

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

**RSA No. 30 of 2006**

**Reserved on: 03.03.2026**

**Date of Decision: 25.03.2026**

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Sharwan Lal and others ...Appellants.

Versus

Ses Ram (deceased) through LRs & Ors ...Respondents.

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*Coram*

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

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

For the Appellants : Mr Vinod Thakur, Advocate.

For the Respondents : Ms Anita, Advocate, vice Ms Anu Tuli, Advocate, Legal Aid Counsel, for respondent No. 1(a).

Mr Sanjeev Kuthiala, Senior Advocate, with Ms Tamanna Sharma, Advocate, for respondents No. 1(b) to 1(g).

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**Rakesh Kainthla, Judge**

The present appeal is directed against the judgment and decree dated 29.12.2005 passed by learned District Judge, Kullu, vide which the appeal filed by Ses Ram (original plaintiff) was allowed and the judgment and decree passed by the learned Civil Judge, Jr. Division, Manali camp at Kullu, District Kullu,

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

H.P. (learned Trial Court) were set aside. *(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 seeking a declaration that mutation Nos. 900 and 903 of Phati Dunkhrigar attested on 13.06.2003, passed by learned Assistant Collector 2<sup>nd</sup> Grade Kullu in favour of the defendant, are illegal, null and void and not binding upon the plaintiff. It was asserted that Rirku, grandfather of the plaintiff, was the owner in possession of the land mentioned in para (1) of the plaint. His sons, Shupu, Birbal @ Popi, Chappu, Fagnu and Jogni, inherited the land in equal shares after his death. Chappu died about 51 years before the institution of the suit, and his estate was inherited by the plaintiff. Shupu gifted his entire property to the plaintiff. Birbal @ Popi died 29 years before the institution of a suit, and his share was inherited by his son and widow. Jogi died issueless about 26 years before the institution of the suit, and his estate was inherited by Shupu and Fagnu. However, his share was mutated in favour of Shupu, Fagnu and Reshmu (defendant) in equal share vide mutation No. 903.

Fagnu died issueless, and his estate was mutated in favour of Shupu and Reshmu vide mutation No. 900. The plaintiff preferred an appeal before Collector, Kullu, which was decided in his favour. The defendant preferred an appeal before the Divisional Commissioner, which was decided in his favour. The plaintiff filed a further appeal before the Financial Commissioner, and this appeal was allowed. Mutations Nos 900 and 903 were ordered to be reviewed. Learned Assistant Collector 2<sup>nd</sup> Grade attested the mutation in favour of the defendant regarding the estate of Jogi and Fagnu. Hence, a civil suit was filed seeking the relief mentioned above.

3. The suit was opposed by filing a written statement, taking preliminary objections regarding lack of maintainability, improper valuation, insufficient description of the suit land, plaintiff being estopped from filing the present suit, and the suit being barred by limitation. It was admitted that the suit land was earlier owned by Rirku, the plaintiff's grandfather; the estate of Rirku was inherited by his sons, and the estate of Birbal @ Popi was inherited by his sons and widow. It was admitted that Jogi was survived by Shupu, Fagnu and Reshmu and mutation No. 903 was attested to this effect. It was also admitted that Fagnu

remained unmarried, and his estate was inherited by Shupu and Reshmu. It was asserted that the plaintiff is estopped from denying that Reshmu is the daughter of Rirku because he had not disputed this fact during the mutation proceeding. It was claimed that the mutations were rightly attested in favour of the defendant. Therefore, it was prayed that the suit be dismissed.

4. No replication was filed.

5. The learned Trial Court framed the following issues on 03.08.2004: -

1. Whether the plaintiff is the owner in possession of the suit land as alleged? OPP.
2. Whether the mutations no. 900 and 903 are wrong and illegal, as alleged? OPP.
3. Whether the plaintiff is entitled to the prohibitory injunction prayed for? OPP.
4. Whether the plaintiff has a cause of action? OPP.
5. Whether the suit is not maintainable in the present form? OPD.
6. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPD
7. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD
8. Whether the suit is time-barred? OPD
9. Whether the defendant is the daughter of late Sh. Rirku as alleged. If so, its effect? OPD
10. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined himself (PW-1), and the defendant examined herself (DW1).

7. The learned Trial Court held that the plaintiff had stated in his cross-examination that Reshmu might be the daughter of Rirku, but her name was not mentioned in the record. The copy of the birth certificate (Ext.D5) showed that one daughter was born to Rirku on 28.01.1924. This entry was recorded on 08.02.1924. The entry and the statement in the cross-examination that Reshmu might be the daughter of Rirku corroborated the defendant's version that she is the daughter of Rirku and entitled to succeed the estate of her brothers. Hence, the learned Trial Court answered issue Nos. 5 and 9 in affirmative, the rest of the issues in negative, and dismissed the plaintiff's suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff preferred an appeal, which was decided by learned District Judge Kullu (learned Appellate Court). The learned Appellate Court held that the defendant was bound to prove that she is the daughter of Rirku.

She relied upon the birth certificate, in which it was mentioned that one female child was born to Rirku. The name of the child was not mentioned in the certificate. Rirku had died on 11.09.1923, and the child was born on 28.01.1924, after the death of Rirku. This was contrary to the defendant's claim that Rirku had died when she was six months old. The entries in the birth and death registers cannot be used to prove the relationship or the identity of a person. The relationship can be proved under Section 50 of the Indian Evidence Act by proving the opinion expressed by the conduct of the persons whose knowledge of the relationship is material. No such evidence was led. The defendant was not proved to be the daughter of Rirku. Fagnu and Shupu inherited the estate of Jogi after his death, and Shupu inherited the estate of Fagnu after his death. Shupu executed a Will in the plaintiff's favour. Hence, the plaintiff was entitled to the declaration sought by him. Learned Trial Court erred in dismissing the suit. Therefore, the appeal filed by the plaintiff was allowed, the judgment and decree passed by the learned Trial Court were set aside, and the plaintiff's suit was decreed.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the legal representatives of the

defendant have preferred the present appeal, which was admitted on the following substantial questions of law on 20.01.2006:-

1. Whether in a suit where a certificate of registration, issued by Registrar of Births & Deaths in prima facie admissible under Section 35 of the Indian Evidence Act, being a public document and having come from proper custody, and there was no necessity of examining any witness to prove it. If so, its effect thereupon?
  2. Whether the genuineness of a certificate must be presumed under Section 79 of the Indian Evidence Act, and the evidence of the registering officer is not necessary to prove the same. If so, its effect thereupon?
  3. Whether, in case a judgment having been passed by the competent authority as envisaged under a statute and the same having attained finality, in the present case the learned Financial Commissioner and there being a specific bar under Section 171(2) (vi) that the jurisdiction of the civil court is barred the suit for quashing the mutations is maintainable in the present form?
10. I have heard Mr Vinod Thakur, learned counsel for the appellants, Ms Anita, Advocate, vice Ms Anu Tuli, Advocate, learned Legal Aid Counsel, for respondent No.1(a) and Mr Sanjeev Kuthiala, learned Senior Advocate, assisted by Ms. Tamanna Sharma, learned counsel for respondents No.1(b) to 1(g).
11. Mr Vinod Thakur, learned counsel for the appellants, submitted that the learned Appellate Court erred in reversing

the well-reasoned judgment of the learned Trial Court. The defendant had relied upon her birth certificate to show that a daughter was born to Rirku. The plaintiff did not specifically deny that one daughter was born to Rirku. This was sufficient to establish the relationship between the defendant and Rirku. The plaintiff had filed a civil suit for setting aside the mutation, which is barred under Section 171(2) (vi) of the HP Land Revenue Act, and the learned Courts below erred in entertaining the suit. Therefore, he prayed that the present appeal be allowed, the judgment and decree passed by the learned Appellate Court be set aside, and the judgment and decree passed by the learned Trial Court be restored.

12. Mr Sanjeev Kuthiala, learned Senior Advocate for the respondents No. 1(b) to 1(g), submitted that the relationship cannot be proved by producing the birth certificate, and the learned Appellate Court was right in holding that the opinion of the person knowing about the relationship was required to be proved to establish the relationship. The defendant has filed an application for additional evidence to prove the public record, which is *per se* admissible. This record shows that Reshmu was nowhere recorded as the daughter of Rirku. Therefore, he prayed

that the application for additional evidence be allowed and the appeal be dismissed.

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

**Additional Evidence**

14. Before advertng to substantial questions of law framed by this Court, it is necessary to dispose of the application [CMP No. 12810/2014] for leading additional evidence by proving the document on record. It has been asserted that Reshmu was never entered as a daughter of Rirku in the Pariwar register or genealogical table. Ses Ram had obtained the documents before his death, and his legal representatives found the documents in the last week of July 2014. The documents are essential for determining the controversy pending before the Court. Hence, the application.

15. No reply to the application was filed.

16. The plaintiff had filed a civil suit on 06.01.2004, which was decided on 14.06.2005. An appeal was presented on 08.08.2005, which was decided on 29.12.2005. The documents sought to be proved on record are the photocopies of the public

documents that existed before filing the suit. There is no explanation at all as to why the documents sought to be produced on record could not be produced before the learned Trial Court or the Appellate Court. It was held in *Sopanrao v. Syed Mehmood*, (2019) 7 SCC 76: (2019) 3 SCC (Civ) 467: 2019 SCC OnLine SC 821 that where the documents were not filed before the learned Courts below, and no explanation was provided for their non-production, 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. It was held in *Jagdish Prasad Patel v. Shivnath*, (2019) 6 SCC 82: (2019) 3 SCC (Civ) 112: 2019 SCC OnLine SC 492 that the

additional evidence can be led when the Trial Court had refused to admit the evidence, the evidence was not available despite the exercise of due diligence and the evidence is required by the Court to effectively adjudicate the dispute pending before it. It was observed at page 96: -

“29. Under Order 41 Rule 27 CPC, the production of additional evidence, whether oral or documentary, is permitted only under three circumstances, which are:

(I) where the trial court had refused to admit the evidence, though it ought to have been admitted;

(II) the evidence was not available to the party despite the exercise of due diligence; and

(III) the appellate court required the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

An application for the production of additional evidence cannot be allowed if the appellant was not diligent in producing the relevant documents in the lower court. However, in the interest of justice and when satisfactory reasons are given, the court can receive additional documents.”

18. It was laid down in *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 but 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” 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 up 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.”

19. 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:

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**“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.”

20. In the present case, the documents sought to be proved on record were public and could have been produced before the learned Trial Court or the learned Appellate Court by exercising due diligence. No reason has been assigned for not producing the documents before the learned Trial Court or the

learned Appellate Court, and it is impermissible to produce them before this Court.

21. The documents sought to be produced are photocopies of the public record. Section 65(e) permits the party to give the secondary evidence when the original is a public document, but it also provides that when the original is a public document, its certified copy and no other kind of secondary evidence is admissible. It was laid down by the Patna High Court in *Jai Gopal Singh v. Divisional Forest Officer, 1953 SCC OnLine Pat 29: AIR 1953 Pat 310* that it is impermissible to lead any other evidence except the certified copy of the public document. It was observed at page 311:

“12. What constitutes primary evidence in the case of a document is defined in S. 62. The secondary evidence is defined in S. 63, and under cl. (5) of that section, an oral account of the contents of a document given by some person who has himself seen it is also secondary evidence. But S. 64 says that “documents must be proved by primary evidence except in the cases hereinafter mentioned”. Section 65 gives the list of cases in which secondary evidence may be given of the existence, condition or contents of a document. It has got seven clauses. Clause (e) of that section speaks about a case when the original is a public document within the meaning of S. 74. In the present case, the original of the notification is in the form of an official Gazette, which, under S. 74, Evidence Act, is a public document. As to such

a document, the provision laid down in S. 65 says that “a certified copy of the document, but no other kind of secondary evidence, is admissible”. In this view of the provisions of law, I think, the notification under Section 30 of the Bihar Private Protected Forests Act, 1947, being in the form of a public document, namely, the official Gazette, cannot be proved by any other kind of secondary evidence save by its certified copy.”

22. A similar view was taken by Allahabad High Court in

*Ganesh Prasad v. Badri Prasad Bholanath, 1980 SCC OnLine All 887:*

*AIR 1980 All 361*, wherein it was observed at page 362:

6.....The court below has further relied upon another assessment list of the subsequent quinquennial in which, according to it, the name of Umesh Chandra Gupta is mentioned. I do not find any certified copy of the aforesaid year. The learned counsel for the respondent pointed out that there were two papers, 126C and 127C, which were filed in court, and subsequently the same were proved by the clerk concerned. These papers were filed per list 125/C by the defendant's counsel, Sri Satya Narain Mishra, Advocate, on 4-3-1978 after remand. I have looked at these papers. These papers are not certified copies issued by the Municipal Board in accordance with Section 33 of the Municipalities Act. These have been issued by one Rashid Ali. They do not bear either any copying stamp, Folio or seal of the Municipal Board. That also did not come under the definition of certified copies as required by Section 65 of the Evidence Act. I compared these papers with the certified copy on record, and I find that these papers were incorrect and wholly inadmissible in evidence. They were not issued by the Municipal Board as required, and further, these papers, not being the certified copies, were inadmissible as provided by Cl. (f) of Sec. 65 read with its proviso. This proviso completely barred any other kind of secondary evidence except a certified copy.”

23. Therefore, the defendant can only prove the certified copy, and the photocopy of the certified copy is not admissible.

24. Consequently, the present application fails, and it is dismissed.

**Substantial Question of Law Nos. 1 and 2**

25. These substantial questions of law are intricately connected and are taken up together for consideration.

26. The defendant relied upon the birth certificate to prove her relationship to Rirku. Learned Appellate Court had rightly held that the entry in the birth certificate is *per se* admissible, but there must be some evidence that the entry pertained to a particular person. It was held by the Calcutta High Court in *Hemanta Kumar Das v. Allianz & Stuttgarter Insurance Co. Ltd.*, 1937 SCC OnLine Cal 158: AIR 1938 Cal 120 that entries in the birth and register are not sufficient without identification. It was observed:

“These extracts were produced by a clerk in the health department of the Corporation of Calcutta, who had no personal knowledge about the entries and could not vouch for their correctness. No attempt was made to identify the persons named therein. It was suggested on behalf of the defendants that these entries refer to the assured and his daughter and wife. and show that he

could not have been of the age stated by him. In my opinion, they cannot be accepted without evidence of identification, and are not sufficient in law without such evidence of identification to establish the defendants' case. As was held in *Draycott v. Talbot* (1 E.R. 1501), entries of the names of persons in a register of births or deaths or marriages cannot be positive evidence of the birth, death or marriage of such persons unless their identity is fully proved. See also Woodroffe's Law of Evidence Edn., 9 at page 394. (c) A certified copy of the entry of registration of a deed presented by one Noot Behari Das of 66, Simla Street, Calcutta, in August 1891, at the Calcutta Registry office, which purports to have been executed by Bhairamani Dasi of 97, Naranoshi Gosh Street. This copy of the entry is admissible in evidence under Sections 74 and 77, Evidence Act, as proof of the entry but not of the contents of the deed; see Woodroffe's Law of Evidence Edn., 9 page 570.

27. Nagpur High Court also held in *State Government v. Kamruddin Imamoddin*, 1955 SCC OnLine MP 72: AIR 1956 Nag 74 that the identity of the person mentioned in the entry is required to be proved by independent evidence. It was observed at page 76:

“27. True, the entry shows that the name of the girl born to Laxman on 10-9-1939 is Jai, but, in our opinion, the name ‘Jai’ written on 29-10-1939 is not admissible in evidence without there being independent evidence to prove it. The Birth and Death Register is no doubt a document within the meaning of Section 35 of the Evidence Act and is therefore relevant and has evidentiary value. But this does not mean that each and every entry made in that register is admissible in evidence.

28. Only such entries as are made therein by persons in the discharge of their official duty are 1 admissible. The relevant rules do not show that any duty is enjoined on the person concerned to note the name of the child born. Lord Parker of Waddington, in delivering the judgment of the Judicial Committee of the Privy Council in — '*Rai Bhaiya Dirgaj Deo Bahadur v. Beni Mahto*', AIR 1917 PC 197 (1) (C), observed at page 197 (1):

“Now, clearly this register is an official document, and therefore it is admissible in evidence under Section 35 of the Indian Evidence Act. It may be possible that in the case of such a document, if it could be shown that any particular part was in excess of the official duty by reason of which it came into existence, that part might not be admissible, but no attempt has been made to show this in the present case.”

29. In the present case, it has been shown that the name of “Jai” was written in Ex. P-9 in excess of the official duty imposed on the person maintaining the register. This part of Exhibit P-9 is, therefore, inadmissible in evidence unless it is established by independent evidence. The entry was made on 29-10-1939. The person who has made it is not examined. Shravan (P.W. 9), who is examined in connection with Exhibit P-9, admits that he did not know who had made that entry in the register.

31. The identity of that person has to be fully established by other evidence: — '*Hemanta Kumar v. Alliantz Und Stuttgarter Life Insurance Co. Ltd.*', AIR 1938 Cal 120 (D) and — '*Biseswar Misra v. The King*', AIR 1949 Orissa 22 (E).”

28. It was laid down by the Bombay High Court in *Paryanibai Raghoji Dhendge v. Bajirao Deorao Marathe*, 1961 SCC OnLine Bom 51: (1962) 64 Bom LR 86 that an entry in the birth and death register is admissible under Section 35 of the Indian

Evidence Act, but some evidence must be led to prove the identity of the person. It was observed at page 89:

“11....It is no doubt true that the entry regarding the birth maintained in the *Kotvari* book, like a birth register, is receivable in evidence under s. 35 of the Indian Evidence Act. But it is wrong to assume that mere filing of a copy of an entry in the birth register or the *kotwari* book proves *ipso facto* that the entry relates to or proves the birth of the person concerned; evidence has to be introduced to connect that entry with the person whose date of birth has to be established. Thus, the learned Judges of the Courts below were wrong in finding that merely because a certified copy of the entry of the date of birth from the *kotwari* book was filed at exh. D-S and P.W. 1, Paryanibai admitted that Mathurabai was called Gajri and that her father's name was Gunaji. This much material on record automatically established that Mathurabai was born on the date mentioned in exh, D-8. It was necessary for the defendant to further lead evidence to prove by calling relations or some other persons that Mathurabai was born at the village from which the book entry is produced, that she was born to Gunaji, the number of children that Gunaji had and that the report of the birth was made in respect of the birth of Mathurabai. If this necessary and vital link is missing in the chain of evidence, then the defendant must be taken to have failed to connect the entry in the *kotwari* book register as the entry with respect to the date of birth of Mathurabai, which fact had to be proved by the defendant. It is only necessary to invite attention in this case to a few decisions such as *State of M.P. v. Kamruddm* [[1955] N.L.J. 799.] *Hemanta Kumar v. Altimitz Ins. Co.* [[1938] A.I.R. Cat. 120.] and *Bisesivar Misra v. The King* [[1949]] A.I.R. Orissa 22.] It is now the established rule that the connection of the identity of the person under the entry must be established by other evidence. Entries of names of persons in a register of births, deaths, or marriages cannot be that

evidence by itself, and the identity of the persons with the entry should be fully proved....

29. Madras High Court also took a similar view in *Nagayasami Naidu v. Kochadai Naidu*, 1967 SCC OnLine Mad 109: AIR 1969 Mad 329 and observed:

Under S. 35 of the Evidence Act, it is only the entry made by a public servant in the discharge of his official duties that is admissible as a relevant fact. (Vide *Ramalinga Reddi v. Kotayya*, ILR 41 Mad 26 : (AIR 1918 Mad 451) in which entries in birth registers kept by village officers were held to be admissible under S. 35 of the Evidence Act. Vide also *Bagiammal v. Kamalammal*, AIR 1965 Mad 205.) Sri Rajah Aiyar drew our attention to some of the cases in which this note of caution was indicated, that other particulars not strictly covered by the entries are not admissible under S. 35 of the Evidence Act. In *Venkayamma v. Gangayya*, AIR 1934 Mad 16, a Bench of this court held that an entry in the death register extract is not admissible to prove the age on the date of death, even though that factum was also recorded. Again, in *Gurusami Nadar v. Irulappa*, AIR 1934 Mad 630, in a death register extract, a particular person was described as a Christian and the learned Judge, Varadachariar J., observed that at best it is safe to rely upon these registers only with reference to the fact of death and the date of birth.

30. It was laid down in *Khatalsaheb Wd. Khadir Saheb Inamdar v. Ameersaheb*, 1994 SCC OnLine Kar 247 : (1995) 1 Kant LJ 663, that an entry in the birth and death register is admissible to show that a particular person mentioned in it was born on

that day, but some evidence must be led to prove the paternity of the person. It was observed at page 669:

“14. The law in this regard can be summarised as follows:  
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Birth and death extracts can be admissible in evidence under Section 35 of the Evidence Act to show that a particular person by that name mentioned in the document was either born or dead on that particular day. But, in order to establish that the said entry relates to a particular person, there must be some evidence led by the party contending that such an entry relates to a particular person. Further, it is very clear that the entry in that birth or death extract cannot be a document to prove the paternity of a person mentioned there, because it is not the duty of the person who makes those entries to make any entry as to the paternity of the person mentioned there. The entries are only regarding birth and death of the person concerned, and the official concerned is required to make these entries only in the discharge of his official duties. The document cannot be used for any purpose other than to prove the date of birth or death of a particular person mentioned in the extract. On the basis of mere entries in the birth or death extract, the paternity of a person cannot be determined. For that purpose, a party concerned will have to lead some other evidence to prove that a particular person was born to a particular man when that point is in issue in the case....”

31. Kerala High Court held in *Suresh Babu v. State of Kerala*, 2000 SCC OnLine Ker 182: (2001) 1 KLT 80 that it is unsafe to rely upon the entry in the birth register without the identity of the person. It was observed at page 83:

“6...No doubt the entry regarding the date of birth in the register of births and deaths is admissible in evidence under S. 35 of the Evidence Act. But, as has been held by this Court in *Govinda Pillai Sukumara Pillai v. Lekshmi Amma Kochappi Amma (1957 KLT 804)* that it is not safe to accept a mere entry in the birth register as proof of the age of the child concerned without some evidence or admission of the parties about the identity of the parents and the child mentioned in the register. In *State v. Kumruddin (AIR 1956 Nagpur 74)*, it has been held that the mere entry in the register of births and deaths to the effect that a child was born to a person without any statement as to the identity of the child is not sufficient to prove the birth of a particular person. The identity of that person has to be fully established by other evidence....”

32. In the present case, the entry mentions that a daughter was born to Rirku on 28.01.1924, whose birth was registered on 08.02.1924. It does not mention the name of any person. The defendant Reshmu stated that she was aged six months when her father Rirku died. The copy of the mutation (Ext.PA) mentions that Rirku S/o Parma Nand had died on 11.09.1923. Thus, Rirku had died much before the birth of his daughter recorded in the certificate, and the testimony of the defendant does not connect her to the entry. Thus, the learned Appellate Court had rightly held that the evidence of the defendant was not sufficient to infer that the birth certificate pertained to her and that she is the daughter reflected in the certificate.

33. There is a distinction between the admissibility and the probative value of the document. The document may be admissible, but its probative value may be nil<sup>2</sup>. It was laid down by the Hon'ble Supreme Court in *Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209: 2010 SCC OnLine SC 890 that an entry made by a public official in discharge of his official duties may be admissible, but the Court has to determine its probative value. It was observed at page 215:

“18. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in *Ram Prasad Sharma v. State of Bihar* [(1969) 2 SCC 359: AIR 1970 SC 326], *Ram Murti v. State of Haryana* [(1970) 3 SCC 21: 1970 SCC (Cri) 371: AIR 1970 SC 1029], *Dayaram v. Dawalatshah* [(1971) 1 SCC 358: AIR 1971 SC 681], *Harpal Singh v. State of H.P.* [(1981) 1 SCC 560: 1981 SCC (Cri) 208: AIR 1981 SC 361], *Ravinder Singh Gorkhi v. State of U.P.* [(2006) 5 SCC 584: (2006) 2 SCC (Cri) 632], *Babloo Pasi v. State of Jharkhand* [(2008) 13 SCC 133: (2009) 3 SCC (Cri) 266], *Desh Raj v. Bodh Raj* [(2008) 2 SCC 186: AIR 2008 SC 632] and *Ram Suresh Singh v. Prabhat Singh* [(2009) 6 SCC 681: (2010) 2 SCC (Cri) 1194]. In these cases, it has been held that even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The

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<sup>2</sup> *State of Bihar v. Radha Krishna Singh*, (1983) 3 SCC 118

standard of proof required herein is the same as in other civil and criminal cases.

19. Such entries may be in any public document, i.e. school register, voters' list, or family register prepared under the Rules and Regulations, etc., in force, and may be admissible under Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain v. State of U.P.* [AIR 1964 SC 1625: (1964) 2 Cri LJ 590] and *Santenu Mitra v. State of W.B.* [(1998) 5 SCC 697: 1998 SCC (Cri) 1381: AIR 1999 SC 1587]

20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act, but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in the school register/school leaving certificate are required to be proved in accordance with the law, and the standard of proof required in such cases remained the same as in any other civil or criminal cases.”

34. Therefore, the learned Appellate Court was justified in holding that mere admissibility of the document will not show that the contents of the document were correct or that they referred to the defendant. Thus, the mere proof of the certificate was not sufficient to connect the defendant to Rirku.

35. Learned Appellate Court had rightly held that Section 50 of the Indian Evidence Act deals with the evidence about the relationship. This Section was interpreted by the Hon'ble Supreme Court in *Dharmrao Sharanappa Shabadi v. Syeda Arifa*

*Parveen, 2025 SCC OnLine SC 2155*, and it was held that the opinion expressed by the conduct regarding the relationship is a relevant fact where the Court has to form an opinion regarding the relationship between two persons. It was observed: -

“26. *Dolgobinda Paricha v. Nimai Charan Misra, AIR 1959 SC 914* is an apt authority for appreciating the contours of Section 50 of the Evidence Act on the opinion evidence on the relationship in issue of fact. The following principles can be culled out from *Dolgobinda Paricha* (supra):

- a. Section 50 specifically makes the opinion expressed by the conduct of a person with special knowledge relevant.
- b. For the applicability of the section, there are three essentials.
  - i. Firstly, the court has to form an **opinion** as to the relationship of one person to another.
  - ii. Secondly, the opinion on this relationship must be **expressed through conduct**.
  - iii. Thirdly, the person whose conduct expresses the opinion must have **special means of knowledge** on the subject, such as being a member of the family or otherwise.
- c. The term “opinion” is defined not as a casual statement or gossip but as a “judgment or belief” or a “conviction.” This belief is demonstrated and proved through the person's **conduct or behaviour**. The conduct must be of a tenor that can only be explained by the existence of that inner belief about the relationship.

26.1 *Chandu Lal Agarwala v. Khalilar Rahman ILR (1942) 2 Cal 299*, further clarifies by stating that conduct is not the ultimate proof of a relationship but an intermediate step.

It allows the court to infer the “opinion” of the person whose conduct is in evidence. The court then weighs this opinion to arrive at its own conclusion regarding the relationship in issue. Hence, Section 50 does not make evidence of mere general reputation (without accompanying conduct) admissible as proof of a relationship. Further, if the conduct is of such a tenor, the Court only gets to a relevant piece of evidence, namely, the opinion of a person. It still remains for the Court to weigh such evidence and come to its own opinion as to the *factum probandum*, as to the relationship in question. In conforming to the above, the conduct, being a perceptible external fact, must be proved by “direct evidence” as defined in Section 60 of the Evidence Act. This means that the witnesses must testify to what they personally saw or heard.

26.2 The opinion expressed by the conduct of any person as a member of the family or of any person otherwise has special means of knowledge on the subject is a relevant fact. This testimony remains as direct evidence under Section 60 of the Evidence Act.”

36. The defendant did not examine any person having special knowledge about the relationship to prove the relationship between her and Rirku. She did not narrate any conduct to show that she was treated as a daughter of Rirku. Therefore, there was insufficient evidence to prove that the defendant was the daughter of Rirku, and the substantial questions of law No. 1 and 2 are answered accordingly.

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

37. It was submitted that the plaintiff has challenged the mutation and such a suit is barred by Section 171 of the H.P. Land Revenue Act. This submission will not help the defendant. It was laid down by a Full Bench of this Court in *Chuhniya Devi vs. Jindu Ram* (21.09.1990 - HPHC): MANU/HP/0084/1990:1991 (1) ShimLC 223 that the exclusion of the jurisdiction of the Civil Court is subject to the provision of the HP Land Revenue Act and the latter itself provides that a person aggrieved by an entry in the revenue record is entitled to file a suit for declaration of his right under Section 46. It was observed:

“11. From the provisions noticed by us, it is clear that the matters which are entrusted specifically to a Revenue Officer by or under the Act are excluded from the jurisdiction of the civil court. But the exclusion, as is evident from the opening part of Section 171, is "except as otherwise provided by this Act".

12. Stated more precisely, the position is that though a civil court cannot give any direction, amongst others, about correction of any entry in a record-of-rights, periodical register of mutation or for framing of a record-of-rights or annual record or the preparation, signing or attestation of any of the documents included in the record, any decision which it may record in respect of a direction given by a Revenue Officer under Sub-section (2) of Section 37 relating to the question as to who is in possession of a property to which the dispute relates or is the person best entitled to it as well as about any right

under which a person is in possession, it will have to be given effect to in the record-of-rights by the Revenue Officer. This is more than clear from what is provided in Section 37(3) and Section 46. The finality of the decision of the Revenue Officer is expressly made subject to a decision by the civil court by these provisions. The jurisdiction of the civil court, in matters falling within the ambit of these provisions, is not excluded. Instead, it has been expressly preserved.

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64. The Answer. Our answer, therefore, is:

(a) that an order made by the competent authority under the H.P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of Section 37 (3) and Section 46 of that Act”

38. A similar view was taken in *Ram Piari vs Devi Ram* 2012(1) Him. L.R. 52 wherein it was observed:

“7. The Sub-section (1) of Section 37 provides that if during the making, revision or preparation of any record or in the course of any inquiry under Chapter IV a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion or on the application of any party interested and after such inquiry as he thinks fit, determine the entry to be made as to that matter. The sub-section (2) further provides that Revenue Officer shall by order direct that, that person be put in possession thereof, and that any entry in accordance with that order be made in that register, under sub-section(3) direction given by Revenue Officer under sub-section (2) is subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.

8. Thus, it cannot be said that the order passed by the Revenue Officer for the correction of the entry is beyond

the purview of the Civil Court. On the contrary, such an order is subject to the decree of the Civil Court. The Civil Court has the jurisdiction to determine the dispute raised by the respondent by filing the suit. The decree passed by the District Judge is not without jurisdiction and not hit by Section 171 of the H.P. Land Revenue Act. The substantial question of law No.1 is decided against the appellants.”

39. This position was reiterated in *State of HP vs Sukhan Devi*, AIR 2025 HP 133, wherein it was observed:

“25. Section 171 itself provides that the Civil Court shall have jurisdiction if otherwise provided under the Act. Section 46, referred supra, is providing right to the aggrieved person to file a suit being aggrieved by the entry in the record of rights/revenue record. Therefore, Section 46 empowers the Civil Court to direct inclusion of the name of a person in the revenue entries, subject to establishing right by such aggrieved person by filing an appropriate suit.”

40. In the present case, the plaintiff sought to establish his right as the legal heir of Fagnu and Jogi, and he is entitled to file a civil suit under Section 46 of the HP Land Revenue Act. The provisions of Section 171 will not bar such a civil suit. Hence, this substantial question of law is answered accordingly.

**Final order:**

41. In view of the above, there is no infirmity in the judgment and decree passed by the learned Appellate Court, and no interference is required with it. Hence, the present appeal

fails, and the same is dismissed, so also pending miscellaneous application(s), if any.

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

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

**25<sup>th</sup> March, 2026**  
*(Nikita)*