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

RSA No.05 of 2023

1. **Sri Bikash Datta,**
   son of late Barindra Datta
2. **Sri Bipul Datta**
   son of late Barindra Datta

   Both are of village- Bhati Dudhpur, P.O. Dudhpur, P.S. & Sub-Division- Kumarghat, District- Unakoti Tripura

…… Appellant(s)

– V e r s u s –

1. **Sri Bindulal Basak,**
   son of late Bidyasagar Basak
2. **Sri Babulal Basak,**
   son of late Bidyasagar Basak
3. **Smt. Hasripriya Basak,**
   daughter of late Bidyasagar Basak

   All are of village & P.O. Kanchanbari, P.S. Fatikroy, Sub-Division- Kumarghat, District- Unakoti Tripura
4. **Smt. Dipali Basak,**
   wife of Sri Bhusan Basak, daughter of late Bidyasagar Basak of Patharpani Road, P.O. & P.S. Lumding, District- Noagaon, Assam
5. **Sri Swapan Basak,**
   son of late Bidyasagar Basak
6. **Smt. Sefali Basak,**
   wife of Pradip Kumar Basak, daughter of late Bidyasagar Basak

   Both are resident of Hriday Sarani, Sonai Road, P.O. & P.S. Silchar, District-Cachar, Assam

…… Respondent(s)

For the Appellant(s)	**:**	Mr. H. Deb, Advocate.
For the Respondent(s)	**:**	Mr. T.D. Majumder, Senior Advocate. Mr. D. Kalai, Advocate.
Date of hearing	**:**	***17th January, 2024.***
Date of delivery of Judgment & order	**:**	***28th February, 2024.***
Whether fit for reporting	**:**	**YES** ✓ / **NO**

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The judgment dated 20.01.2023 passed by the District Judge, Unakoti, Kailashahar in Title Appeal No.42 of 2019 and connected decree thereof are under challenge in this appeal.

[2] By the impugned judgment, the first appellate court dismissed the appeal and affirmed the judgment dated 08.02.2019 passed by the Civil Judge (Sr. Division), Court No.2, Unakoti, Kailashahar in TS No.19 of 2015 and consequent decree therof whereby right, title and interest of the plaintiff-respondents in the suit land was declared and decree of recovery of possession was granted against the present appellants, their men and agent.

[3] The respondents filed the suit bearing TS No.19 of 2015 claiming that the suit land described in the first schedule of the plaint as of their own, having inherited the same from their predecessor, Late Bidyasagar Basak, who according to them, had become the owner of the suit land by purchase through a registered deed and Khatian was accordingly mutated in his name vide MR Case No.147 of 1994. The allegations of the respondents were that in the middle of May, 2013 they were dispossessed from the suit land by the appellants who thereafter constructed huts therein, as specifically descried in the second schedule of the plaint. Incidentally, it was also alleged that the appellants-defendants further attempted to dispossess another adjacent land owner

namely, Santilal Basak on the western side, for which both present respondent No.1 and said Santilal Basak jointly filed a complaint under Section 145 of the Cr.P.C. against the appellants before the Sub-Divisional Magistrate, Kumarghat. But as no effective result thereof was noticed, the respondent No.1 sent one advocate notice, on 25.03.2015, to the appellants to vacate the suit land which also went futile. Then the suit was filed with the following reliefs:

> **[i] Granting declaration of the plaintiffs right, title & interest over the suit land and directing that the plaintiffs do recover possession thereof by removing all obstructions, all the signs of possession of the defendants and suit huts there from on defendants costs and by evicting and driving out both the defendants there from;**
>
> **[ii] Granting compensation to the plaintiffs as mesne profits, both of past and future in respect of the suit land till to the recovery of possession of the suit land;**
>
> **[iii] Granting all other reliefs deemed fit and proper including the total costs of litigation.**

[4] The defendants contested the suit with the plea that the suit land was Government Khas land and that for last 40 years they had been residing therein by constructing huts, to the knowledge of the respondents and their predecessors. They also asserted that the plaintiffs or their predecessor never had any sort of possession on any occasion in the suit land. They denied the factum of purchase of suit land by said Bidyasagar Basak and also questioned the legality of preparation of Khatian in his name. They denied the allegations of such dispossession of respondents by them and also challenged the maintainability of the suit, stating that other family

members of them who were also residing inside the suit land, were not made parties.

[5] The suit land comprises of 8 (eight) Nos. of RS Plots consisting of total area of 2.51 acres. Learned trial court decreed the suit mainly with the observation that the evidences of the appellants' witnesses about their possession over the suit land for more than 40 years was not corroborated by any documentary evidence, rather, the ownership of the predecessor of respondents was established by a registered sale deed bearing No.1-4062 dated 10.07.1961 (Exbt.9) followed by mutation of the name of the predecessor of respondents in the ROR.

[6] While affirming the said judgment and decree, the first appellate court reflected in Para-8 of the judgment, the arguments of the learned counsel of the present appellants and also of the learned counsel of respondents, but surprisingly, such arguments appear to be contrary to the case of their respective clients, which normally would not happen. According to the first appellate court, the learned counsel, despite filing the appeal, argued that the trial court rightly decided the case in favour of the plaintiff-respondents, and learned counsel of the plaintiff-respondents argued on different odds of the judgment of the trial court to get it struck down. At first blush, it appears to be a clear non-application of mind of the first appellate court.

[7] In such backdrop, in the second appeal, the following substantial questions of law were formulated for decision:

> **(a) Whether in absence of any pleading, the certified copy of a sale deed which is exhibited under subject to objection, may go into evidence?**
>
> **(b) Whether the certified copy of sale deed may be exhibited as public document and will go into evidence without complying the provision of Section 65 of Evidence Act?**
>
> **(c) Whether without production of primary evidence, the title of property can be declared on the basis of Secondary Evidence?**
>
> **(d) Whether the record of right i.e. khatian is the proof of title and on the basis of record of right i.e. Khatian, the title of anybody over suit land may be declared?**
>
> **(e) Whether the suit was instituted within the period of limitation, in consideration of the pleading of both the parties?**

-Discussions and decisions-

[8] **Points No.(a)- Whether in absence of any pleading, the certified copy of a sale deed which is exhibited under subject to objection, may go into evidence?**

In the plaint, the respondents simply mentioned that the suit land was owned and possessed by their predecessor by registered purchase but did not mention from whom it was purchased and what were the registration number and date of execution of said purchase deed.

[9] Mr. H. Deb, learned counsel appearing for the appellants argued that in absence of mentioning of those facts in the pleading, the respondents were debarred from taking the certified copy of deed No.1-4062 dated 10.07.1961 (Exbt.9)[*hereinafter referred as 'the purchase deed'*] executed by one Sarada Ram Malakar in favour of predecessor of appellants and their uncle, late Kamala

Basak, into evidence on the ground that there were no mention of such deed in the plaint, and if such sale deed is ignored, there is no document of title of respondents available in the evidence for granting decree of declaration of right, title and interest in their favour in respect of the suit land. Mr. Deb, learned counsel tried to buttress his submission relying on the following decisions:

i) ***Anathula Sudhakar vs. P. Buchi Reddy (Dead) by L. Rs. & Ors., AIR 2008 SC 2033-*** In this case, at Para-23, the Hon'ble Supreme Court observed in the given facts of that case that to attract the benefit of Section 41 of the TP Act, the plaintiffs had to specifically plead the averments necessary to make out a case under Section 41 of the TP Act in their pleading.

ii) ***Food Corporation of India vs. The Assam State Co-Operative Marketing & Consumers Federation Ltd. & Ors. ,1999(1) GLT 1-*** At Para-9 of this judgement, as referred by Mr. Deb, learned counsel, there is mention of submission of one learned counsel that plea of acknowledgement was not pleaded in the plaint and, as such, there was no occasion to controvert it in the written statement and therefore, even if the evidence was led regarding acknowledgement, same cannot be considered. Said learned counsel in that case also relied on one decision rendered in *Venkataramana Devaru vs. State of Mysore, [AIR 1958 SC 255].* Thereafter, Gauhati High Court also cited another decision of said Court in *Mrs. Tazabannisa & Ors. vs. Sadaruddin Ahmed & Ors.,*

(1989) 2 GLR 261 wherein it was observed that the object and purpose of pleadings are to enable the adversary party to know the case it has to meet in order to have a fair trial, and no party can go beyond the pleadings and in absence of pleadings, evidence, if any, produced by the parties, cannot be considered.

[10] In reply, Mr. T.D. Majumder, learned senior counsel for the respondents contended that though there might not be mentioning of details of that purchase deed in the plaint, but it was mentioned that the predecessor of respondents had purchased the suit land by a registered deed of purchase. So, it could not be termed as a case of absence in the pleading.

[11] Now, the question to be decided herein is - whether the non mentioning of the name of vendor, the deed number and the date of execution of the purchase deed in the plaint can be treated to be a case of 'absence of any pleading' or not.

[12] As already indicated above, the specific case of the respondents was that they had derived the ownership of the suit land through their predecessor who became owner thereof by registered purchase. It is not a case that the respondents or their predecessor claimed ownership of the suit land by any other source than the registered purchase. Therefore, it cannot be said that in the evidence they brought any new plea inconsistent with their basic pleading that their predecessor had got the suit land by way of registered purchase.

[13] In ***Bhagwati Prasad vs. Chandramaul, AIR 1966 SC 735,*** the Constitution Bench of Hon'ble Supreme Court held the followings:

> **"(9) There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. The same principle was laid down by this Court in Sheodhari Rai v. Suraj Prasad Singh, AIR 1954 SC 758. In that case, it was held that where the defendant in his written statement sets up a title to the disputed lands as the nearest reversioner, the Court cannot, on his failure to prove the said case, permit him to make out a new case which is not only not made in the written statement, but which is wholly inconsistent with the title set up by the defendant in the written statement. The new plea on which the defendant sought to rely in that case was that he was holding the suit property under a shikmi settlement from the nearest reversioner. It would be noticed that this new plea was in fact not made in the written statement, had not been included in any issue and, therefore, no evidence was or could have been led about it. In such a case clearly a party cannot be permitted to justify its claim on a ground which is entirely new and which is inconsistent with the ground made by it in its pleadings.**
>
> **(10) But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the**

> **trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."**

[14] Thereafter, in ***Ram Sarup Gupta (Dead) by LRs vs. Bishun Narain Inter College & Ors.,(1987) 2 SCC 555,*** in the similar line Hon'ble Supreme Court observed that in absence of pleadings, evidence if any, produced by the parties cannot be considered. No party should be permitted to travel beyond its pleading. The object and purpose of pleadings are to enable the adversary party to know the case it has to meet. The pleadings, however, should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case, it is the duty of the Court to ascertain the substance of the pleadings to determine the question and it is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings, the parties knew the case and they proceeded to trial on those issues by producing evidence, in that

event it would not be open to a party to raise the question of absence of pleadings in the appeal. Similar principle was also again reiterated in ***Bachhaj Nahar vs. Nilima Mandal & Anr.,(2008) 17 SCC 491***.

[15] Therefore, law has been consistent that in absence of pleadings, evidence, if any produced by the parties cannot be considered and no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the party in support of the case setup by it. The basic object of such principle is that the other party may not be taken the case of a party in surprise. However, it is also a settled principle that while considering a pleading, pedantic or hyper technical approach should be avoided. The Court can, however, consider such a case not specifically pleaded where the pleading in substance, contains the necessary averments to make out a particular case; the issues framed in the suit also generally cover the question involved therein and the parties also proceed on the basis that such a case was at issue and lead evidence.

[16] In the instant case in hand as already indicated above, no evidence was led by the respondents in surprise going beyond the plea raised in the plaint or by setting up a new plea. At best, it can be said that the recitals as made in the plaint regarding the claim of purchase of suit land by their predecessor was inadequate, but on the other hand, it was also open to the appellants to put

interrogatories to the respondents to collect the name of vendor and registration number, date of execution etc. of said purchase deed, if they were in need of the same. When no new or inconsistent plea has been taken by the respondents to the utter surprise of the appellants going beyond the arena of their pleading, rejection of entire claim of the respondents based on such inadequate or insufficient description in the plaint in the present case, will lead to a very hyper technical approach to the principle. Therefore, the argument as made by learned counsel of the appellants in respect of absence of pleading is not accepted.

[17] **Point Nos. (b) & (C)- (b) Whether the certified copy of sale deed may be exhibited as public document and will go into evidence without complying the provision of Section 65 of Evidence Act?**

(c) Whether without production of primary evidence, the title of property can be declared on the basis of Secondary Evidence?

Mr. Deb, learned counsel for the appellants argued that the certified copy of the sale deed was taken into evidence without furnishing explanation in the plaint as to why original was not produced. To gain support for his submission, Mr. Deb, learned counsel also referred to a decision rendered in ***Rakesh Mohindra vs. Anita Beri & Ors.,(2016) 16 SCC 483*** and at Para-15, Apex Court observed that the preconditions for leading secondary evidence are that such documents could not be produced by the party relying upon such documents in spite of their best efforts, unable to produce the same which is beyond their control. The

party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original document is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted.

[18] Mr. Deb, learned counsel also referred to another decision as rendered by Gauhati High Court in ***Bidhan Paul vs. Paresh Chandra Ghosh,(2001) 3 GLR 594,*** wherein it was observed by learned Single Judge that the Registration Act never contemplates for keeping any sale deed, gift deed, Deed of power of attorney etc. in its public record and, as such, Volume book containing the copies of entries of a private document cannot be treated to be a "public document" within the meaning of Section 74(2) of the Indian Evidence Act. Only these public records which keep the private documents and not the copies of private documents are treated as "public document". Keeping in view of above said legal position it was further observed that a certified copy of registered deed of power of attorney was not automatically admissible in evidence having no presumptive value within the meaning of Section 79 of the Evidence Act and such type of certified copy of any such document can only be put in evidence being a secondary evidence, if the pre-condition(s) embodied in Section 65 of the Evidence Act is fulfilled.

[19] While arguing further that the alleged certified copy of said sale deed was not 30 years old though the original deed was executed more than 30 years ago and therefore, the presumption under Section 90 of the Evidence Act, 1872 was not available, Mr. Deb, learned counsel referred another decision of Bombay High Court returned in ***Shiolalsing Gannusing Rajput vs. Shankar Motiram Nale, AIR 1984 Bombay 19,*** to the effect that presumption in respect of thirty years old document under Section 90 of the Indian Evidence Act was available in case of certified copy of any document only when the copy itself was more than thirty years old.

[20] In ***Sri Lakhi Baruah & Ors. vs. Sri Padma Kanta Kalita and Ors., AIR 1996 SC 1253,*** as further referred by Mr. Deb, learned counsel, it was observed by Hon'ble Supreme Court at Para-18 that it was the discretion of the Court to refuse to give such presumption under Section 90 of the Evidence Act on certified copy of the document in favour of any party, if otherwise there was occasion to doubt due execution of the document in question. In that case, it was the specific plea of the plaintiffs that the deed of sale was a forged and fabricated document and therefore, it was held that there was a requirement to produce the original copy so that the question of due execution by plaintiff No.1 of that case could have been contested by the parties.

[21] According to Mr. Majumder, learned senior counsel, after a thorough hearing of both the parties, said certified copy of the sale deed (Exbt.9) was admitted in the evidence vide order dated 09.12.2016 and said order was not challenged by the appellants in higher forum letting it to reach the finality, and therefore, the appellants were debarred from raising such an issue in the second appeal. Learned senior counsel also argued that it was not a case that the original purchase deed was missing or destroyed, rather, said original deed was also submitted in the trial court but as only the last page of the same was missing, the certified copy thereof was taken into evidence.

[22] The substantial question of law as framed against point No.(b) are two-folds. The first point to be dealt with is, whether the certified copy of the sale deed may be admitted in evidence as public document and the second point is, whether such certified copy of sale deed may be taken into evidence without complying the provision of Section 65 of the Evidence Act.

[23] Section 74 of the Indian Evidence Act defines the public document and as per sub-section (2) of Section 74, public records kept in any State of private documents are treated to be public documents. Section 76 of the Evidence Act prescribes the procedure of furnishing true copy of such public document(s) and Section 77 of the Act envisages that such certified copies may be produced in proof of contents of the public documents or parts of

public documents of which they purport to be copies. In case of a sale deed registered under the Registration Act, 1908, the original document is not kept as a public record of private document and it is returned to the parties after registration. However, copy of the same is kept in Book 1 as per Section 51 of the Registration Act. As per definition as given in Section 74(2) of the Evidence Act, said record of document kept in Book 1 is a public document. Section 77 of the Evidence Act allows a party to prove the certified copy of such document into evidence.

[24] Section 79 of the Evidence Act attaches presumption of genuineness of such certified copy on two conditions viz i) if the same is declared by law to be admissible in evidence provided it purports to be duly certified by any officer of the Central Government or the State Government or by any officer in the State of Jammu and Kashmir who is duly authorised thereto and ii) if such document is substantially in form and purports to be executed in a manner directed by law in that behalf. Said provision further envisages that the Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

[25] Therefore, abovesaid provision empowers the Court to raise such presumption in respect to the authority of the officer to

certify the document in his official character, apart from drawing presumption of genuineness of such certified copy.

[26] Regarding admissibility of such certified copy, Section 57(5) of the Registration Act, 1908 provides that all copies given under said Section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents. When a document is produced before registering officer, as per Section 34(3) of the Act it is incumbent upon the registering officer to- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed; (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear. As per Section 58 of the Act, when a document is admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under Section 89, there shall be endorsed from time to time the following particulars namely, (a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent; (b) the signature and addition of every person examined in reference to such document under any of the provisions of the Act; and (c) any payment of money or delivery of goods made in the presence of the registering officer in

reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution. As inquiry or verification is done by the registering officer by following various provisions of the Registration Act regarding execution of a document, finally a presumption is raised in favour of valid execution of the same. Hon'ble Supreme Court in ***Prem Singh v. Birbal, (2006) 5 SCC 353,*** held the followings:

> **"27. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."**

[27] Regarding adducing of secondary evidence, Section 65 of the Evidence Act primarily lays down certain pre-conditions where secondary evidence relating to any document may be proved. A certified copy of registered sale deed may be taken into evidence if any of the condition as enumerated in Section 65 of the Act is fulfilled or same is admissible as per any other provision(s) of Law. Recently, Hon'ble Supreme Court *in* ***Appaiya vs. Andimuthu alias Thangapandi and Ors.,*** **2023 SCC OnLine SC 1183,** also observed the followings:

> **"30.....Ex.A.1, indisputably is the certified copy of sale deed No.1209/1928 dated 27.08.1928 of SRO Andipatti. In terms of Section 74(2) of the Evidence Act, its original falls within the definition of public document and there is no case that it is not certified in the manner provided under the Evidence Act. As noticed hereinbefore, the sole objection is that what was produced as Ext.A1 is only a certified copy of the sale deed and its original was not produced in evidence. The hollowness and unsustainability of the said objection would be revealed**

> **on application of the relevant provisions under the Evidence Act and the Registration Act, 1908. It is in this regard that Section 77 and 79 of the Evidence Act, as extracted earlier, assume relevance. Section 77 provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original. Section 79 is the provision for presumption as to the genuineness of certified copies provided the existence of a law declaring certified copy of a document of such nature to be admissible as evidence. When that be the position under the aforesaid provisions, taking note of the fact that the document in question is a registered sale deed, falling within the definition of a public document, the question is whether there exists any law declaring such certified copy of a document as admissible in evidence for the purpose of proving the contents of its original document. Subsection (5) of Section 57 of the Registration Act is the relevant provision that provides that certified copy given under Section 57 of the Registration Act shall be admissible for the purpose of proving the contents of its original document. In this context it is to be noted that certified copy issued thereunder is not a copy of the original document, but is a copy of the registration entry which is itself a copy of the original and is a public document under Section 74(2) of the Evidence Act and Sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original.....”**

In view of above, I most respectfully note my disagreement with the ratio of ***Bidhan Paul (supra)*** as mentioned above to the extent that the Volume books containing the copies of the entries of private documents cannot be treated to be a public document, and that only those public records which keep the private documents and not the copies of private documents are treated as public document within the meaning of Section 74(2) of the Indian Evidence Act.

[28] From the record of trial court, more particularly from orders dated 30.11.2016 and 09.12.2016, it appears that at the time of submission of examination-in-chief on affidavit of the

witnesses, plaintiff-respondents on 20.07.2016 submitted the original purchase deed No.1-4062 dated 10.07.1961 but it was found that last page of the original deed was missing and therefore later, on 07.09.2016 they submitted certified copy of the said deed. The defendant-appellant side, thereafter, put the challenge regarding admissibility of said certified copy on the ground that said certified copy ought to have been filed earlier with the leave of the Court and they were to prove that the original document was not in possession or power of them. The trial court, thereafter, vide order dated 09.12.2016 turned down such challenges with the observation that inclusion of said certified copy shall not cause any prejudice to the defendants' side, as the information of said document was there with them from the date of filing of examination-in-chief on affidavit of the plaintiff witnesses and they had the scope to cross-examine the witness on that document and therefore, leave under Order VII Rule 14 CPC was granted to the plaintiff-respondents to admit said document and finally, vide order dated 04.01.2017, said certified copy of sale deed was taken into evidence and was marked as Exbt.9 subject to objection recorded by the appellant side. Thus, it appears that the challenge of the appellants regarding said document was basically in respect of inadmissibility of the same for delayed submission of the same and for not showing that the original thereof was not in possession of the respondents. There was no challenge in respect of mode of proving the same.

[29] In ***R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple & Anr.,(2003) 8 SCC 752***, Hon'ble Supreme Court discussed the position of law at Para-20 in respect of challenges raised regarding admissibility of documents in evidence and the relevant portion of Para No.20 is extracted thus:

> **"20.....Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is *itself inadmissible* in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play....."**

[30] In the case in hand, when there was no challenge regarding the mode of proof of the said certified copy of purchase deed in the trial court, now appellants cannot be permitted to raise such question here. However, regarding admissibility of such a document, the trial court decided the matter vide order dated 09.12.2016 which was not challenged further by any party. Apart there from, in view of the position of law as discussed above, it is held that such secondary evidence is/was permissible to be taken into evidence. In fact the original sale deed was produced before

the Court, but one page of the same was found lost or missing and therefore, the respondents were entitled to lead secondary evidence of said purchase deed. Moreso, as per Section 65(f) of the Evidence Act, when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India, to be given in evidence, secondary evidence thereof can be led. Therefore, there is no bar in declaring title of the respondents in the suit land based on such certified copy, if said relief is not barred otherwise for any other reason. The point Nos. (b) and (c) are answered accordingly.

[31] **<u>Point Nos.(d) and (e)</u>- (d) Whether the record of right i.e. khatian is the proof of title and on the basis of record of right i.e. Khatian, the title of anybody over suit land may be declared?**

(e) Whether the suit was instituted within the period of limitation, in consideration of the pleading of both the parties?

Mr. H. Deb, learned counsel argued that the ROR was not a basic document of title and therefore the Khatian standing in the name of predecessor of plaintiff-respondents as was proved under Exbt.1 could not be treated as basic document of title to pass decree in favour of the plaintiff-respondents. Mr. Deb, learned counsel on that point referred a decision of Hon'ble Supreme Court in ***Union of India & Ors. vs. Vasavi Co-op. Housing Society Ltd. & Ors., AIR 2014 SC 937*** wherein it was observed that the revenue records are not document of title and the entries in the revenue papers, by no stretch of imagination can form the basis for

declaration of title in favour of plaintiffs. Mr. Deb, learned counsel also referred to another decision of learned Single Judge of this Court rendered in ***Sarda Bala Roy vs. Gouranga Chandra Roy, (2019) 1 TLR 295,*** wherein also said law as enunciated by Hon'ble Supreme Court in different decisions that Khatian or the mutation in the khatian or the Khasra record does not create any title over any property in favour of anyone, was reiterated.

[32] It is no longer *res integra* that record of right does not create or extinguish title of any person over any land and, therefore, it is not the proof of title of any person in respect of any land. However, the TLR & LR Act, 1960 and rules made thereunder were legislated with certain objectives. In one way, it abolished the right of intermediaries in the land and also simultaneously a new method of revenue survey and settlement operation was introduced.

[33] While preparing khatian (ROR) under the Act of 1960, procedures are prescribed for draft publication thereof, consideration of any objection made thereunder and ultimately final publication of the same under Section 42 and 43 of the Act. Section 44 of the Act bars the jurisdiction of the Civil Court from entertaining any suit or application for the settlement or determination of land revenue or the incidence of any tenancy to which the record of right relates. Even after final publication of record of rights, scope has been made there under section 45 of

the Act for correction of such finally published khatian by any revenue officer specially empowered in this regard by the State Govt. within one year from such final publication. Chapter VIII of the Act lays down the procedure for filing first appeal, second appeal, review and revision in different revenue fora for correction of such entry. Under section 81 of the Act, the revenue officer, while exercising power under the Act or under any other law to inquire into or to decide any question arising for determination between the Government and any person or between parties in any proceeding is treated to be a revenue court having power of summoning witnesses, issuing of bailable warrants, recording of evidence etc.

[34] As per Rule 56 of T.L.R. & L.R. Rules, 1961, revenue survey is conducted and record of rights are prepared maintaining the below noted stages-

i) demarcation of village boundaries;
ii) traverse survey;
iii) cadastral survey (or Kistwar);
iv) preliminary record writing (or Khanapuri);
v) local explanation (or Bujharat);
vi) attestation including determination of rent or revenue of tenancies and holdings (or Jamabandi);
vii) publication of the draft record of rights;
viii) disposal of objections under sub-section (1) of section 43; and
ix) preparation and publication of the final record of rights under sub-section (2) of section 43.

As per Rule 64, a notice atleast 30 days before the abovesaid attestation begins, is required to be given to the riyats,

under-riyats, occupants and other land holders calling upon them to appear before the revenue officer, on the date fixed with relevant documents in support of their right, title and possession (*emphasis laid*) . Therefore, while preparing the khatian (ROR) an inquiry by the revenue authority is done in a systematised manner under the provision of the Act of 1960 and the Rules of 1961 made thereunder and the document(s) relating to right, title and possession of the parties are also examined by the revenue officials at that time. Therefore, khatian prepared under the Act of 1960 carries a substantial evidentiary value though it is not the document of title nor it confers any title upon anybody, but such evidentiary value is always rebuttable. Section 99 of the Act provides that the rights of a riyat in his land shall be permanent, heritable and transferrable.

[35] Considering the relevant provisions of the said Act of 1960, Hon'ble Supreme Court in ***Sudhangshu Mohan Deb (Dead) by LRS. Vs. Niroda Sundari Debidhup & Ors.,(2004) 4 SCC 389,*** observed as follows:

> **"6. From a perusal of the above provisions, it will be seen that all estates in a notified area vest in the Government free from all encumbrances. All right, title and interest of every intermediary in the estates stands extinguished. After the notified date, no one except the State Government is left with any right, title or interest in the subject lands. Once the lands vested in the State Government, the State Government is free to deal with the same in any manner it decides. This may include a decision on the part of the State Government to grant tenancy rights with respect to the lands or any portion thereof in favour of any party on payment of land revenue. It appears that in 1968 the appellant applied for grant of right as a "*raiyat*" or as a non-agricultural**

> **tenant for the land in suit on payment of land revenue under Section 136(2) of the Act. The State Government granted the right as a "*raiyat*" in favour of the appellant which was evidenced by a "*khatiyan*" (entry in the revenue records showing tenancy) in the appellant's favour. The *khatiyan* was initially granted on a provisional basis which was after contest finalised in favour of the appellant in 1974. The revenue entry was published in the revenue records which is evidenced by the *khatiyan*. The effect of grant of *khatiyan* in favour of the appellant is that his possession of the lands is under the Government and is with the consent of the Government and he is paying land revenue to the Government for the same. In other words, the appellant gets a fresh right to possession of the land as a tenant. Section 43 of the Act conveys the consequence of publication of *khatiyan*. The said section is reproduced as under:**
>
> > **"43.(1) When a record-of-rights has been prepared, the survey officer shall publish a draft of the record in such manner and for such period as may be prescribed and shall receive and consider any objections which may be made during the period of such publication, to any entry therein or to any omission therefrom.**
> >
> > **(2) When all objections have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be finally published in the prescribed manner.**
> >
> > **(3) Every entry in the record-of-rights as finally published shall, until the contrary is proved, be presumed to be correct."**
>
> **7. It will be seen from the above provision that once a *khatiyan* is finalised and its publication takes place, it is presumed to be correct until the contrary is proved. The final *khatiyan* stands published in favour of the appellant which gives the appellant right to remain in possession of the suit land. This is a fresh right created in favour of the appellant by the State Government in whom the entire land had vested by virtue of Sections 134 and 135 of the Act."**

[36] Therefore, the record of right, i.e. the Khatian, is not the proof of title. However, one can maintain his possession or may sue for maintaining the same based on such Khatian, provided contrary is not shown to revert the presumptive value of such Khatian as envisaged under Section 43 of the TLR & LR Act, 1960.

[37] In the instant case in hand, as already discussed above, the plaintiff-respondents proved a certified copy of sale deed No.1-4062 (Exbt.9) dated 09.07.1961 executed by one Sarada Ram Malakar in favour of Bidyasagar Basak and his brother Kamala Basak by transferring one drone one kani land from Plot Nos. 117 and 118/130 as per map of 1336 TE with certain specific boundaries. Thereafter, in the year 1963, vide Khatian No.129 (Exbt.A), name of the said two purchaser brothers were reflected against CS Plot Nos.1045 and 1044 for a total area of 5.18 acres. From finally published Khatian dated 24.02.2014 bearing No.246 (Exbt.1) it appears that during revisional survey, the suit property has been recorded in the name of father of plaintiff-respondents for an area of 2.51 acre. The appellants in their written statement, took the plea that the suit land was a khas land and they were in possession of the same for about 40 years living therein with their family members. But such plea could not be established by them with any convincing evidence.

[38] Mr. Deb, learned counsel argued that as the appellants were in possession of the suit land for more than 40 years, therefore, the suit was time barred. However, such plea is not tenable as there was no plea of adverse possession from the side of the appellants in respect of the suit land.

In view of the above, the appeal is found devoid of merit and, accordingly, the same is dismissed with costs in favour of the plaintiff-respondents.

Registry is to prepare decree accordingly and to re-consign the LCRs with copy of the judgment and decree.

Pending application(s), if any, also stands disposed of.

JUDGE