

**IN THE HIGH COURT OF TRIPURA
A G A R T A L A**

RSA.NO. 78 OF 2007

1(a). Smti. Chinu Rani Saha,
wife of late Sunil Saha @
Sunil Chandra Saha

1(b). Sri Subhashish Saha,
son of late Sunil Saha @
Sunil Chandra Saha

both residents of Town Pratapgarh (Central Road Extinction)
P.S. East Agartala, Dist- West Tripura

1(c). Smti. Sonali Poddar,
wife of Bijoy Kumar Poddar,
daughter of late Sunil Saha @
Sunil Chandra Saha,
Resident of Melagarh, Rajghat,
P.S. Melagarh, Dist- West Tripura

.....Appellants

-V E R S U S-

1(a). Smti. Pranati Shingha Bist,
wife of late Quar Bahadur Shingh Bist

1(b). Smti. Nikita Shingh Bist

1(d). Smti. Gayetri Shingh Bist

all are resident of 19/15 Faltu Line, Dehradun, Uttarakhand

1(c). Smti. Bharati Shingha Bist,
daughter of late Capt.
Quar Bahadur Shingha Bist,
C/o B.R. Mahapatra House No. 351,
Bileek Bihar, Banbaychak,
Jharseegora, Orissa

.....Respondents

RSA.NO. 84 OF 2007

1(a). Shri Subhash Ch. Ghosh,
son of late Purna Chandra Ghosh,
resident of Netaji Subhash Road,
Agartala, P.S. West Agartala, Dist- West Tripura

.....Appellant.

-V E R S U S-

1(a). Smti. Pranati Shingha Bist,
wife of late Quar Bahadur Shingh Bist

1(b). Smti. Nikita Shingh Bist

1(d). Smti. Gayetri Shingh Bist

all are resident of 19/15 Faltu Line, Dehradun, Uttarakhand

1(c). Smti. Bharati Shingha Bist
daughter of late Capt.
Quar Bahadur Shingha Bist
C/o B.R. Mahapatra House No. 351
Bileek Bihar, Banbaychak
Jharseegora, Orissa

.....Respondents

RSA.NO. 85 OF 2007

1. Shri Tulsi Paul

2. Shri Bijan Paul

both are residents of Netaji Subhash Road, Agartal, P.S. West Agartala
District-West Tripura

.....Appellants

-V E R S U S-

1(a). Smti. Pranati Shingha Bist,
wife of late Quar Bahadur Shingh Bist

1(b). Smti. Nikita Shingh Bist

1(d). Smti. Gayetri Shingh Bist,

all are resident of 19/15 Faltu Line, Dehradun, Uttarakhand

1(c). Smti. Bharati Shingha Bist,
daughter of late Capt.
Quar Bahadur Shingha Bist,
C/o B.R. Mahapatra House No. 351
Bileek Bihar, Banbaychak
Jharseegora, Orissa

.....Respondents

RSA.NO. 80 OF 2007

1(a). Smti. Chinu Rani Saha,
wife of late Sunil Saha @
Sunil Chandra Saha

1(b). Sri Subhashish Saha,
son of late Sunil Saha @
Sunil Chandra Saha

both residents of Town Pratapgarh (Central Road Extention)
P.S. East Agartala, Dist- West Tripura

1(c). Smti. Sonali Poddar,
wife of Bijoy Kumar Poddar,
daughter of late Sunil Saha @
Sunil Chandra Saha,
resident of Melagarh, Rajghat,
P.S. Melagarh, Dist- West Tripura

.....Appellants

-V E R S U S-

1(a). Smti. Pranati Shingha Bist,
wife of late Quar Bahadur Shingh Bist

1(b). Smti. Nikita Shingh Bist

1(d). Smti. Gayetri Shingh Bist

all are resident of 19/15 Faltu Line, Dehradun, Uttarakhand

1(c). Smti. Bharati Shingha Bist,
daughter of late Capt.
Quar Bahadur Shingha Bist,
C/o B.R. Mahapatra House No. 351
Bileek Bihar, Banbaychak
Jharseegora, Orissa

.....Respondents

RSA.NO. 83 OF 2007

1(a). Smti Milan Rani Saha,
wife of late Krishna Chandra Saha,

1(b). Shri Laxmi Kanta Saha

1(c). Shri Shibu Saha

1(d). Shri Ramdas Saha

- 1(e). Shri Shyamdas Saha
1(f). Gurudas Saha

all are sons of late Krishna Chandar Saha of Shibnagar, Agartala, P.S. East Agartala, district – West Tripura

- 1(g). Smti. Lika Saha,
wife of Shri Bimal Kanti Saha,
resident of Shibnagar, near Modern Club,
P.S. East Agartala, Dist- West Tripura

.....Appellants

-V E R S U S-

- 1(a). Smti. Pranati Shingha Bist,
wife of late Quar Bahadur Shingh Bist

- 1(b). Smti. Nikita Shingh Bist

- 1(d). Smti. Gayetri Shingh Bist

all are daughters of late Quar Bahadur Shingh resident of 19/15
Faltu Line, Dehradun, Uttarakhand

- 1(c). Smti. Bharati Shingha Bist,
daughter of late Capt.
Quar Bahadur Shingha Bist,
C/o B.R. Mahapatra House No. 351
Bileek Bihar, Banbaychak
Jharseegora, Orissa

.....Respondents

RSA.NO. 81 OF 2007

Shri Gopal Ch. Saha,
son of late Gouranga Ch. Saha,
resident of Netaji Subhash Road,
Agartala, P.S. East Agartala,
Dist- West Tripura

.....Appellant

-V E R S U S-

- 1(a). Smti. Pranati Shingha Bist,
wife of late Quar Bahadur Shingh Bist

- 1(b). Smti. Nikita Shingh Bist

1(d). Smti. Gayetri Shingh Bist,

all are daughters of late Quar Bahadur Shingh resident of 19/15
Faltu Line, Dehradun, Uttarakhand

1(c). Smti. Bharati Shingha Bist
daughter of late Capt.
Quar Bahadur Shingha Bist,
C/o B.R. Mahapatra House No. 351
Bileek Bihar, Banbaychak
Jharseegora, Orissa

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner/appellants	:	Mr. D. Chakraborty, Sr. Advocate Mr. P.Chakraborty, Advocate				
For the respondents	:	Mr. M.Kar Bhowmik, Sr. Advocate Mr. S.M.Chakraborty, Sr. Advocate Mr. R.R. Dutta, Advocate Mr. Shankar Bhattacharjee, Advocate Mr. Raju Dutta, Advocate & Ms. A. Dhar, Advocate				
Date of hearing	:	07.05.2015				
Date of judgment & order	:	27.05.2015				
Whether fit for reporting	:	<table><tr><td>Yes</td><td>No</td></tr><tr><td>√</td><td></td></tr></table>	Yes	No	√	
Yes	No					
√						

JUDGMENT & ORDER

These appeals being (i) RSA 78/2007 from the judgment and decree dated 07.06.2007 delivered in Title Appeal No. 29/1992 on affirming the judgment and decree dated 29.05.1992 delivered in Title Suit No. 63/1971 (ii) RSA No. 80/2007 from the judgment and decree dated 07.06.2007 delivered in Title Appeal No.31/1992 on affirming the judgment and decree dated 29.05.1992 delivered in Title Suit No. 67/1971 (iii) RSA No. 81/2007 from the judgment and decree dated

07.06.2007 delivered in Title Appeal No.27/1992 on affirming the judgment and decree dated 29.05.1992 delivered in Title Suit No. 40/1966 (iv) RSA No. 84/2007, from the judgment and decree dated 07.06.2007 delivered in Title Appeal No.32/1992 on affirming the judgment and decree dated 29.05.1992 delivered in Title Suit No. 65/1971 (v) RSA No. 83/2007 from the judgment and decree dated 07.06.2007 delivered in Title Appeal No.28/1992 on affirming the judgment and decree dated 29.05.1992 delivered in Title Suit No. 64/1971 and (vi) RSA No. 85/2007, from the judgment and decree dated 07.06.2007 delivered in Title Appeal No.30/1992 on affirming the judgment and decree dated 29.05.1992 delivered in Title Suit No. 62/1971, by the Civil Judge Sr. Division No.2, West Tripura, Agartala, whereby the suit was decreed, are taken up together as the identical substantial questions of law are involved in all these appeals. More importantly the related suits and the appeals were disposed of by the common judgments passed by the Trial Court and the First Appellate Court. The common judgment and decree passed in the first appeal affirming judgment and decree allowing the suit has been questioned in this cluster of appeals filed under Section 100 of the CPC.

[2] At the time of admitting these appeals following substantial questions of law have been formulated by the order dated 14.02.2012:

(i) Whether the judgment and decree passed by the trial Court in TS. No. 63 of 1971 and affirmed by the First Appellate Court in TA.No. 29 of 1992 are based on inadmissible evidence and whether the material document which was supposed to be considered by the trial Court and the First Appellate Court has been ignored and therefore, the judgment and decree are liable to be termed as perverse.

(ii) Any other issue may be formulated in course of hearing if found necessary.

[in all these appeals the same substantial questions of law has been formulated but in the relevant part the number of the Title Suit and the First Appeal got changed as required.]

[3] Even though liberty was given to the appellants to raise any other substantial question of law, if found material for hearing the appeal but the appellant did not raise any additional substantial questions of law.

[4] For laying the perspective and also for appreciating the substantial questions of law, the essential fact may be laid at the outset.

According to the original plaintiff, namely, Capt. Quar Bahadur Singh, he purchased the A-Schedule land in the suit by two (2) registered Sale Deeds dated 24.11.1965 (Exbt. A2) and 20.04.1962 (Exbt.A 2) from the pro-forma respondents No. 3 to 6, who, before Tripura Land Revenue and Land Reforms Act 1960 (in short TLR & LR Act, 1960), were the Dar Talukdar (intermediary) for 20 years which would be apparent from the certified copy of the Touji (Exbt.A1). During pendency of the suit the original plaintiff, namely, Capt. Quar Bahadur Singh, transferred the entire A-Schedule land to Sri Madhusudhan Debbarma by

dint of the Sale Deed dated 18.08.72, Exbt-A4 without any permission of the court. However, when the said transfer was brought to the notice of the court for the purpose of addition of Madhusudhan Debbarma, the trial court allowed such addition and thus, Madhusudhan Debbarma, was added as the plaintiff No. 2 along with the original plaintiff, Capt.Quar Bahadur Singh.

[5] Even after TLR & LR Act came into operation, the name of Rani Ujjala Devi and other pro-forma respondents, her sons, were recorded as the Rayat in possession in the Khatian of the attestation stage. Those Khatians have been placed in the evidence as Annexure-A7 to Annexure-A7(8), showing the defendants as the forceful occupiers of various plots under the land described in the A-Schedule. The respective piece of land under possession of the defendant/s have been shown in the Schedule- B. These facts are not in dispute at all. The suits have been instituted for eviction of the forceful occupiers who are the principal defendants in the respective suits and the appellants in the first appeals. The schedule B land in the plaint of the suits are the parts of the A-Schedule land and under possession of the respective principal defendants. Even the defendants did not dispute to that extent. The defendants, the appellants herein, by filing the written statement has stated that they are in the forceful possession over the land as described in the schedule B land but they have asserted

that by virtue of the possession over the suit land for more than the statutory period, the title over the suit land of the true owner has extinguished. They have categorically denied that the original plaintiff or his alleged vendors, the pro-forma defendant Nos. 3-6, have or had acquired any right, title or any interest whatsoever in the suit land in any manner and they did never possess the suit land nor did they indulge any act for asserting their possession whatsoever in the suit land at any time before institution of this suit. Their alleged story of taking settlement by dint of Takshisi Taluki right in the T.K. No. 300 is false and a myth. If such a collusive, falsely created and concocted paper of any settlement is produced at any time in this case, it would be proved to be quite false, void, inoperative being a paper transaction without being acted upon at any time and by such false paper, no right, title or interest is accrued or can accrue either to the pro-forma defendants No. 3-6 or to these plaintiffs in any manner according to law. So the plaintiffs' suit for recovery of possession and mesne profit is liable to be dismissed outright with compensatory costs to these defendants.

[6] On framing various issues including "is the suit property Jote land or Khas land? (the issue No.4) The trial court while deciding the issue No. 4 by the common judgment dated 29.05.92 has observed as under:

“.... It cannot be said that the lands in suit vested to the Government and became Khash land. The lands are quite a jote land. The Exbt. A-1 is the tauzi of Takshishi taluk whereby it can be said that the land was not a khash land. The Exbt. A.7, Exbt. A.7/1, Exbt. A.7/2, Exbt. A.7/3, Exbt. A.7/4, Exbt. A.7/5, Exbt. A.7/6, Exbt. A.7/6, Exbt. A.7/8, Exbt. A.7/8, are the record of the settlement which shows that even after the introduction of the TLR & LR Act the lands of the aforesaid takshishi Taluk No. 300 and the land thereof was posted against the tauji of Rani Ujjala Devi and others Exbt. A/9, A/10, A/11 and A/12 are the records of right prepared in the name of the plaintiff No. 2.

Therefore, it can be very safely being inferred that lands in suit are the jote land and not the khash land”.

[7] Admittedly, those records of right are not finally published and those are no foundation to enable the trial court draw presumption under Section 43(3) of the TLR & LR Act. Based on the said finding the suits were decreed.

[8] Being aggrieved by the said judgment dated 29.05.92 the appellants herein, filed the first appeals being TA. No. 27/92, TA. No. 28/92, TA. No. 29/92, TA. No. 30/92, TA. No. 31/92 and TA. No. 32/92. By the impugned common judgment dated 07.06.2007 the first appellate court has affirmed the finding of the trial court without much discussion. For purpose of reference, the finding based on which the impugned judgment of affirmation has been passed is reproduced hereunder:

10. **Ld. counsel appearing for the defendants-appellants submitted that due to the introduction of the TLR &LR Act, 1960, all rights in the intermediaries to the Govt. of Tripura as per provision of Section 134 of the said Act and that had there been any settlement granted by Rani Ujjala Devi to the**

intermediaries the legal force of the settlement ceased to exist on the introduction of the provision of Section 134 of the TLR & LR Act and as there shall be no intermediaries and the person of such a status shall be the direct riyat under the Govt. of Tripura. Ld. counsel further submitted that having lost intermediaries' right on the introduction of TLR & LR Act, the tenants have also lost their continuing right which was existing prior to the introduction of the said Act.

11. Ld. counsel for the plaintiff-respondents stated that provision of Section 134 of the TLR & LR Act, has no application in the instant suit on the ground that the rights of intermediaries shall no doubt vest to the Government freed from all encumbrances relating to only the agricultural land and in no case in non-agricultural land and that admittedly, the suit property is a Bazar viti land and, therefore, obviously a non-agricultural land. Ld. counsel further argued that plaintiff-respondents are further protected under the provision of Section 199 of the TLR & LR Act as Rani Ujjala Devi get settlement of the land in the year 1946 when TLR & LR Act was not in existence and as a result transaction of settlement were guided under the enactment as in force i.e. under the Rent Law, 1296 TE. The settlement in question was obviously come under the provision of the said Rent Law and in view of the provision of Section 199 of the TLR & LR Act whereby though the Rent Law was replaced has not affected operation of anything done under any enactment even after the introduction of TLR & LR Act, 1960.

12. It is the case of the plaintiff that Rani Ujjala Devi was obtaining 'tolas' from the persons in the suit land and some land were lying vacant and taking the carelessness of the pro-forma-defendant Nos. 3 to 6 the defendants trespassed into the land and occupied the same and they are nothing but mere trespasser. All the defendants claimed that they have been possessing the suit land since long and by this time they acquired title over the suit land by way of adverse possession. Once possession begun it could never become adverse unless hostile animus was expressed at any particular time to the knowledge of the plaintiff. In the written statement also there was no plea as to when such hostile animus was exhibited. Mere

possession of a land for a long time would not lead to acquisition of title.

13. Ext.A to Ext.A 7/8 are the records of the settlement which show that even after the introduction of the TLR & LR Act land of the aforesaid Takshishi Taluk No. 300 was posted against the Touji of Rani Ujjala Devi and that Rani Ujjala Devi had the saleable right to sell the suit property and after purchase the suit land under Ext. A-2 the suit land has been recorded in the record of rights (Ext.A-9 to Ext. A-12) in the name of plaintiff No. 2, Madhusudan Debbarma. Khatians are the proof of possession as well as title unless or until contrary is proved. The defendants claimed that they were in possession of the suit land by purchase. If they are in possession of the suit land by purchase then record of right surely would have been created in their names. There is also no evidence produced from the side of the defendants that they ever made any prayer before the authority for correction of record of rights prepared in the name of Madhusudan Debbarma and therefore, it cannot be said that the land in suit vested to the Government and became khas land. The lands are jote land.

[9] There is no dispute that at the instance of the defendants in the first appellate stage, three documents being the judgment dated 24.05.80 delivered in T.S. No. 19/66 (Ext. B20), the judgment dated 25.06.81, delivered in T.A. No. 14/80 (Ext. B20 series) and the judgment dated 20.01.84 delivered in Second Appeal No. 21/81 by the Gauhati High Court (Ext. B20 series) were introduced under Order XLI Rule 27 of the CPC. No challenge was projected against such admission of additional evidence. The plaintiff in the TS. No. 19/66 is the original plaintiff of the present suits. By the judgment and decree dated 24.05.80 (Ext. B20), the suit being T.S No.19/66 was dismissed. In the said

judgment dated 24.05.80. (Ext. B20) on embarking on elaborate discussion it has been held that:

8. Issue No. 4: This issue is taken up first in preference to other issues because the preliminary question and probably the vital question which is to be decided in this suit is whether the plaintiff has succeeded in establishing his jote right in the land in suit. It may be mentioned here that in course of the trial it is practically not disputed that (Page- 6) pro-forma defendants 3-6 namely Rani Ujjala Debi, Rana Dal Jang Bahadur, Rana Sri Sherjang Bahadur and Rana Sri Tikjit Jang Bahadur took settlement of the land measuring 4 gandas 1 Kara 1 Kranta of first schedule land. (Ext. 1) which is the certified copy of the Settlement Roll shows that land of schedule A to the plaint was settled with the above named proforma defendants for a period of 20 years from 1356 T.E. to 1375 T.E. Ext. A -16 Treasury Challan further shows that proforma defendant No. 3. Rani Ujjala Debi also deposited the revenue of the land of Takshishi Taluk No. 300 for the year 1365 T.E. That the land of schedule A appertains to Takshishi Taluk No. 300 of Mouja Agartala Town under present Sheet No. 15 is also not disputed. It is also admitted fact that the suit land which measures 2 Karas and 13 dhurs also forms a part of the land of schedule A and that it bears Dag No. 13223 of the recent Survey Settlement operation. The report of Survey Commissioner which has been marked as Ext. C-1 also shows that the suit land forms part of Schedule A of the plaint and it bears Dag No. 13223 of the last Survey Operation. So from these documents the in-disputed fact that emerges out is that the proforma defendant No. 3 Rani Ujjala Debi and her 3(three) sons took settlement of the land of schedule A and that it was posted in their names under Takshishi Taluk No. 300 of Mouja Agartala Maharajganja Bazar appertaining to present Sheet No. 15 of Agartala Town and thus they acquired Taluki right over this land of Schedule A including the suit land.

9. Now the vital question which is to be determined is whether proforma defendants held that land in suit under the (Page-7) jote right after the date of vesting which is admittedly 14.11.1961 A.D. It is an admitted fact that

as per the declaration of the Government of Tripura all taluki rights vested in Government on 14.11.61 A.D. Learned counsel Mr. Deb Roy appearing for the plaintiff submits that as per the provision of Section 136(1)(a) of the Tripura Land Revenue and Land Reforms Act the Taluki right which the proforma defendants held so-long over the land in suit was transformed into jote right. In support of his contention he draws my attention to Ext. 3 which is an attested Khatian. But this document does not show what class of right Rani Ujjala Debi was holding. This Khatian was attested on 10.09.65 A.D, i.e after the date of vesting but the column No. 15 which is meant for showing the class of right is vacant. Rather column No. 23 of this document shows that defendant No. 1 Sri Patit Paban Banik has been possessing the land as a permissive owner of Rani Ujjala Debi. So the recitals of this document militates against the plaintiff. Further Ext. B-4 which is the Parcha shows that the land in suit was recorded in the name of defendant No. 1 Sri Patit Paban Banik. So from Ext. 3 it cannot be concluded that on the date of vesting by operation of Section 136(1)(a) of the Tripura Land Revenue and Land Reforms Act the Taluki right of pro-forma-defendants over the land in suit was transformed into jote right. No reason has been assigned as to why this Khatian was not finally published. Section 136(1)(a) of the Tripura Land Revenue and Land Reforms Act reads :(Page-8)

“ Notwithstanding anything contained in Section 134 and 135, an intermediary shall, subject to the provision of sub-Section 2 be entitled to retain with effect from the vesting date, (a) homesteads, buildings and structures together with the lands appurtenant thereto in the possession of the intermediary other than buildings vested in the Government under Section 135 (b) (c) (d) (e) (f).....(2) an intermediary who is entitled to retain possession of any land under sub-Section (1) shall hold such land directly under the Government from the vesting date as a raiyat thereof or as a non-agricultural tenant thereof, as the case may be, and be liable to pay therefore land revenue at full rate applicable to similar lands in the locality ”.

10. A perusal of this provision shows that an intermediary is entitled to retain possession of Homesteads,

buildings and structures together with the lands, appurtenants thereto if on the date of vesting he was actually in possession of that land. So the most important question which arises in this suit is whether on the date of vesting the proforma defendants namely Rani Ujjala Debi and her 3(three) sons had possession over the land in suit. It is the case of the plaintiff that the land in suit was vacant and sometime in the month of January, 1963 A.D. the defendant No. 1 trespassed into this land and thereafter erected a hut. It is pertinent to point it out here that plaintiff Kuyer Bahadur Singh did not examine himself in this suit. He, however, tried to prove the possession of proforma defendants on the land in suit by the evidence of his attorney named Basudev Sarma (P.W 1), Sashi Sekhar Bhattacharjee (P.W-2), Sri Haradhan Deb (P.W-3), Sri Pradesh Kumar Dasgupta (P.W-4) and his co-plaintiff Sri Madhusudan Debbarma. That plaintiff Kuyer Bahadur Singh had no possession over the land in suit is an admitted fact as the kabala Ext. 13 by dint of which he purchased the land of Schedule A was executed on 20.04.1966 A.D. However, let us now take up the evidence of PWs one after another to ascertain as to whether on the date of vesting the proforma defendants had possession or exercised any (Page-9) act of possession over the land in suit.

11. It may, however, be remembered here that the case of the defendant No. 1 Sri Patit Paban Banik is that he took over possession of the land in suit on 05.07.1959 A.D. after purchasing it from his vender Sri Nurjahan Bibi. That Smti. Burjahan Bibi was carrying on some business of pan, Bidi etc., in a part of the land of schedule A is practically not disputed as it would be apparent from the examination in chief of P.W. 2 Sri Sashi Sekhar Bhattacharjee that Nurjahan Bibi was one of the tenants. Similarly it will be apparent from the cross examination of P.W.1 Sri Basudev Sarma (Page No. 10) that he cannot say for how many years Smti Nurjahan Bibi carried on the business of pan shop. These P.W.1 Sri Basudev Sarma and P.W.2 Sri Sashi Sakhar Bhattacharjee are undoubtedly most important witnesses in this case. So the indubitable fact that emerges out from their evidence is that Smti. Nurjahan Bibi was carrying on the business of pan, Bidi etc. in a part of the land of Schedule A.

12. Now it is to be investigated how Rani Ujjala Debi exercised possession over the land of Schedule A after taking settlement in the year 1953 A.D. P.W. 1 Sri Basudev Sarma who is the attorney of plaintiff Kuyer Bhadur Singh deposes that after taking settlement Rani Ujjala Debi set up fencing around the entire land and thereafter she also erected a few huts and let out those huts to tenants. According to him Pradesh Kumar Dasgupta, Gobinda Sarma and Harendra Shil were tenants in 3(three) different huts and these 3 (three) huts were situate on the eastern side of the land of Schedule A. But PW.2 Sri Sashi Sekhar Bhattacharjee has stated in (Page-10) his examination-in-chief (Page No. 2) that the tenants themselves constructed huts and that the price of the huts were deducted from the rent. So the version of P.W. 1 Sri Basudev Sarma that Rani Ujjala Devi herself constructed the huts before letting out those to tenants has been constructed by PW.2 Sashi Sekhar Bhattacharjee. This PW. 1 further states that on the extreme western side there was one two roofed tin shed hut and one Smti Sonabarannesa was the tenant of that hut. According to him the middle portion of the land of Schedule A was vacant and on the market days people would sit there for selling merchandise, vegetable etc. and Rani Ujjal Devi would realise rent from them. According to him Rani Ujjala Devi constructed only 4 huts and the tenants were Pardesh Kumar Dasgupta, Gobinda Sarma, Harendra Das and Sonabarannesa. But P.W.2 who is undoubtedly the most competent witness has stated that Pradesh Kumar Dasgupta, Gobinda Sarma, Harendra Shil, Amar Shil, Fatik Shil, Sonabarannesa and Nurjahan Bibi were the tenants. Further this witness states that Nurjahan and Sonabarannesa were on the extreme western side and that they themselves constructed their huts. That apart although he has stated that Rani ujjala Devi set up fencing around the land of Schedule A in the cross examination he has stated that he did not see at the time when the fencing was get up. So it is undoubtedly incumbent upon the witness to state as to how he could know that the fencing was given by Rani Ujjal Devi. Further this P.W. 1 stated that Rani Ujjala Debi never consulted with him as to how she was exercising possession over the land of Schedule A. So it it not clear to me how he could know that Rani Ujjal Debi was actually exercising possessing over the land of Schedule A (Page-11) including the

suit land. It may be very well said here that the assertion of PW.1 that Rani Ujjal Debi was exercising possession over the land in suit has no basis as the witness does not even know when defendant No. 1 dispossessed Rani Ujjala Debi although he has stated that he passes besides that suit land almost daily. He claims that he was staying in the house of Rani Ujjala Debi but even Rani Ujjala Debi did not consult with him at the time of selling this land to plaintiff Kuyer Bahadur Singh. It has also been stated by this witness in his examination-in-chief that Rani Ujjala Debi sold Taluki right to plaintiff Kuyer Bahadur Singh. It has been suggested to this witness that Rani constructed no hut on the Taluki land of the suit. This witness, however, denied the suggestion. This denial indicates that Rani Ujjala Debi constructed some hut on the land in suit and according to him Rani Ujjala Debi constructed the huts in the year 1953 A.D. and she possessed these hut for about 5 years i.e according to his version Rani Ujjala Debi exercised her possession till 1958 A.D. So although in his enthusiasm to support the case of the plaintiff he said so many things as to the possession of Rani Ujjala Debi over the suit land, his evidence is conflicting and suffers from so many infirmities. What at best can be inferred from his evidence is that Rani Ujjala Debi exercised her possession on some portion of Schedule A of the land for a certain period.

13. PW.2 Sri Sashi Sakhar Bhattacharjee was an employee of Rani Ujjal Debi and he used to realise the rent of the estate of Rani Ujjala Debi. According to him he took over possession of the land of Takshishi Taluk No. 300 on behalf of Rani Ujjala Debi immediate after settlement. He has also stated (Page-12) that after taking over possession the low land was raised by earth filling and during cross examination (page No. 14) it has been elicited from him that earth filling was done within 3 or 4 days of taking over possession of the land. But P.W 3 Sri Haradhan Deb who deposed on 18.01.1979 A.D. has stated in his examination-in-chief that about 19/20 years back he carried earth by his own vehicle and filled up the low land i.e he did the earth filling work in the year 1960. The story of earth filling as given by P.W 2 Sashi Sekhar Bhattacharjee has thus been contradicted by PW.3. Further during cross examination the witness has stated that Rajasaheb the husband

of Rani died in the year 1946 A.D. Cross examination further he states that he is not quite sure as to whether Rajasaheb or Rani Ujjala Debi took settlement of the land. He is also unable to say what amount Rani had to pay for taking settlement of the land. Further although this witness took over possession of the land on behalf of Rani Ujjala Debi it would be evident from his cross examination (page No. 10) that he is not quite sure whether he took over possession in the year 1952. Further his evidence in cross examination shows that he cannot say whether the suit land is situate within the Chandiana of Maharajganj Bazar or not. So the evidence of this witness does not inspire confidence about the manner in which Rani Ujjala Debi exercised possession over the land in suit.

14. The evidence of P.W 3, Sri Haradhan Deb is also not convincing. During cross examination he has stated that there were 2 or 3 houses in that land when he did the earth filling work but it has also been elicited from him during cross examination that when he deposed in some case in the Court of (Page-13) Munsiff he stated that at the time of earth filling the entire land was vacant and I am, therefore, not prepared to give reliance upon the testimony of this witness. PW. 4 Sri Pradesh Kumar Dasgupta was a tenant in one of the hoses of the land of Schedule A. According to him he left the house in the year 1960/61 A.D. but Receipt No. 401 shows that rent was realised from him even on 2nd Ashad, 1376 B.S. This Receipt Book thus creates much confusion and the argument of learned counsel Mr. N. M. Paul that these receipts were created after institution of the suit, cannot be lightly brushed aside. Further it is apparent from his evidence that one Mohammedan woman would stay in one of the huts of that land. He is unable to say for how many years that mohammedan woman carried on the business.

15. P.W 5 is Madhusudan Debbarma, he is one of the plaintiffs of the suit. During pendency of the suit he purchased the land of Schedule A including the suit land. According to him his house is situate at a distance of about 150/200 cubits from the suit land. He deposed on 10.05.1979 A.D. but according to him the fencing around the suit land was given about 7 or 8 years back. He claims that he saw when the earth filling was done and fencing was given. So the story of

earth filling of the suit land and setting up of fencing around it appears to be quite conflicting.

16. So if the evidence of these 4 (four) witnesses who were actually examined for showing the possession of Rani Ujjala Debi is carefully scrutinised then it will appear that their evidence is conflicting with one another on the material aspect. PW 6 Sri Kamala Kanta Dutta and PW 7 Sri Gopal Chandra Majumder (Page-14) were probably examined for showing the location of Maharajganj Bazar Chowmohani. The evidence of these two witnesses was felt necessary because defendants exhibited some documentary evidence namely Ext. B-3 to Ext. B -19 series. I have perused the evidence of both the witnesses but their evidence did not at all inspire my confidence as the evidence of both the witnesses suffer from so many infirmities. As for PW 6 Sri Kamala Kanta Dutta has stated in his examination –in-chief that Maharajganj Bazar Chowmohani is situate to the north of Gol Chakkar and according to him Radha Rani Jewellery i.e. the shop of DW 1 is situate opposite to that Chowmohani but in the same breath he has stated that this Radha Rani Jewellery is situate beside Netaji Road. He is unable to say whose shop is situate to the east of Radha Rani Jewellery and he is also unable to say what are written in the Sigh Boards of adjoining shops. Similarly the evidence of PW 7 Sri Gopal Chandra Majumder does not appear to be of much importance as Survey Commissioner was appointed to ascertain the location of the suit land and there was practically no controversy against the report of the Survey Commissioner.

17. Coming now the evidence of defendants it may be mentioned here that it is an admitted fact that defendant is carrying on some business on the land in suit under the named and style Radha Rani Jewellery. The report of Survey Commissioner will also show that the defendant No. 1 Sri Patit Paban Banik is in occupation of the land in suit and he has been carrying on the business of Jewellery under the named and style Radha Rani Jewellery. Examined as DW 1, defendant No. 1 Sri Patit Paban Banik deposes that on 05.07.1959 A.D. he (page-15) purchased the house of Nurjahan on the suit land at a consideration price of Rs. 350/-. The document has been marked as Ext. B-B-1 and it shows that he purchased the land in suit as well as the hut there on from Nurjahan at a

consideration price of Rs. 300/- . According to him after purchase he improve the land by filling earth on it and also constructed a tin shed hut thereon. His further statement is that after purchasing this land he started the business of gold and silver and he has been carrying on this business till today without any sort of interruption from the side of plaintiff or pro-forma defendants from the year 1959 A.D. He has exhibited the documents namely Ext. B-3 to Ext. B-19 series. Ext. B-2 is a notice which was issued by the Circle and Assistant Settlement Officer upon the defendant No. 1 for vacating the suit land. This document, however, does not indicate from which date the defendant No. 1 is in possession of the suit land. But Ext. B -16 shows that in the month of August, 1959 A.D. the notice for payment of insurance premium was addressed to the defendant No. 1 to his present address. It indicates that he was in possession of the suit land in the year 1959 A.D. Similarly Ext. B-4, preliminary record of right shows that the defendant No. 1 was in possession of the land in suit. DW 2 Nibaran Chakraborty has a house at a short distance from the suit land. He also supports the case of defendant No. 1 by stating that one mohannedan woman was on the suit land and that she was running one shop of pan, Bidi etc. This (page-16) witness further states that some time in the year 1952/53 A.D. the defendant No. 1 entered into this house. This witness is undoubtedly a competent witness as his house is situate at a very short distance from the suit land. Similarly DW 3 Sri Atul Chandra Banik who has a shop house just opposite to the suit land states in his deposition that Nurjahan sold her hut to DW 1, Sri Patit Paban Banik sometime in the year 1952/53 A.D. According to him since that time the defendant No. 1 has been possessing the suit land after making improvement of the land and also constructing huts thereon. DW 7 Sri Dinesh Chandra Banik is another person who runs a shop house near the suit land. He also supports that version of DW 1 by stating that Nurjahan sold the land in suit as well as the hut thereon to defendant No. 1 by executing Ext. B-1 Sale Deed DW 5 Sri Akhil Chandra Ghosh and DW 6 Sri Gadadhar Bhowmik also appeared to be competent witness as they have shop house near the suit land. They have also corroborated the story of DW 1 Sri Patit Paban Banik. It appears from their evidence that they have been staying near the suit land before the date of vesting.

18. So upon consideration of the evidence of both sides I find that the evidence adduced on behalf of the defendants is more convincing as it cannot be disputed that the competency of the DWs are of much higher degree than the competency of PWs and I find no sufficient reason to reject their evidence. PW 5 Sri Madhusudan Debbarma has quite unequivocally stated in his cross examination that he purchased the Taluki right. Similarly the operative portion of this Kabala shows (page-17) that he purchased the Taluki right only. From my discussion of the evidence of PWs it will be abundantly clear that the PWs have made discrepant version as to the story of possession of Rani Ujjala Debi on the suit land and some of them appeared to be pliable for consideration to be made to say different version at different time. That Nurjahan was an occupant in a part of the land of Schedule A cannot be disputed. It is needless to emphasize that the principle of law is that the plaintiff is to prove his case and he cannot take advantage of the witnesses of his adversaries.

19. I have already stated above that an intermediary is entitled to retain possession under the provisions of Section 136(1) (a) of the Tripura Land Revenue and Land Reforms Act in case he possessed the land on the date of vesting. Learned counsel Mr. Deb Roy appearing for the plaintiff has submitted quite strenuously that the attested Khatian Ext. 3 is the proof that Rani Ujjala Debi acquired title to the suit land immediate after the date of vesting. But I am unable to accept his contention as attested Khatian does not confer any title. That apart even the recitals of column 23 of this document show that plaintiff was a permissive occupier under Rani Ujjala Debi. So if this document is to be taken into consideration then it is also to be deduced from it that defendant No. 1 is not only permissive occupier but he was also allowed to build a house on the land and as such I find that he is not ejectable. Further if this attested Khatian is to be taken into consideration then I see no reason why Ext. B-4 Parcha should not also be taken into consideration. The plaintiffs did not assign any reason as (page-18) to why he did not file their parcha. Learned counsel Mr. Deb Roy has, however, submitted that it was not considered necessary because the attestation stage is a subsequent stage of the preparation of the preliminary record

(Parcha). It is true that the stage of attestation is a subsequent stage but in face of the fact that preliminary record of right i.e the parcha was prepared in the name of defendant No. 1. it is not understandable to me how the attested Khatian was prepared in the name of Rani Ujjala Debi without any objection case on her behalf. It is also necessary to mention here that as per the provision of Section 43(3) of the Tripura Land Revenue and Land Reforms Act only finally published record of right renders the presumption in favour of the person in whose name it was recorded. But in the instant case the finally published Khatian has neither been filed nor the plaintiff assigned any reason whatsoever as to why they could not obtain that finally published Khatian. It is also necessary to mention it here that there is no abstract principle that whatever will appear in the record of rights will be presumed to be correct when it is shown by evidence that the entries are not correct. If any authority is required on this point it may be found in the case of Sita Ram Bhau Patil Appellant v. Ramchandra Nago Patil (dead) by Lrs. and another, respondents reported in A.I.R. 1977 Supreme Court at Page 1712.

20. Learned counsel Mr.N.M. Paul appearing for the defendants submits that the intention of the TLR &LR Act is fairly clear that it was intended by the legislator to liquidate all intermediary interest and vest the ultimate ownership on the land in the State. He, however, agree that under the provision of Section 136(1) (a) of the TLR & LR Act an intermediary is entitled to retain possession of any land falling under sub-Section 1 if on the date of vesting he was in actual possession of it. But according to him in that case that intermediary is to attain his jote right through some procedure. According to him under Rule 14 of the TLR & LR Rules, 1962 an amount equal to the market value of the land shall be charged as premium for allotment of any town land and that before allotment written consent of the Collector is required. He also draws my attention to Rules 17 and 18 and according to him in the case of town land the Collector is also required to take the approval of the Administrator before making any such allotment. But in the present case plaintiff did not file any document to show that Rani Ujjala Debi actually acquired the jote right over the suit land. Learned counsel Mr. Deb Roy argued at length that it

is sufficient if plaintiff succeeds in establishing a prima facie title and it is then for the defendants to substantiate the plea of adverse possession. But in the present case the question of adverse possession does not arise as it will be abundantly clear from the evidence and circumstances discussed above that the plaintiff failed to prove his prima facie title on the suit land. PW 5 Sri Madhusudan Debbarma who purchased the land of Schedule A including the suit land in the year 1972 A.D. has quite categorically stated in his cross examination that he purchased only Taluki right. It may be argued that he purchased the Taluki right only to get compensation from the Government.

21. So in view of the evidence both oral and documentary as discussed above I come to conclusion that the suit land falls under the category of Khas land of Government of Tripura and the plaintiff fails to prove his jote right on it. The issue is accordingly determined against the plaintiff.

22. Issue No. 3: In view of my decision in Issue No. 4 I find that plaintiff had no right and title to the suit property. The issue is accordingly determined against the plaintiff.”

[Emphasis Supplied]

[10] Being aggrieved by that finding of the Subordinate Judge in Title Suit No. 19/66 the plaintiff in this suit filed an appeal in the Court of the District Judge West Tripura, Agartala being T.A. No. 14/80 which was later on heard by the Additional District Judge, West Tripura, Agartala. By the judgment dated 25.06.81(Ext.B20 series) the suit was dismissed by affirming the finding of the trial court holding inter alia that:

19. The provisions of Section 136 have undergone in amendment by TLR & LR (Third Amendment) Act, 1975 which came into force on and from 27th day of Feb, 1975. The word ‘occupation’ in sub Section 1 has been substituted by the word ‘possession’ with a deeming provision to have been

substituted retrospectively, (Contd to Page/3) but in Sub Section 2 the word “or as a non agricultural tenant thereof, as the case may be “have been substituted for the words” as a rayati thereto”. But this substitution by amendment in Sub Section 2 has not been so substituted with any deeming clause. There having been no provision for retrospectivity in the enactment itself the amendment must be deemed to have been retrospectively substituted the word “as a non agricultural tenant there of”, as the case may be “must be substituted prospectively.

20. Let it now be seen how far the provision of Section 136 helps the plaintiffs. The suit land was admittedly a non agricultural land being a bazaar viti. So under Sub Section 2 of Section 136 of the Act of 1960 the intermediary could become a rayat from 1975 only after the 3rd Amendment Act came into force i.e. 27.02.1975. So prior to 27.02.1975 the defendant Nos. 3-6 had no right to become a rayat for a non agricultural land.

21. It is also admitted that the defendant Nos. 3-6 did not submit any return showing the land in his possession. Sub-Section (1) of Section 136 is a non obstante clause which clothes with an enabling provisions to an intermediary to retain lands under personal cultivation. But that provision is also subjected to the other provisions of the Act of 1960. Section 160 of the Act of 1960 makes the provisions of part III of the Act of 1960 applicable so far as a result of the operation of part IV any person acquires the right to hold as a raiyat or an under raiyat. Section 102 of the Act of 1960 defines the permissible limit presumable by a raiyat for personal cultivation. Similarly the provisions of Part V, Act of 1960 defines ceiling limit for individual (contd to Page/14) as well as families. Section 137 of the Act vests a duty upon the intermediary to give a return in the event he is so asked. Section 137 of the Act of 1960 reads “The Collector shall take charge of estates and interests of intermediary which vest in the Government under Section 135. So as soon as the notification of vesting is published the Collector takes charge of the estate and his interests. The taking of charge is automatic and it is only then after that the intermediary becomes “entitled to retain” the lands under this possession. Similarly section 138 of the Act 1960 says that in

the event of any dispute about the possession between the intermediary and the under raiyat the decision of the Collector shall be final. The Rule making power is also there and accordingly the Rules 1961 prescribed that in intermediary shall submit a return showing the lands in his possession. It is Tripura Land Revenue and Land Reforms Form 53 under Rule 172 (2) of the Rules of 1961.

22. Under Section 137 of the Act of 1960 the Collector takes the charge of the intermediary right immediately after the estate vests in the Government and it is only the Government thereafter to exercise all the right to the exclusion of the erstwhile intermediary. There is no order to show that under Sub-Section 2 of Section 136 of the Act of 1960 the erstwhile intermediary was allowed to hold such land directly under the Government from the vesting date as a raiyat thereof or as a non agricultural tenant thereof. Ext.3, as has already been held, does not show the status of the defendant Nos. 3-6. Sub-section 2 of Section 136 of the Act of 1960 has by the 3rd Amendment Act of 1975 entitled an intermediary to retain possession of any land “ as a non agricultural tenant thereof” only from 27.02.1975. The suit land is admittedly a non agricultural (contd to page/15) land and a rayati right can accrue to the defendant Nos. 3-6 for the suit land on any date anterior to 27.02.1975. Section 136 of the Act of 1960 also entitles the retention a homestead building and structure together with appurtenant thereto in the possession of the intermediary. The suit land does not fall in either of the categories aforesaid. The suit land also does not fall in any of the clauses of sub section 1 of section 136 of the Act of 1960 sub section 1 of section 136 of the Act of 1960 only entitled an intermediary to return possession. The entitlement of retention is also subject to the other provision of the Act of 1960. Here no option has been exercised to show that the erstwhile intermediary did exercise their option to retain the suit land. In the absence of any option by the intermediary they could not become raiyat under the Government. It is further held that Ext.3 which is exfacie contrary to Ext. B.4 cannot be taken into consideration in as much as the said Ext.3 also does not show the status of the said defendants No. 3-6 and also because of the fact that no proceeding was taken out to arrive at a

conclusion different from that to Ext. B-4. The record of right Ext.3 is not a finally published record to receive the presumption of correctness of the entry. Further the Hon'ble Supreme Court in Sita Ram Bhan Patil vs. Ram Chandra Nago Patil reported in AIR 1977 SC 1712 has held in para 20 of the said judgment.

“ There is no abstract principle that whatever will appear in the record of rights will be presumed to be correct when it is shown by evidence that the entries are not correct. Apart from the intrinsic evidence in the record of rights that they refer to facts which are untrue it also appears that the record of right have reference to the mutation entry that was (contd. . p/16)made by the Circle Officer on 30th January 1956. Counsel for the respondent rightly contended that no presumption could arise for two principal reasons. First, the oral evidence in record of rights as showing a state of affairs opposed to the real state of affairs and, second, no notice was even given to the respondent with regard to mutation proceedings. Therefore, the respondent is right in contending that no presumption can validly arise from the record of rights”.

23. It is admitted from the perusal of the oral evidence that Nurzahan Bibi was in possession of the suit lands till after the land was taken in settlement by the defendant Nos. 3-6. No evidence has been given on behalf of the plaintiff that the said Nurzahan Bibi gave up the possession of the suit land in favour of the plaintiff. P.W.2 also does not say that Nurzahan Bibi gave up the possession in favour of the defendant Nos. 3-6.

24. Ext. 12 and 13 are the sale deeds for the sale deeds by the defendant Nos. 3-6 in favour of the plaintiff No. 1. The recitals of the said sale deeds refer to the sale of Taluki rights. Even the Schedules of the land described in the said sale deed also refer to the Taluki right. The sales were not sales of any raiyati right. The reference in Ext. 12 that the Taluki right have become raiyati lands under the provision of the Act of 1960 does not make the document to be a sale deed for raiyati right. The Schedule also gives description to be in taluki right. Ext. 15, the purchase deed by the plaintiff No. 2 is also for the purchase of Taluki right. PW.5 also in his evidence admitted to

have purchased the Taluki right. In view of the above it is held that the defendant Nos. 3-6 were not in possession of the said land on the date of vesting and as such acquired no right title interest over the (contd to page/17) suit land.

[11] The said judgment dated 25.06.81 delivered in T.A. No. 19/80 was challenged in a second appeal by the plaintiff herein, as the plaintiff of the T.S. No. 19/66 in the Gauhati High Court being Second Appeal No. 21/81. By the judgment and order dated 20.01.84 (Ext. B20 series) the said appeal was dismissed giving the finality to the dispute as no further action was carried out from the said judgment and order dated 20.01.84 by either of the parties. While refusing to disturb the concurrent finding in the impugned judgment, it has been categorically held that:

But as found by the learned trial court this Khatian does not show the specific class of tenancy given to the Khatian holder. Column 23 of the record shows 1st defendant has been in permissive possession of the land. Ext. B.4 is the Parcha of the land in the name of the 1st defendant. All these show that the intermediary did not take steps to retain the suit land under Section 136 of the Act. The Courts below have been concurrent in the finding that the predecessors in interest in the plaintiff did not retain the suit land. This being a finding of fact, there is little scope to interfere with such finding in second appeal unless there be any perversity in such finding. I find no perversity in the finding aforesaid.

[Emphasis Supplied]

[12] Mr. Chakraborty, learned senior counsel has categorically submitted that in view of the finding returned by the judgment dated 20.01.84 (Ext. B20 series) by the Gauhati High Court in Second Appeal No. 21/81, since it has affirmed the

finding that the pro-forma respondent did not retain the Takshishi Taluk No. 300 or any part thereof and the Schedule A land of the present suits being admittedly the same Takshishi Taluk the same as the Schedule A land of T.S. No. 19/66, no other interference can be drawn. He has further submitted that based on the pleadings the first appellate court allowed to bring the judgments (Ext. B20 and B20 series) on the records of evidence but, those judgments have not been read, rather those were overlooked and the first appellate court while returning the finding by the impugned judgment has clearly ignored these relevant evidence. The finding in the Ext. B20 and Ext.B20 series has ascertained the fact as to the vesting of the Schedule A land. For the declaration made by the Gauhati High Court in respect of the Takshishi Taluk No. 300 Mr. Chakraborty, learned senior counsel has submitted that the appellants on denying the right title and interest of the true owner are adversely in possession on the suit land. They are not tenants and they had never acquiesced to the status of the pro-forma respondent or the plaintiff respondents as the true owner of the suit land.

[13] The appellants have further asserted that they have been possessing the suit land by denying the title. According to the appellants the owner of the suit land is the Government of Tripura inasmuch as Ext. A7 to Ext.A 7/8 does not create any right for the reason as given in the judgment by the Subordinate

Judge in the T.S. No. 19/66 (Ext. B20). On the face of the said judgment those records of right do not create any presumption whatsoever.

[14] From the other side Mr. M. Kar Bhowmik, learned senior counsel appearing for the heirs of the original plaintiff except the respondent No. 1(b) and the pro-forma respondents has submitted that the question formulated by this Court as the substantial questions of law cannot be treated as the substantial questions of law inasmuch as the decision of the Courts below as regards the title over the suit land being concurrent in nature no further enquiry is called for in an appeal under Section 100 of the CPC. To buttress his contention he has referred the decision of the apex court in **Santosh Hazari v. Purushottam Tiwari (dead), reported in AIR 2001 SC 965**, where it has been held that:

A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be ‘substantial’ a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law ‘involving in the case’ there must be first a foundation for it laid in the pleading and the question should emerge from the sustainable findings of fact arrived at by Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is

not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stage and impelling necessity of avoiding prolongation in the life of any lis.

[15] Mr. Kar Bhowmik, learned counsel has also relied on a decision in **Thiagarajan and Others v. Sri Venugopalaswamy B. Koli and Others**, reported in AIR 2004 SC 1913, where it has been observed that:

23. in our opinion, the High Court has erred in holding that the appellants have failed to establish inter alia to the suit property evidently without appreciating the evidence on record in its proper perspective by making any reference to portions of evidence having once decided to re-appreciate the evidence. The High Court, in our opinion ought to have examined the entire evidence both oral and documentary instead of only a portion thereof especially while deciding to look into and re-appreciate the evidence despite the limited scope under S. 100 of the CPC. In our view, the learned Single Judge of the High Court has exceeded his jurisdiction in reassessing, re-appreciating and making a roving enquiry by entering into the factual arena of the case which is not the one contemplated under the limited scope of jurisdiction of a second appeal under Section 100 of the CPC.

24. In the present case, the lower appellate Court fairly appreciated the evidence and arrived at a conclusion that the appellant's suit was to be decreed and that the appellants are entitled to the relief as prayed for. Even assuming that another view is possible on a re-appreciation of the same evidence that should not have been done by the High Court as it cannot be said that the view taken by the first appellant Court was based on no material.

25. To say the least the approach of the High Court was not proper. It is the obligation of the Courts of law to further the clear intentment of the legislature and not frustrate it by excluding the same. This Court in a catena of decisions held that where findings of fact by the lower appellate Court are based on evidence, the High Court in second appeal cannot substitute its own findings on re-appreciation of evidence merely on the ground that another view was possible.

[Emphasis Supplied]

[16] Mr. S.M. Chakraborty, learned senior counsel appearing for the plaintiff No. 2 represented by his legal heirs has submitted that the suit land in TS. No. 19/66 and the suit land in the present suit are not identical and hence the judgment dated 24.05.80 delivered in T.S.No.19/66 or the judgment dated 25.06.81 delivered in TA.No.14/80 or the judgment dated 20.01.84 delivered in Second Appeal No. 21/81 cannot have any impact or consequence in the present suit. Hence these judgments are not relevant. However, he has not made any endeavour to distinguish the findings returned by the Exbt. B20 and Exbt.B20 series where it has categorically held and affirmed that the pro-forma defendants did not retain the Takshishi Taluk No. 300 and as such the entire taluk has vested in the government by operation of law as stated.

[17] Mr. R. Dutta, learned counsel appearing for the one of the legal heirs of the original plaintiff being respondent No. 1(b) has submitted that the first appellate court has rightly discarded the judgments (Ext. B20 and Ext. B.20 series) inasmuch as no

pleading has been raised as regard those documents or to the effect that it has been held by the Gauhati High Court in the judgment dated 20.01.84 delivered in second appeal No. 21/81 that Takshishi Taluk No. 300 was not returned by the Dartalukdar, pro-forma respondents No. 3-6 and as such the entire land of the Takshishi Taluk No.300 got vested in the Government and that the land in the Schedule A of the plaints is now Khas land.

[18] In absence of pleading, no plea can be allowed to be raised on the basis of documents even if those are admitted in the evidence. In support of his contention, Mr. Dutta, learned counsel has referred to a decision in **Siddik Mahomed Shah v. Mt. Saran and Others, reported in AIR 1930 Privy Council 57 (1)**, where it has been held that “no amount of evidence can be looked into upon a plea which was now put forward”.

In *Bondar Singh and Others v. Nihal Singh and Others*, reported in (2003) 4 SCC 161, it has been held as under:

7. As regards the plea of sub-tenancy (shikmi) argued on behalf of the defendants by their learned counsel, first we may note that this plea was never taken in the written statement the way it has been put forth now. The written statement is totally vague and lacking in material particulars on this aspect. There is nothing to support this plea except some alleged revenue entries. It is settled law that in the absence of a plea no amount of evidence led in relation thereto can be looked into. Therefore, in the absence of a clear plea regarding sub-tenancy (shikmi), the defendants cannot be allowed to build up a case of sub-tenancy (shikmi). Had the

defendants taken such a plea it would have found place as an issue in the suit. We have perused the issues framed in the suit. There is no issue on the point.

[19] The moot question that has emerged from the rival contentions as projected by the learned counsel for the parties is that whether the judgment dated 24.05.80, Ext. B20 , the judgment dated 25.06.81 and the judgment dated 20.01.84, Ext. B20 series, are relevant for determination of the suit having particular reference to the title of the suit land and whether non consideration of the findings as regards the title as returned by the Ext. B20 and Ext.B20 series has rendered the findings returned by the impugned judgment perverse. Mr. D. Chakraborty, learned senior counsel has emphatically contended that such non-consideration has rendered the finding of the first appellate court perverse. Such non-consideration constitutes substantial question of law.

[20] Mr. Kar Bhowmik, learned senior counsel has contended that the question as raised by the appellant is not at all a substantial question of law inasmuch as there must be a foundation for it laid in the pleading and the question should emerge from the substantive findings of fact arrived at by the court of facts, but in this case there is no such pleading laid by the defendants-appellants for appreciation of the alleged non-consideration.

[21] Mr. R. Dutta, learned counsel appearing for one of the respondents has also seconded the proposition of law as espoused by Mr. M. Kar Bhowmik, learned counsel on laying further emphasis on the aspect of absence of pleadings in the written statement. It is true that there is no pleading having specific reference to the judgments (Ext. B20 and B20 series) but from a bare perusal of the written statement it appears that the defendant appellants have categorically asserted that the plaintiff or his alleged vendors, the pro-forma defendant Nos. 3-6 have or had acquired no right title or interest whatsoever in the suit land nor had they done any act of possession whatsoever over the suit land any time before institution of the suit. The story of taking settlement in Takshisi Taluki being T.K.No. 300 in their names is false and a myth. If such a collusive, falsely created and concocted paper of any settlement is produced at any time in the case, it would be proved to be quite false, void, inoperative being a paper transaction without being acted upon at any time and by such false paper, no right, title or interest is accrued or can accrue either to pro-forma defendant Nos. 3-6 or to the plaintiffs in any manner and according to law.

[22] It can no doubt be argued that such pleading is general in nature. In the written statement, the defendants are under no obligation to plead the facts specially not found accommodation in the plaint, but they are under obligation to

deny the contention of the plaintiff specifically, not in an evasive manner if they intend to shift the onus of proof entirely on the plaintiff.

[23] The way the claim of the original plaintiff as to the title of the suit land has been denied, the plaintiff has definitely been saddled with the substantive onus of proving the title. It is an admitted position of fact that the pro-forma defendants were the Dar Talukdar of the Takshishi Taluk No. 300 for 20 years and they had no title at all. Even the original plaintiff has failed to prove that the pro-forma defendants retained the suit land as the intermediary by submitting the return as mandatorily required under section 136 of the TLR &LR Act, for being rayat directly under the State Government nor have they paid the rent to the State Government as per the rate. Even the return for retaining the said Takshishi Taluk has not been produced to show that the intermediary, the pro-forma-defendants, have become rayat under the Government by operation of the provision of Section 136 of the TLR & LR Act for improving the array of evidence from the Title Suit No. 19/66 . On the basis of some Khatians in the attestation stage viz. Exbt. A7, Exbt. A7/1, Exbt. A7/2, Exbt. A7/3, Exbt. A7/4, Exbt. A7/5, Exbt. A7/6, Exbt. A7/6, Exbt. A7/8, Exbt. A7/8 the courts below have declared the title of the proforma defendants and the original plaintiff over the suit land as the pro-defendants transferred the Schedule A land in favour of

the original plaintiff. The original plaintiff had subsequently transferred the said land to the added plaintiff during pendency of the suit, without any leave from the court.

[24] Even that finding has been affirmed by the first appellate court ignoring the judgments (Ext. B20 and B20 series) which were admitted in the first appellate stage. By those judgments it has been concurrently held that original plaintiff or the Dar Talukdar, the pro-forma-defendants, did not retain the Takshishi Taluk No. 300 or any part thereof and as such the pro-forma defendants or the original plaintiff did not have any title.

[25] In the considered opinion of this Court, those judgments (Ext.B20 and B20 series) are inextricably relevant for determination of the suit inasmuch as the original plaintiff had instituted the Title Suit No. 19/66 and non-consideration thereof would give rise to the substantial question of law. In this regard, a decision of the apex court in **Abdul Raheem v. Karnataka Electricity Board and Others, reported in AIR 2008 SC 958** may be referred to. It has been held in that decision by the apex court that there cannot be any doubt whatsoever that consideration of irrelevant fact and non-consideration of relevant fact would give rise to a substantial question of law. In that case, reversal of the finding of fact arrived at by the first appellate court ignoring vital documents, has been held to be a substantial

question of law. In **Vidhyadhar v. Manikrao and Another reported in (1999) 3 SCC 573** it has been held:

23. The findings of fact concurrently recorded by the trial Court as also by the lower appellate Court could not have been legally upset by the High Court in a second appeal under Section 100 CPC unless it was shown that the findings were perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion.

[26] Having regard to that proposition of law and on scrutiny of the pleadings this Court is unhesitatingly of the view that denial of the title over the suit land has been pleaded by the defendant appellants in such a manner that the defendant appellants were entitled to adduce evidence in respect of that pleading for rebutting any presumption as might have been drawn for the Khatians of the attestation stage. The pleading in the written statement forms the specific denial. Thus, not only appreciation of those judgments is the sheet anchor, but whether the plaintiffs have discharged their burden of proving their title is inalienably related to the assessment.

[27] Thus the first and foremost duty of the original plaintiff or the added plaintiff was that to show they had/have valid title to seek recovery of the Khash possession of the Schddule B land. But they have not discharged such duty to the satisfaction of the Court inasmuch as based on the Khatians published in the attestation stage nobody should except that any

court of law would declare title in favour of any person particularly on the face of the law declared by the Apex Court in **Sita Ram Bhau Patil v. Ramchandra Nago Patil (dead) by Lrs. and another**, reported in **AIR 1977 SC 1712**, where it has been held that there is no abstract principle that whatever will appear in the record of rights will be presumed to be correct when it is shown by evidence that the entries are not correct. The plaintiffs have entirely failed to show the entries in the Khatian at the attestation stage was based on valid title. When the plaintiff could not do so, by virtue of Ext. B20 and Ext. B20 series the defendant appellants have proved that the Gauhati High Court refused to declare the title in favour of the original Plaintiff in respect of the same Takshishi Taluk No. 300 and the same land as described in the Schedule A of the plaint, on affirming the judgments of the courts below categorically holding that intermediary did not take steps to retain the suit land under Section 136 of the Act. Consequently, the Schedule A land got vested in the government by operation of law. This is a finding on the title in respect of the same land. Even the original plaintiff did not care to exposit that fact in the plaint. If it is not suppression of material fact, what else?

[28] The objection raised by Mr. S. M. Chakraborty, learned senior counsel does not hold any substance inasmuch as the suit land in the TS.No. 19/66 was a part of the Takshishi

Taluk No. 300 and the land in the Schedule A in that suit pertained to the Takshishi Taluk No. 300. Moreover, the land of the Schedule A in the present suit exactly the same land.

[29] In the Title Suit No. 19/66, the original plaintiff took a stand that the pro-forma defendant, Rani Ujjala Devi and her three sons took settlement of the said Schedule A land and that land was posted in their name under the Takshishi Taluk No. 300 of Mouja Agartala, Maharajaganj Bazar, now Sheet No. 15 of Agartala Town. Thus, the right over the land as described in the Schedule A cannot be questioned. The subordinate Judge in the judgment dated 24.05.80 (Ext.B20) has observed categorically that no reason has been assigned as to why the Khatian in the attestation stage was not finally published for purpose of Section 136 (1) (a) of the TLR & LR Act. Thereafter, a definite finding has been returned by the said subordinate Judge that the suit land is in the category of the Khas land of the Government of Tripura and the original plaintiff has not right on it. In the present suit also, either the original plaintiff or the plaintiff No. 2 has failed to prove that the proforma-defendants, Rani Ujjala Devi and her three sons had retained the Takshishi Taluk No. 300 under Section 136 of the TLR & LR Act nor have they proved how did they acquired valid title over the suit land.

[30] In view of the finding returned by the Gauhati High Court as regards the status of the Takshishi Taluk No. 300 it has

to be held that the original plaintiff or the plaintiff No. 2 has failed to prove their title over the suit land. This finding returned by the Gauhati High Court in its judgment dated 20.01.84 delivered in Second Appeal No. 21/81 (Ext. B20 series) constituted the relevant fact and non-consideration thereof has rendered the finding of the first appellate court, recorded in the impugned judgment, perverse.

[31] On consideration of Ext. B20 and B20 series, this Court does not have any hesitation to hold that the original plaintiff or the added plaintiff namely Madhusudhan Debbarma, has failed to prove their title and since the recovery has been sought by virtue of the title, the impugned judgment is liable to be set aside and as consequence thereof the suit is also liable to be dismissed. Accordingly it is ordered.

[32] It is to be noted that since the proforma defendants, Rani Ujjala Devi and her sons did not retain any part of the Takshishi Taluk No. 300 she did not have any title over the suit land pertaining to Takshishi Taluk No. 300. Hence she and her sons did not have any competence to transfer the suit land to the original plaintiff. If a person does not have competence to transfer, the transfer turns invalid in the eye of law in view of Section 7 of the Transfer of Property Act 1882, which provides thus:

Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property

not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

[33] Since the proforma defendants or the original plaintiff had no transferable right over the Schedule A land, indisputably Takshishi Taluk No. 300, the transfer caused by them is wholly illegal and unsustainable and hence no title has devolved to the original plaintiff or to the added plaintiff No. 2.

[34] In the result all the appeals stand allowed.

[35] Draw the decree accordingly on recording dismissal of the suits. Send down the LCRs thereafter.

JUDGE

A. Ghosh.