

RSA-2577-2015 (O&M)
and other connected case **1**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1.RSA-2577-2015 (O&M)

Surjit Kaur and another
....Appellants

Versus

Om Parkash and others
..Respondents

2.RSA-6118-2017 (O&M)

Karam Singh and another
....Appellants

Versus

Om Parkash and others
..Respondents

Date of decision:13.07.2022
Reserved on: 08.07.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vijay Lath and
Mr. Naveen Sharma, Advocates for the appellants
in RSA-2577-2015

Mr. Ramneek Vasudeva, Advocate for the appellants
in RSA-6118-2017

Mr. Ashwani Bakshi, Advocate for respondent no.1

ANIL KSHETARPAL, J

1. The Regular Second Appeal in the States of Punjab,
Haryana and Union Territory, Chandigarh are governed by Section 41 of

the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. By this judgment two connected Regular Second Appeals i.e RSA-2577 of 2015 and RSA-6118 of 2017 shall stand disposed of.

3. Both the appeals have been filed separately by defendant No. 9-10 and 11-12 in a suit filed for grant of decree of declaration, with a consequential relief of permanent injunction and in the alternative for grant of a decree for possession. The learned counsel representing the parties are ad idem that both these appeals can be conveniently disposed of by a common order.

4. In the opinion of this Court, the following question arises for adjudication:-

“Whether a certified copy of Roznamcha Waqiyati (diary) maintained by the village Patwari in discharge of his official duties, being a public document, is admissible in admission, in accordance with Section 74 read with Section 77 of the Indian Evidence Act, 1872?”

5. The defendants assail the correctness of the concurrent findings of fact arrived at by the courts below. Sh. Om Parkash son of Sh. Ram Nath @ Babu Ram filed the suit claiming that he was owner in possession of the land measuring 120 kanals and 12 marlas approximately being 1/6th share of the land measuring 723 kanals and 14 as per the Jamabandi for the year 1960-61. The suit land was situated in village Una, District Hoshiarpur but later on due to re-adjustment in the

district boundaries, it fell within the area of Tehsil Anandpur Sahib, District Ropar. On account of a decree for recovery of amount of Rs. 2721.44 in favour of Lala Vyas Ram and against Om Parkash, the land measuring 60 kanals and 6 marlas being 1/12th share of the land measuring 723 kanals and 14 marlas belonging to Om Parkash was attached by the warrants of attachment entered by the Patwari in its Roznamcha Waqiyati No. 56 dated 3rd October, 1960. The aforesaid land was sold in a court auction in favour of one Durga Das and the warrants of possession issued by the Civil Court were entered by the Patwari in Roznamcha Waqiyati No. 341 on 28th April, 1966 the evidencing the delivery of possession of the land measuring 60 kanals and 6 marlas. Thereafter, the mutation No. 713 with respect to land measuring 60 kanals and 6 marlas was entered by the Patwari in its record on 28th April, 1966 but it was sanctioned after nearly 3 years on 27th September, 1969 by wrongly reflecting that land measuring 70 kanals and 60 marlas have been sold in a public auction. Thereafter, in the Jamabandi for year 1970-71 the name of the plaintiff (Om Prakash) was wrongly deleted from the revenue record though he continued to remain owner of the remaining piece of land. The entry was wrongly recorded in favour of Radha Krishan son of Runila, Nathu son of Bholu, Hirda and Hansraj sons of Devi Sharan. These persons sold the property by executing various sale deeds though they had no right, title or interest vested in the said property. The revenue authorities in collusion with the various defendants, took benefit of the absence of the plaintiff, who is a resident of state of Gujarat. They started threatening to dispossess the plaintiff

resulting in filing of the suit. Defendant No. 7,9, 10, 11, 12, 14, 23, 37, 38, 46 and 41 contested the suit. In substance, they claim to be the bonafide purchasers of the property for the valuable sale consideration. It was claimed that in fact Roznamcha Waqiyati No. 56 and 341 entered by the Patwari are factually incorrect.

6. The plaintiff filed replications to the various written statements filed by the defendants. The court culled out the following issues:-

- 1) Whether the plaintiff is entitled to declaration as prayed for? OPP*
- (2) Whether the sale deed and subsequent revenue record as alleged in the head note of the plaint are illegal , null and void conferring no right and title to its vendee? OPP*
- (3) Whether the plaintiff is entitled to decree of permanent injunction? OPP*
- (4) Whether the plaintiff is entitled to alternative relief of possession? OPP*
- (5) Whether the suit is not maintainable in the present form? OPD*
- (6) Whether the suit is bad for mis - joinder and non - joinder of necessary parties? OPD*
- (7) Whether the defendants are bonafide purchasers of suit land? OPD*
- (8) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
- (9) Whether the suit time barred ? OPD*
- (10) Relief.”*

7. The plaintiff, in order to prove his case, examined PW-1 Rajendra Kumar son of Om Prakash (plaintiff's son) while producing the general power attorney, revenue record from the year 1960-61 and certified copies of Roznamcha Waqiyati No. 56 and 341 and also produced mutation No. 713 as documentary evidence. The defendants examined DW 1, Karam Singh, defendant No. 11, DW3, Om Parkash, defendant no.39, DW 4 Himmat Singh, defendant No. 14 and produced

various documents namely copies of the Jamabandi for the year 2008-09, mutation No. 1351,1352, 1354, 1381 and photostat copy of Khasra Girdawari for the kharif of 2006 to Rabbi of 2007 as Mark A.

8. On appreciation of the evidence, both the courts have decreed the suit filed by the plaintiff to the extent that he has been declared owner of the property and the deletion of his name from the revenue record has been declared illegal. It has been held that he continues to be owner of the remaining land except 60 kanals and 6 marlas which was sold through the court auction.

9. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook and the record of the courts below which was requisitioned. Shri Vijay Lath learned counsel representing defendant No. 9 and 10 has vehemently contended that the certified copy of the Roznamcha Waqiyati is not a public document, therefore, it is not admissible in evidence. While elaborating, he submits that the plaintiff has failed to prove his case and there is some discrepancy with regard to the amount of decree for recovery. Hence, he submits that the Roznamcha Waiqaiti is a suspicious document. Learned counsel representing defendant No. 10 and 11 while reiterating the arguments of the learned counsel representing defendant No. 9 and 10 has also contended it that the defendants are the bonafide purchasers and they are protected under Section 41 of the Transfer of Property Act, 1882.

10. Per contra, the learned counsel representing the plaintiff (respondent herein) while appreciating the correctness the judgments

passed by the courts below contended that the certified copies of the Roznamcha Waqiatu were admitted in evidence and being part of the revenue record, are admissible in evidence.

11. Keeping in view the arguments of the learned counsel representing the parties, the aforementioned question arises for adjudication. It may be noted here that Roznamcha Waqiatu is maintained by the Patwari of the village under Para 3.79 and 3.80 of Chapter III Part XXIV of the Punjab Land Records Manual. This Manual is being issued by the Financial Commissioner of the State of Punjab while compiling the previous standing orders. Clause 3.79 and 3.80 are extracted as under:-

“3.79 Diary- *The Patwari is required to keep diary (Roznamcha Waqiatu) work book (Roznamcha Karguzari).*

3.80 Village Diary and file of instruction – *The roznamcha waqiatu is the book in which occurrences relating to the patwari's duty and his circles are to be entered day by day. In this book to and fro movements of the patwari are also to be entered.”*

12. Section 151 of the Punjab Land Revenue Act, 1887 provides that the papers kept by the village officers will be deemed to be the public documents. Section 151 is extracted as under:-

“ 151. Papers kept by village-officers to be deemed public documents: - (1) Any record or paper which a village-officer is required by law, or by any rule under this Act, to prepare or keep shall be deemed to be the property of the Government. 1 of 1872: - (2) A village-officer shall, with respect to any such record or paper in his custody, be deemed for the purpose of the Indian Evidence Act, 1872, to be a public officer having the custody of a public document which any person has a right to inspect,”

13. The public documents are defined under Section 74 of the Indian Evidence Act, 1872. It includes the Acts or the records of the Acts, sovereign authority and official bodies and tribunals and of public officers, legislative, judicial or executive or a foreign country. The provision is extracted as under:-

74.Public documents.—The following documents are public documents :—

- (1) Documents forming the acts, or records of the acts—
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, 1[of any part of India or of the Commonwealth], or of a foreign country; 1[of any part of India or of the Commonwealth], or of a foreign country;"
- (2) Public records kept [in any State] of private documents.

14. Section 77 provides that production of certified copy of the contents of the public documents or parts of the public document shall be admissible in evidence, which is extracted as under:-

“77. Proof of documents by production of certified copies.—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. ”

15. It is evident from the provisions of the Punjab Land Revenue Act, 1887 read with Punjab Land Records Manual that the Roznamcha Waiqaiti is a public document maintained by the Patwari in discharge of his official duties. As per clause 3.81 of the Punjab Land Record Manual, the Patwari is required to enter various events, developments and other occurrences enlisted therein for the maintenance of record. It is also provided that such entry should be made with the

signature or seal of one of the village Headman concerned. It provides for the information with regard to the execution of the decree of the court, attachment proceedings, alienation or any alteration in the cultivation etc shall be entered therein. Roznamcha Waiqaiti is basically a diary of daily incidents maintained by the Patwari under executive instructions issued from time to time. Patwari makes an entry each day for the mentioning of aforementioned subjects.

16. Thus, the Patwari is entitled to issue a certified copy of the Roznamcha Waiqaiti on receipt of the prescribed fee. He has to certify its correctness before issuing a copy thereof. Thus, the aforesaid documents that are part of Roznamcha Waqaiti fulfill the requirements of being the public document. Consequently, the certified copies thereof are admissible in evidence. Hence, both the courts have not erred in admitting the aforesaid documents in evidence.

17. Learned counsel representing the appellant relies upon a judgment passed in **Sait Tarajee Khimchand And Ors. vs Yelamarti Satyam and others** (1972) 4 SCC 562. This Court has carefully read the aforesaid judgment. In that case, the plaintiff wanted to rely upon exhibits A-11 and A-13, the paybook and ledger, respectively. In that context the Supreme Court held that mere marking of such documents as exhibits does not dispense with the requirement of the proof of such documents. With greatest respect, the aforesaid judgment is not applicable to the facts of the present case.

18. The second argument of the learned Counsel representing defendant No. 11 and 12 is with respect to the plea of bonafide

purchasers. In fact, expression ‘bonafide purchaser’ is available only in Section 19 of the Specific Relief Act, 1963, which is entirely in a different context. Section 41 of the Transfer of Property Act, 1882, deals with a sale by an ostensible owner, which is extracted as under:-

“41. **Transfer by ostensible owner.**—Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

19. The Supreme Court while, dissecting the requirements of Section 41 of the Transfer of Property Act, 1882 in **Hardev Singh v. Gurmail Singh (Dead) By Lrs. . (2007) 2 SCC 404** has laid down as under:-

- a) the vendor should be the ostensible owner of the property.
- b) the sale must be **is** for valuable consideration.
- c) the owner by express or implied consent has admitted the ostensible owner to be the actual owner.
- d) the transferee has taken reasonable care to ascertain the title of the transferor

20. In the present case, there is no plea or evidence to prove that Om Prakash, the actual owner ever expressly or impliedly admitted the vendors of the defendants to be the owners. In the absence of the aforesaid, the appellants cannot be held to be the bonafide purchasers.

21. Keeping in view the aforesaid discussion, the conclusion is inevitable. Finding no merit in the case, both the appeals are ordered to be dismissed.

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22. All the pending miscellaneous applications, if any, are also disposed of.

13.07.2022
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE