

**HIGH COURT OF TRIPURA
AGARTALA
RSA 39 of 2023**

1) Md. Ichub Ali,
son of Late Ayaz Ali

2) Md. Riaj Uddin,
son of Md. Ichub Ali and Aftara Bibi

3) Md. Nazir Uddin,
Son of Md. Ichub Ali and Aftara Bibi

4) Md. Altab Uddin,
son of Md. Ichub Ali and Aftara Bibi,
all are resident of Latugoan, (Laicherrea G.P. Ward No.6),
P.O. Dupirbond, P.S. Dharmanagar, District-North Tripura,
Pin-799250

---- Appellant-Defendant(s)

Versus

1. Mst. Nurjan Bibi,
wife of Late Nazir Hussein

2. Mst. Alakjan Bibi,
wife of Md. Sahab Uddin,
daughter of Late Nazir Hussein

3. Md. Abdul Ali,
son of Late Nazir Hussein

4. Md. Guljar Hossein,
son of Late Nazir Hussein,
all are resident of Latugoan,
Laicherrea, P.O.Dupirbond,
P.S. Dharmanagar, District-North Tripura,
Pin-799250

5. Mst. Hazira Begam,
wife of Md. Masuk Mia,
son of Late Nazir Hussein,
resident of Batarashi Latugoan,
P.O.Dharmanagar, District-North Tripura,
Pin-799250

6. Mst. Malima Begam,
wife of Md. Atabur Rahaman,
daughter of Late Nazir Hossein
of Village-kalacherra, P.S.Dharmanagar,
District-North Tripura, Pin-799250

7. Husanara Begam,
wife of Md. Aklish Uddin,
daughter of Late Nazir Hossein
of Village-South Gangana, P.S. Dharmanagar,
District-North Tripura, Pin-799250

----Respondent-Plaintiff(s)

For Appellant (s)	:	Mr. Saktimoy Chakraborty, Sr. Adv. Ms. Pinki Chakraborty, Adv.
For Respondent(s)	:	Mr. Ratan Datta, Adv. Mr. Aditya Baidya, Adv. Ms. Swasati Nag, Adv.
Date of Hearing	:	30.04.2025
Date of Judgment & Order	:	07.05.2025
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This second appeal under Section 100 of CPC is preferred by the appellants challenging the judgment dated 10.10.2023 and decree dated 11.10.2023 delivered by Learned Additional District Judge, North Tripura, Dharmanagar in connection with Title Appeal No.07 of 2023 affirming the judgment dated 04.01.2023 and decree dated 10.01.2023 delivered by Learned Civil Judge (Senior Division), Dharmanagar, North Tripura in connection with Case No. Title Suit 08 of 2020.

[02] Heard Mr. S.M. Chakraborty, Learned Senior counsel assisted by Ms. P. Chakraborty, Learned counsel appearing on behalf of the appellant-defendants and also heard Mr. R. Datta, Learned counsel assisted by Ms. A. Baidya, Learned counsel and Ms. Swasati Nag, Learned counsel appearing on behalf of the respondent-plaintiffs.

[03] Before proceeding with the merit of the appeal, let us discuss about the subject matter of dispute amongst the rival parties. According to the respondent-plaintiffs, the suit land described in Schedule-A of the plaint was belongs to the predecessor of the plaintiffs namely Nazir Hussein which was

recorded in his name in Khatian No.708/2 under Muja Dipurbond, T.K-Uptakhali, Dharmanagar, North Tripura corresponding to Hal Dag No.1629/5849, Sabek C.S. Plot No.751p land measuring 0.12 acre. Said Nazir Hussein expired on 24.08.2016 leaving behind the respondent-plaintiffs as his legal heirs. During his life time Nazir Hussein constructed a hut on the suit land and in the year 2012 deceased defendant No.1 of the original suit approached him to allow her to carry business on a portion of the suit land as described in Schedule-B of the plaint and on and from 05.09.2012 the deceased respondent-defendant No.1 had been possessing the suit land as permissive possessor along with other defendants. On 10.02.2014 the predecessor of the plaintiffs i.e. the respondents herein requested the defendant No.1 of the original suit to hand over the vacate possession of the suit land but the defendant No.1 requested for allowing her to stay for another two years and accordingly the predecessor of the respondent-plaintiffs allowed the defendants to stay over the suit land for further two years and on 24.08.2016 Nazir Hussein died. After completion of two years on 30.08.2018, again the respondent-plaintiffs requested the defendants to vacate the suit land but that was not vacated. Hence the respondent-plaintiffs filed the suit before the Learned Trial Court.

[04] The defendants here the appellants herein contested the suit by filing written statement denying the plea of the respondent-plaintiffs and pleaded that the suit land along with other land originally owned and possessed by one

Nakib Mia, the predecessor of the defendants and his brother namely Munsu Mia (since dead). Nakib Mia died leaving behind his son Masaddar Ali, the predecessor the defendants and after the death of Masaddar Ali the defendants became the owner and possessor of the suit land along with other lands. Nazir Hussein, the predecessor the plaintiff being a day labourer took shelter with his family member on the suit land with the permission of the predecessor of defendants namely Masaddar Ali and keeping the original owner in dark Nazir Hussein fraudulently mutated the suit land along with other land of Masaddar Ali in his name in connivance with the Revenue Authority without having any possession and title. It was further pleaded that Nazir Hussein, the predecessor the plaintiff fraudulently obtained Khatian no.708/2 in his name showing the original owner, the defendant No.1 as permissive possessor. Hence, the contesting the defendants, now the appellants herein prayed for dismissal of the suit with costs.

[05] Upon the pleadings of the parties, Learned Trial Court below framed the following issues :

- "i. Whether the suit is maintainable in its present form and nature?**
- ii. Whether there is cause of action of filing this suit?**
- iii. Whether Khatian bearing No.708/2 has been obtained by the plaintiffs by fraud?**
- iv. Whether the plaintiffs are entitled to get decree for right, title and interest over the suit land as mentioned in schedule-A of the plaint?**
- v. Whether the plaintiffs are entitled to get decree of recovery of Khash possession over the suit land?**
- vi. Whether the plaintiffs are entitled to mense profits @ Rs.600/- per month w.e.f.30.08.2018 till the date of handing over the possession of the suit land by the defendants?**
- vii. Any other relief/relieves which the plaintiffs are entitled to?"**

[06] To substantiate the issues, both the parties have adduced oral/documentary evidence on record. For the sake of convenience, I would like to refer herein below the name of

witnesses as well as the exhibited documents of the parties as follows :

APPENDIX
Case No.T.S.08 of 2020

(A) Plaintiffs Exhibits:-

Exbt.1 as a whole-Certified copy of computerized khatian No.708/1 under Mouja-Dupirband, T.K-Uptakhali standing in the name of Nazir Hussain.
Exbt.2-Certified copy of computerized khatian No.708/2 under Mouja-Dupirband, T.K-Uptakhali standing in the name of Nazir Hussain.
Exbt.3-Certified copy of computerized khatian No.266 under Mouja-Dupirband T.K-Uptakhali standing in the name of deceased Nazir Hussain.
Exbt.4-Certified copy of trace map under Mouja-Dupirband, sheet No.1(P).
Exbt.5-Certified copy of manual khatian bearing No.708/1 under Mouja-Dupirband, T.K-Uptakhali.
Exbt.6 as a whole-Certified copy of manual khatian bearing No.266 under Mouja-Dupirband, T.K-Uptakhali.
Exbt.7-Certified copy of manual khatian bearing No.266 under Mouja-Dupirband T.K-Uptakhali.

(B) Defendants Exhibit : Nil.

(C) Plaintiffs Witnesses :

PW1-Guljar Hussain
PW2-Sahab Uddin
PW3-Abdul Kashim

(D) Defendants Witnesses :

DW1-Riyaj Uddin
DW2-Abdul Gani
DW3-Altab Uddin

(E) Court Witness : Nil

(F) Material Exhibit: Nil

[07] Finally, on conclusion of trial, Learned Trial Court below decreed the suit in favour of the original plaintiffs and accordingly, decree was prepared. The operative portion of the judgment dated 04.01.2023 delivered by Learned Civil Judge (Senior Division), Dharmanagar, North Tripura runs and follows :

"20. In the result, on the basis of the above discussion and deliberations, the suit is decree with the declaration that the plaintiffs have right, title and interest over the suit land specifically described in the schedule-A of the plaint and the plaintiffs are further entitled to recovery of khash possession of the landed property specifically described in the schedule-A of the plaint by evicting the defendants from the suit land removing them from the land specifically described in schedule-B of the plaint and also by removing all obstruction or construction existing in the suit land at the cost of the defendants.

The defendants are directed to hand over vacant possession of the suit land to the plaintiffs

within 30 days from the date of this Judgment and Order.

The costs of the suit shall be borne by the defendants.

This suit is disposed off accordingly on contest.

Sherestadar is directed to prepare decree accordingly as per the Civil Rules and Orders.

Thus Judgment and Order is passed on this 04th day of January, 2023 under the seal and signature of the Court.

Make necessary entry in the Trial Register."

[08] Challenging that judgment, the defendants as appellants preferred this appeal under Section 96 of CPC read with Section 41 of CPC before the Court of Learned Additional District Judge, North Tripura, Dharmanagar and the Learned Additional District Judge after hearing both the sides dismissed the appeal upholding the judgment of the Learned Trial Court below. The operative portion of the judgment of the Learned First Appellate Court dated 10.10.2023 runs as follows :

"In the result, the appeal is dismissed and judgment and decree passed by the Ld. Trial Court is affirmed.

This appeal is disposed of on contest.

Prepare appellate decree accordingly and place before me for signature within 15 days.

Send down the Trial Court Record along with a copy of this judgment and decree.

Make entry in Trial register and upload in CIS."

On the basis of that judgment, consequential decree was passed. Challenging that judgment the defendants as appellants have preferred this appeal before the High Court.

[09] At the time of admission of appeal, the following substantial questions of law was formulated by order dated 06.12.2023 which reads as under :

"[i] Whether the plaintiff-respondents can claim right, title and interest over the suit land basing only on ROR when the defendant-appellants claiming title over the suit land fails to prove any document of title in their favour and when the possession of the defendant-appellants in the suit land is admitted?"

[10] Taking part in the hearing, Learned Senior counsel, Mr. S.M. Chakraborty appearing on behalf of the

appellant-defendants drawn the attention of the Court that although both the Courts below gave concurrent findings but that findings of the Learned Courts below are perverse and beyond the principle of law laid down by the Hon'ble Apex Court. Learned Senior counsel further submitted that the suit was filed under Section 5 of the Specific Relief Act which requires proving of title. But here in the given case, save and except ROR which does not confer any title, the Learned Trial Court as well as the Appellate Court decreed the suit in favour of the respondent-plaintiffs ignoring the principle of law laid down by the Hon'ble Apex Court. Learned Senior counsel further submitted that the respondent-plaintiffs in their plaint and also by their evidence on record admitted the fact or possession of the defendants i.e. the appellants herein and the citations referred by Learned First Appellate Court at the time of delivery of judgment beyond the principle of law laid down by the Hon'ble Apex Court and as such, both the judgments delivered by the Learned First Appellate Court and by the Learned Trial Court needs to be interfered with and the judgment and decree needs to be set aside by allowing this appeal.

[11] On the other hand, Learned counsel, Mr. R. Datta appearing on behalf of the respondent-plaintiffs first of all drawn the attention of the Court referring the plaint and the written statement filed by the defendants i.e. the appellants herein and submitted that both the Learned Courts below gave concurrent findings and the Khatian which gives a presumptive value as per Section 43(2) of TLR & LR Act and

thus declared right, title and interest over the suit land of the respondent-plaintiffs. So, there was no infirmity in the judgment delivered by the Learned Courts below and as such, Learned counsel urged for dismissal of this present appeal. Furthermore, the defendants could not adduce any rebuttable evidence on record.

[12] Learned counsel for the respondent-plaintiffs relied upon one citation of **Gauhati in Narendra Chandra Deb and Others versus Kamini Mohan Deb** reported in **AIR 1979 NOC 169(Gauhati)** wherein the Hon'ble Gauhati High Court observed as under :

"A person can sue for this right, title and interest based on an entry reflected in the record of rights. The term "title" is of variable meaning the elements constituting "legal ownership" a right to possession, interest in any property, are all covered within the term "title".

The entire structure and methodology of preparation of the record of rights under the Act ensures due preparation wide publication, hearing of objections regarding entries from all quarters and thereafter final publication in the manner prescribed under the Act, bear stamp of authenticity, correctness of the preparation of the record of rights. The legislative intent behind the presumption of correctness of the entry until the contrary is proved and the reason for putting the record of rights on a higher pedestal than other official documents become clear. The creation of the presumption as to the correctness of the entries in the record of rights in turn creates a right in favour of the party to claim the rights, title and interest reflected in such record of rights. It can safely be presumed that a claim of rights, title and interest in land can be founded on the basis of the record of rights in all actions including civil actions.

It is not for the person relying on the entry to substantiate the correctness thereof but it is the person questioning the correctness thereof who is called upon to prove the contrary. However, the person may rebut the presumption by creating a strong doubt in the mind of the Court whereupon the onus of correctness may shift on the person relying on the correctness of the entry.

A person can sue on the basis of his rights reflected in the record of rights, claim a decree and the plaintiff in whose favour an entry is made is not required to establish by supporting evidence that the entry was correctly made. It is not at all necessary for him to adduce evidence to establish that there was foundation for making the entry. When an entry becomes suspect it may be necessary for the plaintiff to lay the foundation as to the correctness of the same. The presumption in question is rebuttable."

Referring the same, he submitted that in view of Section 43(3) of TLR & LR Act entries in the record of rights presumed to be correct until the contrary is proved. But here in the given case, the defendants i.e. the appellants herein could not adduce any rebuttable evidence on record to cast doubt upon the title of the plaintiffs, i.e. the respondents herein so, the Learned Courts below rightly decreed the suit in favour of the respondent-plaintiffs.

He also relied another judgment of this High Court in **Amiyanshu Sharma and Ors. versus Matilal Dey and Ors.** reported in **(2022) 1 TLR 571** wherein in para Nos.15, 16, 17 & 18 this Court observed as under :

"15. Under this provision, a person by way of creation of Khatian is declared as "Rayat". Rayat is defined in the Act itself. It means the person who owns the land. I have no difference of opinion that a Khatian being created in compliance with the provision under Section 43 of TLR and LR Act is not a document of title. However, it is settled by a catena of decisions of this court that the correctness of record-of-right being finally published has a presumptive value until the contrary is proved i.e. until the said presumption is rebutted by way of laying cogent evidence. Section 35 of the Evidence Act postulates that entry in the record of right is admissible in evidence. It is now well settled that the finally published Khatian must be construed to have authenticity as to the possession of the plaintiffs over a certain land in dispute. Furthermore, every entry in the record-of-right is presumed to be correct and burden is on the defendant to prove the contrary in the trial.

16. Now, I am to decide whether the defendant has been able to rebut the presumption of Khatians created in favour of the plaintiffs. It is seen that the defendant had tried to establish his title over the suit land by dint of a registered gift deed and the Will. Both the courts after appreciating the facts on those two documents held that the defendant had failed to prove the gift deed as well as the Will. It is not the case of the defendant that he acquired right, title and interest over the property by way of adverse possession. His claim is based on title. But, acquisition of such title by dint of the gift deed and the Will had been rejected by both the courts below. The submission of learned counsel for the respondent that PW-1 himself stated that he heard that his father had sold out the property to the original owner of the suit land and that PW-2 stated that he could not say whether the suit land was sold by his father to the original owner. I am of the opinion that these statements made during their cross-examinations have no evidentiary value because the statement of PW-1 is hit by Section 60 of the Evidence Act which provides that oral evidence must, in all cases, be direct. Here, the statement of PW-1 during cross-examination was

not based on his personal knowledge, but, what he heard from others is hearsay evidence and such evidence is inadmissible.

17. In the case in hand, what is before the court is the khatian i.e. ROR which was created in the name of the father and after his death in the name of his legal heirs. Before preparation of draft Khatian there are four stages which are to be followed i.e. (1) Dagawari, (2) Khanapuri, (3) Bhujarat and (4) Attestation (jamabandi). Had the defendant was in actual possession on the suit land for so many years and having title as he asserted in his written statement, then, question naturally arises why he did not approach the revenue authority to create Khatian in his name. According to this court, that gives an adverse inference against the plea of the defendant.

18. On the other hand, it is the specific case of the plaintiffs that when the son of PW-1 had tried to raise boundary fencing around the suit land, then, the defendant raised objection and that has given rise to cause of action to institute the present suit. In front of this court, there is no document of better title than that of the Khatians i.e. the record of right. Of course, it is a document of presumption. In the record of right, the names of the plaintiffs have been recorded as Rayats. I reiterate that "Rayat" means who owns the land. This is also a presumption of ownership of a person over a piece of land which presumption has to be rebutted by way of placing better evidence of title, which is absent in the instant suit. Even, the defendant did not raise any objection during those four stages. Furthermore, under the scheme of the TLR and LR Act after completion of the above formalities draft publication is made showing the name(s) of the owner of the land provisionally. At the time of draft publication, objection is invited from the persons who had/has any interest or claims over the property under the draft publication. In other words, interested person(s) if any, can raise his/their objection against any entries or omissions mentioned in the draft khatian prepared by revenue authority. After considering objection, if any, the Khatian i.e. the record-of-right is finally published."

He also referred another judgment of a coordinate bench of this High Court in connection with RSA 07 of 2016 dated 16.07.2019 [**Sri Haridas Sutradhar and Others versus Sri Sunil Chandra Das and Others**] wherein in para Nos.12 & 13 this Court observed as under:

"12. In view of that, it has to be admitted that the defendants have not challenged the plaintiff in a substantive manner. Moreover, the decision of the apex court, no doubt, is applicable as a general proposition of law but when the finally published khatian has been placed in the record showing that the predecessor of the plaintiffs were recorded as the rayat and that entry has not been challenged, in view of Section 43(3) of the TLR & LR Act, the civil court committed no wrong while returning the finding on title after making due inquiry into the relevant facts.

13. This court, having appreciated the submission made by the learned counsel for the parties is of the view that when there is no ambiguity in respect of the proposition of law that solely on the basis of the finally published khatian the records of right the title may not be declared but in the circumstances of this

case when the correctness of the entry is not challenged by the defendants, according to this court, both the courts below did not commit any illegality and as such, this court is unable to accept the analogy advanced by the learned counsel appearing for the appellants.

Having observed thus, this appeal stands dismissed.

Draw the decree accordingly.

Send down the records thereafter."

Relying upon the said judgment, Learned counsel for the respondent-plaintiffs submitted that since the defendants i.e. the appellants herein before the Learned Trial Court have failed to adduce any rebuttable evidence on record to counter the case of the respondent-plaintiffs and as such, after discussing the oral/documentary evidence on record Learned Trial Court returned the findings in favour of the respondent-plaintiffs which was affirmed by Learned First Appellate Court and urged for dismissal of this appeal upholding the judgment and decree of the Learned First Appellate Court.

[13] On the other hand, Mr. S.M. Chakraborty, Learned Senior counsel appearing on behalf of the appellant-defendants at the time of hearing relied upon one citation of the Hon'ble Apex Court in **Union of India and Others versus Vasavi Cooperative Housing Society Limited and Others** reported in **(2014) 2 SCC 269** wherein in para Nos.21 to 24 the Hon'ble Apex Court observed as under :

"21. This Court in several Judgments has held that the revenue records does not confer title. In *Corporation of the City of Bangalore v. M. Papaiah and another* : (1989) 3 SCC 612 this Court held that :

"5.....it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law."

In *Guru Amarjit Singh v. Rattan Chand and others* (1993) 4 SCC 349 this Court has held that :

"2.....that the entries in jamabandi are not proof of title".

In *State of Himachal Pradesh v. Keshav Ram and others* (1996) 11 SCC 257 this Court held that :

“5.....an entry in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiffs.”

22. The Plaintiff has also maintained the stand that their predecessor-in- interest was the Pattadar of the suit land. In a given case, the conferment of Patta as such does not confer title. Reference may be made to the judgment of this Court in Syndicate Bank v. Estate Officer & Manager, APIIC Ltd. & Ors. (2007) 8 SCC 361 and Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu & Ors. (1991) Supp. (2) SCC 228.

23. We notice that the above principle laid down by this Court sought to be distinguished by the High Court on the ground that none of the above-mentioned judgments, there is any reference to any statutory provisions under which revenue records referred therein, namely, revenue register, settlement register, jamabandi registers are maintained. The High Court took the view that Ext.A-3 has evidentiary value since the same has been prepared on the basis of Hyderabad record of Rights in Land Regulation, 1358 Fasli. It was also noticed that column 1 to 19 of Pahani Patrika is nothing but record of rights and the entries in column 1 to 19 in Pahani Patrika shall be deemed to be entries made and maintained under Regulations.

24. We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned.”

Referring the same, he submitted that Khatian does not confer any title. So, on the basis of Khatian no decree of title can be granted in any case. Furthermore, the respondent-plaintiffs admitted the possession of the appellants over the suit land.

He further referred another citation of a Division Bench of this High Court in **Tripura Co-operative Milk Producer Union Ltd. versus Madhura Manjuri Singh and Ors.** reported in **(2020) 1 TLR 789** wherein in para No.17 this High Court observed as under :

“17. In our opinion, instead of interfering with the revision order, the parties ought to have been left to the remedies before civil court to establish rights and titles. If the original petitioners wanted a declaration of ownership or desired that the Milk Producer Union should vacate the land which according to them the Union was occupying without

authority of law, they had to institute and should be left to institute civil proceedings before the competent court. Minute examination and interference with the revisional order in a writ jurisdiction would not be called for. As noted, the issues pertain to the entries in the revenue records which were meant only for fiscal purpose and a presumptive value of possession but not indicative of title to the land in question. The petitioners do not dispute the possession of the Milk Union over the land."

Referring the same, Learned counsel submitted that from the said judgment it appears that entries in the revenue record is only meant for fiscal purpose and a presumptive value of possession but not indicative of title to the land in question. But here in the given case, the respondent-plaintiffs by oral evidence on record admitted the possession of the appellants herein, i.e. the defendants of the original suit. As such, in view of the principle of law laid down by the Hon'ble Apex Court there is no scope to confirm the judgment and decree delivered by Learned First Appellate Court as because on the basis of Khatians no title can be accrued upon.

[14] I have perused the record of the Learned Trial Court and the Learned Appellate Court including the evidence on record. The respondent-plaintiffs on the basis of Khatian No.708/2 tried to establish that their predecessor was the lawful owners in possession as well as the valid title holder over the suit land. In the judgment of this High Court referred by the Learned counsel for the respondents herein it was discussed that as per TLR & LR Act "record of rights" is prepared through different stages and during that period, no challenge was made by the present appellants herein regarding creation of Khatian in the name of the predecessor of the respondent-plaintiffs and in those cases it was the observation of the coordinate Benches of this High Court that a presumption can be drawn up as per Section 43(3) of TLR & LR Act which states that "entries in the record of rights shall be presumed to be correct until

the contrary is proved.” In those case, since the defendants could not adduce any rebuttable evidence on record to create any doubt about the title of the plaintiffs. So, based on the Khatians the concerned Courts gave the findings which were affirmed by the High Court. But here in the given case it is on record that the predecessor of the defendants i.e. appellant herein was shown as permissive possessor during settlement operation which was marked as Exbt.1 as a whole and on perusal of Exbt.3 i.e. Khatian No.266 it appears that on 13.06.1966 during attestation period name of the predecessor of the respondent-plaintiffs was shown as “Rayot”. But how his name was recorded as Rayot, in this regard, the respondent-plaintiffs before the Learned Trial Court or Appellate Court could not adduce any documentary evidence on record. Hon’ble the Supreme Court of India in this regard in **P. Kishore Kumar versus Vittal K. Patkar** reported in **2023 SCC OnLine SC 1483** in para Nos.12 to 16 and 24 to 32, the Apex Court observed as under :

“12. It is trite law that revenue records are not documents of title.

13. This Court in Sawarni vs. Inder Kaur and Ors.:(2020)19 SCC 57 held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.

14. This was further affirmed in Balwant Singh & Ors vs. Daulat Singh (Dead): (1996) by LRs and Ors. :(1997)7 SCC 137 wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.

15. In Jitendra Singh vs. State of Madhya Pradesh and Ors.: 2021 SCC OnLine SC 802”, this Court after considering a catena of judgments, reiterated the principle of law as follows:

“6. *mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose.”**

16. We may also profitably refer to the decision of this Court in Sita Ram Bhau Patil vs. Ramchandra Nago Patil (Dead) by LRs. and Ors. (1977) 2 SCC 49 wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary.”

24. This Court, in Union of India and Ors. vs. Vasavi Co-operative Housing Society Limited and Ors. :(2014) 2 SCC 269, held as under:

"15. It is trite law that, in a suit for declaration of title, the burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff."

25. This decision was affirmed, and further elaborated upon, in Jagdish Prasad Patel (Dead) thr. LRs. and Ors. vs. Shivnath and Ors. :(2019) 6 SCC 82, wherein this Court has succinctly summarized the law on burden of proof in suits for declaration of title as follows:

"44. In the suit for declaration for title and possession, the Plaintiffs- Respondents could succeed only on the strength of their own title and not on the weakness of the case of the Defendants-Appellants. The burden is on the Plaintiffs-Respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The Plaintiffs-Respondents have neither produced the title document i.e. patta-lease which the Plaintiffs-Respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title."

26. Mr. S.N. Bhat placed reliance on the decision of this Court in R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple :(2003) 8 SCC 752 to contend that the plaintiff was only expected to prove his title to a high degree of probability and not beyond reasonable doubt. The principle of law argued by the learned senior counsel is not one we wish to dispute, the same having been well settled through numerous decisions of this Court. However, having led in evidence only revenue documents which are essentially fiscal in nature, we have no hesitation in holding that in the present case, the plaintiff has been unable to assert his case to a high degree of probability. It is, therefore, not enough that the plaintiff led in evidence records of rights for a number of years in an attempt to establish his title; such records would not counter the proof of occupancy rights furnished by the defendant, in a test of probative value.

27. This Court, in Somnath Burman vs. S.P. Raju and Ors. : (1969) 3 SCC 129 held that possession can be regarded as a better title against all, except the true and lawful owner. Therefore, the multitude of revenue documents put to use to argue that the plaintiff was cultivating the suit property would not adequately meet the demands of proof made by law. The only credible document of title led as evidence in the present case was in favour of the defendant's predecessor-in-interest; hence, it must follow that it is only the defendant who can be declared the lawful owner of the 'B' schedule property.

28. In the light of the discussions made above, we hold that the Trial Court erred in decreeing the suit by placing on a higher probative pedestal the revenue entries. In our considered opinion, the first appellate court rightly overturned the findings of the Trial Court and dismissed the suit. The Commissioner's order was correctly interpreted to

determine as to in whom occupancy rights vested in respect of the 'B' schedule property.

29. The first appellate court having examined the facts in extenso, the High Court ought not to have interfered with the findings rendered therein by virtue of being, in second appeal, a court of law. As was astutely said by this Court in *Gurdev Kaur vs. Kaki* : (2007) 1 SCC 546, a second appellate court is not expected to conduct a "third trial on facts" or be "one more dice in the gamble." The decision rendered by the first appellate court, not being in violation of the settled position of law, ought not to have been interfered with. With utmost respect to the High Court, we are constrained to observe that the question framed by it could be regarded as one of law, if it all, but did not merit the label of a substantial question of law so as to warrant interference with the first appellate decree under section 100 of the CPC.

30. That apart, the High Court was remiss in reversing the findings of facts rightly arrived at by the first appellate court. The decision to adopt the Trial Court's approach of interpreting the Commissioner's order within the framework of the revenue records that were exhibited was yet another aspect in which the High Court fell in error. An attempt ought to have been made by the High Court to harmoniously read the Commissioner's order with the provisions of the Act and to interpret the same so as to render it in consonance with the law, the failure of which leads to the inescapable conclusion that the same is indefensible.

31. The sequitur of this discussion, with respect, is that the High Court while rendering the judgment and order under challenge proceeded on an erroneous approach and contrary to settled law. The plaintiff having failed to meet the burden of proof imposed on him by law, his suit against the defendant must fail.

32. The impugned judgment and decree are, accordingly, set aside. The civil appeal stands allowed and the decree passed by the Trial Court, extracted hereinabove, is set aside with the result that the plaintiff's suit shall stand dismissed. There shall be no order as to costs."

In another judgment, Hon'ble the Supreme Court of India in **Bhimabai Mahadeo Kambekar (Dead) through Legal Representative versus Arthur Import and Export Company and Others** reported in **(2019) 3 SCC 191**, in para No.6 further observed as under :

"6.This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. (Seen *Sawarni v. Iner Kaur* : (1996) 6 SCC 223), *Balwant Singh v. Daulat Singh* : (1997) 7 SCC 137 and *Narasamma v. State of Karnataka* : (2009) 5 SCC 591."

From the aforesaid principles of law laid down by the Hon'ble Apex Court it appears that revenue records are not

documents of title and in the said judgments it is also mentioned that mutation of records does not confer any right, title and interest in favour of any person and the mutation record or the revenue record is meant only for the fiscal purpose. Relying upon the aforesaid principles we can safely come to the conclusion that the observations of the Learned Courts were not in accordance with the guidelines/observations made by the Hon'ble Apex Court in the aforesaid cases. It appears that based on revenue records no decree of title can be granted by any Court. Accordingly, the substantial question of law formulated is answered in negative against the respondent-plaintiffs.

[15] Situated thus, it appears that both the Courts below have committed error in decreeing the suit in favour of the respondent-plaintiffs. Accordingly, in the considered opinion of this Court although the appellants could not produce any rebuttable evidence on record but on the basis of documentary evidence on record as relied upon by the respondent-plaintiffs up to this stage, no decree of title can be conferred by any Court. Thus, it appears that both the Courts below have misinterpreted the principles of law laid down by the Hon'ble Apex Court and as such, both the judgments and decree are liable to be interfered with.

[16] In the result, the appeal filed by the appellants is hereby allowed but considering the facts and circumstances of this case, no order is passed as to costs. The judgment dated 10.10.2023 and decree dated 11.10.2023 delivered by Learned Additional District Judge, North Tripura, Dharmanagar in connection with Title Appeal No.07 of 2023 confirming the judgment dated 04.01.2023 and decree dated 10.01.2023 delivered by Learned Civil Judge (Senior

Division), Dharmanagar, North Tripura in connection with Case No. Title Suit 08 of 2020 are accordingly stands set aside. This judgment is based on the basis of documentary evidence on record adduced by the parties and also in view of the principle of law laid down by the Hon'ble Apex Court. However, in future, if the respondent-plaintiffs could able to find out any document or title on the basis of which Khatian was prepared in the name of the predecessor of the respondent-plaintiffs in the year 1966, in that case, the respondent-plaintiffs shall be at liberty to file regular suit for declaration of title and for recovery of possession, if they are so advised.

With this observation, the appeal filed by the appellants is hereby allowed and disposed of.

Pending application/s, if any, also stands disposed of.

JUDGE

SABYASACHI
BHATTACHAR
JEE

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BHATTACHARJEE
Date: 2025.05.09
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