

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 17th OF JUNE, 2025

FIRST APPEAL No. 208 OF 2008

STATE OF MADYA PRADESH

Vs.

SMT. SHINGAR BAI AND OTHERS

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Appearance

Shri Ajay Ojha – Government Advocate for the appellant/defendant.

Shri Rajas Pohankar – Advocate for respondent Nos.1 to 3/plaintiffs.

Shri S.P. Rai – Advocate for the proposed respondent.

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Reserved on : 07.05.2025

Pronounced on : 17.06.2025

J U D G M E N T

At the request of learned counsel for the parties, this appeal is finally heard.

2. In this appeal filed under Section 96 of the Code of Civil Procedure, assail is made to the impugned judgment and decree dated 24.10.2007 passed by the Court of Eighth Additional District Judge, Bhopal, in Civil Suit No.10-A/2005 whereby granting decree of declaration and mandatory injunction, the trial Court had decreed the suit in the plaintiffs' favour.

3. As per facts of the case, a suit was filed by the plaintiffs claiming declaration and mandatory injunction. As per the plaint averments, the suit land ad-measuring 41.52 acres, situates at Village Goura, PH No.40,

Revenue Survey No.234, Tahsil Hujur, District Bhopal and is being owned and possessed by the plaintiffs which according to them is their ancestral property.

(3.1) According to the plaintiffs, some part of the said land was in the shape of *Pathar* whereas in the remaining part, they are doing cultivation. According to the plaintiffs, over the said land, a *pucca* house and 'Well' are also situated.

(3.2) As per the plaintiffs, their predecessor Mohanlal, whose name is shown to be a *bhumiswami* in the revenue records, died in the year 1953 and thereafter, his two sons namely Ramdayal and Sitaram came in possession over the land in question. Although, after the death of Mohanlal, one of his sons namely Sitaram started living in his maternal home and thereafter, some part of land was being cultivated by Ramdayal whereas other was given on *batiya*, but after the death of Ramdayal and Sitaram, the land was being taken care of and cultivated by Shingar Bai.

(3.3) As per the plaintiffs, neither the suit land was sold; acquired by the State Government nor it was vested in any of the schemes or policies of the State Government. In the year 2000-01, Shingar Bai had given the suit land to Yunus Khan on *batiya*, who later on, tried to grab the said land and thereafter, Shingar Bai filed a suit which, on 26.01.2005, got withdrawn as the parties had settled their grievances.

(3.4) Pursuant to the dispute arose between Shingar Bai and Yunus Khan, Shingar Bai had obtained the revenue records of the suit land from 1939 till 2002-03 and then only, she got the information that the suit land was shown to be a land of Mohanlal s/o Kashiram and after his death in the

year 1953, the said land was recorded in the name of his legal heirs i.e. her two brothers and plaintiff herself.

(3.5) As per the plaint averments, in the year 1954, the suit land was shown to be in two khasra numbers. Although, in one khasra number, the names of plaintiff and her two brothers were recorded but the other khasra number was kept vacant and that information was not there in the knowledge of the plaintiffs for the reason that since the suit land was recorded as a *Pathar* land and, therefore, it was free from any outstanding towards the land revenue and as such, no communication was made in this regard between the plaintiffs and revenue authorities and thereafter, revenue records were not being properly maintained and in fact, the names of the plaintiffs from the column of ownership '*swamitwa*' got removed. However, according to the plaintiffs, they are still in possession over the suit land.

(3.6) According to the plaintiffs, even in the year 2000, their possession over the land in question could not be recorded and thereafter, under some mistake, the suit land was shown to be the land of the State and, therefore, defendant No.1 had initiated the proceeding of allotment of suit land in favour of defendant No.2 (respondent No.4 herein) and as such, a public notice got issued on 09.01.2004 in Dainik Bhaskar inviting objections in respect of allotment of land likely to be made in favour of defendant No.2 and then only, the plaintiffs, on 15.01.2004 had published their objection and in fact, on the same date they had also submitted their written objection before the Nazul Officer, Bhopal stating therein that the suit land belonged to them and as such, the State has no right to allot it in favour of defendant No.2.

(3.7) Subsequently, on 25.01.2005, a revenue inspector along with two policemen came on spot and pressurized the plaintiffs to remove their possession over the land in question otherwise, they will be removed forcefully and as such, left with no other alternative remedy, the plaintiffs had filed the suit.

(3.8) According to the plaintiffs, the cause of action arose in their favour on 09.01.2004 when they came to know about the notice published on behalf of the State inviting objections about the allotment of land likely to be made in favour of defendant No.2 and thereafter, another cause of action arose when on 25.01.2005, the revenue inspector along with two policemen came on spot and pressurized them to remove their possession over the land in question and as such, it was claimed that their suit was within time because the same was filed only on 29.01.2005.

(3.9) Written-statement was also filed by defendant No.1 claiming therein that the suit land belongs to the State. According to defendant No.1, from 1955-56, since the suit land is shown to be *Pathar* in the revenue records, therefore, no question for its acquisition arose. It is further stated that the plaintiffs were not cultivating the said land. In the written-statement, an objection in respect of maintainability of suit on the ground of *res judicata* had also been raised saying that on an earlier occasion, a suit filed by the plaintiffs even between the same parties got withdrawn that too without there being any liberty and as such, subsequent suit is not maintainable.

(3.10) In the written-statement, defendant No.1 had also denied the fact that under some mistake, the suit land is being shown to be the State land. According to defendant No.1, since the plaintiffs are trying to grab the suit land, therefore, they had filed the suit on the false and incorrect facts. In

the written-statement, defendant No.1 had also denied the fact about any ownership and possession of the plaintiffs over the suit land. According to them, the suit is time barred. It was further claimed that the suit is liable to be dismissed on the ground that proper Court-fee had not been paid by the plaintiffs.

(3.11) Ultimately, the trial Court vide impugned judgment and decree dated 24.10.2007 had decreed the suit in the plaintiffs' favour holding therein that they are the *bhumiswami* of the suit land. The trial Court had directed that defendant No.1 shall record the plaintiffs' name in khasra *panshala* treating them to be the *bhumiswami*. The trial Court had also declared the proceeding initiated by defendant No.1 for allotment of suit land in favour of defendant No.2, as illegal and void. The defendants were also restrained from interfering in the possession of the plaintiffs over the suit land.

4. Learned counsel for the appellant is challenging the impugned judgment and decree mainly on the ground that while shifting the burden of proof upon the appellant/defendant, the trial Court had committed an error. It is contended that the Court had further failed to see that the suit ought to have been dismissed on the ground that it was hopelessly barred by time because as per the admission of the plaintiffs themselves, their names were not there in the revenue records since 1954 and, therefore, it is clear that suit was filed after almost 60 years. It is contended by the appellant that the suit was also liable to be dismissed on the ground of *res judicata* because earlier suit filed by the plaintiffs got withdrawn without there being any liberty and, therefore, as per the provision of Order 23 of the CPC, once earlier suit constituted between the same party got

withdrawn that too without any liberty, then subsequent suit filed between the same party is not maintainable. It is further contended by learned counsel for the appellant that the observation with regard to the ownership of the plaintiffs interpreting 'GAIR MAKBUZA NAKABIL KASTA PATHAR' was based upon perverse finding. As per learned counsel for the appellant, after introducing the Code i.e. M.P. Land Revenue Code, 1959, the suit land automatically got vested in the State. It is further contended that in the year 1939, by making manipulation, the name of Mohanlal s/o Kashiram got substituted in the revenue records that too without there being any foundation and for that no sufficient explanation was given and as such, the Court had to draw an adverse inference in this regard, but the Court failed to do so. It is further contended that the trial Court acted illegally without considering the fact that after 1954, the name of predecessor of the plaintiffs was not shown in the revenue records whereas the land was shown as a *Pathar* and as such, it had to be considered a land of the State Government. Further, the fact of non-payment of land revenue had also not been taken note of in a proper manner and even the trial Court failed to appreciate the fact that when the land was recorded as a barren land, then it cannot be considered to be the land of a private person.

5. On the other hand, learned counsel for the respondents has opposed the submissions advanced by learned counsel for the appellant and submitted that the impugned judgment and decree passed by the trial Court is based upon the evidence adduced by the parties during the course of trial. It is contended that during trial, in fact, the defendant/appellant failed to adduce any evidence to establish as to how, the suit land belonged to the State. It is further contended that the revenue entries, since 1939 onward,

are not only showing the name of predecessor of the plaintiffs as the *bhumiswami*, but they are also showing their possession over the suit land. It is submitted that after the death of Mohanlal (original owner of the land), though, their legal heirs came on record, but later on, revenue records were not properly maintained and in the year 1989, all of a sudden, the suit land was shown to be a land of the State Government. It is also contended that the appellant failed to show as to how the name of State got recorded in the revenue records against the suit land. It is further submitted that the State Government though had produced a witness, but she herself had admitted that neither there was any order nor any entry prior to 1989 in the revenue records showing that the suit land belonged to the State. It is also contended that the said witness had further failed to disclose the fact as to how the revenue entries got changed when no order in this regard was passed by any competent authority. It is also contended by learned counsel for the respondents that the trial Court, on the basis of old revenue entries showing the name of predecessor of the plaintiffs as a *bhumiswami*, had found that the suit land is continuously in their possession and as such, rightly decreed the suit in the plaintiffs' favour. According to him, this appeal being misconceived, is liable to be dismissed.

6. I have heard the arguments advanced by learned counsel for the parties and perused the record.

7. The trial Court, considering the pleadings made by the parties, had framed as many as eight issues including the issues with regard to maintainability of suit on the grounds of *res judicata* and limitation. The trial Court had further framed the issue about the proceeding initiated by the State for allotment of the suit land in favour of defendant No.2.

8. For deciding the dispute involved in this case and ascertaining the correctness of the impugned judgment and decree, it is to be seen as to whether these three issues have rightly been dealt with and answered by the trial Court or not and, therefore, I am giving my opinion in respect of those issues.

9. So far as question of limitation is concerned, the trial Court had considered that as per the averments made in the plaint itself, first cause of action arose in favour of the plaintiffs in the year 2004 when a notice got published in Dainik Bhaskar inviting objections with regard to allotment of the suit land likely to be made in favour of defendant No.2 and thereafter, second cause of action arose in the year 2005 when a revenue inspector came on spot along with two police persons and asked the plaintiffs to remove their possession over the suit land otherwise the same would be done forcefully and, therefore, looking to the date of filing the suit i.e. 29.01.2005, the trial Court had decided the said issue saying that the suit was filed within limitation. However, considering the facts and circumstances of the case, I am also of the opinion that in the present case, first cause of action arose in favour of the plaintiffs only after publication of notice inviting objections in respect of allotment of the suit land likely to be made in favour of defendant No.2. However, in response to the same, the plaintiffs had not only published their objection in the newspaper but also submitted a written objection before the Nazul Officer, Bhopal. Likewise, second cause of action arose when the revenue inspector came on spot and asked the plaintiffs to remove their possession over the suit land and, therefore, looking to the period of limitation for filing the suit in respect of declaration as prescribed under Article 58 of the Limitation Act

i.e. three years, the trial Court, in my opinion, had rightly observed that the suit filed by the plaintiffs was within limitation.

10. As regards, the issue of *res judicata*, though a suit was filed by the plaintiffs against Yunus Khan, but in the said suit, the State was only a formal party and in fact, no relief was claimed against the State and ultimately, the matter got compromised between the parties; neither any order on merit was passed nor any issue was framed, then the subsequent suit filed by the plaintiffs cannot be said to be not maintainable on the ground of *res judicata*. It is also pertinent to mention here that in the earlier suit filed by the plaintiffs, relief was claimed only against Yunus Khan, but in the subsequent suit, relief of title was being claimed against the State and, therefore, it does not attract the principles of *res judicata* and under such circumstances, even the provisions of Order 23 of the CPC do not come in the way of the plaintiffs for the reason that the subsequent suit was filed between different parties. As such, while deciding the said issue, the finding so given by the trial Court that subsequent suit does not attract the principles of *res judicata*, cannot be said to be perverse in any manner. That apart, before the trial Court, the State was failed to produce any document showing that in the earlier suit, relief was claimed against the State and as such, the finding given by the trial Court in this regard cannot be said to be improper.

11. Now the basic issue involved in this case is as to whether under the existing facts and circumstances of the case, a decree of declaration and title could have been granted in favour of plaintiffs and as such, finding given by the trial Court in this regard can be said to be perverse as has been contended by learned counsel for the appellant or not.

The plaintiffs had filed revenue records from 1939 and since those documents were in Urdu, therefore, a person well versed in Urdu language; did his higher secondary with said language and was in a position to translate those documents, was brought to the witness-box and had stated before the trial Court that the documents Ex.P-17 and Ex.P-18 are showing the name of Mohanlal s/o Kashiram as the owner (*bhumiswami*) of the suit land and in fact, his possession is also showing therein. He had also stated that in one of the documents (Ex.P-17), the name of Mohanlal was deleted by red-ink and thereafter, names of Ramdayal, Shingar Bai and Sitaram got recorded.

At the same time, Naib Tahsildar namely Mrs. Sunita Lal was also examined, who, in her statement had very categorically stated that she had no knowledge about the fact as to how the name of the State came in Ex.P-35. She had also admitted the fact that without there being any order or following any procedure, such entries were made in favour of the State. She had further admitted that in Ex.P-2, the name of Mohanlal s/o Kashiram got recorded as *bhumiswami*, but the name of State was not there. However, she had submitted that the suit land was shown to be a *Pathar* and as such, it otherwise means that it belongs to the State.

Although, she had admitted that from 1959 till 2005, the name of the State was there in the revenue records, but she failed to demonstrate as to how in Ex.P-35, the name of State has come in the revenue records. She had also admitted that in the document (Ex.P-19), till 1934, revenue records were blank. She had further admitted that since she had not inspected the suit land, therefore, not in a position to say whether any 'Well' is situated there or not. She had also admitted that no report of any

encroachment over the land was ever produced before her.

12. Under the existing scenario, it is clear that by producing the relevant documents i.e. revenue entries, the plaintiffs had successfully proved their title and possession over suit land whereas the State failed to show as to under what authority, the name of the State got recorded in the revenue records and as to how, they could claim their title over the suit land. So far as the contention made by learned counsel for the appellant that the plaintiffs had to prove their title is concerned, I am not convinced with the same for the reason that as per the provision of Section 117 of the M.P. Land Revenue Code 1959, a presumption with regard to entries in the revenue records can be considered to be correct until contrary is proved. As is clear from record, before the trial Court, the State was failed to produce any material contrary to the revenue entries shown to have been made since 1939 and even before this Court, nothing has been produced by the State to hold that the finding given by the trial Court is perverse and contrary to law.

13. Dealing with almost similar circumstances, the Supreme Court in a case reported in **(2020) 11 SCC 242 [Pratap Singh (Dead) Through Legal Representatives and others Vs. Shiv Ram (Dead) Through Legal Representatives]** has observed as under:-

‘15. The record produced by Lalita Chauhan (DW 8) for correction of khasra girdawari entries is not relevant and admissible before the civil court. The proceedings before the Revenue Officer for correction of revenue record are summary in nature. The statements recorded by the Revenue Officer during the proceedings for correction of revenue record are not per se admissible in evidence. Maybe the evidence of the witnesses could be used to confront the witness being a previous statement if such a statement is made on oath. Therefore, the reference of corrections of khasra girdawari proceedings is wholly unwarranted when such entries are not proved to be

incorrect.

16. As per Section 32(2)(a) of the 1954 Act, record-of-rights i.e. jamabandi, shall include the name of persons who are landowners, tenants or assignees of land revenue and also the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the Government. On the other hand, the periodical record i.e. khasra girdawari, as mentioned in Section 34 of the 1954 Act, is to be prepared every year as the proof of the statements, as mentioned in sub-section (2) clause (a) of Section 32, which includes the name of the landowners, tenants and the rent and land revenue payable. In terms of Section 45 of the 1954 Act, the record-of-rights as prepared in terms of Sections 32 and 34 of the 1954 Act carries a presumption of truth. Still further, any person who is aggrieved by any entry in the record-of-rights or in a periodical record has a right to invoke the jurisdiction of the civil court for correction of the entries in terms of Section 46 of the 1954 Act.

17. The detailed procedure for recording of periodical record-of-rights as well as the record-of-rights in terms of Sections 32 and 34 of the 1954 Act has been prescribed. The record-of-rights contains entries of the revenue record for the four years. Such record-of-rights carries the presumption of correctness in terms of Section 45 of the 1954 Act and also Section 35 of the Evidence Act, 1872 (for short “the Evidence Act”). Section 109 of the Evidence Act further contemplates that whether there exists a relationship of landowner and tenant and the burden of proving such a relationship is on the person who affirms it.

18. The relevant provisions of the Evidence Act read as under:

“35. Relevancy of entry in public record or an electronic record made in performance of duty.—An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.

* * *

109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.—When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.”

19. In the State of Himachal Pradesh, jamabandi, under Section 32 of the 1954 Act as well as khasra girdawari, under Section 34 of the 1954 Act, both are record-of-rights in terms of Section 32 of the 1954 Act, and have statutory presumption of truth. How that presumption can be inferred has come up for consideration before this Court in Harish Chander v. Ghisa Ram [Harish Chander v. Ghisa Ram, (1981) 1 SCC 431] . This Court held that the entries in the jamabandi carry presumption of truth but such presumption is rebuttable. Once that presumption is raised, still another comes to the aid of Respondent 1 [therein] [Ed.: The facts of Harish Chander, (1981) 1 SCC 431, are that the name of Respondent 1 therein was recorded as a tenant in the jamabandi for the year 1959-60 (Ext. P-1) and consistently thereafter till the year 1968 (Khasra-girdawaris Exts. P-2 to P-7). Thus it was held that the statutory presumption of truth of these entries was attracted to the benefit of Respondent 1 tenant, and so also the reversal of burden of proof under Section 109 of the Evidence Act, 1872, was held to be to his benefit. The facts of the present case are exactly the opposite—see para 20 below—there is no entry at all in the record-of-rights of the tenancy claimed by the respondent-defendant herein. Thus, the presumption of the truth of the record-of-rights has been held to enure to the benefit of the appellants whose names were found to be recorded in the record-of-rights.] by reason of the rule contained in Section 109 of the Evidence Act, namely, that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship has ceased, is on the party who so asserts. It was held as under: (SCC pp. 431-433, paras 2 & 6)

“2. ... Apart from the oral evidence there is no material on the record which may indicate the falsity of any of the entries in the revenue records and we are of the opinion that the lower courts were fully justified in relying on them.

* * *

6. No suspicion can attach to the entries in the jamabandi for the year 1959-60, nor have the contents of that document been assailed before us. A presumption of truth attaches to those entries in view of the provisions of Section 44 of the Punjab Land Revenue Act. That presumption is no doubt rebuttable but no attempt has been made to displace it. Further, once that presumption is raised, still another comes to the aid of Respondent 1 by reason of the rule contained in Section 109 of the Evidence Act, 1872, namely, that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship has ceased, is on the party who so asserts. It may therefore be legitimately presumed that the plaintiff continued to possess the land as a tenant till the institution of the suit.”

20. The present is a case where no relationship of landlord and tenant is mentioned in the revenue record though required in terms of Section 32(2) (a) of 1954 Act. In the absence of entry in the revenue record, which is also expected to contain the entry of rent and possession, the tenancy cannot be treated to be in existence only on the basis of oral evidence of the witnesses examined by the defendant. The burden of proving the relationship was on the defendant. Such burden cannot be said to be rebutted only by oral evidence. The witnesses may lie but the documents do not, is a golden rule. The presumption of truth attached to the revenue record can be rebutted only on the basis of evidence of impeccable integrity and reliability. The oral evidence can always be adduced contrary to the revenue record but such oral testimony will not be sufficient to hold that the statutory presumption stands rebutted.

21. This Court in *Vishwa Vijay Bharati v. Fakhrul Hassan* [*Vishwa Vijay Bharati v. Fakhrul Hassan*, (1976) 3 SCC 642] held that the entries in the revenue record ought to be generally accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent entries. This Court held as under: (*Fakhrul Hassan case* [*Vishwa Vijay Bharati v. Fakhrul Hassan*, (1976) 3 SCC 642] , SCC p. 645, para 14)

“14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.”

22. This Court in *Guru Amarjit Singh v. Rattan Chand* [*Guru Amarjit Singh v. Rattan Chand*, (1993) 4 SCC 349 : AIR 1994 SC 227] was examining a dispute of relationship of landlord and tenant. A copy of more than thirty years old lease deed was produced to prove the relationship between landowner and tenant. However, the revenue record did not show any payment of rent but only existence of terms of lease to pay rent. This Court held that non-production of the receipts of payment of rent clearly indicates that there was no relationship between landlord and tenants.

23. In *Sodhi Transport Co. v. State of U.P.* [*Sodhi Transport Co. v. State of U.P.*, (1986) 2 SCC 486 : 1986 SCC (Tax) 410] , this Court was considering Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 which raises a presumption of sale of goods in a manner prescribed therein. This

Court considered Section 4 of the Evidence Act and also the previous judgments and held as under: (SCC p. 496, para 14)

“14. A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.”

24. In another judgment in **Kumar Exports v. Sharma Carpets** [**Kumar Exports v. Sharma Carpets**, (2009) 2 SCC 513 : (2009) 1 SCC (Civ) 629 : (2009) 1 SCC (Cri) 823] , this Court examined the presumption of fact in proceedings under Section 138 of the Negotiable Instruments Act, 1881. It was held that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. It was held as under: (SCC p. 521, para 21)

“21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.”

25. The presumption of truth attached to the revenue record can be rebutted if such entry was made fraudulently or surreptitiously (Vishwa Vijay Bharati case [*Vishwa Vijay Bharati v. Fakhrul Hassan*, (1976) 3 SCC 642]) or where such entry has not been made by following the prescribed procedure (*Bhimappa Channappa Kapali v. Bhimappa Satyappa Kamagouda* [*Bhimappa Channappa Kapali v. Bhimappa Satyappa*

Kamagouda, (2012) 13 SCC 759 : (2014) 5 SCC (Civ) 419]). Even in *Guru Amarjit Singh* [*Guru Amarjit Singh v. Rattan Chand*, (1993) 4 SCC 349 : AIR 1994 SC 227], where thirty years' old lease deed was produced, this Court had not accepted the proof of the relationship between landowner and tenant in absence of receipt of payment of rent.

26. Therefore, we find that the presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidence to rebut the statutory presumption as the credibility of oral evidence vis-à-vis documentary evidence is at a much weaker level.

27. In view thereof, we find that the High Court has erred in law in allowing the defendant's appeal relying upon oral evidence to rebut the statutory presumption of truth attached to the revenue record. The onus of proof was placed on the defendant by the learned trial court. The burden is on the person who asserts such a relationship as per Section 109 of the Evidence Act. The defendant has failed to rebut the presumption of truth on the basis of reliable, trustworthy and cogent documentary evidence to prove the relationship of a tenant.'

(emphasis supplied)

14. In view of the aforesaid enunciation of law, I have no hesitation to say this appeal is without any merit and accordingly, it is hereby **dismissed**.

**(SANJAY DWIVEDI)
JUDGE**