THE HIGH COURT OF SIKKIM : GANGTOK

CRP No.06 of 2007

In the matter of a petition under Section 115 of the Code of Civil Procedure, 1908

and

in the matter of

Karma Doma Gyatso @ Babila Kazi,
Sonam Building,
Development Area,
Gangtok, Sikkim ..... Petitioner

versus

1. Mrs. Kesang Choden,
W/o Mr. K. N. Pulger,
Permanent residence at Tibet Road,
Gangtok, Sikkim
Present residence at Development Area,
Gangtok, Sikkim ..... Opposite Party No.1/
Respondent No.1

2. Mr. Tashi Topden,
S/o Late Libing Athing @ Rai Bahadur Sonam Topden,
Libing House,
Kazi Road,
Gangtok, Sikkim ..... Opposite Party No.2/
Respondent No.2

3. Mrs. Gigi Wangyal,
W/o Late Phurba Wangyal,
Enchay Compound,
Tibet Road,
Gangtok, Sikkim ..... Opposite Party No.3/
Respondent No.3

4. Office of the District Collectorate,
East District,
Gangtok, Sikkim ..... Opposite Party No.4/
Respondent No.4

For Petitioner	:	Mr. T. B. Thapa and Mr. B. R. Pradhan, Senior Advocates with Ms. Yangchen D. Gyatso, Advocate.
For Respondent No.1	:	Mr. Tashi Rabden Barfungpa and Mr. Jorgay Namka, Advocates.
For Respondent Nos.2 & 3	:	None appears.
For Respondent No.4	:	Mr. Karma Thinlay, Government Advocate.

PRESENT : THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.

Last date of hearing : 4th December, 2008

Date of Judgment : 8th April, 2009.

JUDGMENT

A. P. SUBBA, J.

This Revision Petition is directed against the Order dated 10th August, 2007 passed by the learned Civil Judge, East Sikkim at Gangtok in Title Suit No.06 of 2006, whereby an application praying for rejection of plaint filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') was rejected.

2. The facts of the case relevant for our present purpose are that the original plaintiff, i.e., the opposite party No.1 herein filed a suit for declaration, cancellation of records of rights, injunction and other consequential reliefs against the present petitioner and others in June, 2006. The case of the plaintiff was that the suit premises was given to her mother Late Libing Anyo by Late Libing Athing @ Rai Bahadur Sonam Topden out of love and affection towards his brother Late Dugda Kazi, husband of Libing Anyo as per the old custom and tradition. After the suit property was so handed over Libing Anyo, the mother of the plaintiff, moved into the premises with her daughter Kesang Choden, the present plaintiff, occupying the portion of the first floor. The rest of the premises were let out to tenants as they had no other source of income. Having thus entered into possession, Late Libing Anyo and after her demise, the plaintiff along with her husband and children continued to enjoy the suit premises as owner of the same without any interference. They paid all ground rent, electricity and water charges to the concerned authorities as and when demands were raised. After some time, when the financial

condition of the plaintiff and her family improved, the plaintiff directed the tenants to pay the house rent in respect of the tenanted premises to Late Sonam Gyatso, i.e., the father of petitioner, i.e., defendant No.1 and his family as they were not financially sound at the relevant time. However, some time in the year 1990, Late Sonam Wangmoo, W/o Late Sonam Gyatso and mother of the defendant No.1 began claiming title over the suit premises on the plea that she had purchased the suit premises and the house was constructed by her. Accordingly, on 12th June, 1990 she served a notice upon Shri K. N. Puljer, husband of the plaintiff claiming that she was the owner of the suit premises and that the plaintiff being merely a tenant should vacate the premises. On enquiry from the concerned authorities, the plaintiff came to know that the suit property was mutated in the name of the defendant No.1 on the basis of an application made by her mother Late Sonam Wangmoo and on the strength of a no objection issued by one Gigi Wangyal, wife of Late Phurba Wangyal Kazi. However, in spite of mutation of the suit properties in the name of defendant No.1, the plaintiff continued in possession of the suit premises. Only in the year 2005, the defendant No.1 in an attempt to take over possession entered the suit premises and damaged the toilet-cum-bathroom and stairway of the plaintiff's suit premises and the plaintiff had to lodge an FIR.

On the basis of the facts as narrated above, the plaintiff in paragraph 37 of the plaint stated that the cause of action first arose on 3rd January, 1990 and on several dates thereafter till 2006 and prayed for the reliefs as mentioned earlier.

3. Based on the above statement made in paragraph 37 of the plaint the defendant No.1, i.e., the present revisionist moved an application under Order VII Rule 11 CPC for rejection of the plaint. After hearing the parties, the learned trial Court, however, came to the

conclusion that the cause of action cannot be held to have arisen before the year 2005 when the defendant No.1 trespassed into the suit land in an attempt to dispossess the plaintiff and accordingly, rejected the petition. Aggrieved by this order, the defendant No.1 is before this Court in the present revision petition.

4. Mr. T. B. Thapa and Mr. Bhaskar Raj Pradhan, learned senior counsel with Ms. Yangchen D. Gyatso, learned counsel appearing for the petitioner, Mr. Jorgay Namka and Mr. Tashi Rabden Barfungpa, learned counsel appearing for the respondent No.1 and Mr. Karma Thinlay, learned Government Advocate appearing for the State-respondent No.4 were heard.

5. Two questions that arise for consideration in this revision petition are:-

i) Whether the cause of action can be taken to have arisen on 3rd January, 1990 or on other subsequent dates?

ii) Whether Article 58 of the Limitation Act applies and if so, whether the suit is barred by limitation.

So far as the question regarding the date on which the first cause of action arose is concerned, it is the submission of the Mr. T. B. Thapa and Mr. B. R. Pradhan, both learned counsel appearing for the petitioner that the clear statement in paragraph 37 of the plaint being to the effect that the cause of action first arose on 3rd January, 1990 the same date has to be taken as the date of cause of action. In other words, it is the submission of the learned counsel that the plaintiff cannot be allowed to deviate from the date mentioned in the plaint as the date on which cause of action arose for the first time, and as such, the suit having been filed only in the year 2006 the same has to be treated as hopelessly barred by limitation.

The question that requires to be determined is, when and on which date the cause of action can be taken to have arisen in the circumstances of the present case. As per the statement made in this regard in the plaint, the first cause of action arose on 3rd January, 1990. The submission of the learned counsel for the petitioner as already noted above is that this date which finds specific mention in the plaint cannot be deviated from for ascertaining the date of cause of action. The first decision relied on by the learned counsel for the petitioner in this regard is ***Mohan Lal Sukhadia University, Udaipur*** vs. ***Miss. Priya Soloman*** reported in ***AIR 1999 Raj 102***. The particular observation made by the Court on which much emphasis has been laid by the learned counsel for the petitioner is the following:-

> "4. ..... Whether this statement is or is not correct does not arise for consideration at this stage. ....."

Relying on this observation, the submission of the learned counsel for the petitioner is that the correctness or otherwise of the statement made in the plaint does not arise for consideration at the stage of consideration of an application for rejection of plaint under Order VII Rule 11(d) CPC.

Two more decisions relied on by the learned counsel for the petitioner on the point are -

1. ***N. V. Srinivasa Murthy & Others*** vs. ***Mariyamma & Others*** reported in ***(2005) 5 SCC 548***
2. ***Hardesh Ores (P) Ltd.*** vs. ***Hede and Company*** reported in ***(2007) 5 SCC 614***

While ***N. V. Srinivasa Murthy case*** was referred to for the purpose of showing that the suit of the plaintiff in the said case was held to be hopelessly bared by limitation by reckoning the cause of action from the date mentioned in the plaint, the other case of ***Hardesh Ores (P)***

Ltd. was referred to in support of the proposition that the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The point the learned counsel endeavoured to make by referring to the above decisions is that the statement made in the plaint regarding cause of action cannot be deviated from. Further endeavour made by the learned counsel for the petitioner to strengthen the petitioner's stand on the point was to the effect that ***Mohan Lal Sukhadia case (supra)*** was examined by the Hon'ble Supreme Court in ***Balasaria Construction (P) Ltd.*** vs. ***Hanuman Seva Trust and Others*** reported in ***(2006) 5 SCC 662*** and ***Balasaria Construction (P) Ltd.*** vs. ***Hanuman Seva Trust and Others*** reported in ***(2006) 5 SCC 658*** but was not over-ruled, thereby suggesting that ***Mohan Lal Sukhadia case (supra)*** was still a good law on the point. A perusal of these two judgments would, however, show that even though the case of ***Mohan Lal Sukhadia case (supra)*** came up before the Apex Court by way of reference in the above two cases, it was entirely on a different point. In ***(2006) 5 SCC 662 (supra)*** it was noticed that there was a conflict of opinion of different High Courts on the question whether the words 'bared by law' occurring in Order VII Rule 11(d) of CPC would also include the ground that it is barred by law of limitation and since the question was considered to be of importance the matter was referred to a larger Bench. In the other case, i.e., ***(2006) 5 SCC 658 (supra)*** it was held that question of limitation is a mixed question of law and fact and *ex facie* on reading the plaint a suit cannot be held to be barred by limitation. Thus, the point that the statement made in the plaint regarding cause of action must be adhered to without any reference to other part of pleadings does not figure anywhere in the discussion in both the judgments. It is thus obvious that the reliance of the learned counsel for the petitioner on the decision of ***N. V. Srinivasa***

Murthy case (supra) is but misplaced. Same happens to be the case in respect of the reliance placed in the other decision, namely, ***Hardesh Ores case (supra)***. This decision has been relied on in support of the proposition that the statement in plaint must be taken without addition or substitution for the purpose of cause of action. Far from saying so, the observation in the judgment is to the effect that the averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII CPC is applicable and for this purpose, it is not permissible to cull out a sentence or a passage and to read it out of the context in isolation.

6. Now coming to the stand taken by the respondent No.1 in this regard, it may be noted that even though Mr. Jorgay Namka and Mr. Tashi Rabden Barfungpa, learned counsel appearing for the respondent No.1 do not deny that the statement made in the plaint does show that the cause of action arose for the first time on 3rd January, 1990, it is the contention of the learned counsel that it was so mentioned through inadvertence due to a genuine mistake on the part of the counsel. It is, however, the further submission of the learned counsel that it is the well-established law that an isolated statement in the plaint cannot be taken as showing the cause of action. It is only on a reading of the whole plaint that one can come to the conclusion as to the date on which such cause of action arose. This submission of the learned counsel for the respondent No.1 is sought to be repelled by the learned counsel for the petitioner contending that such an approach will result in making out a case not even pleaded in the plaint and thus, it would be against the pleadings. Over and above, it is further submitted that the plaintiff (Opposite Party No.1) while moving an amendment of the plaint in the learned trial Court has clearly stated that the amendment if allowed would not change the nature and character of the suit as also the date of

cause of action which will remain 3rd January, 1990. It was on such submission that the learned trial Court had allowed the amendment duly recording the submission in the Order dated 12th December, 2006. Thus, having taken a benefit once already the plaintiff (Opposite Party No.1.) cannot now be allowed to take the plea that the mention of date 3rd January, 1990 as the first date of cause of action was made inadvertently due to Advocate's mistake. To be specific, it is the contention of the learned counsel for the petitioner on the strength of two decisions, namely, ***Ashok Kapil*** vs. ***Sana Ullah and Others*** reported in ***(1996) 6 SCC 342*** and ***Kusheshwar Prasad Singh*** vs. ***State of Bihar and Others*** reported in ***(2007) 11 SCC 447*** that one who has taken advantage of a purported mistake and benefited therefrom should be estopped from subsequently resiling from the previous stand. The observation made in the above two cases and sought to be relied by the learned counsel is that 'No man can take advantage of his own wrong'. The observation no doubt lays down norms of propriety in general terms undoubtedly applicable to litigants as well. I, however, fail to see how this helps to further the petitioner's case. For, even if we bind down the plaintiff to the statement made in the plaint that the first cause of action arose on 3rd January, 1990 the position in law as already highlighted above is to the effect that well established rules of interpretation of pleadings require that such statement has to be considered in the light of other statements thereby taking the whole averments in the plaint.

The following decisions relied on by the learned counsel for the respondent No.1 will make the issue more than clear.

(i) ***Sopan Sukhdeo Sable and Others*** vs. ***Assistant Charity Commissioner and Others*** reported in ***AIR 2004 SC 1801***;

(ii) ***Popat and Kotecha Property*** vs. ***State Bank of India Staff Association*** reported in ***(2005) 7 SCC 510***;

(iii) ***Ram Prakash Gupta*** *vs.* **Rajiv Kumar Gupta and Others** *reported in* ***(2007) 10 SCC 59***; and

(iv) ***Hardesh Ores Pvt. Ltd.*** vs. ***M/s. Hede and Company*** reported in ***(2007) 7 SCALE 348***.

In ***Sopan Sukhdeo case***, a two Judge Bench of the Apex Court observed that it is not permissible to cull out a sentence or a passage and to read it out of the context in isolation for the purpose of finding out the date of cause of action.

In ***Popat and Kotecha Property case*** which was also a Division Bench decision, the Apex Court held that it is trite law that not any particular plea has to be considered but the whole plaint has to be read. So far as applicability of clause (d) of Order VII Rule 11 CPC is concerned, the Bench observed as follows :-

> "10. ..... Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."

In ***Ram Prakash Gupta case*** the Court agreeing with the view expressed in earlier two decisions, namely, ***Raptakos Brett & Co. Ltd.*** vs. ***Ganesh Property*** reported in ***(1998) 7 SCC 184*** and ***Sopan Sukhdeo case (supra)*** held that the intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole and the claims in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII was applicable.

In ***Hardesh Ores Pvt. Ltd. case (supra)*** it was observed as follows:-

> "21. .....The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation."

7. Thus, the correct approach to arrive at any conclusion about the date on which the cause of action arose is to read the plaint as a whole. So read as a whole the facts that emerge from the pleadings in the present case is that even though the suit land was mutated in the name of the defendant No.1 in the year 1990 the plaintiff continued in peaceful possession of the suit premises without being disturbed. It was only in the year 2005 that the defendant No.1 trespassed into the suit land with a view to take possession of the suit premises. These statements, according to the learned counsel for the respondent No.1, make it amply clear that even though the suit land was mutated in the name of the mother of the defendant No.1 in the year 1990 the possession of the plaintiff not being threatened she continued to remain in possession. In these circumstances, the contention that the cause of action must be taken to have arisen for the first time on 3rd January, 1990 on the basis of what is stated in the plaint cannot be accepted.

8. The following are some of the other relevant pronouncements of the Apex Court as well as several High Courts on the above point. Since these decisions throw further light on the question as to when and on what date cause of action can be taken as having arisen, it would be worthwhile to scan through them.

The leading decision on the subject that can be referred to with advantage is the decision of the Judicial Committee in ***Mt. Bolo*** vs. ***Mt. Koklan and Others*** reported in ***AIR 1930 PC 270***. The observation of Sir Binod Mitter in the said case is to the following effect:-

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted." [emphasis added]

Quoting with approval the above principle of law, the Apex Court in ***Mst. Rukhmabai*** vs. ***Lala Laxminarayan and Others*** reported in ***AIR 1960 SC 335*** stated the legal position on the subject as follows:-

> "(33) .....The right to sue under Art. 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right." [emphasis supplied]

Relying on the above law laid down by the Apex Court and few other decisions, the Andhra Pradesh High Court in ***Ramchander Naik*** vs. ***Linga Ramachanderiah and Others*** reported in ***AIR 1971 A.P. 395*** observed as follows:-

> "7. ..... We are, therefore, however, unable to agree that there was any such unequivocal threat to the plaintiff's right so as to constitute an infringement thereof more than six years prior to the date of the institution of the suit simply because it was averred in paragraph 5 of the plaint that the defendants were "trying to dispossess" the plaintiff for the last 7 years. It is not necessary that the plaintiff should rush to Court within 6 years from the date of denial of right or threat irrespective of the nature of that denial or threat. It is always open to him to treat only such denial or threat which, in his opinion, amounts to an effective and unequivocal invasion or infringement of his right as the starting point for computing the period of limitation." [emphasis supplied]

In ***The State of Punjab and Others*** vs. ***Gurdev Singh Ashok Kumar*** reported in ***JT 1991 (3) S.C. 465*** a three Judge Bench of the Apex Court observed as follows :-

> "4. ..... The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted." [emphasis supplied]

The above decisions make it amply clear that there has to be a clear and unequivocal threat to the right claimed by the plaintiff. Such being the position in law the contention advanced by the learned counsel for the petitioner that the very fact of the suit land being recorded in the name of the defendant No.1 in the year 1990 followed by notice to vacate must be taken as clear and unequivocal threat to the right claimed by the plaintiff cannot be accepted.

9. The matter can also be looked at from another angle. It is the settled legal position that mere entry of one's name in the record-of-rights does not give rise to any effective cause of action. The following are some of the decisions on the point:-

In ***Jagat Chandra Marak and Others*** vs. ***Ulfat Ali Bhuiya and Others*** reported in ***AIR 1970 Tripura 43***, it has been held as follows:-

> "21. ..... A mere adverse entry in the record of rights does not give rise to any cause of action. But, when the defendant causes an infringement of the right of the plaintiff by denying his title or dispossessing him from the property on the basis of such an entry, then the cause of action arises from the date of the infringement. The plaintiff's knowledge of the adverse entry does not start the period of limitation." [emphasis supplied]

Similar is the principle of law laid down by Gauhati High Court in ***Harendra Chandra Nath and Others*** vs. ***Bijoy Krishna Nath and Others*** reported in ***AIR 1993 Gauhati 52***. Relying on the decision of Oudh Court in the case of ***Thakurain Chhabraj Kuer*** vs. ***Ram Deo Singh and Others*** reported in ***AIR 1942 Oudh 346***, it was held that the right to sue would not occur even if the name of the defendant is entered in the rights of record. The Court observed that so long as an adverse entry in the revenue records does not injure the plaintiff, he need not come to Court at all, and hence a plaintiff in a suit for declaration that he is an under-proprietor is not out of time if he institutes the suit within the prescribed period of limitation after the injury.

The above decisions make it clear beyond any shadow of doubt that mere entry of name in the record-of-rights gives rise to no cause of action. Even though, such is the position in law, the learned counsel for the petitioner came up with the submission that in Sikkim parcha khatiyan have always been treated as an instrument of title and in view of this, the recording of the suit land in the name of the petitioner's mother cannot be treated as of no consequence. It was the submission of the learned counsel that historically, all lands in Sikkim at one point of time belonged to the King as the supreme head of the Kingdom. Thereafter, in time the King either granted certain lands to certain individuals or allotted immovable properties or allowed settlers to be in possession of lands on which they had settled. In time, after making statutory laws to regulate these lands the citizens were issued parcha khatiyans as bustiwallas. So the original transfer of these lands from the King to the settlers were evidenced only by way of parcha khatiyan. According to the learned counsel even today, when a Sikkimese presents a deed of transfer to the Registering Authority for registration the first act by the Registering Authority is to refer the matter to the concerned amin of the Collectorate to ascertain from the khasra records as to whether the land sought to be transferred stands in the name of transferor. Thus, it was accordingly contended that the khatiyans which are prepared from the khasra records are but documents of title in Sikkim.

10. Further submission of the learned counsel for the petitioner on the same point is that an examination of the old laws of Sikkim as found in,

(i) Land Revenue Department Notification No.1208/L&F dated 20th May, 1950;

(ii) Record Writing or Kotha Purnu or Drub-Deb and Attestation Rules for Sikkim State issued in October, 1951; and

(iii) Notification No.3083/LR, Rules under the Notification No.3082/LR dated 24.3.54;

makes it abundantly clear that the parcha khatiyan is the instrument of title. To strengthen the point, the learned counsel for the petitioner went further and pointed out that in the year 1977 the Government of Sikkim enacted the Sikkim Agricultural Land Ceiling and Reforms Act, 1977 (in short "Act"). This Act came into force in the State of Sikkim on 22nd June, 1978 vide Notification No.3/LR dated 22nd June, 1978 issued by the Government of Sikkim. A full chapter III has been dedicated to Preparation of Record-of-Rights. Sections 19, 20 and 22 deals with the same. Section 19 deals with how Record-of-Rights are to be prepared. Section 20 deals with draft and final publication of Record-of-Rights. Section 20(8) and (9) provides that the entry shall be presumed to be correct. Section 22(1) provides that when an order has been made under section 19 directing revision or preparation of a record-of-rights, no Civil Court shall entertain any suit or application for the determination of the revenue or the intendments of any land or the status of any person in relation to any land to which the record-of-rights relates, and if any suit or application in which any of the aforesaid matters is in issue, is pending before a Civil Court on the date of such order, it shall be stayed and it shall on, the expiry of the period prescribed for an appeal under sub-section (5) of section 20 when such an appeal has been filed under the sub-section, on the disposal of such appeal, abate so far it relates to any of the aforesaid matters.

Proceeding further the learned counsel for the petitioner submitted that Section 22(2) of the said Act further provides that no Civil Court shall entertain any suit or application concerning any land if it

relates to any alteration of any entry in the record-of-rights finally published, revised, corrected or modified under any of the provisions of the Chapter". Therefore, under this section there is a clear bar on the Civil Court to entertain any suit or application for the determination of the status of any person in relation to any land to which record-of-rights relates. This, according to the learned counsel for the petitioner, makes it clear that the Government has always perceived parcha khatiyans to be instruments of title in the State of Sikkim and as per the practice prevailing in the State. The learned counsel for the petitioner went on further to say that in Sikkim apart from the Financial Institutions operating in Sikkim, even the Government Authorities and the learned Courts accept parcha khatiyans as security and proof of title to immovable property. Contending that such practice in the State must be taken as no less than such documents being treated as documents of title, the learned counsel referred to the decision of ***M.T.W. Tenzing Namgyal & Others*** vs. ***Motilal Lakhotia India & Others*** reported in ***(2003) 5 SCC 1*** wherein at page 11 in para 32 the Apex Court has observed as follows:-

> "32. The *khasra* and *khatian* have not been prepared under a statute. The question as to whether the same would be historical material or instrument of title or otherwise, would depend upon either the statute governing the same or the practice prevailing in the State. In the event, however, the record-of-rights were not prepared under a statute, a presumption of correctness may be raised only in terms of Section 35 of the Indian Evidence Act."

The following observation made by a Division Bench of this Court in **Pipon Langchen** *vs.* **Thondup Bhatia and Others** *reported in* **(1977) 1 SLJ 40** is in the conformity with the above observation of the Apex Court:-

> "17. ..... It has been urged that in Sikkim, the Record-of-Rights, which are known as Dhadda khatiyans, are regarded as records of title also. On the materials on record and without further relevant materials and more thorough and detailed probe, it is not possible to determine this question decisively, but the contention put forward as aforesaid may not be without any basis or foundation. In the Privy Council case of Ballabh Das Vs. Nur Mohammad (AIR 1936 Privy Council 83), it was observed by their Lordships (at page 88) that Khasras and Khatiyans may not be merely "historical materials" but may be "instruments of title or otherwise the direct foundation of right". ..... The very expression "Record-of-Rights" implies that it is a document where rights of the parties in respect of lands are recorded. Even if such Record-of-Rights are not prepared under any Statutory law, but are prepared by public servants in discharge of their official duty under the executive orders of the Government, the entries in such records cannot but still be regarded to have been made by public servants in discharge of their official duty within the meaning of Section 35 of the Evidence Act and, therefore, according to the ratio of the Privy Council decision in Ganga Bai's case, are to be treated as evidence of facts recorded in them."

It is thus clear from the above decision that all that has been held is that such documents, i.e., khasra and khatiyan may be treated as evidence of facts recorded in them and not as documents of title in itself. This position would also be clear from the decision of a Single Bench of this Court in ***Arjun Pradhan & Others*** vs. ***Ram Kumar Mazi*** decided on 28th September, 2005. It has been clearly held that mere recording of name(s) in the record-of-rights including khatiyan does not confer any right or title to any land. Thus, mutation proceedings not being judicial proceedings no question relating to proprietary rights in immovable property are determined in such proceedings. [see ***Gouranga Sahu and Others*** vs. ***Bhaga Sahu and Another*** reported in ***AIR 1976 Ori 43***]

11. On the basis of the foregoing discussion, it becomes fairly clear that the khasra and khatiyan cannot and have not been treated as amounting to records of title in the State. A prayer was, of course, made

by the learned counsel for the petitioner that the point raised being of importance this Court might consider referring the matter to a larger Bench. However, since the decision on the issue between the parties in the present case not being entirely dependant on resolution of the above controversy, I find it appropriate to leave the question open for determination later in appropriate proceedings.

12. Hence, on the basis of the legal position as highlighted above, it must be held that the cause of action in the present case cannot be taken to have arisen before 2005 on the basis of the mere statement in the plaint that the first cause of action arose on 3rd January, 1990.

13. Having thus held that the cause of action cannot be held to have arisen before the year 2005, in the facts and circumstances of the case, the next question which relates to limitation as already noted hereinabove is whether Article 58 of the Limitation Act applies, and if so, whether the suit is barred by limitation.

14. The contention advanced by learned counsel for the petitioner is that, since the suit is one for declaration simpliciter, Article 58 of the Limitation Act would apply to the present case and as this Article prescribes period of 3 years from the date of the first cause of action, the suit must be considered to be barred by limitation long before the present suit was instituted in the year 2006. Per contra, it was contended by the learned counsel for the respondent No.1 that the relief of declaration as prayed by the plaintiff is accompanied by further relief like injunction, cancellation and registration, and as such, the suit filed by the plaintiff cannot be taken as a declaration simpliciter and, therefore, the appropriate Article of Limitation Act that applies is Article 113 and not Article 58 as contended by the learned counsel for the respondent No.1.

15. The specific submission of the learned counsel for the petitioner is that the reliefs of interim injunction and direction for

registration as prayed for not being independent on the reliefs of declaration was only consequential and the consequential reliefs are so intertwined with the main relief of declaration that the reliefs prayed for by the petitioner in the plaint is nothing more than 'declaration simpliciter'. In support of the submission, the learned counsel for the petitioner strongly relied on the following observation of Calcutta High Court in ***Naba Kumar Das*** vs. ***Damodar Das*** reported in **1992 (II) CHN 482** in which it was observed as follows :-

> "10. ..... A relief is consequential, if it has no independent footing. What follows or ensues must have a nexus with the cause. The word consequential is the result of an act. Cause and consequence are correlative terms which is not exclusive but inclusive for each other. Accordingly, the words 'consequential relief' imply that the other relief should be one which flows directly from the declaration which the plaintiff desires to be made. This means that the plaintiffs should be entitled to the other relief only as a necessary consequence or result of the granting of the declaratory relief. The other relief must be so dependent on the declaratory relief that it cannot be allowed, if the principal relief is refused. ....."

16. In order to ascertain whether the ratio of the above case applies to the facts and circumstance of the present case, a reference to the relevant facts of the case in which the above observation has been made is called for. A bare perusal of the facts of the case go to show that the plaintiff, whose father who was arraigned as defendant No.2., i.e., opposite party No.2 had executed a deed of gift in favour of defendant No.1. (another son) allegedly on undue influence being exercised upon him by defendant No.1., had instituted the suit seeking declaration that the Deed of Gift was a nullity and void with consequential relief of cancellation of the document and injunction. For the purpose of Court-fees, the suit was valued at Rs.51/- for injunction under Section 7(iv)(b) of the Court-fees Act, 1870. In this suit, a preliminary objection was raised by the defendant No.1 regarding valuation of the suit and the

Court-fees paid on it contending that the plaintiff in fact wanted to set aside the disputed deed of gift under the garb of declaration and as such, the plaintiff were required to pay *ad valorem* Court-fee on the valuation of the property as mentioned in the deed of gift. Allowing the preliminary objection, the learned trial Court directed the plaintiff to pay the *ad valorem* Court-fee on Rs.47,000/-, i.e., the value of the suit. However, on a revision being filed the Calcutta High Court reversed the decision holding that the relief for setting aside the disputed deed of gift was so inseparably connected with the main relief of declaration and so dependant upon it that the deed of gift would stand cancelled or set aside upon the very declaration that the deed was a nullity or void. In the facts and circumstances of the case, it was observed that even a suit simply for declaration without any consequential relief could have been brought by the plaintiff ignoring the deed altogether.

17. The above rationale, however, cannot apply to the facts of the present case as they stand on different footing. To appreciate this point, it is necessary to notice the nature of the reliefs asked for by the plaintiff. The reliefs as sought in the plaint are the following:-

> "(a) A Decree for ad-interim ex-parte Injunction against Defendant No.1 and restraining her from illegally removing the Plaintiff and her family from the peaceful possession of the suit premises.
>
> (b) A Decree to declare and cancel the conveyance of ownership and to cancel and declare the below mentioned Mutation Certificate/Parcha as null and void, not binding on the plaintiff:-
>
> Mutation Certificate/Parcha dated **28.01.2004** in the name of **Karma Doma Gyatso D/o Sonam Gyatso,** registered in the Office of the District Collectorate, East District, Sikkim, Gangtok.

(c) To pass a Decree and declare the Plaintiff as true-full and Legal owner of the said suit premises and direct the concerned Authority to register the said premises in her name.

(d) A Decree for costs of this Suit, and

(e) A Decree for any other and further reliefs as this Hon'ble Court deem fit and proper in the facts and circumstances of the case, in the interests of justice and equity."

It is clear from the above that the relief sought for in the suit are declaration that the Mutation Certificate/Parcha is null and void, declaration that the plaintiff is the true full and legal owner of the suit premises, and as a consequence a direction to the concerned authority to register the suit premises in the name of the plaintiff and injunction against the defendant not to disturb the peaceful possession of the suit premises. The submission of the learned counsel for the petitioner in this regard is that the relief of declaration as prayed for in (b) if allowed would culminate in cancellation of the Parcha dated 3rd January, 1990. While this may be so the relief relating to direction to the concerned authority to register the properties in the name of the plaintiff is not so connected with the relief of declaration as to form a part of it. It is obvious that with the mere declaration of the parcha khatiyan as null and void, the property does not stand registered in the name of the plaintiff. Therefore, the contention of the learned counsel for the petitioner that the relief relating to direction for registration directly relates to the relief of declaration cannot be of any assistance. It is obvious that the relief sought for ranges from declaration of title to direction to register the premises in the name of the plaintiff, the other relief of injunction apart. In other words, the nature of the consequential relief prayed for are such that they do not result as a natural consequences on the grant of the relief of declaration as in the ***Naba Kumar Das case (supra)*** relied on by the learned counsel for the petitioner. Over and above, the suit as

framed does not show that the plaintiff has treated the suit as a suit for declaration simpliciter. This becomes clear from the fact that the plaintiff has put the valuation of the suit as Rs.27,000/- and has duly paid *ad valorem* Court-fees of Rs.1,620/- vide Challan No.256 dated 02.06.2001. All these facts, in my view, lead but to one conclusion that the present suit cannot be treated as a suit for declaration simpliciter. That a prayer for declaration ceases to remain as a declaration simpliciter where it is accompanied by a further prayer for consequential relief would be clear from the decision of the Apex Court in the case of ***C. Mohammad Yunus*** vs. ***Syed Unnissa and Others*** reported in ***AIR 1961 SC 808*** wherein the Apex Court has held that a suit for declaration with consequential relief for injunction, is not a suit for declaration simpliciter but it is a suit for declaration with further relief. Thus, it is manifest that for the purpose of limitation the relevant Article that applies to the case of declaration with a consequential relief would be the residuary Article 113 and not Article 58 which applies to declaratory suits.

18. It is thus obvious that Article 58 which applies to cases of declaration simpliciter would not be applicable in the present case. Instead, it is residuary Article 113 which is attracted in the case of the plaintiff. However, the period of limitation prescribed under both the Articles being 3 years when the right to sue first accrues (under Article 58) and when the right to sue accrues (under Article 113), the question as to which of the two Articles applies would not be of much significance particularly in the light of the finding that the right to sue accrued only in the year 2005 and the suit has been filed in the year 2006, i.e., within one year of the right to sue accruing. Hence, the three decisions referred to by the learned counsel for the petitioner, namely, ***S. S. Rathore*** vs. ***State of Madhya Pradesh*** reported in ***(1989) 4 SCC 582***, ***Secretary to Govt. of Punjab and Others*** vs. ***Ajit Singh and Others***

reported in ***1999 SCC (L&S) 1322*** and ***State of Punjab and Another*** vs. ***Balkaran Singh*** reported in ***(2006) 12 SCC 709*** which deal with service matter and which lay down that the limitation period of three years starts when the right to sue first accrues hardly needs to be dealt with in any detail. Suffice it to say that the right to sue having arisen for the first time in the year 2005 and the suit having been filed within one year thereafter, i.e., in the year 2006, it is difficult to agree with the submission that the suit is one which ought to have been rejected under Order VII Rule 11 CPC.

19. To take note of one more point raised by the learned counsel for the petitioner, it was contended that suit filed by the plaintiff which is a suit for declaration and consequential relief is based on no title deed and yet the plaint has been drafted in such a clever way that it creates the illusion of a cause of action. The suit was, therefore, a fit one to be nipped in the bud by the learned trial Court with exemplary cost. Strong reliance was placed in the case of ***N. V. Srinivasa Murthy (supra)*** wherein a two Judge Bench of the Apex Court had upheld the rejection of plaint under Order VII Rule 11(d) CPC making an observation that the plaint had been very cleverly drafted with a view to get over the bar of limitation and payment of the Court-fees. In the other decision, namely, ***T. Arivandandam*** vs. ***T. V. Satyapal & Another*** reported in ***(1977) 4 SCC 467*** also relied on by the learned counsel for the petitioner it has been observed by the Apex Court that the answer to persistently frivolous and vexations litigations was the contempt power of the Court.

I, however, find it unnecessary to go into these issues in view of the conclusion arrived at hereinbefore that the suit on the basis of the averments made in plaint discloses a cause of action and the suit cannot be held to be barred by limitation.

In view of foregoing, the impugned order calls for no interference.

20. In the result, I am of the view that no case is made out for interference by this Court in its revisional jurisdiction. Accordingly, the revision application is rejected. In the circumstances of the case, there shall be no order as to costs.

Needless to say, the observations made above will not prejudice the rights of the parties at the trial.

21. Let the records of the Court below be returned forthwith.

(Justice A. P. Subba)
Judge
08-04-2009