

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 542 of 2008

Reserved on: 15.09.2026

Date of Decision: 28.09.2026

Sarnu (since deceased) through his LRs ...Appellants

Versus

Roshan Lal (since deceased) through his LRs. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the appellants : Mr Mohinder Verma, Advocate.

For the respondents : Mr O.P. Sharma, Senior Advocate,
with Mr Gurmeet Bhardwaj,
Advocate, for respondents No.1(a)
to 1(i).

Name of respondent No.2 stands
deleted vide order dated 04.10.2019.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment
and decree dated 21.06.2008, passed by learned Additional
District Judge –I, Kangra, at Dharamshala, District Kangra, H.P.

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

H.P. (learned appellate Court) vide which the judgment and decree, dated 25.10.2004, passed by the learned Civil Judge, Senior (Division), Jawali, District Kangra, H.P. (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 plaintiffs filed a civil suit before the learned trial Court for seeking a declaration that the plaintiffs and the defendant are joint owners of the suit land described in the head note of the plaint, and the entry in the revenue record showing the defendant to be in exclusive possession of the suit land is illegal, null and void. A consequential relief for permanent prohibitory injunction for restraining the defendant from interfering with the plaintiffs' right over the suit land was also sought. It was asserted that the plaintiffs and defendant are the joint owners of the suit land, who became the owners in equal share after the commencement of the H.P. Tenancy and Land Reforms Act. The defendant is the plaintiffs' real brother. He was managing the revenue entries, and the plaintiffs, being his younger brothers, had full faith in him. The defendant got a

mutation of ownership attested in his favour by mentioning himself to be the only person cultivating the suit land in connivance with the revenue staff without following the proper procedure. He prevented the plaintiffs from exercising their rights over the suit land. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objections regarding lack of locus standi, cause of action and maintainability, the plaintiffs being estopped by their acts and conduct from filing the present suit, and the plaintiffs having not come to the Court with clean hands. The contents of the plaint were denied on merits. It was asserted that the defendant is the exclusive owner in possession of the suit land and the plaintiffs have no concern with it. The suit was filed without any basis. Hence, it was prayed that the same be dismissed.

4. No replication was filed.

5. Learned trial Court framed the following issues on 09.12.1997:

1. Whether the plaintiffs are owner-in-possession

to the extent of 2/3rd share in the suit land, as alleged? OPP.

2. Whether the suit of the plaintiffs is not maintainable in the present form, as alleged? OPD.
3. Relief.

6. The parties were called upon to produce the evidence, and the plaintiffs examined Roshan Lal (PW-1), Jodh Raj (PW-2), Rattan Chand (PW-3), Jagjit Chand (PW-4), Mohinder Sood (PW-5) and Vir Singh (PW-6). The defendants examined Saran Dass (DW-1) and Durga Dass (DW-2).

7. Learned trial Court held that the defendant's name was recorded in the column of cultivation as Gair Maurusi tenant under Jodha Ram, landlord. There was no evidence to show that the suit land was in joint cultivating possession of the parties. The plaintiffs admitted that they used to remain out of the village in connection with their jobs, and that the defendant has no source of income except cultivation. The revenue entries carry with them a presumption of correctness, and the evidence was insufficient to rebut this presumption. The mutation of conferment of proprietary rights was attested in the year 1986. The Civil Court does not have the jurisdiction to go into the

validity of conferment of proprietary rights, and the suit for setting aside the entries was not maintainable. Hence the learned trial Court answered issue No. 1 in the negative, issue No. 2 in the affirmative 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 Additional District Judge-I, Kangra at Dharamshala (learned appellate Court). The learned appellate Court held that the defendant had taken the land of Jodhu on tenancy, which was being cultivated jointly by the parties. This fact was duly supported by the original landlord. The entries in favour of the defendant as exclusive tenant and conferment of proprietary rights in his favour were wrong. The trial Court had relied upon the photocopies of the documents, which is impermissible. The defendant admitted in his cross-examination that a dispute between him and the plaintiffs had occurred in December 1995, and the suit was within limitation. Thus, the learned appellate Court set aside the judgment and decree passed by the learned trial Court.

9. Being aggrieved by the judgment and decree passed by the learned appellate Court, the defendant has filed the present appeal which was admitted on the following substantial question of law on 24.10.2008: -

1. Whether the suit filed by the respondents is beyond the period of limitation, especially taking into consideration the documents Mark A to Mark F whereby the respondents have joined the proceedings before the Revenue authorities?
2. Whether long outstanding entries in favour of the present appellant are rebutted only by placing on record Ext.P-4, i.e. Jamabandi for the year 1978-79?

10. I have heard Mr Mohidner Verma, learned counsel for the appellants and Mr O.P. Sharma, learned Senior Advocate, assisted by Mr Gurmeet Bhardwaj, learned counsel for respondents No.1(a) to 1(i).

11. Mr Mohidner Verma, learned counsel for the appellants, submitted that the learned appellate Court erred in reversing the well-reasoned judgment passed by the learned trial Court. The appellants have filed an application under Order 41 Rule 27 of CPC for placing on record the certified copies of the correction application. The learned appellate Court held that the photocopies of the documents cannot be looked into. Therefore, it has become necessary to produce the certified copies to prove

that a correction had taken place. The documents sought to be produced on record are highly relevant for the adjudication of the controversy before the Court. Hence, he prayed that the present application be allowed. He further submitted that the proprietary rights were conferred in favour of the defendant in the year 1986. The plaintiffs had not challenged the conferment of proprietary rights. The learned trial court had rightly held that it is impermissible to file a civil suit, ignoring the conferment of proprietary rights. The suit was filed in the year 1996, and was hopelessly barred by limitation. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned appellate Court be set aside.

12. Mr O.P. Sharma, learned Senior Advocate, for the respondents No. 1(a) to 1(i) submitted that the learned trial Court had wrongly relied upon the photocopies of the documents and the learned appellate Court had rightly held that the judgment passed by the learned trial Court was not sustainable. The suit was not filed to challenge the conferment of proprietary rights, and the finding recorded by the learned trial Court that the suit was not maintainable is erroneous. The documents sought to be produced on record were within the

knowledge of the applicants and could have been produced before the learned trial Court or the learned appellate Court. No reason has been assigned for non-production of the documents before the learned trial Court or the learned appellate Court, and it is impermissible to produce these documents before this Court. Hence, he prayed that the application for additional evidence as well as the appeal be dismissed.

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

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14. The applicants have filed the present application for bringing on record the certified copies of the record of the correction application. It has been asserted that the photocopies of the correction proceedings were placed before the learned trial Court as Mark A to Mark F. Jodha Ram was the owner of the suit land and Sarnu was recorded to be a tenant in the copy of Jamabandi for the year 1972-73. However, the plaintiffs got their names incorporated in the column of possession as Gair Maurusi in the Jamabandi for the year 1978-79. The defendant filed an application for correction of the revenue entries, which was

allowed, and the correction was carried out in the Jamabandi for the year 1984-85. The authenticity of the Jamabandi for 1978-79 is in question, and the documents sought to be produced on record would assist the Court in determining this question. Hence, it was prayed that the present application be allowed and the certified copies be permitted to be taken on record.

15. The application is opposed by filing a reply asserting that the documents were within the knowledge of the applicants and could have been produced before the learned trial Court or the appellate court by exercising due diligence. The applicants cannot fill up the lacuna before this court. The provisions of H.P. Tenancy and Land Reforms Act have no bearing in the present case. The application has been filed to deprive the respondents of their rights. Hence, it was prayed that the present application be dismissed.

16. The applicants are seeking to place on record the certified copies of the proceedings for correction, which were carried out in the year 1980-83. The suit was filed in the year 1996. Therefore, the documents were in existence at the time of the filing of the suit. It was specifically stated in the application

for leading additional evidence that the photocopies of the documents were filed before the learned trial court. Thus, the applicants were aware of the existence of the documents. The defendant filed the photocopies before the learned trial Court and has not assigned any reason why the certified copies were not filed. It was held in *Sopanrao v. Syed Mehmood*, (2019) 7 SCC 76: (2019) 3 SCC (Civ) 467: 2019 SCC OnLine SC 821, that where no explanation was provided for the non-production of the documents, they cannot be taken on record. It was observed at page 81:

“13. At this stage, it would be pertinent to point out that the appellant-defendants, during the course of this appeal, have filed a number of applications to place on record certain documents which were not on the record of the trial court. No explanation has been given in any of these applications as to why these documents were not filed in the trial court. These documents cannot be looked into and entertained at this stage. The defendants did not file these documents before the trial court. No application was filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908, for leading additional evidence before the first appellate court or even before the High Court. Even the applications filed before us do not set out any reasons for not filing these documents earlier, and do not meet the requirements of Order 41 Rule 27 of the Code of Civil Procedure. Hence, the applications are rejected, and the documents cannot be taken into consideration.”

17. The learned appellate Court held that the learned trial Court had erred in relying upon the photocopies of the documents. The present application has been filed to get rid of the findings recorded by the learned appellate Court. It was laid down in *the North Eastern Railway Administration vs. Bhagwan Das*, (2008) 8 SCC 511, that the provisions of Order 41 Rule 27 do not enable an unsuccessful litigant to patch up the weak parts of his case. It was observed: -

“13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary, is not admitted, Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist. The circumstances under which additional evidence can be adduced are:

(i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted [clause (a) of sub-rule (1)], or

(ii) the party seeking to produce additional evidence establishes that, notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed

against was passed [clause (aa), inserted by Act 104 of 1976], or

(iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause [clause (b) of sub-rule (1)].

14. It is plain that under clause (b) of sub-rule (1) of Rule 27 Order 41 CPC, with which we are concerned in the instant case, evidence may be admitted by an appellate authority if it “requires” it to enable it to pronounce judgment, or for any other substantial cause. The scope of the Rule, in particular of clause (b), was examined way back in 1931 by the Privy Council in *Parsotim Thakur v. Lal Mohar Thakur* [AIR 1931 PC 143]. While observing that the provisions of Section 107 as elucidated by Order 41 Rule 27 are clearly not intended to allow the litigant, who has been unsuccessful in the lower court, to patch up the weak parts of his case and fill up omissions in the court of appeal, it was observed as follows : (AIR p. 148)

“... Under clause (1)(b), it is only where the appellate court ‘requires’ it (i.e. finds it needful) that additional evidence can be admitted. It may be required to enable the court to pronounce judgment, or for any other substantial cause, but in either case, it must be the court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but ‘when on examining the evidence as it stands some inherent lacuna or defect becomes apparent’.”

15. Again, in *K. Venkataramiah v. A. Seetharama Reddy* [AIR 1963 SC 1526 : (1964) 2 SCR 35], a Constitution Bench of this Court, while reiterating the aforementioned observations in *Parsotim case* [AIR 1931 PC 143], pointed out that the appellate court has the power to allow

additional evidence not only if it requires such evidence “to enable it to pronounce judgment” but also for “any other substantial cause”. There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so it cannot strictly say that it requires additional evidence “to enable it to pronounce judgment”, it still considers that, in the interest of justice, something which remains obscure should be filled in so that it can pronounce its judgment in a more satisfactory manner. Thus, the question whether looking into the documents, sought to be filed as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits.”

18. It was laid down by the Hon’ble Supreme Court in *Gobind Singh v. Union of India*, 2026 SCC OnLine SC 339, that the parties can lead evidence before the appellate court after satisfying the conditions provided under Order 41 Rule 27 of CPC. It was observed:

“11.2. In order to properly appreciate the controversy involved, it is necessary to first advert to the statutory provision applicable to the case at hand. Order XLI Rule 27 CPC reads as follows:

“27. Production of additional evidence in the appellate court. –

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if–

(a) ...

(aa) the party seeking to produce additional evidence establishes that, notwithstanding the

exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) ...the appellate court may allow such evidence or document to be produced, or a witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the Court shall record the reason for its admission.” (emphasis supplied)

11.3. Rule 27, being couched in negative terms, makes it abundantly clear that parties to an appeal are not entitled to adduce additional evidence, whether oral or documentary, save and except in the circumstances expressly enumerated therein. The provision contemplates only three eventualities in which additional evidence may be permitted: *first*, where the court which passed the decree has refused to admit evidence which ought to have been admitted; *second*, where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed; and *third*, where the appellate court itself requires any document to be produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause.

11.4. Accordingly, it is only upon satisfaction of any of the aforesaid three contingencies that an application under Order XLI Rule 27 CPC can be entertained. Sub-rule (2) of the said provision further mandates that where the appellate court forms an opinion that additional evidence is required to be admitted, it must record the reasons for such admission. While elucidating the scope and object of Order XLI Rule 27 CPC, this Court, in *Union of India v.*

Ibrahim Uddin (2012) 8 SCC 148, undertook an exhaustive analysis of the provision. The relevant extract is reproduced hereinafter:

“36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply when, on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

...

38. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage, where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence.

...

41. The words “for any other substantial cause” must be read with the word “requires” in the beginning of the sentence, so that it is only where, for any other substantial

cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment.” (emphasis supplied)

Thus, a holistic reading of the aforesaid decision makes it clear that the appellate court's inquiry, while considering an application for leading additional evidence, is confined to examining whether such evidence is necessary to remove a lacuna in the case. More importantly, the appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage. Consequently, the provision has no application where the appellate court is in a position to render a satisfactory and reasoned judgment on the basis of the evidence already available on record.

11.5. In *State of Karnataka v. K.C. Subramanya (2014) 13 SCC 468*, the appellants therein had moved an application before the appellate court under Order XLI Rule 27 CPC seeking leave to produce a map of the area to establish that the disputed land constituted a public road. This Court, while affirming the High Court's decision to reject the said application, held as follows:

“4. ...On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporate

conditions to the effect that the party, in spite of due diligence, could not produce the evidence, and the same cannot be allowed to be done at his leisure or sweet will.” (emphasis supplied)

This Court thus categorically held that unless the requirements stipulated under Order XLI Rule 27 CPC are strictly satisfied, a party cannot be permitted to adduce additional evidence at the appellate stage. Such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party.

11.6. Where the appellate court permits additional evidence to be adduced, Order XLI Rule 27(2) CPC casts a mandatory obligation upon the court to record the reasons for such admission. In *Ibrahim Uddin* (supra), this Court elucidated the rationale underlying the requirement of recording reasons in the following terms:

“**42.** Whenever the appellate court admits additional evidence, it *should record its reasons* for doing so (sub-rule (2)). It is a salutary provision which operates as a check against too easy a reception of evidence at a late stage of litigation, and the statement of reasons may inspire confidence and disarm objection. Another reason for this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the court of further appeal to see if the discretion under this Rule has been properly exercised by the court below. *The omission to record the reasons must, therefore, be treated as a serious defect.* But this provision is only Directory and not mandatory, if the reception of such evidence can be justified under the Rule.”

11.7. The procedural framework under Order XLI of CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the trial court. The appellate court is not expected to embark upon a

fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the appellate court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below.”

19. In the present case, the applicants could have produced the certified copies of the proceedings before the learned trial Court or the learned appellate Court and no reason has been assigned as to why they had not done so; therefore, the present application cannot be allowed, and it is dismissed.

Substantial question of law No. 1.

20. It is undisputed that a mutation of conferment of proprietary rights was attested in favour of the defendant in the year 1986. The copy of Jamabandi for the year 1984-85 contains an endorsement that a mutation No. 568 of conferment of proprietary rights was attested in favour of the defendant on 25.03.1986. The order of conferment of proprietary rights was passed by a competent officer in exercise of the jurisdiction conferred under the H.P. Tenancy and Land Reforms Act. The plaintiffs were required to set it aside by taking appropriate proceedings, and they could not have ignored the same. They have not challenged the order of conferment of proprietary

rights even in the present suit by claiming that the order was passed without jurisdiction or contrary to the fundamental provisions of law. Therefore, the order passed by the competent authority had attained finality. The plaintiffs filed the civil suit on 02.03.1996, after the lapse of ten years. The limitation to set aside an order passed by a competent authority is one year from the date of passing of the order under Article 100 of the Limitation Act. The learned trial Court had rightly held that the suit filed in the year 1996 was hopelessly barred by limitation.

21. The learned appellate Court held that the defendant admitted the existence of a dispute between the parties in December 1995, which was sufficient to confer the cause of action upon the defendant. However, the learned appellate Court conveniently ignored the order passed by the competent authority for the conferment of proprietary rights and the necessity to set it aside.

22. The plaintiff had cleverly drafted the present plaint by not mentioning the order passed by the competent authority and without seeking any declaration regarding its invalidity because a full bench of this Court had held in *Chuhniya Devi vs.*

Jindu Ram 1991 (1) Shim. LC 223, that the jurisdiction of the Civil Court to go into the question of the conferment of proprietary rights is barred except where there is a violation of natural law, the statutory authorities had not acted in conformity with the fundamental principle of judicial procedure or had not complied with the provisions of the Act. The plaintiffs could not have circumvented the judgment of this Court by ignoring the order. The passing of the order of conferment of proprietary rights would prevent the Court from exercising the jurisdiction to set it aside unless the requirements laid down in *Chuhniya Devi (supra)* are complied with. There is no whisper in the plaint or the evidence that the requirements specified in *Chuhniya Devi (supra)* were fulfilled in the present case. Therefore, it was impermissible for the learned appellate Court to ignore the order and pass a decree in favour of the plaintiffs by holding that the dispute had arisen in December, 1995.

23. Therefore, the learned appellate Court erred in holding that the suit was within limitation. Hence, this substantial question of law is answered accordingly.

Substantial question of law No. 2.

24. The copy of Jamabandi for the year 1972-73 (Ext.P1) mentions Jodha Ram to be the owner and Sarnu to be the tenant on the payment of 1/3rd produce. The names of the plaintiffs were incorporated in the copy of Jamabandi for the year 1978-79 along with the defendant. Plaintiff Roshan Lal admitted in his cross-examination that the plaintiffs' names were recorded for the first and only time in the copy of Jamabandi for the year 1978-79. He admitted that the entry in the plaintiffs' favour was corrected by the revenue authorities. Thus, the entry in the plaintiffs' favour was a stray entry, which was made for the year 1978-79 and was immediately corrected. Such a stray entry will not rebut the presumption attached to the revenue record, and the learned trial Court had rightly held that this entry is not sufficient to confer any rights upon the plaintiffs.

25. The plaintiff Roshan Lal (PW-1) stated that he had retired two years before the date of deposition. He volunteered to say that he had joined the service in the year 1984. Jodh Raj (PW-2) also admitted in his cross-examination that Tarlok and Roshan Lal served outside the village. Rattan Chand (PW-3) also

admitted in his cross-examination that Roshan Lal and Tarlok had served on a dam for 20-22 years. Vir Singh (PW-6) also admitted that Roshan Lal had served at the dam for 22 years. He could not say that Tarlok was serving at Ludhiana. Therefore, the statements of the plaintiffs' witnesses proved that the plaintiffs were employed and were not residing in the village. Therefore, the learned trial Court had rightly held that the plea taken by the plaintiffs that they were jointly cultivating the land with the defendant was not established.

26. The learned appellate Court heavily relied upon the statement of Jodh Raj (PW-2), who stated that he had given the land to Roshan Lal and his brother for raising the construction of the house and cultivating it. All three brothers had constructed the houses. They used to cultivate the land jointly, and he had not given the land to any of the brothers exclusively. The testimony of this witness will not assist the plaintiffs. He had lost title in the year 1986, after the conferment of proprietary rights, and any admission made by him after he ceased to be the owner of the property will be irrelevant as per Section 18 of the Indian Evidence Act.

27. Roshan Lal (PW-1) admitted in his cross-examination that abadi is located adjacent to the suit land. Jodh Raj (PW-2) also admitted this fact in his cross-examination. He further admitted that no demarcation was conducted in his presence to establish which portion of the house was located on abadi deh and which portion was located on the suit land; therefore, his testimony is not sufficient to establish the plaintiffs' possession.

28. Rattan Chand (PW-3) stated in his cross-examination that he could not say that all the brothers were residing separately since 30-35 years. He volunteered to say that they were working together. He admitted that he is related to Jodh Raj. Therefore, he cannot be called an independent person.

29. Vir Singh (PW-6) stated that he had seen three brothers residing together for 40-45 years; however, he had seen them residing separately for 20-22 years. He admitted in his cross-examination that the Girdawaries are correctly entered in the village.

30. Therefore, the statements of the witnesses of the plaintiffs were not sufficient to rebut the presumption of

correctness attached to the revenue record and learned appellate Court erred in holding that the parties were joint tenants of the suit land. Therefore, this substantial question of law is answered accordingly.

Final order:

31. In view of the above, the present appeal is allowed and the judgment and decree passed by the learned appellate Court in Civil Appeal No. 4-J/2005, in the case titled Roshan Lal & anr. vs Shri Sarnu, decided on 21.06.2008, are ordered to be set aside, while those passed by the learned trial court are ordered to be restored.

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

(Rakesh Kainthla)
Judge

28th September, 2026
(ravinder)