

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**  
**Appellate Side**

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**SA 149 of 1998**

**Maharani Manna & Ors.**

**Versus**

**Sri Subhas Adak & Ors.**

**For the Petitioners** : Mr. Anirban Mitra, Adv.  
Mr. Kartik Chandra Kapas, Adv.  
Mr. Amit Roy, Adv.

**For the Respondents** : Mr. Amit Ranjan Pati, Adv. (Through V.C.)  
Ms. Swastika Chowdhury, Adv.  
Ms. K. Kubra, Adv.

**Heard on** : 04.04.2025

**Judgment on** : 18.06.2025

**Ajay Kumar Gupta, J:**

1. This Second Appeal is directed against the Judgment and Decree dated 26.04.1995 and 04.05.1995 passed by the Learned Assistant District Judge, Arambagh, Hooghly, in connection with Title Appeal No. 39 of 1994, thereby affirming the Judgment and Decree dated 25.07.1994 and 11.08.1994 passed by the Learned Munsif, 1<sup>st</sup> Court, Arambagh, Hooghly, in connection with Title Suit No. 59 of 1990, whereby the Learned Trial Court dismissed the suit on contest with cost to the defendants.

2. The appellants/plaintiffs' predecessor instituted a suit being Title Suit No. 59 of 1990 seeking declaration of title, confirmation of possession and other consequential reliefs stating, inter alia, that the suit property, as described in the schedule to the plaint was acquired by them from their predecessor-in-interest, Shri Bipin Chandra Manna and Gosto Bihari Manna, who were Korfa tenants under the original landlord. Additionally, the appellants/plaintiffs also claimed their title through adverse possession, as they were in possession for more than 12 years even after extinguishment of the tenancy right of their predecessor. According to the plaintiffs, during the Revisional Settlement, the respondents/defendants, in collusion with the staff of

the Settlement Office managed to have their names fraudulently recorded in the R.S. Records of Rights in respect of the R.S. Khatian No. 155 to the extent of 4 Decimal of land. Therefore, they have also challenged the R.S.R.O.R. as the same was erroneously recorded in the name of respondents/defendants in collusion with the staffs of Settlement Office.

**3.** The defendants contested the suit by filing a written statement denying all the plaintiffs' averments made in the plaint and also further contended that the appellants/plaintiffs never possessed the Suit Plot No. 631/1239. According to them, the alleged 4 decimal of land originally belonged to one Ahladi Dasi, wife of Late Fakir Das, who was the sister of one Late Chunibala Adak, wife of Late Shridhar Adak, sister of respondents' grandmother, maternal aunt (Masi) of Jharu Adak and Upendra Adak sons of Late Shridhar Adak and predecessor-in-interest of the respondents/defendants. The said 4 decimal of land was recorded in her name in the C.S.R.O.R. over C.S. Khatian No. 156. During her lifetime, the said Ahladi Dasi had constructed two rooms on the said 4 decimals of land adjacent to the eastern side of 15 decimal of land of C.S. Khatian No. 155 and resided there in her final days. As she died without any child and

having been cared for by Jharu Adak and Upendra Adak, the said land devolved upon them as her successors.

**4.** It was further contended that Jharu Adak and Upendra Adak had been in possession of the said 4 decimals of land along with standing structure and trees standing thereon for a long time. After the demise of the Jharu Adak and Upendra Adak, the respondents/defendants got the property as the legal heirs and recorded their names in the record of rights over as Plot No. 631/1239.

**5.** It is also the case of the respondents that in 1385 B.S., after the flood, they renovated the existing structures and constructed a new cowshed which was regularly used for keeping cows. They asserted continuous peaceful and uninterrupted possession of the suit land for over 12 years along with regular payment of taxes. According to the respondents, the R.S.R.O.R. was made after spot inspection and measurement and as the defendants were in possession of the land, their names were recorded in the R.S. Records of Rights by creating a bata plot being no. 631/1239.

**6.** Not only that, the case of the respondents is that their predecessor-in-interest had allowed Ahladi Dasi to possess and enjoy the 4 decimals of land as Anumati Dakhaldar and after her death, well before preparation of R.S. Records of Rights, Jharu Adak and Upendra Adak took possession of the said 4 decimals of land. Thus, the plaintiffs had neither possession nor title over Plot No. 631/1239 measuring an area about 4 decimals. Accordingly, it was prayed that defendants were in lawful possession of the suit property to the extent of 4 decimal of land even for more than 12 years and so the suit should be dismissed with cost.

**7.** Upon careful consideration and analysis of the evidence on record adduced by the parties, the Learned Trial Court dismissed the suit on contest with cost to the defendants.

**8.** The First Appellate Court affirmed the said decree by dismissing the appeal preferred by the appellants/plaintiffs. Therefore, the Second Appeal has been preferred by the appellants/plaintiffs. The appeal was admitted by the Division Bench of this Court on the following substantial questions of law as

stipulated in the Memorandum of Appeal and the same has been reflected herein under: -

*“I) For that the learned Court below failed to appreciate that the made in favour of the predecessor-in-interests were not challenged by the defendants and as such the title of the defendants on the basis of such Korfa Settlement has not been denied by the defendants.*

*II) For that the Learned Courts below failed to appreciate that the only thing which is to be gone into the present suit on the basis of pleadings of the parties, the extend of Korfa tenants and not the tenancy itself.*

*III) For that the Learned Courts below failed to appreciate that the defendants have also challenged the correctness of the entries in the R.S. Khatian and as such the presumptive value of R.S. Khatian being disputed by both the parties as presumptive value.*

*IV) For that the defendants want an independent title in respect of 4 decimal which have been curbed out of*

*plot No. 631 not as a Korfa tenant, has not been proved by the defendants.”*

**9.** With regard to grounds (I) and (II) raised by the appellants/plaintiffs, the learned counsel appearing on behalf of the appellants/plaintiffs submitted that the Learned Trial Court failed to consider the case of the appellants/plaintiffs that the name of Shri Bipin Chandra Manna and Gosto Bihari Manna were recorded in the C.S. Khatian in respect of the suit land as Korfa tenants. It was contended that they were in possession of the suit land by constructing houses thereon as of their own right exclusively and had planted trees on the said land while paying rent for the same. After demise of Gosto Bihari Manna and Shri Bipin Chandra Manna, the plaintiffs being the legal heirs continued in possession of the suit land over 12 years and they have also acquired title over the suit land by adverse possession.

**10.** It was further submitted that the Learned Trial Court did not consider the fact that the right of their predecessor as Korfa tenants was extinguished after their demise and the plaintiffs have acquired title over the suit land as Raiyat. However, due to erroneous record of

right, the defendants have expressed that they will take possession of 4 decimal of land in respect of plot no. 631/1239 on 28.04.1990. As such, the plaintiffs have immediately filed the suit for (i) declaration of title, (ii) recovery of possession, (iii) permanent injunction and (iv) for a declaration that the R.S. and M.S. Record of Rights in respect of Plot No. 631/1239 are without any foundation and recorded their names in collusion with the staff of Settlement office.

**11.** Whereas, the learned counsel appearing on behalf of the respondents have categorically submitted that it is the claim of the appellants/plaintiffs that their predecessor obtained the property from their original landlord, Rashik Adak through Korfa settlement and alternatively, they also claimed title through adverse possession. However, the plaintiffs miserably failed to prove their case. They also failed to produce any receipt of paying taxes or rents to the original landlord or Government. Both the Learned Courts below have concurrently held that the appellants/plaintiffs have failed to furnish any rent receipts whatsoever during their examination or even before the First Appellant Court. Therefore, it cannot be said that their Korfa tenant settlement has been proved by any documentary evidence. They even failed to prove their possession by adverse possession. No

single documents or oral evidence was brought on record to satisfy the courts below for the claim of adverse possession. The R.S. Record of Rights in favour of the respondents/defendants clearly proves that they are in possession of the suit land.

**12.** It is a settled principle of law that the obligation of Raiyat is to pay rent. Section 24 of the Bengal Tenancy Act, 1885 clearly denotes the obligation of a Raiyat to pay rent. The said Section also provides that any occupancy Raiyat shall pay rent for his whole at a fair and equitable rate. But they failed to produce any valid documents to prove their case that their predecessor was a Korfa tenant and the suit land was settled in their favour on the basis of Korfa Settlement. Their claim to be occupancy Raiyats also lacked evidentiary support. Therefore, in view of concurrent findings of facts by both the Courts below and absence of any substantial question of law, the Second Appeal preferred by the appellants/plaintiffs does not have merit.

**13.** With regard to ground no. III, the contention of the appellants/plaintiffs that the respondents/defendants have also challenged the correctness of the entries in the R.S. Khatian and,

hence, such presumptive value of R.S. Khatian is under dispute by both the parties. However, according to the defendants, the R.S. Record of Rights are correct and shall prevail over the C.S. Record of Rights as the entry of R.S. Record of Rights have been made at a later point of time on the basis of their physical possession and spot verification. The appellants also failed to prove with regard to erroneous record of rights made in favour of the respondents/defendants and in collusion with the staffs of Settlement Office. No valid or reliable evidence transpires from the record to ascertain that R.S ROR was recorded erroneously by the settlement office. According to the defendants, their names have also been recorded in the M.S. ROR and they have been possessing the suit land measuring an area about 4 decimals of land in respect of the plot no. 631/1239 and the defendants have denied that they threatened the plaintiffs on 28.04.1990. According to the defendants, they constructed a cowshed and dwelling house on the suit land and were possessing the same. In 1385 B.S., after the flood, they restructured the existing construction and constructed a new cowshed wherein they kept their cows. They also planted the trees and they have been possessing the same by paying rent regularly to the concerned department for more than 12 years and no

interruption has been made from any corner by anybody. R.S. Record of Right was prepared after spot enquiry and measurement as the defendants were in possession their names were recorded by creating a Bata Plot No. 631/1239 and the same was published on 19.03.1955 and after long 35 years of expiry of the said recording of the name of the respondents/defendants, the plaintiffs have filed false and frivolous suit only to harass the defendants. Appellants/plaintiffs also failed to prove their case by any cogent evidence that the M.S. and R.S. Record of Rights are erroneous and the said Record of name of the respondents/defendants was recorded erroneously in collusion with the staffs of the Settlement Office. As the records were prepared based on actual possessions and in absence of any rent receipts or documentary evidence from the side of plaintiffs, their claim lacks merit.

**14.** Whereas, on the other hand, the defendants had produced R.S. and M.S. Records of Rights, rent receipts to show that they have been paying rent for the R.S. Plot No. 631/1239. They also showed that they are in possession of the plot measuring an area of 4 decimals. Therefore, the Learned Trial Court has rightly held that the presumption of entry in the Records of Rights must be deemed to be

correct until and unless it is rebutted by any cogent evidence. Both the Learned Courts below did not find any evidence to rebut the said presumption. Hence, there is no substantial question of law involved herein to entertain the Second Appeal as has been preferred by the appellants/plaintiffs.

**15.** In respect of the aforesaid contention, learned counsel appearing on behalf of the Respondents/defendants have placed reliance upon the judgments passed in the following cases:-

- i. Shri Raja Durga Singh of Solon Vs. Tholu and Ors.*<sup>1</sup>  
*particularly paragraph no. 8;*
- ii. Mahabir Pandey and Ors. Vs. Sashi Bhusan Dubey and Ors.*<sup>2</sup> *particularly paragraph nos. 6 and 7;*
- iii. Smt. Gitabala Dashi @ Gita Rani Dashi Vs. Sri Fatik Ruidas & Ors.*<sup>3</sup>.

**16.** In ***Shri Raja Durga Singh of Solon v. Tholu and Ors.***, the Hon'ble Supreme Court held in paragraph no. 8 as under:-

*“8. Now we will come to the second point because the argument is that on the finding of the learned District*

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<sup>1</sup> 1962 SCC OnLine SC 19;

<sup>2</sup> 1981 SCC OnLine Cal 6;

<sup>3</sup> 2012 SCC OnLine Cal 8203.

*Judge the respondents are tenants and, therefore, their ejectment cannot be ordered by a civil court. As already stated the appellant challenged the finding of the Judicial Commissioner on the point on the ground that he had no jurisdiction to reverse the finding of the District Court because it was a finding of fact on the question. There is no doubt in our mind that the learned Judicial Commissioner was in error in reversing the finding of fact of the District Judge particularly so because the finding of the District Judge is based upon a consideration of entries in the record of rights from the year 1936 onwards showing that the lands were the Khudkhast lands of the appellant and were in his possession. The learned Judicial Commissioner has omitted to bear in mind the provisions of Section 44 of the Act which give a presumptive value to the entries in revenue records. It was argued before us that there are prior entries which are in conflict with those on which the learned District Judge has relied. It is sufficient to say that where there is such a conflict, it is the later entry which must prevail. Indeed from the language of Section 44 itself it follows that where a new entry is substituted for an old one it is that new entry which will take the place of the old one and will be entitled to the presumption of correctness until and unless it is established to be wrong or substituted by another entry.*

*In Deity                      Pattabhiramaswamy v. S.*

*Hanymayya [AIR (1959) SC 57] this Court held that a finding of fact arrived at by the District Judge on the consideration of all evidence, oral and documentary, adduced by the parties, cannot be set aside in second appeal. The question here is whether the respondents are the tenants of the appellant. Though for determining the question documentary evidence fell to be considered, the finding on the question is no less a finding of fact than may have been the case if the evidence to be considered was merely oral. As was pointed out by this Court in that case as well as recently in *Chunilal V. Mehta & Sons Ltd., Bombay v. Century Spinning & Manufacturing Co. Ltd., Bombay* [CA 417 of 1957 decided on 5-3-1962] an issue of law does not arise merely because documents which are not instruments of title or otherwise the direct foundation of rights but are merely historical documents, have to be construed. Of course here, as we have already pointed out, the High Court has ignored the presumption arising from certain documentary evidence and, therefore, there is an additional reason vitiating its finding.”*

- 17.** In ***Mahabir Pandey and Others v. Sashi Bhusan Dubey and Others***, the Hon’ble Calcutta High Court held in paragraph nos. 6 and 7 as under:-

*“6. There is a clear averment in paragraph 7 of the plaint that the entry in the R.S. Khatian regarding the suit land in Mahamaya's name is erroneous. Neither the learned Munsif nor the learned Subordinate Judge considered this important aspect of the case. In the case of Shankarrao v. Sambhu Wallad, reported in 45 Cal WN 57 : (AIR 1940 PC 192), Sir George Rankin stated that where in coming to a finding of fact, the first appellate court has given no effect what soever to the statutory presumption contained in S. 135-J of the Bombay Land Revenue Code of 3879 (corresponding to the presumption under S. 103-B of the Bengal Tenancy Act), the finding is not binding upon the High Court in second appeal.*

*7. In the case of Durga Singh v. Tholu, reported in AIR 1963 SC 361 at p. 364, Mudbolkar, J. has stated that when there is a conflict between the entries in the C.S. Khatian and the new record of rights, the recent one will be presumed to be correct. This case was followed in the case of Hrishikesh v. State of West Bengal, reported in AIR 1978 Cal 556. Hence the courts below arrived at an erroneous finding that the defendants could not rebut the presumption of the correctness of the entry in the C.S. Khatian. In view of the entry in the R.S. Khatian, the defendants had no business to show that the entry in the C.S. Khatian was incorrect. The approach of the courts below is Wrong. Hence the perverse findings arrived at on the*

*basis of such wrong angle cannot be sustained in second appeal.”*

**18.** In **Smt. Gitabala Dashi @ Gita Rani Dashi Vs. Sri Fatik Ruidas & Ors.**, the Hon’ble Calcutta High Court held as under:-

*“Under the circumstances, I am of the view that the plaintiff has failed to prove her title to the extent of 16 annas in the suit property and the First Appellate Court has rightly observed that when the plaintiff has failed to prove her burden of proof, the presumption in case of conflict in between the C.S. record of rights and the R.S. record of rights, the latter would prevail. The contention contrary to such findings, I hold, cannot be accepted.”*

**19.** So far as the 4<sup>th</sup> Ground is concerned, burden of proof squarely lies upon the appellants/plaintiffs and not on the respondents/defendants. The appellants/plaintiffs have come up before this Court for declaration of title, confirmation of possession and other consequential reliefs. But they failed to produce any documents either with regard to the right, title or adverse possession.

**20.** The Learned First Appellate Court upon considering the pleadings, all materials on record and documentary evidence

exhibited therein, has categorically found that the R.S. Records of Rights is correct and stands in favour of the predecessors of the respondents, to the extent of their 04 decimals of land over the suit property being Plot No. 631/1239. Also, does not find any place of the claim of the plaintiffs/appellants that the said R.S. Records of Rights are erroneous as the plaintiffs failed to prove by any cogent evidence that the R.S. Records of Rights are recorded erroneous by or in collusion with the staffs of settlement office. Not only that, the First Appellate Court also held that the appellants failed to furnish any rent receipts before the Learned Trial Court for which the Learned Munsif has rightfully drawn up an adverse presumption against the appellants.

**21.** On the other hand, the respondents/defendants have filed rent receipts (Exhibit B Series) certifying their possession over the suit land. Upon considering all aspects as well as evidence of the case, the First Appellate Court concurrently held the findings of the Learned Munsif is correct and refused to interfere with the Judgment passed by the Learned Munsif. Therefore, there is no substantial question of law involved here to entertain the Second Appeal as has been preferred by the appellants/plaintiffs.

**22.** In the light of above observations, I am of the view that this Second Appeal lacks merit and there is no scope to interfere with the Judgment and Decree passed by the Learned First Appellate Court.

**23.** The appellants/plaintiffs have filed an application being CAN No. 1047/1995 as well as supplementary affidavit on 30.01.2023 thereby trying to develop their case by seeking to allow to place rent receipts to support their case at this stage after a lapse of 33 years without any cogent ground. The same was neither a part of the record nor have the plaintiffs/appellants pleaded about such rents receipts. Therefore, the documents, now relied on by the plaintiffs/appellants at the stage of Second Appeal, have no evidentiary value and have no legs to stand. Therefore, it cannot be taken into consideration at the time of deciding the instant Second Appeal as the appellants never brought any oral and documentary evidence before the Learned Trial Court or the Learned First Appellate Court with a contention that there was any rent receipts lying with them. Therefore, at the belated stage, such document cannot be taken into consideration. Such additional documents being incorporated at the stage of the Second

Appeal is liable to be rejected. Consequently, CAN No. 1047/1995 is, thus rejected.

**24.** Accordingly, **SA 149 of 1998** is, thus, **dismissed**.

**25.** The Judgment and Decree dated 26.04.1995 and 04.05.1995 passed by the Learned Assistant District Judge, Arambagh, Hooghly, in connection with Title Appeal No. 39 of 1994 thereby affirming the Judgment and Decree dated 25.07.1994 and 11.08.1994 passed by the Learned Munsif, 1st Court, Arambagh, Hooghly, in connection with Title Suit No. 59 of 1990 is hereby affirmed. There will be no order as to costs.

**26.** Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

**(Ajay Kumar Gupta, J)**

P.A.