

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 10th November, 2021

SINGLE BENCH: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RSA No.01 of 2021

Appellant : Shova Rai *alias* Ruth Rai

versus

Respondent : Bharat Scouts and Guides

Appeal under Section 100 of the
Code of Civil Procedure, 1908

Appearance

Mr. Gulshan Lama, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Mr. Sushant Subba and Mr. Yozan Rai, Advocates for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Two substantial questions of law were formulated in this Second Appeal *viz.*;

(i) Whether the Learned First Appellate Court can ignore Exhibit 3, the Map, wherein the Suit premises is depicted as being below the road while the Appellant claims to be in possession of property above the road?

(ii) Whether the findings of the Learned First Appellate Court is perverse?

2.(i) The Respondent herein, the Plaintiff before the Court of the Learned Civil Judge, Chungthang, North Sikkim, claimed Ownership and Recovery of Possession from the Appellant of one *Ekra* residential quarters measuring 34 feet x 38 feet with GCI roofing, situated at 6th Mile, Tadong, East Sikkim, described in the Schedule to the Plaint, butted and bounded as follows;

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East: Land of Kumari Chimi Pendam
West: Land of D.B. Rai
North: National Highway
South: Land of D.B. Rai

(ii) The case of the Respondent/Plaintiff (*hereinafter "Respondent"*) briefly is that the mother of the Appellant/Defendant (*hereinafter "Appellant"*), Late Martha Rai had been employed as a Caretaker for the upkeep and maintenance of the Old Office of the Respondent. To facilitate this, she had been allowed to reside in the Scheduled premises specifying clearly that the Respondent would terminate the Licence as and when the situation demanded. By a Communication dated 28.03.2013, the Respondent requested Martha Rai to vacate the Suit premises to enable them to rent it out. She sought three weeks time to vacate the premises but failed to do so. After the death of Martha Rai on 17.09.2016, the Appellant and her husband continued residing in the premises, sans sanction by the Respondent. Besides, they are reportedly involved in a criminal case under the Sikkim Anti Drugs Act, 2006, which is unbecoming for the image of the Respondent. On 21.03.2017, a Legal Notice was issued to the Appellant requiring her to hand over vacant possession of the Suit premises to the Respondent within one month from the date of receipt of the Notice, in vain. Hence, the Suit.

(iii) The Appellant's Written Statement denied and disputed the claims of the Respondent and instead asserted that one Nima Lama, resident of Tathangchen, Gangtok, East Sikkim had authorized, her father one R.B. Chettri, to dwell on the said Suit premises which had been occupied by the Appellant and her family for more than thirty years. After the Appellant's father went

missing, Nima Lama executed a hand written document confirming that he had no objection in allowing the Appellant's mother to reside in the Suit premises.

(iv) The Learned Trial Court, on consideration of the pleadings of the parties, framed five Issues for determination and after considering all relevant material and evidence on record, dismissed the Suit of the Respondent.

(v) While deciding Issue "**a. Whether the plaintiff is the absolute and exclusive owner of the suit property?**" the Learned Trial Court examined the eleven documents relied on by the Respondent and concluded that Exhibits 9, 10 and 11 remained unproved on account of non-production of the Issuing Authority as Witnesses. That, the correctness of Exhibits 1, 2 and 3 were not proved by P.Ws. 2 and 3 as Exhibit 1 had several corrections, alterations and attestations. It was concluded that the Respondent is not the absolute and exclusive owner of the Suit property.

(vi) While deciding Issue "**b. Whether the suit premises is under occupation and possession of the defendant for more than 30 years and has any authority on it or not?**" the Learned Trial Court observed that P.W.1 himself has admitted that the Appellant and her family had been residing in the Suit property for more than twenty years. That, Exhibits 5, 6, 7 and 9, in no way establish the contention of the Respondent that Martha Rai was engaged by them as a Caretaker of the Suit premises and allowed by them to reside therein without payment of rent. That, no Appointment or Termination Order had been issued to her nor was it proved that the Respondent's Old Office was situated in the vicinity of the Suit premises. The Learned Trial Court concluded that the Appellant is

in occupation and possession of the property for twenty years although not thirty years as claimed, but had authority over the property.

(vii) Issue "*c. Whether the plaintiff is entitled to claim the suit premises and has right to vacate possession thereof from the defendant of the suit premises?*" was decided against the Respondent in view of the observations made in Issues "a" and "b."

(viii) In Issue "*d. Whether the suit is barred by law of limitation?*" it was found that no evidence was led pertaining to the Issue but that the Counsel for the Appellant had argued that as per Section 65 of the Limitation Act, 1963 (*for short, the "Limitation Act"*), the Suit was barred by limitation as it was a case of adverse possession. The Learned Trial Court observed that unless the person possessing the land has a requisite *animus*, the period for prescription does not commence. That, it has to be admitted by the Defendant that the Plaintiff is the actual owner of the Suit property which was not the case. The Issue was decided in the negative.

(ix) Issue "*e. What relief or reliefs entitled, if any?*" was decided in the negative in view of the observations in the other Issues.

3.(i) Aggrieved thereof, the Respondent was in Appeal before the Learned District Judge, East Sikkim at Gangtok in Title Appeal No.07 of 2019 assailing the Judgment and Decree of the Learned Trial Court, dated 13.08.2019, in Title Suit No.07 of 2017.

(ii) In Appeal, while considering Issue "a" *supra*, the Learned First Appellate Court was in disagreement with the observations of the Learned Trial Court and held that Exhibit 1 was

a Sale Deed registered in the year 1994 while the Suit came to be instituted in 12.06.2017. That, it is a well settled proposition that there is always a presumption that a registered document is validly executed and the onus of proof to rebut that presumption would lie on the person claiming otherwise. That, Exhibit 1 had been identified by P.Ws.1, 2 and 3 as the concerned Sale Deed and P.W.2 had categorically stated that the original records pertaining to Exhibit 1 were not traceable in the Office. That, Exhibit 2 is a document with regard to plots of land conveyed vide Exhibit 1 and the name of the Respondent has been specifically recorded therein. That, although P.Ws.2 and 3 had admitted that the dimension of property given in Exhibits 1 and 2 do not match but Exhibits 1 and 2 prove to the contrary. That, corrections with regard to the Plot numbers and areas in Exhibit 1 are seen to have been attested by the concerned Sub Registrar and no ill motives can be foisted on the parties or the Authority concerned. The Learned First Appellate Court, in the absence of evidence, disbelieved the assertion of the Appellant that the Suit premises belonged to one Nima Lama and concluded that Exhibit D-1 relied on by the Appellant was a vague document sans date or particulars of the property. The Learned First Appellate Court was also unimpressed with the Learned Trial Court discarding Exhibits 10 and 11 when the said documents had not been assailed or controverted by the Appellant. Hence, the findings of the Learned Trial Court in Issue "a" was set aside and the Issue was decided in the affirmative.

(iii) Issues "b" and "c" (*supra*) were taken up together and it was concluded that the occupation of Late Martha Rai over the Suit premises was only as a Licensee and the relationship between

the Respondent and Late Martha Rai was that of a Licensor and Licensee. The question of the License being assignable or heritable in favour of the legal heirs of Late Martha Rai would not arise and the Respondent being the owner of the Suit premises was entitled to its possession.

(iv) In Issue "d" (*supra*) the Learned First Appellate Court was in agreement with the findings of the Learned Trial Court that the Suit was not barred by limitation and even assuming that possession of the property by the Appellant became adverse, the Suit would still be within the period of limitation as Martha Rai passed away on 17.09.2016, on which date, the Personal Licence granted to her stood terminated.

(v) In Issue "e" (*supra*) the Learned First Appellate Court observed that the Respondent was entitled to the reliefs prayed for by them at Prayers "a, b and c" of the Plaint and the Suit decreed accordingly. Dissatisfied with the findings of the Learned First Appellate Court, the Appellant is before this Court, wherein the afore-detailed substantial questions of law have been formulated.

4. Learned Counsel for the Appellant, before this Court, canvassed the argument that the corrections and alterations in respect of the area and Plot numbers which had been inserted in Exhibit 1 was erroneously ignored by the Learned First Appellate Court despite the mandate in Rule 10 of the Sikkim State (Registration of Documents) Rules, 1930 that all alterations appearing in a document must be attested by the parties to it with their signatures before such document can be accepted for registration. That, undue weight was afforded to Exhibit 1 by the

Learned First Appellate Court despite the admitted evidence of P.Ws.1, 2 and 3 that the area and dimension of the Suit premises in Exhibit 1, the Sale Deed and that of Exhibit 2, the *Parcha Khatiyan* were inconsistent. The Learned First Appellate Court also failed to consider that P.W.1 was not a signatory to Exhibit 1, while P.Ws.2 and 3 had no personal knowledge about the concerned registration process with regard to Exhibit 1. That, admittedly the original records pertaining to Exhibit 1 could not be traced in the Office of the concerned Sub Registrar, as admitted by P.W.2. That, P.W.3 the Revenue Officer in his cross-examination, admitted that the name of the Respondent was not recorded in the *khasra* records produced before the Learned Trial Court during the time of his examination but his evidence was ignored. More importantly, the Learned First Appellate Court ignored Exhibit 3, the Map, as per which the Suit premises is shown to be below the National Highway whereas P.W.1 (Prakash Kazi Shakya) has deposed that the Suit premises is located above the road. This vital inconsistency in the evidence of P.W.1 and Exhibit 3 was not considered nor any finding recorded on this aspect by the Learned First Appellate Court. On this count, Learned Counsel placed reliance on ***Rattan Dev vs. Pasam Devi***¹ wherein it was held that the First Appellate Court was bound to apply its mind to all the evidence available on record and then test the legality of the findings arrived at by the Trial Court. P.W.1 was unaware from whom the Respondent had derived the Suit premises. The boundary holders of the Suit premises were also not examined which thereby leads to an adverse inference under Section 114 of the Indian Evidence Act, 1872 (*for short, the*

¹ (2002) 7 SCC 441

"Evidence Act"). While placing reliance on ***Union of India and Others vs. Vasavi Cooperative Housing Society Limited and Others***², Learned Counsel urged that in a Suit for Title, the burden lies with the Plaintiff to make out a clear case for grant of such a declaration and the weakness of the Defendant's case will not be a ground for grant of such relief to the Plaintiff. To further buttress his contentions, reliance was placed on ***Naresh Chandra Bose vs. State of West Bengal and Others***³, ***J.B. Sharma vs. State of Madhya Pradesh and Another***⁴, ***Yadarao Dajiba Shrawane (Dead) by LRs. vs. Nanilal Harakchand Shah (Dead) and Others***⁵ and ***Madan Mohan Singh and Others vs. Rajni Kant and Another***⁶. Hence, the impugned Judgment be set aside.

5. Contrarily, Learned Senior Counsel for the Respondent submitted that no error arises in the findings of the Learned First Appellate Court which has rightly set aside the findings of the Learned Trial Court as in the first instance, the Appellant has no *locus standi* to challenge the title of the Respondent. She is merely a squatter on the Suit premises. All that the Appellant has in support of her case is Exhibit D-1 which is purported to be a "No Objection Certificate" issued by Nima Lama allowing Moti Rai to reside on his Plot which divulges no Area, Plot Number or Boundaries neither is it a Title Deed. No person has been produced to prove this document, as admittedly Nima Lama has passed away. Besides, the person who was allowed to reside in the premises vide Exhibit D-1 was Moti Rai and it is not even clarified

² (2014) 2 SCC 269

³ AIR 1955 Calcutta 398

⁴ AIR 1988 SC 703

⁵ (2002) 6 SCC 404

⁶ (2010) 9 SCC 209

whether Moti Rai and Martha Rai are one and the same person. The identification of Nima Lama is not revealed, neither is it stated in what capacity he had allowed Moti Rai to occupy the premises. In cross-examination, the Witness of the Appellant has deposed that Nima Lama has children but they were not produced to depose before the Learned Trial Court, hence the contents of Exhibit D-1 remained unproved. Exhibit 1 may include corrections but these were made before the registration and bear the seal and signature of the Sub Registrar, who is the concerned Authority, thereby validating the corrections. Towards this contention, Learned Senior Counsel placed reliance on **Satindra Nath Choudhury vs. Jatindra Nath Choudhury and Another**⁷. Exhibit 1 is a registered Sale Deed and the Appellant does not dispute it or the ownership of the Respondent. Exhibit 2 is the *Parcha Khatiyan* in the name of the Respondent while Exhibit 3 is the Map of the location and premises. That, the Map has to be read in its correct perspective and the land in Exhibit 3 is clearly described in Exhibit 2 and Exhibit 1, besides, the Appellant has not filed any Counter Claim seeking cancellation of Exhibit 1. The Map Exhibit 3 has not been proved to be wrong. Exhibit 1 is a public document as per Section 74 of the Evidence Act and Section 77 of the Act provides that a certified copy can be furnished to prove contents of the document. That, where the Plot in dispute is not reliable then boundaries have to be relied on. On this aspect strength was drawn from the ratios in **Chewang Dorjee Lama vs. Lerap Dorjee Bhutia and Others**⁸ and **Pratibha Singh and Another vs. Shanti Devi Prasad and Another**⁹. Learned Senior Counsel

⁷ (1934-35) 62 IA 265

⁸ AIR 2006 Sikkim 37

⁹ (2003) 2 SCC 330

also placed reliance on *Narbada Devi Gupta vs. Birendra Kumar Jaiswal and Another*¹⁰ and *On the Death of Prafulla Lahkar, his Legal Heirs, Arati Lahkar and Others vs. On the Death of Bipul Chandra Baruah, His Legal Heirs, Abhijit Baruah and Another*¹¹. That, the eviction prayer is made herein but the eviction herein is not between a tenant and a landlord but one who is in unauthorized possession of the land, hence the Appeal be dismissed.

6.(i) Taking up the first substantial question of law formulated hereinabove for consideration, Exhibit 3 is the Map showing the land holding of the State Secretary, Bharat Scouts and Guides, under Block Tadong. The Plots are numbered 461 and 462/699. Exhibit 3 indicates that the plot of land is bounded on the East by "Kumari Chimi," on the West by "Dhan Bdr. Rai," on the North by "National Highway" and on the South by the field of "D.B. Rai." The measurement of the said Plots of land are; **(i)** Plot No.461-.0320 hectares, and **(ii)** Plot No.462/699-.0030 hectares. This document is to be read along with Exhibit 1, the Sale Deed, a careful perusal of which, reveals that the disputed property is butted and bounded as given in Exhibit 3, already discussed hereinabove. Exhibit 1 also reveals that the Managing Director, Sikkim Industrial Development and Investment Corporation Ltd. (SIDICO), Gangtok, Sikkim was the Seller of the property while the Purchaser was the State Secretary, Sikkim State, Bharat Scouts and Guides, Tadong, Sikkim. The property is described as under;

"a) One Industrial shed measuring 31'4" x 57'6" (Covered area 1769 sft)

¹⁰ AIR 2004 SC 175

¹¹ (2019) 1 Gau LR 156

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- b) One ekra residential quarter-measuring 1291 sft (covered) with GCI roofing located at 6th Mile, Tadong.
- c) The premises covered under registration No. Book No. I, Volume II, Item No.208, for the year 1978, dated 9.2.79."

As pointed out by Learned Senior Counsel for the Respondent, it is evident that although there are corrections on Exhibit 1, Sale Deed dated 03.06.1992, the same have duly been validated by the signature of the Sub Registrar, East District, Gangtok, Sikkim, who is the Registering Authority.

(ii) Exhibit 2 is the *Parcha Khatiyan* indicating mutation of the property in the name of the State Secretary, Bharat Scouts and Guides at Tadong. The Plot numbers are reflected as "461" with an area of ".0320 hectares" and "462/699" with an area of ".0030 hectares." Exhibits 1, 2 and 3 therefore tally with each other so far as the boundaries, the area and the ownership are concerned.

(iii) The cross-examination of Respondent's Witness Sunil Kumar Mothay, Sub Divisional Magistrate, Headquarters Gangtok and the authorized representative of the Office of the Registrar, East at Gangtok, extracted the following sentence;

".....It is true Exbt-2 matches with the areas and the plot numbers in Exbt-1. However the area as per the dimension mentioned in the sale deed (Exbt-1) does not match with that in the parcha (Exbt-2)."

Gyan Bahadur Subba, another Witness for the Respondent, under cross-examination also deposed as follows;

".....It is true that the area mentioned in the Parcha Khatiyan (Exbt-2) does not match with the dimension mentioned in the Exbt-1."

(iv) On examining Exhibits 1 and 2, the Statements of the Witnesses *supra* are evidently incorrect, as both these documents indicate that Plot No.461 comprises of .0320 hectares while Plot

No.462/699 comprises an area of .0030 hectares, as rightly observed also by the Learned First Appellate Court. The *Khatiyani* Plot number being mentioned as "67" in Exhibit 1 and as "1576" in Exhibit 2 is of no consequence and can be attributed to the fact that corrections were made in Exhibit 1 but the number "67" was not scored out. In any event, the description of the property as detailed in Exhibit 1 bear the exact same description as found in Exhibit 3, the Map, relied on by the Appellant herein to urge the point that the Learned First Appellate Court failed to consider this document. Exhibit 1 is duly registered in terms of the Sikkim State (Registration of Documents) Rules, 1930 and Section 54 of the Transfer of Property Act, 1882.

(v) So far as the interpolations that are reflected in Exhibit 1 is concerned, in this context, we may refer to the ratio of the Hon'ble Supreme Court in ***Satindra Nath Choudhury supra***, relied on by Learned Senior Counsel for the Respondent (*which is apposite for the circumstances in Exhibit 1*), wherein it was observed *inter alia* thus;

"The person presenting a document for registration has no control over the procedure of the officer registering it, and it is the latter who, subject to the control of his superior officer, selects the book in which it should be entered. As held by the High Court, the document should have been entered in Book I., and the mistake, which was made by the registering officer in good faith, has not injured any innocent person. It is provided by s. 87 of the statute that nothing done in good faith by any registering officer shall be deemed invalid merely by reason of any defect in his procedure."

(vi) In ***Chewang Dorjee Lama supra*** relied on by Learned Senior Counsel for the Respondent, this Court held that the well established rule of interpretation is that boundaries must prevail over areas in case of conflict between dimension and boundaries.

That, in order to ascertain the correct position, it would not be enough to consider only the Plot numbers and its area. The boundary must also be taken into consideration. In the instant matter, the "Plaint" clearly identifies the Suit premises inasmuch as the boundaries thereto have been detailed. The boundaries and the area already having been discussed hereinabove, no fault emanates on the part of the Learned First Appellate Court in its conclusion in any of the above Issues.

(vii) So far as the contents of Exhibits 1, 2 and 3 are concerned, the Respondent's Witness Prakash Kazi Shakya (*authorized representative of the Respondent*), in his Evidence-on-Affidavit, has deposed *inter alia* as hereunder;

"2. That the Plaintiff is the absolute and exclusive owner of one industrial shed of area measuring 31'4" x 57'6" = 1769 sq.ft. and one ekra residential quarter of area measuring 34' x 38' = 1292 sq.ft. with GCI roofing located at 6th Mile, Tadong, East Sikkim. The industrial shed along with ekra residential quarter was purchased by the Plaintiff from Sikkim Industrial Development & Investment Corporation Limited (SIDICO) in the year 1992. (An original Sale Deed, Parcha Khatiyon and Map are annexed herewith and marked as Exhibit-P/1, Exhibit-P/2 and Exhibit-P/3 respectively)."

Under cross-examination, Exhibits 1, 2 and 3 have not been contested and all that has emerged is as follows;

"It is not a fact that I do not know much about the suit premises. It is true that in the sale deed Exhibit 1, the plot number and the area of the land has been mentioned after correction. In the sale deed Exhibit 1, the khatiyon number is mentioned as 67 whereas in the khatiyon parcha Exhibit 2, the khatiyon number is recorded as 1576. It is not a fact that the plot number in the sale deed is not recorded properly. It is not a fact that the particulars mentioned in the sale deed namely the plot no, measurement of area are ambiguous."

(viii) The Respondent's Witness Sunil Kumar Mothay, in his evidence, deposed *inter alia* as under;

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"It is true as per Exbt-1 and the office records, owner and the title holder of the schedule property is the plaintiff.

It is true as per Exbt-1 defendant or her family members are not the boundary holder to the schedule property. It is true the plot nos. mentioned in Exbt-1 are not in the name of the defendant.

It is true Exbt-2 matches with the areas and the plot numbers in Exbt-1. However the area as per the dimension mentioned in the sale deed (Exbt-1) does not match with that in the parcha (Exbt-2)."

In cross-examination, it emerged as follows;

"It is true that since I could not trace the original record of Exbt-1 in my office I could not verify the Exbt-1 with the original record from our office."

(ix) The Respondent's Witness Gyan Bahadur Subba in his examination-in-chief, deposed as under;

"It is true Exbt-2 and Exbt-3 have been issued in the name of the plaintiff by our office."

The contents of Exhibit 1 have also been proved by P.W.Sunil Kumar Mothay as also the signature of the Registering Officer appearing therein, which has not been questioned at all during cross-examination. P.Ws. Prakash Kazi Shakya and Sunil Kumar Mothay have both identified Exhibit 3 as the Map pertaining to the land, its contents have not been decimated during cross-examination. Thus, no specific cross-examination has been made with regard to the execution of Exhibits 1, 2 and 3 and the veracity of the documents have not been decimated.

(x) Learned Counsel for the Appellant had also advanced the argument that in a Suit for Title, the burden lies with the Plaintiff to make out a clear case for grant of such a declaration and the weakness of the Defendant's case will not be a ground for grant of such relief to the Plaintiff. It is not disputed that mere production and marking of a document as an Exhibit by the Court cannot be held to be proof of its contents, its execution has to be

proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in Issue. In the instant case, representatives of the concerned authority i.e. the Sub-Registrar, P.Ws.2 and 3 have vouchsafed for the execution of the documents and no cross-examination has decimated such deposition.

(xi) The arguments of Learned Senior Counsel for the Respondent that the provisions of Sections 74, 76 and 79 of the Evidence Act would come into play, is irrelevant for the present purposes as Exhibits 1, 2 and 3 are documents in original. It is only that the Respondent's Witness Sunil Kumar Mothay has stated that the original records pertaining to Exhibit 1 were not traceable in the Office. In any event, the *khasra* records are not a part of the Documents relied on either by the Respondent or the Appellant, before the Learned Trial Court.

(xii) Thus, while considering the contents of Exhibits 1, 2 and 3, reference may be made to the ratio in ***Shri Bhaskar Waman Joshi (deceased) vs. Shri Narayan Rambilas Agarwal (deceased)***¹², wherein the Hon'ble Supreme Court observed *inter alia* thus;

"6.The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect."

(xiii) Consequently, in view of Exhibits 1, 2 and 3, it is found that the Suit premises is that of the Respondent, as correctly observed by the Learned First Appellate Court and Exhibit 3 is the correct Map which indicates the property of the Respondent and

¹² AIR 1960 SC 301

has to be read along with Exhibits 1 and 2 and not in isolation. It is relevant to state herein that documents speak for themselves and nothing more can be read into the contents of a document or a Map besides what is depicted therein. Section 91 describes the "best evidence rule," while Section 92 comes into operation for the purpose of contradicting or adding or subtracting from its terms. This Court is aware that as per the settled proposition of law, mutation entry does not confer any Right, Title or Interest in favour of the person and the mutation entry in the Revenue Records is only for fiscal purposes. Thus, an entry in the Revenue Records does not confer Title on a person whose name appears in the Records of Rights. At the same time, it is essential to point out that immovable property is legally and lawfully transferred/conveyed only by a Registered Deed of Conveyance such as Exhibit 1. It is evident that the contents of Exhibit 1 speak for themselves and thus require no further elucidation.

(xiv) That apart, all the Appellant has in proof of her ownership over the property is Exhibit D-1 which is not only undated but does not describe or disclose details of the concerned property and the person concerned could well be referring to any property at 6th Mile, Tadong. The identity of Nima Lama is mysterious, no Witness was examined to establish that he ever owned any property at Tadong.

7.(i) With regard to Exhibits 9, 10 and 11, although the Learned Trial Court in its Judgment has observed that these documents were not proved by the Respondent by production of the issuing authorities, perusal of the entire evidence on record reveals that the said Exhibits have not been contested by the

Appellant or by her Witness Santosh Rai, as correctly observed by the Learned First Appellate Court. It, therefore, follows that the Appellant has impliedly conceded to the truth of Exhibits 9, 10 and 11.

(ii) The findings of the Learned First Appellate Court that there is always a presumption that a registered document is validly executed/registered and would *prima facie* be valid in law, also brooks no interference, as duly buttressed by Section 114 *Illustrations (e) and (f)* of the Indian Evidence Act, 1872.

(iii) At Paragraph 21 of the Judgment of the Learned Trial Court, while recording the arguments of Learned Counsel for the Appellant, the Learned Court reflected the following;

"21. It is submitted that exhibit 3 shows the suit property below the road, whereas the place which is in occupation by the defendant is located above the road."

Despite this argument, no finding was arrived at on Exhibit 3 by the Learned Trial Court, except in Paragraph 27 *inter alia* as follows;

"27.PW 3 has also not stated anything which would prove the contents of exhibit 1, 2 & 3."

The Appellant subsequently did not raise this Issue at all before the Learned First Appellate Court and has raised this matter only before this Court, which is impermissible.

(iv) With regard to Issues "b" and "c," as correctly found by the Learned First Appellate Court in Paragraph 42 of its Judgment, there can be no doubt that the relation between the Respondent and the Appellant's Late mother was that of a Licensor and Licensee. For clarity in the matter, it may be explained that the

Indian Easements Act, 1882, at Sections 52, 53 and 54 lays down as follows;

“52. “License” defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

53. Who may grant license.—A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

54. Grant may be expressed or implied.—The grant of a license may be expressed or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.”

(v) Issue “d” has rightly been decided by the Learned Trial Court, although I am not in agreement with the findings of the Learned First Appellate Court on this Issue, wherein at Paragraph 46 of the impugned Judgment, the Learned Court observed *inter alia* as hereunder;

“46.Therefore, in view of Article 65 of the Limitation Act, 1963 the prescribed period of limitation for filing the suit of the present nature would be 12 years from the date when the possession of late Martha Rai, or for that matter those claiming under her such as the Defendant/Respondent herein, became adverse to it. In the case at hand, late Martha Rai expired on 17.09.2016 on which date this Court has held that the personal licence granted to her stood terminated, if not earlier. Even if it is held that after the demise of late Martha Rai and the consequent termination of the personal licence given to her the possession of her legal heirs including daughter(Defendant) became adverse the suit would still be within the limitation period.”

It is clarified herein that “adverse possession” and “title” cannot be claimed by the Appellant in the same breath. It is settled law that a person can either claim ownership by “title” or by “adverse possession,” the claims cannot be analogous. The Appellant claims ownership of the property by way of Exhibit D-1, thereby not recognizing its ownership by the Respondent herein, therefore, in

such a circumstance, her possession over it cannot be said to be adverse to the Respondent. In any event, the argument of Learned Counsel for the Appellant before the Learned First Appellate Court invoking the provisions of Article 65 of the Limitation Act, is an afterthought without any pleadings to that effect.

8. Reliance on the ratio of *Naresh Chandra Bose supra* by Learned Counsel for the Appellant is of no assistance to his case as in that matter what was sought to be proved by the State by production of the Registers of the Sub-Registrar's Office was not any original entry or one prepared by the Sub-Registrar himself but copies of documents, the originals of which were admittedly in the custody of persons in whose favour they were executed.

9. It, thus, concludes that the Suit property, as described in the Schedule to the Plaint, belongs to the Respondent and Exhibit 3 correctly depicts the disputed property. The Issue of Exhibit 3 not having been raised before the Learned First Appellate Court by the Appellant, the question of it having been ignored by the Court is erroneous.

10. In view of the foregoing discussions in Question No.1 *supra*, I am of the considered opinion that although no elaborate discussions arose of Exhibit 3 in the Courts below, however, it is clear that it depicts the disputed property correctly and is in tandem with the entries in Exhibits 1 and 2. Thus, nothing perverse emanates in the findings of the Learned First Appellate Court, which thereby quells the second question.

11. The impugned Judgment of the Learned First Appellate Court is hereby upheld.

- 12.** Appeal fails and is accordingly dismissed.
- 13.** No order as to costs.
- 14.** Copy each of this Judgment be transmitted to the Learned First Appellate Court and the Learned Trial Court, for information.
- 15.** Trial Court records be remitted forthwith.

(Meenakshi Madan Rai)

Judge
10.11.2021