whole or not at all. In the case of ***Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091]*** this Court observed as follows:
>
> > "It is settled law that an admission made by a person, whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all."
>
> To the same effect is the decision of this Court in the case of ***Palvinder Kaur v. State of Punjab [(1952) 2 SCC 177: AIR 1952 SC 354: 1953 SCR 94]*** where Mahajan, J., speaking for the Court, observed as follows:
>
> > "The court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well accepted rule regarding the use of confession and admission that these must either be accepted as a whole or rejected as a whole and that the court is not competent to accept only the

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> inculpatory part while rejecting the exculpatory part as inherently incredible."

42. The same view was taken in a recent decision of this Court in the case of ***Dadarao v. State of Maharashtra [(1974) 3 SCC 630: 1974 SCC (Cri) 120]*** where this Court observed as follows:

> "It may not, however, be overlooked that the admission made by the appellant must be read as a whole, for what he has stated is that he had made his signature in the account books of the branch office after an audit objection was raised that he ought to have signed the books at the end of every day in his managerial capacity. The statement of the appellant on this aspect is not capable of dissection because the particular part thereof on which the High Court relies is inextricably connected with the other part which the High Court has not taken into consideration."

15. Thus, the admission could not have been used to confer title upon the defendants.

16. In any case, the title is conferred by a sale deed properly executed in favour of a person. It was laid down by the Hon'ble Supreme Court in ***Canbank Financial Services Ltd. v. Custodian*****, *(2004) 8 SCC 355*****,** that an admission cannot confer any title upon a person. It was observed:

> **85.**...Creation of title by an act of parties is subject to law. Once a title vests in a person, he cannot be divested therefrom except by reason of or in accordance with a statute and not otherwise. An admission does not create a title; the logical corollary whereof would be that an admission of a party would not lead to relinquishment of

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his right therein, if he has otherwise acquired a title in the property.

17. A similar view was taken in ***Kanhirakottil Mani v. Madhavi, 2017 SCC OnLine Ker 519*** wherein it was observed:

> **27.** We shall examine the merit of the contention regarding admission first. The principle that an admission by itself cannot confer title to a property is well settled. Section 17 of the Evidence Act defines "admission", and Section 18 of the said Act deals with admission by a party to proceedings or his agent. Section 21 of the Evidence Act speaks about proof of admissions against persons making them, and by or on their behalf. Section 58 of the Evidence Act says that an admitted fact need not be proved. Although an admission is the best piece of evidence against the person making it, he can rebut the same. It is fundamental that admissions can be explained and proved to be erroneous.
>
> **28.** The Supreme Court in ***Ambika Prasad Thakur v. Ram Ekbal Rai (AIR 1966 SC 605)*** has considered inter alia the effect of admission by a party in respect of title. It is held that title cannot pass by a mere admission. The principle that an admission by itself cannot confer title to property has been laid down by this Court also.

18. Therefore, the title could not have been conferred upon the defendants by any admission, and this substantial question of law is answered accordingly.

Substantial question of law No.2

19. The defendants proved the sale deed by examining Pawan Sharma (DW-1), Registration Clerk, who brought the record maintained in the office of the Sub Registrar, Shimla,

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District, Shimla, H.P. It was laid down by the Karnataka High Court in ***Budavant Subraya Palekar v. Babu Vajra Chandavarkar, 2003 SCC OnLine Kar 148: ILR 2004 Kar 4068,*** that there is no distinction between the production of a certified copy and summoning of Volume-I from the office of the Sub Registrar, because the contents of Volume-I are no better than the certified copy. It was observed at page 4072:

> **"7.**....The evidence adduced by the defendant through PW 3 has no useful purpose to prove the case of the defendant about the execution. Volume-I, a book regularly maintained by the office of the Sub-Registrar, was summoned through PW 3, and he has given evidence saying that the certified copy of the document would be delivered to the public with reference to the contents of Volume-I. According to the procedure and practice, whenever a document is registered, the copy of the document is recorded in Volume-I for official purposes. Volume I does not contain the signatures or the LTM of the parties, which are usually taken on the original of the document. There does not appear to be any substantial distinction between production of a certified copy and summoning of Volume I. The contents of Volume I are no better than a certified copy issued by the Sub-Registrar. The Trial Court comes to the conclusion that, as the entries in Volume I relating to the transaction being 30 years old, a presumption is drawn under Section 90 of the Evidence Act."

20. Therefore, a document cannot be proved by examining an official/officer from the office of the Sub

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Registrar and by proving the certified copy as was done in the present case.

21. It was submitted that the document is 30 years old and is presumed to be validly executed under Section 90 of the Indian Evidence Act. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Lakhi Baruah v. Padma Kanta Kalita, (1996) 8 SCC*** 357, that the presumption under Section 90 of the Indian Evidence Act applies to the original document and not to the certified copy produced before the Court. It was observed: -

> **16.** So far as applicability of presumption arising from Section 90 of the Evidence Act, 1872 in respect of copy of the old document is concerned, the earliest decision of the Indian Court was made in 1880 in ***Khetter Chunder Mookerjee v. Khetter Paul Sreeterutno [ILR (1879-1880) 5 Cal 886: 6 CLR 199]***. Later on, in the decisions of various High Courts, the presumption under Section 90 was also made applicable to the certified copy. The Privy Council, upon review of the authorities, however, did not accept the decision rendered in ***Khetter [ILR (1879-1880) 5 Cal 886: 6 CLR 199]*** and other decisions of the High Court, where the presumption was attached also to copies, as correct. It was indicated that in view of the clear language of Section 90, the production of the particular document would be necessary for applying the statutory presumption under Section 90. If the document produced was a copy admitted under Section 65 as secondary evidence and it was produced from proper custody and

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was over thirty years old, then the signature authenticating the copy might be presumed to be genuine; but production of the copy was not sufficient to justify the presumption of due execution of the original under Section 90. In this connection, reference may be made to the decisions in ***Seethayya v. Subramanya Somayajulu [(1928-29) 56 IA 146: AIR 1929 PC 115] and Basant Singh v. Brij Raj Saran Singh [AIR 1935 PC 132: 1935 All LJ 847: 39 CWN 1057: 62 IA 180]***. In view of these Privy Council decisions, disproving the applicability of the presumption under Section 90 to the copy or the certified copy of an old document, in the subsequent decisions of the High Courts, it has been consistently held by different High Courts that production of a copy or a certified copy does not raise the presumption under Section 90.

17. The position since the aforesaid Privy Council decisions being followed by later decisions of different High Courts, is that presumption under Section 90 does not apply to a copy or a certified copy even though thirty years old; but if a foundation is laid for the admission of secondary evidence under Section 63 of the Evidence Act, 1872 by proof of loss or destruction of the original and the copy which is thirty years old is produced from proper custody, then only the signature authenticating the copy may under Section 90 be presumed to be genuine.

18. In the facts of this case, the presumption under Section 90 was not available on the certified copy produced by the defendants and, in our view, the High Court is justified in refusing to give such presumption in favour of the defendants. We may also indicate that it is the discretion of the court to refuse to give such presumption in favour of a party if, otherwise, there is occasion to doubt due execution of the document in question. The plaintiffs' definite case was that the deed of sale in favour of Holiram was a forged and fabricated document. In the aforesaid facts, there was a requirement to produce the original copy so that the question of due

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execution by Plaintiff 1 could have been contested by the parties.

22. This judgment was followed by the Hon'ble Supreme Court in ***Iqbal Basith v. N. Subbalakshmi*, (*2021*) 2 *SCC 718*.**

23. Therefore, no presumption could have been attached to the certified copy, and the submission of learned Senior Advocate for the appellants to this effect is not acceptable.

24. In any case, the sale deed (Ext.DW-1/A) mentions the building bounded on the North by road leading from Shimla to Jatog, on the South, by the land of the purchaser, on the East by a dilapidated house and the land of the seller and on the West, by the house of Lakshmi Ram. There is no evidence that the suit property in the present case has the boundaries specified in the sale deed. No witness deposed this fact, not even the defendants. Rajesh Bhatia (DW-2) has nowhere provided the boundaries of the suit property to connect it to the land mentioned in the sale deed. The sale deed does not mention that the building was mortgaged; rather, it mentions that the building was free from any encumbrances. Hence, the learned appellate Court was justified in holding that the sale deed is not connected to the suit land.

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25. It was submitted that it is not necessary to mention the Khasra numbers in the sale deed. There can be no dispute with this proposition of law. However, when the property has been sold by the boundaries, it was necessary to lead evidence to connect it to the suit property. Hence, the judgments in ***Jagan Nath*** (supra) and ***Rajagopala*** (supra) do not apply to the facts of the present case. Hence, this substantial question of law is answered accordingly.

Substantial question of law No.3.

26. Copy of Jamabandi for the year 1988-89 (Ext.DW-2/A) mentions that as per mutation No. 1147, Ram Gopal etc. had redeemed the mortgaged property. No person deposed that the property was redeemed during the pendency of the proceedings on 02.12.1984. Therefore, there was no basis for this note. Further, note number 3 mentions that as per mutation number 1146, Ram Gopal etc. had sold the land in favour of Gur Prashad. Learned appellate Court rightly held that no witness deposed this fact; even the defendants had not pleaded that Ramgopal etc. had sold the land during the pendency of the proceedings to the defendants. Therefore,

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these entries in the jamabandi could not have been used by the defendants to acquire title of the suit land.

27. The defendants had not filed the mutations but have only relied upon the copies of jamabandies. The mutations would have shown the Court as to what exactly had transpired at the time of its sanction and what kind of mutation was attested. In the absence of the mutations, the reliance could not have been placed upon the copies of jamabandi, and this substantial question of law is answered accordingly.

Final order:

28. In view of the above, there is no infirmity in the judgment and decree passed by the learned appellate Court requiring any interference from this Court. Hence, the present appeal fails, and it is dismissed. Pending application(s), if any, also stand disposed of.

29. A copy of the judgment, along with the records of the learned Courts below, be sent back forthwith.

(Rakesh Kainthla)
Judge

11th September, 2026
(ravinder)

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