

## APPELLATE CIVIL.

*Before Bhide and Din Mohammad JJ.*

KARTAR SINGH, DECEASED, THROUGH HIS LEGAL  
REPRESENTATIVES (AUCTION-PURCHASER); AND  
ASA SINGH (DECREE-HOLDER),  
(DEFENDANTS) Appellants

*versus*

MST. MEHR NISHAN (PLAINTIFF) }  
FAZAL ILAHI (DEFENDANT) } Respondents.

Civil Appeal No. 2530 of 1923.

*Indian Registration Act, XVI of 1908, section 17 (2) :  
Unregistered document — compulsorily registrable — whether  
can be used for determining nature of claimant's possession—  
Transfer of Property Act, IV of 1882, section 41 : khasra  
paimash and Police census of houses—whether carry pre-  
sumption of correctness—and whether consulting these docu-  
ments amount to ' reasonable care ' and ' good faith ' under  
the section.*

*Held*, that an unregistered document, though compul-  
sorily registrable, can be used for determining the nature of  
the claimant's possession.

*Qadar Bakhsh v. Mangha Mal (1) and Ata Muhammad  
v. Shankar Das (2)*, followed.

*Held also*, that the *khasra paimash* is not a record of title  
and carries with it no presumption of correctness so far as the  
question of ownership is concerned, and the same applies to  
entries made by the Police in a census of houses made for the  
purpose of levying a punitive tax. Merely consulting these  
documents from among the Municipal records does not amount  
to ' reasonable care ' and ' good faith ' within the meaning of  
section 41 of the Transfer of Property Act.

*Muhammad Sulaiman v. Sakina Bibi (3) and Azima Bibi  
v. Shamalanand (4)*, relied upon.

(1) (1923) I. L. R. 4 Lah. 249. (3) (1922) I. L. R. 44 All. 674.

(2) (1925) I. L. R. 6 Lah. 319. (4) (1913) I. L. R. 40 Cal. 378 (P.C.).

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*First Appeal from the decree of Mr. James Read, Senior Subordinate Judge, Rawalpindi, dated 10th October, 1928, granting the plaintiff a declaratory decree to the effect that she is the owner of the house in question and that the mortgage and sale of the said house shall not affect her rights, but dismissing her claim with respect to the land.*

S. N. BALI and GOBIND RAM KHANNA, for Appellants.

MOHAMMAD DIN JAN and BALKISHEN, for Respondents.

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DIN MOHAMMAD J.—One Mehr Bakhsh, *Darzi* of Rawalpindi, jointly owned with his three brothers some agricultural land and two small houses situated in the town of Rawalpindi. In 1879 he executed an *ante nuptial* agreement in favour of Mehr Nishan whom he later married and settled on her his whole share of the above-mentioned property in case she remained faithful to his bed. He died sometime after 1900 and before 1911, leaving him surviving his widow Mehr Nishan and his two sons, Karam Ilahi and Fazal Ilahi. It appears that Mehr Bakhsh had been occupying exclusively one of the two houses mentioned above and it remained in the possession of his family even after his death. In 1911 Sher, one of the surviving brothers of Mehr Bakhsh, brought a suit for possession by partition of two-third share of this house against the sons of Mehr Bakhsh on the ground that their fourth brother had died issueless and he had purchased the share of the third brother also. Fazal Ilahi and Karam Ilahi contested the suit and pleaded that the whole house was owned by their mother Mehr Nishan since 1879, and that she should be impleaded as a defendant as they had no title to the

house. A similar application was put in by Mehr Nishan herself and consequently she was impleaded as a defendant in the case, along with her two sons. The matter was referred to arbitration and by mutual agreement before the arbitrators, it was decided that Sher may be given his two-third share by partition. An award followed on these terms in April, 1912, leaving Mehr Nishan in the occupation of one-third of the house.

On 6th September, 1924, Fazal Ilahi executed a mortgage without possession of the land as well as of the house left by Mehr Bakhsh in favour of Asa Singh, defendant No.1, for a sum of Rs.1,000. The default having been made by Fazal Ilahi in the payment of the mortgage money, Asa Singh brought a suit for the realization of his mortgage debt and obtained a decree against Fazal Ilahi on the 11th May, 1927. In execution of this decree he brought the house to sale on 7th October, 1927, which was purchased by Kartar Singh, defendant No.3. On 20th December, 1927, Mehr Nishan brought the present suit against Asa Singh, Fazal Ilahi and Kartar Singh, on the allegation that she had been in exclusive possession of the house as owner since 1879 and as Fazal Ilahi had never lived with her since 1912 and had no transferable interest in the property, both the original mortgage and the subsequent sale did not affect her interest. She prayed for a declaration to the effect that she was the exclusive owner of the house. Both Asa Singh and Kartar Singh denied her allegations and further pleaded section 41 of the Transfer of Property Act as a bar to her suit. The learned Senior Subordinate Judge has dismissed her suit so far as the agricultural lands are concerned but has granted her a decree in respect of the house. Both

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Asa Singh and Kartar Singh have preferred this appeal against that decree.

Mr. Bali, who has argued the appeal before us on behalf of the appellants, has contended that the document relied on by Mehr Nishan in support of her claim is a forgery, that Mehr Bakhsh was shown as an owner of the house in the *khasra paimash* prepared by the Municipal Committee, Rawalpindi, in 1900, that in a register relating to the levy of punitive tax prepared in 1911, Fazal Ilahi is shown as the sole occupant of the house and that as Mehr Nishan has suffered Fazal Ilahi to deal with the property as his own she cannot now defeat the claims of the transferees for value. He has further urged that the document in question is inadmissible in evidence for want of registration.

I will take up the last ground first. It is urged that, as the alleged agreement of 1879 purports to dispose of property of the value of Rs.100 or more, it is compulsorily registrable. Now, there is no reliable evidence on the record to show that the value of the property covered by this agreement was more than Rs.99 in 1879 and, in the absence of any such clear proof, it will be very difficult to hold that, in those days when the value of the property was very small, the property covered by this agreement was worth more than Rs. 99. The learned counsel for the plaintiff-respondent has contended that the document as it stands does not require registration as it does not create any such right as is contemplated by section 17 (b) of the Registration Act, and has relied on *Sansar Singh and another v. Tiloka and others* (1) and *Bhan Singh and others v. Thakar Das and others* (2), in

(1) 51 P. R. 1898.

(2) 89 P. R. 1908.

support of his contention. I do not, however, consider that it is necessary to determine whether those authorities lay down a rule of law which is applicable to the facts of the present case, as in my opinion, besides what I have indicated above, even if it were held that the document was compulsorily registrable, there is ample authority for the proposition that such unregistered documents can be used for determining the nature of the claimant's possession. Reference may be made among others to *Qadar Bakhsh v. Mangha Mal* (1) and *Ata Muhammad and others v. Shankar Das and others* (2).

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Similarly, section 41 of the Transfer of Property Act is no bar to the plaintiffs' claim. Even if the principles of the Transfer of Property Act were applicable to the Punjab, there is no proof on the record that Fazal Ilahi had ever been made an ostensible owner of the house with the express or implied consent of Mehr Nishan or that the mortgagee or the auction purchaser had, after taking reasonable care to ascertain that Fazal Ilahi had the power to make the transfer, acted in good faith. The learned counsel for the appellants contends that the transferees consulted the Municipal records and the Police records and this was enough for the purposes of section 41 of the Transfer of Property Act. The learned Senior Subordinate Judge has disbelieved this part of the story but, even if it were true, in my view the enquiry made will not amount to 'reasonable care' and 'good faith' within the meaning of section 41 of the Transfer of Property Act. The *khasra paimash* is not a record of title, but a mere record of survey and carries with it no presumption of

(1) (1923) I. L. R. 4 Lah. 249.

(2) (1925) I. L. R. 6 Lah. 319.

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correctness so far as the question of ownership is concerned. A Municipality is generally interested more in the assessment of tax than in the determination of ownership, and for its purposes an occupier is as good as an owner. Moreover, in the preparation of documents like *khasra paimash* a Municipality is concerned more with the measurements of the buildings with a view to safeguard its own interests against any encroachment on the public streets than in the ascertainment of the title of persons owning such buildings. In the same way the Police Department when taking a census of the houses for the purposes of levying the punitive tax is merely interested in recording the names of the occupants from whom they could levy the contribution. It will further be seen that this entry relates to the year 1911 and it is significant that it was in this year that both Fazal Ilahi and Karam Ilahi had disclaimed any connection with the house and unequivocally admitted Mehr Nishan's title thereto in the partition suit brought by their uncle Sher. It cannot be reasonably argued, therefore, that the transferees discharged their obligations under section 41 of the Transfer of Property Act by merely raking out the old records of the Municipality relating to the year 1900 or that of the Police Department of the year 1911. I am fortified in my conclusions by a judgment of the Allahabad High Court in *Muhammad Sulaiman v. Sakina Bibi* (1). In this case the learned Judges made the following remarks :—

“ Bad-ullah was only the manager of the property, and, as pointed out in the case of *Jamna Das v. Uma Shankar* (2), the possession of a manager cannot be treated as sufficient evidence of ostensible

(1) (1922) I. L. R. 44 All. 674.

(2) (1914) I. L. R. 36 All. 308.

ownership with the consent, express or implied, of the real proprietor, within the meaning of section 41 of the Transfer of Property Act. The entry of the name of Bad-ullah in the house-tax register was only made for the purpose of assessment and collection of house-tax and was not intended for registering title, and as their Lordships of the Privy Council say in *Merwanji Muncherji Cama v. The Secretary of State for India in Council* (1), such an entry is not always enough to induce a person to think that the person whose name was entered was the proprietor and had a right to sell the property which was entered in his name." In *Azima Bibi v. Shamalanand* (2) their Lordships of the Privy Council observed as follows:—

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"The appellants were *pardah nashin* ladies, and naturally left the management of the property in the hands of the males. There was nothing to show that the appellants had misled the respondent, either by word or by conduct to the belief that they had no proprietary interest in the property, and he made no enquiries in the matter from them as he might have done if he had any doubt in the matter."

Under the circumstances I feel no hesitation in holding that section 41 of the Transfer of Property Act does not help the appellants at all.

The argument that the document in question is a forgery is also devoid of force. It would appear from the document itself that it was written 55 years ago by a licensed stamp-vendor and as it came out from proper custody it could claim the benefit of section 90 of the Evidence Act. Moreover, in the previous suit, as already remarked, precisely the same

(1) (1915) 19 Cal. W. N. 1056 (P. C.).

(2) (1913) I. L. R. 40 Cal. 378 (P. C.).

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allegations were made as are being made now on the strength of this document. It cannot, therefore, be believed that this old lady fabricated the document in question merely for the purpose of the present suit. I would, therefore, maintain the decree of the Court below and dismiss this appeal with costs.

BHIDE J.—I agree.

A. N. C.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Bhide and Din Mohammad JJ.*

SOHAN LAL (DEFENDANT) Appellant

*versus*

KARTAR SINGH AND OTHERS

(PLAINTIFFS)

ISHAR SINGH (DEFENDANT)

} Respondents.

Civil Appeal No. 2727 of 1928.

*Punjab Laws Act, IV of 1872, section 5 : Custom or Personal Law—presumption—Sikh Jhiwars of Ludhiana District—Alienation of ancestral land—Hindu Law : Suit by sons to impeach the alienations of their father—immoral purposes—what the sons should prove—Antecedent debts—whether constitute necessity.*

*Held*, that according to the Punjab Laws Act, the initial presumption is that Hindus and Muhammadans are governed by their personal laws and if a custom modifying such laws is alleged, it must be decided on evidence and not on conjecture.

*Daya Ram v. Sohel Singh*, per Robertson J. (1) and *Abdul Hussein Khan v. Mst. Bibi Sona Dero* (2), relied upon.

Where a family of Sikh Jhiwars lived in a village among an agricultural tribe, and followed agriculture for the last two or three generations, but did not form a village community, and not a single instance was cited in which they had departed from the rules of Hindu Law—

(1) 110 P. R. 1906 (F. B.) (2) (1918) I. L. R. 45 Cal. 450 (P. C.)