

**Parameswar Shit  
Vs.  
Lal Mohan Shit & Ors.**

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Mr. Sounak Bhattacharyya  
... For the Appellant

The appellate judgment and decree dated 25<sup>th</sup> February, 2014 passed by learned Civil Judge (Senior Division), 1<sup>st</sup> Court at Contai, District-Purba Medinipur in Title Appeal No. 47 of 2011 affirming the judgment and decree dated 19<sup>th</sup> September, 2011 passed by learned Civil Judge (Junior Division), 1<sup>st</sup> Additional Court at Contai, District-Purba Medinipur in Title Suit No. 232 of 2007 filed by the plaintiffs is the subject matter of challenge in this second appeal.

We have heard Mr. Sounak Bhattacharyya, learned counsel appearing for the appellant. Mr. Bhattacharyya has submitted that the Trial Court has completely overlooked the facts that in justification of title the plaintiffs have produced LRRORs (Exhibit-3 series) and rent receipts (Exhibit-1 series) in their names to discharge their prima facie onus as regards their exclusive title to the suit land. However, it appears that the defendants produced ROR under the Bengal Tenancy Act (Exhibit-C) and RSROR (Exhibit-D) wherefrom it is found that their predecessor-in-interest Ramanath Shit had 1/3<sup>rd</sup> share to the suit land. Moreover, P.W 1 during cross-examination admitted that no partition, as alleged, ever took place amongst the co-sharers to the suit land. There is no evidence of any such partition otherwise. It is also admitted that said Ramanath Shit did not execute any deed in

favour of the plaintiffs or their predecessor.

The predecessor of the plaintiffs or the plaintiffs never challenged the BTROR or the RSROR before the settlement authority which they should have done if they had considered the said records as erroneous. P.W1 stated during cross-examination that he had made no enquiry about the RSROR and whether Ramanath, Bhaku and Ukil were shown to hold equal share in respect of the suit plot in the RSROR. P.W2 in his cross-examination stated that he could not say to whom the suit land originally belonged and how it had devolved upon the plaintiffs. In other words, the plaintiffs could not establish exclusive title in the suit property. On the contrary, the defendants produced government rent receipts in the name of Ramanath Shit till the year of 1963 as well as the original Tamsuk dated 3<sup>rd</sup> January, 1959 (Exhibit-E) purportedly bearing the signature of Ramanath Shit. These documents are more than 30 years old and these documents have been produced from the custody of the legal representatives of Ramanath Shit, which may be considered as proper custody. In view of Section 90 of the Indian Evidence Act, it may be presumed that the signature of Ramanath Shit is genuine. The very existence of the RSROR taken together with Exhibit-A series and Exhibit-E proves that Ramanath Shit lived at the time of preparation of the RSROR.

It is well settled principle of law that the entries in the record of rights must be presumed to be correct unless the contrary is proved, as observed by the learned Trial Judge that in the instant suit there is no evidence which can effectively rebut the presumption of genuineness

attached to the BTROR and the RSROR. Hence, the said records of right stand to prove that Ramanath had 1/3<sup>rd</sup> share to the suit plot till the time the preparation of the RSROR. It is admitted position that no partition took place with regard to the suit plot and Ramanath did not execute any deed of transfer in favour of the plaintiffs or their predecessor in respect of the suit plot. Moreover, there was no proof of any proceeding as per the West Bengal Estate Acquisition Act or the WBLR Act as regards mutation or correction of the record of right after giving notice to Ramanath Shit or his legal representatives.

All these factors, in our view, have rightly been taken into consideration by the Trial Court in expressing its opinion that there is no justification as to why the names of the legal representatives of Ramanath Shit should go away altogether from the LRRORs and why the entire suit plot should be recorded in the names of the plaintiffs in the said RORs.

It further transpires that the plaintiffs had one sister, who died living behind two sons and two daughters. However, in the LRROR there was no mention of the share of the sister or her sons and daughters. It can be safely said that LRRORs (Exhibit-3 series) are erroneous.

Mr. Bhattacharyya has submitted relying upon the decision of the Supreme Court in *Shri Raja Durga Singh of Solon Vs. Tholu and Ors.*, reported in AIR 1963 SC 361 that in case of conflict between the entries in the record of rights the 'later entry' prevails, therefore the entries in the LRROR would prevail over those in the RSROR. However, we are not inclined to

accept such submission, as we observed earlier that entries in the LRROR were erroneous. The aforesaid decision would be applicable only where the later entries are otherwise correct or the Court arrived at a finding that the foundation of such entries are erroneous. In our view, the Trial Court has rightly relied upon *Mohonlal Dey and Ors. Vs. Sudhir Chandra Dey & Ors.*, reported in 1984(1) CLJ 408 in which it was held that when the correctness of the entries in the record of rights is investigated by the Civil Court and the parties adduced evidence on the point in controversy, the entries lose their sanctity when the evidence discloses no foundation for it. The said principle has correctly applied in the facts and circumstances of the case and it can be clearly derived that the presumption of genuineness cannot be attached to the LRRORs submitted by the plaintiffs as the said RORs have no foundation and are erroneous and there is no evidence in support of the entries made in the LRRORs. Moreover, the LRROR is not a document of title. Hence, the plaintiffs cannot claim their title to the entire suit plot on the basis of the said LRRORs. Once the plaintiffs was unable to prove their exclusive right to the suit plot, the plaintiffs are not entitled to eviction of the suit plot as it was established at the trial that the defendants are the co-sharers to the suit plot and it is well settled principle of law that a co-sharer to any property cannot claim a suit for eviction against another co-sharer in the same property unless and until the said property is partitioned. The Trial Court has considered the aforesaid facts. There cannot be any doubt that according to RORs Ghanashyam, Bhaku and

Ukil, all three brothers, are co-sharers in respect of the suit property.

In view of decision reported in AIR 1997 Cal 120, the burden of proof lies upon the plaintiffs to prove that the entry made in revenue record under B.T Act as well as under W.B.E.A Act are erroneous.

On such consideration, we do not find any concurrent finding of facts arrived at by the Trial Court on the basis of oral and documentary evidence.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

**(Uday Kumar,J.)**

**(Soumen Sen, J.)**

