

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

RSA No. 259 of 2025
Date of Decision: 25.11.2025.

Rajender Singh

.....Appellant.

Versus

Gurbachan Singh and others

.....Respondents

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Appellant : Mr. G.R. Palsra, Advocate.

For the respondents : Nemo

Bipin Chander Negi, Judge (oral).

The present appellant has filed this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), assailing the judgment and decree dated 10.09.2025, passed by the learned District Judge, Mandi, District Mandi, H.P. in Civil Appeal No. 41/2023, titled Rajender Singh vs. Gurbachan Singh and others, whereby the judgment and decree dated 30.06.2023, passed by the learned Civil Judge Court No. 3, Mandi,



District H.P. in Civil Suit No. 11583/2013, titled Gurbachan Singh and others vs. Rajender Singh and others, has been affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.

3. The facts material and relevant for the disposal of the present appeal are that the plaintiffs filed a suit seeking declaration and permanent injunction. Their case, as per the plaint, was that land situated in Muhal Nela/342, Tehsil Sadar, District Mandi, originally recorded under Khewat No.3 Majkoor, was owned by Gitta Nand. As per the Jamabandi Missal Haquiat Bandobast Jadid for 1962-65, the possession was shown with Budhiya and Santu, both sons of Dens, as non-occupancy tenants. The plaintiffs claimed to be the successors-in-interest of Santu. They averred that as per the Jamabandi for 2005-2006, the suit land, now bearing Khewat No.238/181, was recorded in their ownership and possession. However, in the column of 'Kafiat', defendants No. 1 and 2 (grandsons of Budhiya)



were recorded as owners of 1435/2686 shares. The plaintiffs contended that this entry was incorrect. Their case was that only Santu was the legitimate non-occupancy tenant under landlord Gitta Nand, and Budhiya was never inducted as a tenant, making the entry of his name in the 1962-65 record wrong and illegal.

4. They further stated that by operation of the H.P. Tenancy and Land Reforms Act, proprietary rights were granted exclusively to Santu vide notification dated 29.06.1976. After Santu's death in 1981, the plaintiffs inherited the land, with other legal heirs relinquishing their shares in their favour. The plaintiffs asserted exclusive ownership and possession, having sold and acquired parts of the land over time. They claimed to have discovered the wrongful entry of Budhiya's name only in March 2014. They challenged subsequent revenue entries, including Fard No.9 and Mutation No.1351, which recorded the share of late Budhiya in favour of defendants No. 1 and 2, and an exchange deed dated 25.04.2014 executed by these defendants in favour of defendant No. 3, alleging all



these actions were based on incorrect records and made in connivance with revenue staff.

5. The defendant No. 1, contesting the suit, asserted that the entries in the 1962-65 record showing both Budhiya and Santu as non-occupancy tenants were correct. He claimed that defendants No. 1 and 2, as legal heirs of Budhiya, were rightfully recorded with a 1435/2686 share in the suit land in the 2005-06 Jamabandi. The defendant contended that the 1976 notification granting ownership rights wrongly excluded Budhiya, and this error was corrected by revenue authorities vide Fard Bardar No.9 and Mutation No.1351 dated 29.05.2014. He argued that Budhiya and his successors had always been in possession and that the plaintiffs' suit, filed after about 50 years, was an afterthought.

6. The trial court framed the following issues on 08.03.2016:-

1. **Whether the plaintiff is entitled for the relief of declaration that revenue entries in Misal Haquiat Jadid concerning the alleged share of Budhiya son of Dens is wrong, null and void, as prayed for? OPP.**
2. **Whether the plaintiff is entitled for the relief of declaration that entries in Jamabandi for the year 2005-06 in favour of late Shri Budhiya and defendant is illegal, null and void? OPP.**



3. **Whether the plaintiff is entitled for the relief of declaration that exchange deed No.469/214 dated 25.04.2014 by the defendants No.1 and 2 in favour of defendant No.3 is wrong, null and void and liable to be cancelled, as alleged? OPP.**
4. **Whether the plaintiff is entitled for the relief of permanent prohibitory injunction, as prayed for? OPP.**
5. **Relief.**

7. After recording evidence, which included documents like the Misal Haquiat (Ext.PW1/C), Jamabandis, and a fact-finding report (Ext.PW1/N) concerning the patwari's action, the trial court decided issue No. 1 in the negative, holding the entries in the old Misal Haquiat (1962-65) regarding Budhiya were not proven to be wrong. However, it decided issues No. 2, 3 and 4 in favour of the plaintiffs. The court primarily relied on the fact-finding report (Ext.PW1/N) to hold that the patwari had made subsequent entries (Fard Badar No.9 and Mutation No.1351) in favour of Budhiya's successors without proper inquiry or following due procedure, and thus these entries in the 2005-06 Jamabandi and the consequential exchange deed were wrong and illegal. Accordingly, the suit was partly decreed.

8. Feeling aggrieved, the defendant No. 1 filed the first appeal. The grounds of appeal challenged



the judgment as wrong, illegal, and unsustainable. The appellant contended that once the trial court upheld the correctness of the original tenancy entry in favour of both Budhiya and Santu (Issue No.1), it was inconsistent to declare the subsequent entries reflecting Budhiya's share as illegal. It was argued that the name of Budhiya was illegally deleted by Santu behind his back, and the subsequent correction by revenue authorities in 2014 was valid.

9. The appellant emphasized that the defendants, as Budhiya's successors, were in continuous possession. It was further submitted that the trial court placed undue reliance on the preliminary fact-finding report (Ext.PW1/N) while ignoring a subsequent departmental inquiry that exonerated the patwari, Kehar Singh, of any misconduct. An application under Order XLI Rule 27 CPC was filed to bring this subsequent inquiry report and exoneration order dated 13.04.2016 on record. The appellant argued that these subsequent events were crucial for proper adjudication and that the findings of the trial court were contrary to the evidence.



10. The first appellate court, however, dismissed the application filed under Order XLI Rule 27 CPC as well as the appeal and affirmed the judgment and decree of the trial court. It is against this dismissal of the first appeal that the present second appeal has been preferred.

11. Heard Counsel for the Appellant, perused the impugned judgements.

12. The foundational revenue record, namely the Jamabandi for 1960-61 (Ext. PW1/B) and the Misal Haquiyat Bandobast Jadid for 1962-65 (Ext. PW1/C), indisputably recorded the suit land as being owned by Gitta Nand and in the possession of two individuals, Budhiya and Santu, both sons of Dens, as gair morusi (non-occupancy) tenants. This constituted the prima facie position as of the mid-1960s.

13. A significant administrative determination was made by the revenue authorities in the Fard Partaal for the year 1970-71 (Ext. PW1/P). This document, which reflects an on-the-spot verification, conclusively recorded that the cultivating possession of the suit land at that time was exclusively with Santu.



This finding was not a mere clerical entry but a substantive determination following a revenue process. Acting upon this finding, the subsequent revenue record, the Jamabandi for 1975-76 (Ext. PW1/E), correctly reflected Santu as the sole gair morusi tenant. The legal landscape then changed with the coming into force of the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

14. In accordance with its provisions, proprietary rights were conferred upon the recorded tenant, Santu, vide a formal notification dated 29.06.1976, a fact duly recorded in the remarks column of Ext. PW1/E. This transformed Santu's status from a tenant to an owner. This ownership was consistently reflected in all subsequent jamabandis, including Ext. PW1/F for 1980-81. Upon Santu's demise, his legal heirs, the plaintiffs, were duly recorded as owners vide Mutation No. 216, and their ownership and possession remained uncontested for over three decades. This continuity is further fortified by the fact that when a portion of the suit land was acquired by the state in 1997, compensation was



assessed and paid exclusively to the plaintiffs, without any rival claim being raised by the family of Budhiya.

15. The testimony of defendant No.1, who appeared as DW1, critically undermines the defendants' case. During cross-examination, he made admissions of a decisive nature. Significantly, he professed no awareness of the Fard Partaal for the year 1970-71 (Ext. PW1/P), a critical revenue document that established exclusive possession. More crucially, he acknowledged that neither his father, Natha Singh, nor his grandfather, Budhiya, ever initiated any legal action to contest the ownership or possession of Santu at any point during their lives. He further conceded that no discourse or claim regarding any dispute over this land existed within his family's knowledge. These admissions are wholly inconsistent with a claim of concurrent possession or a shared interest in valuable property over several generations. They corroborate the plaintiffs' assertion that Budhiya's line had long ceased to have any connection with the suit land.



16. The controversy in the present suit was triggered in 2014, nearly five decades after the 1965 record and over four decades after the exclusive possession of Santu was established. In that year, the local Patwari, purportedly acting under Fard Badar No.9, made an entry in the column of 'Kafiat' of the Jamabandi for 2005-06 (Ext. PW1/L) and attested Mutation No. 1351. These entries purported to show that the deceased Budhiya had a 1435/2686 share in the ownership of the suit land and that this share had devolved upon defendants No.1 and 2. This action lies at the heart of the dispute.

17. The legal character of a "Fard Badar" is well-defined. It is an administrative tool meant for the correction of minor, clerical, or accidental mistakes in the revenue record, such as typographical errors or incorrect plot numbers. It is not, and cannot be, a vehicle for adjudicating substantive rights of ownership or for effecting a change in title based on a contested claim of inheritance or tenancy. The conferment of ownership rights, or the declaration of heirship in a contested scenario, is a substantive legal act that must



emanate from a competent judicial forum or follow a rigorous statutory process prescribed under the relevant tenancy or land revenue act.

18. The Patwari's unilateral action, taken without any notice or opportunity of hearing to the recorded owners of nearly forty years i.e the plaintiffs was a gross violation of the principles of natural justice and was wholly without jurisdiction. Such an entry, made in patent disregard of the established record and due process, is a nullity in the eyes of law and cannot create any right, title, or interest in favour of the defendants. Therefore, the 2014 entries, being the product of a fundamentally flawed process, are void *ab initio* and confer no legitimacy upon the defendants' claim.

19. A necessary corollary of the above finding is the status of the exchange deed (Ext. PW1/J) dated 25.04.2014, executed by defendants No.1 and 2 in favour of defendant No.3. The foundational principle of property law, *nemo dat quod non habet* (no one can give what he does not have), applies with full force. Since defendants No.1 and 2 acquired no legal title or



interest in the suit land through the void revenue entries of 2014, they possessed nothing of legal value to exchange. Consequently, the exchange deed, being founded on a non-existent title, is itself void and incapable of transferring any rights to defendant No.3.

20. In conclusion, the plaintiffs have successfully demonstrated a clear chain of title originating from the exclusive tenancy and subsequent ownership of Santu, which has been perfected over time and remains undisturbed by any lawful challenge. The defendants' claim, based solely on a recent and illegal manipulation of the revenue record, is devoid of merit. The plaintiffs, as the established and lawful owners in possession, are rightly entitled to the protection of the court by way of a permanent injunction restraining the defendants from interfering with their peaceful enjoyment of the suit land. The impugned judgment and decree correctly appreciated this legal and factual position.

21. In the aforesaid facts and attending circumstances, there arises no question of law, much-less a substantial question of law for consideration of



the Court, therefore, the present appeal is dismissed being devoid of merit. Pending miscellaneous applications, if any, also stand disposed of.

(Bipin Chander Negi)
Judge

25th November, 2025
(*Susheel/T.B.*)