

(2008) 12 PAT CK 0078

Patna High Court

Case No: LPA No. 849 of 1998

Narshing Mishra,
Narmadeshwar Mishra and
Others

APPELLANT

Vs

Rajendra Mishra, and Others All
are sons and legal
representatives of Bishundeo
Mishra and Others

RESPONDENT

Date of Decision: Dec. 15, 2008

Acts Referred:

- Evidence Act, 1872 - Section 106, 120(2), 50

Citation: (2009) 2 PLJR 1028

Hon'ble Judges: Ravi Ranjan, J; Chandramauli Kr. Pd., J

Bench: Division Bench

Advocate: Ram Kumar Sharma and Ajay Mishra, for the Appellant; Rakesh Kumar Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

Prasad & Ranjan, JJ.

Appellants, being aggrieved by the judgment and decree dated 25th of June, 1998 passed by a learned Single Judge of this Court dismissing the First Appeal No. 818 of 1978 and affirming the judgment and decree dated 11th of September, 1978 passed by the trial court in Title Suit No. 650/ 132 of 1974/1978, have preferred this appeal under Clause 10 of the Letters Patent. During the pendency of the first appeal aforesaid, the original plaintiffs (appellant Nos. 1, 2 and 3 in the first appeal) died and the present appellant Nos. 1 to 14 were substituted in their place being their legal representatives. Defendant No. 3 also died during the pendency of the first appeal and his legal representatives were also substituted in his place. Appellant No. 20 is original defendant No. 4 himself. Original defendant Nos. 1 and 2 (Respondent

Nos. 1 and 2 herein) died during the pendency of this appeal and the present respondents were substituted in their place being their legal representatives. Similarly appellant Nos. 1 and 16 also died during the pending of this appeal. The legal representatives of appellant No. 1 were already on record whereas the legal representatives of appellant No. 16 were substituted in his place.

2. Original plaintiffs filed Title Suit No. 650/132 of 1974/1978 seeking partition of their 1/8th share out of the suit property measuring an area of 11 bighas 2 kathas and 14 dhoors pertaining to Khata No. 115 situate at Village Hembardaha, Pargana Kuari, P.S. Kuchaikote, District-Gopalganj, which are described in Schedule-I of the plaint.

3. Shorn of details, plaintiff's case in brief is that the suit land described in Schedule-I of the plaint was joint property of Ramhit Missir, Ram Sewak Missir, both sons of Rameshwar Missir, Deoki Missir son of Doulat Misshir, Bishwanath Missir son of Hira Misshir and Indradeo Missir son of Ram Prasad Missir, their common ancestor being Radha Missir. According to the plaintiff-appellants, the suit property stood recorded in the names of their ancestors in the C.S. and R.S. khatians in defined shares. Further contention of the plaintiff is that the recorded co-sharers and their descendents have even sold part of their shares to the ancestors of the contesting defendant Nos. 1 and 2 by sale deeds dated 22.7.1918 and 14.9.1922. The claim of the plaintiffs is that since they felt inconvenience in cultivating the suit property jointly with the contesting defendants, they wanted partition by carving out their shares out of the suit property. Since defendant Nos. 1 and 2 did not agree, the present suit was filed by the plaintiffs.

4. Defendant Nos. 1 and 2 filed written statement jointly. Their case in short is that the property in question originally belonged to one Sharda Shukul of Village-Hembardaha, which was. part of 34-35 bighas of lands held by him as Brit Belagan land (Rent free lands), which after his death, came in the possession of his sons Kandhar Shukul, Nidhi Shukul and Anant Shukul. Aforesaid three sons after the death of their father, divided the lands between themselves as a result of which, 11 bighas 8 kathas and 14 dhoors of land, which is the suit property and has been described in Schedule-I of the plaint, was allotted to Kandhar Shukul. On the death of Kandhar Shukul, the property came in possession of his widow Mostt. Tarwana, who remained in possession of the same throughout her lifetime.

5. Further case of the contesting defendants is that one of the Kandhar Shukul's daughter, namely, Ganpati was married to Bujhawan Missir of Village Barnaiya Bissa (grandfather of Bishundeo Missir-defendant No. 1 and great-grandfather of Ram Swarup Missir-Defendant No. 2), whereas other daughter of Tarwana, namely, Mahesha was married with Tahlui Pandey of Village-Hathua, who subsequently died issueless. Hence, the case of contesting defendants is that all the properties of Kandhar Shukul including the suit property, devolved upon the sons of Bujhawan Missir after the death of the widow of Kandhar Shukul, namely, Mostt. Tarwana, and

thereafter, Nand Keshwar Missir son of Bujhawan Missir remained in possession of the same.

6. The contesting defendants, by filing written statement, vehemently denied that the property in question ever belonged to or possessed by Ramhit Missir, Ram Sewak Missir, Deoki Missir etc. They claimed that the suit property was mortgaged to Ram Tahlu Pandey by Kandhar Shukul by executing the deed of mortgage dated 18.9.1984. The aforesaid Ram Tahlu Pandey filed T.S. No. 222 of 1895 on the basis of aforesaid simple deed of mortgage against Mostt. Tarwana, the widow of Kandhar Shukul and got decree against her. Subsequently, he filed Execution Case and in the execution case, entire property measuring 11 bighas 8 kathas 14 dhoors of land was put to auction sale.

7. In order to save the property, Bujhawan Missir, the eldest son-in-law of Mostt. Tarwana, got a farzi settlement made with respect to the aforesaid property in the name of his pattidar Rameshwar Missir.

8. The claim of aforesaid contesting defendants is that the suit property was Brit Belagan land and names of their ancestors were recorded in the C.S. Khewat as well as R.S. Khewat. They used to pay cess to Hathua Raj. The suit property is situated in Village-Hembardaha, whereas the plaintiffs/appellants are resident of Village-Barnaiya Bissa and thus, they never came in possession of the same. Further claim of the contesting defendants is that they remained continuously in possession of the suit property. At the time of abolition of Zamindari, their ancestor Nand Keshwar Missir did not file return because there was no raiyati sairat in the khewat and the land of the khewat was in possession of Nand Keshwar Missir as Khewatdar (Tenure holder). Since the suit land was Maliki Brit Belagan land of the ancestors of the defendants, there was no question of payment of rent and they only use to pay cess to Hathua Raj and got receipts thereof. After the vesting of Zamindari in the State of Bihar, their ancestors became Kashtkar with respect to the land in question and the State of Bihar created Jamabandi and fixed rent and since then the ancestors and subsequently the defendants continuously paid rent to the State of Bihar. In acknowledgment thereof, the State of Bihar issued rent receipt in their names.

9. According to the defendants, the names of plaintiffs/appellants were found recorded in C.S. Khatian and R.S. Khatian only on the basis of farzi settlement engineered by Bujhawan Missir in order to save the land from being auctioned sold at the instance of Ram Tahlu Pandey.

10. Defendant Nos. 3 and 4 filed their joint written statement. However, they fully supported the case of the plaintiffs.

11. On the pleadings of the party, the trial court framed the following issues:-

1. Is the suit, as framed, maintainable?

2. Have the plaintiffs got any valid cause of action for the suit?
3. Is the suit barred by the law of limitation?
4. Is the court fee paid by the plaintiffs sufficient?
5. Is there any unity of title and possession between the parties over the suit land?
6. Are the plaintiffs entitled to a decree for partition, if so, to what extent and with respect to what property?
7. To what relief or reliefs, if any, are the plaintiffs entitled?

12. The trial court took up issue Nos. 5 and 6 together as they were the main issues involved in the case and has held that the plaintiffs had failed to prove that they had got unity of title to and unity of possession over the suit land and thus the suit for partition brought by them was found not maintainable and was dismissed with contest against defendant Nos. 1 and 2.

13. Aggrieved thereof, the plaintiffs as well as defendant Nos. 3 and 4 preferred F.A. No. 818 of 1978 before this Court and the learned Single Judge, after hearing the matter at length and on consideration thereof, dismissed the aforesaid appeal by the impugned judgment. The plaintiff/appellants and the supporting defendants have preferred this appeal challenging the aforesaid judgment and decree of the learned Single Judge.

14. Heard Shri Ram Kumar Sharma for the appellants and Shri Rakesh Kumar Srivastava for the respondents.

15. Learned counsel appearing for the appellants has mainly centered his submissions on two issues. His first contention is that the entries in the C.S. as well as R.S. Khatians are conclusive proof of title and continuous possession of the appellants over the suit property. He submitted that in this case, the entries were made in the C.S. Khatian and later on in R.S. Khatian also in the names of the ancestors of the plaintiffs/appellants, which according to him, is conclusive evidence fully admissible in law proving the title and uninterrupted possession of the plaintiffs over the suit land. Further contention is that even if the entries are forged one, since having not been challenged, those are binding upon the defendants/respondents and as such, they are estopped from challenging the title and possession of the appellants.

16. So far as the entries in C.S. and R.S. Khewats and Khatians are concerned, it was submitted that the entries made in Khatian being latter entries, shall prevail and thus, the trial court as well as the learned Single Judge ought to have decreed the suit in favour of the plaintiff-appellants.

17. Second submission on behalf of the appellants is that defendant Nos. 1 and 2 could not establish the relationship between their ancestors Bujhawan Missir,

Kandhar Shukul and Mostt. Tarwana. Since the entire case of the contesting defendants is revolving around the aforesaid relationship, the same in absence of cogent evidence, should have been discarded by the trial court.

18. Shri Rakesh Kumar Srivastava, learned counsel for the respondents, vehemently opposed the submissions raised on behalf of the appellants contending that the law is well settled that the presumption regarding the entries made in the record-of-rights are rebuttable, specially so, when the Khewat of the corresponding survey goes to show that the lands are Brit Belagan (Rent free) land and the same devolved upon the ancestors of the contesting defendants after the death of Mostt. Tanwara. He contended that the plaintiffs have miserably failed to prove as to how the suit property was acquired by them or their family and also failed to prove their continuous possession thereof. According to him, merely the entries in the Khatian will not do in this case as entries in the Khewat are contrary to the aforesaid raiyati entries in the khatian. Therefore, the plaintiffs were bound to disclose as to how these properties were acquired by their family.

19. The trial court, on appreciation of both documentary as well as oral evidence, came to the conclusion that the plaintiffs failed to prove as to how the suit property was acquired by them. According to the trial court, they have also failed to prove the subsequent continuous possession after the alleged acquisition of the property. Apart from the entries in the survey records, the plaintiffs could not produce any piece of documentary evidence to show their continuous possession, whereas the contesting defendants proved their title and possession by showing payment of cess to Hathua Raj and entries in R.S. khewat alongwith several rent receipts granted by the State of Bihar after fixing rent and creation of Jamabandi in favor of their ancestors subsequent to the abolition of the Zamindari. The aforesaid rent receipts are marked as Ext. A to A(51). One rent receipt Ext. A(52) has also been brought on record by the contesting defendants to show that Kandhar Missir was paying cess to the Hathua Raj with respect to the suit land. That apart, several other documents have also been brought on record by the defendants in support of their case. Ext. E/1 is Zarpeshgi deed dated 10.8.1931 executed by Bujhawan Missir son of Madho Missir and his son Nand Keshwar Missir with respect to 2 bighas and 5 kathas of land out of the suit land in favour of one Babu Ram Autar Rai.

20. The trial court has also considered two Ladabi deeds (deed of relinquishment) executed by the ancestors of the plaintiffs in favour of defendant Nos. 1 and 2. The trial court has also considered the oral evidence led by the parties and observed that the plaintiffs could not examine any witness from village Hembardaha, to where the suit property belong or situate whereas the contesting defendants had been able to examine many witness from the aforesaid village. Even a few of the adjoining raiyats of the suit property were also examined as witnesses by them. One of the persons of the branch of Nidhi Shukul (brother of Kandhar Shukul), namely, Harkesh Pandey has been examined as D.W. 4, who has fully supported the case. D.W. 5 Satyadhari

Missir is also of the branch of Anant Missir. He has got his land at the boundary of the suit land. The trial court, on appreciation of documentary as well as oral evidence, has observed and held as follows:-

"29. The aforesaid facts amply prove that the property in suit was originally the properties of Kandhar Shukul. The names of family members of Kandhar Shukul viz. Anant Shukul, Nidhi Shukul or their representative found mentioned on the boundaries of the properties mentioned in the C.S. of the simple mortgage deed Ext. 1 of the year 1884 and also on the boundaries of the C.S. Plot in the C.S. Khatian the C.C. of which has been filed on behalf of the defendants 1 and 2 which has been marked as Ext. 1. If the suit properties belonged to Mishra family of the parties of Village-Bamaiya Bisa their names would have been mentioned on the boundaries of all the properties in Exts. 1 and 1(1) but the name of none of them found mentioned therein on the boundaries. During the lifetime of Bujhawan Missir his sons Nand Keshwar Missir and Thakur Missir inherited the property and their names were entered in C.S. as well as R.S. Khewats. The case for the defendants 1 and 2 that the suit property was inherited by Nand Keshwar Missir and Thakur Missir being daughter"s sons of Kandhar Shukul is proved.

30. It is necessary to consider as to whether Bujhawan Missir is the son-in-law of Kandhar Shukul. Ram Tahal Pandey had filed a title suit being Title Suit No. 282 of 1895 against Lai Behari Shukul and others on the basis of the simple mortgage bond executed by Kandhar Shukul and others in his favour in which decree was passed and the same put in execution which was numbered as Ex. Case No. 11 of 1896. In the execution case, notice dated 18.7.1896 was issued against judgment debtors. That notice has been filed on behalf of the defendant Nos. 1 and 2 which has been marked as Ext. G. That notice had been issued against Lai Bihari Shukul through Bujhawan Missir, husband of Ganpati Kuar. This notice clearly shows that Ganpati Kuar the daughter of Kandhar Shukul had been married with Bujhawan Missir. The C.C. of the deposition of the witnesses examined in the Title Suit No. 282/1895 has been filed on behalf of the defendants 1 and 2 which has been marked as Ext.-H. Bujhawar Missir had stated in that suit that he was married to Ganpati Kuer about 1b or 16 years ago. He has been examined on 14.1.1996. The C.C. of the suit Register of that suit has been filed on behalf of the defendant Nos. 1 and 2 which has been marked as Ext. K. which shows that the property had been auction sold. The document mentioned above clearly indicate that Bujhawan Missir of Village-Bamaiya Bisa was the son-in-law of Kandhar Shukul. The plaintiff No. 1 Sheobalak Missir in his evidence as P.W. 6 has stated that Nand Keshwar Missir and Thakur Missir were daughter"s sons of Kandhar Shukul in whose names the C.J. as well as the R.S. Khewat with respect to the suit land had been prepared. He admits that Ganpati was the daughter of Kandhar Shukul. Several witnesses have been examined on behalf of the defendant Nos. 1 and 2 on this point who are D.W. 4 Markesh Pandey, D.W. 5 Satyadhari Missir, D.W. 8 Shyambaran Singh, D.W. 9 Rambishwas Ram, D.W. 12 Sheodhari Mistry and D.W. 22 who is Bishundeo Missir the defendant No. 1 who

have consistently stated that Mostt. Tarwana Kuar was the daughter of Kandhar Shukul, who had been married with Bujhawan Missir of village Barnaiya Bisa. Nand Keshwar Missir and Thakur Missir were the daughter's son of Kandhar Shukul and sons of Bujhawan Missir.

31. Thus, from the discussions made above, it is clear that Bujhawan Missir of Village-Barnaiya Bisa was the son of Kandhar Shukul. Kandhar Shukul was the Nana of Nand Keshwar Missir and Thakur Missir. It is also clear that Bujhawan Missir had settled at his Sasurai Village-Ram Bardaha. It is admitted case of the parties that the defendants 1 and 2 who are descendants of Bujhawan Missir reside at Village-Hembardaha."

21. The trial court further found that the plaintiffs could not prove as to how Ram Sewak Missir acquired the suit property. In the C.S. Khatian, Rs. 10 has been shown as the rent of the suit land but there is nothing to show that Ram Sewak Missir ever paid any rent with regard to the aforesaid lands. It has been found by the trial court that there is absolutely nothing on the record to show that aforesaid, Ram Sewak Missir was ever in possession of the suit property. Peculiarly, in the R.S. Khatian, the names of heirs not only of Ram Sewak Missir but also of other branches were recorded alongwith them. There is no explanation as to how these persons got interest in the property. Finally, the trial court, while dismissing the suit, held as follows:-

"63. It has been seen above that the suit land was originally Bakast Brit land of Kandhar Shukul. Nand Keshwar Missir and Thakur Missir were daughter's sons of Kandhar Shukul and they inherited that property after the death of their mother Ganpati Devi. That land became their Bakast Brit land. They were in Khas possession thereof and they used to pay cess to Hathua Raj with respect to that land as was recorded in C.S. Khest in the name of Nand Keshwar Missir and in the R.S. Khewat in the names of Nand Keshwar Missir and Thakur Missir both sons of Bujhawan Missir. They had been dealing with that property. It was a rent free land. There was no Raiyat on that land because it was in khas possession of the tenure holder Nand Keshwar Missir and that Thakur Missir. In this view of the matter the C.S. Khatian recorded in the name of Rameshwar Missir with respect to that land was incorrect. The R.S. Khatian prepared with respect to the suit land in the names of Ramhit Missir and others was also incorrect. There is absolutely nothing to show that those persons ever came in possession of that land. Therefore, the rulings cited by the learned lawyer appearing on behalf of the plaintiffs is not applicable to the facts of the present case.

64. Thus, from the discussions of the oral as well as documentary evidence adduced on behalf of both the parties, I come to the conclusion that the plaintiffs have utterly failed to prove that they have got unity of title to and unity of possession over the suit land and so the suit for partition brought by them is bound to fail. Hence, these two issues are decided against the plaintiffs and in favour of the defendants 1 and

2."

22. In appeal thereof, learned Single Judge, while dealing with the aforesaid issues, has observed as follows:-

"9. The trial court on detailed consideration held that the plaintiffs have failed to prove as to how Rameshwar Missir acquired that property, over which they are silent, and on the other hand defendant Nos. 1 and 2 have given explanation as to how the suit land got recorded in the name of Rameshwar Missir by Bujhawan Missir, and rightly felt convinced that the explanation given by the defendant Nos. 1 and 2 is convincing and fit to be relied upon. It is the settled principle of law that the entry in survey khatian is not an evidence of title. In C.S. khatian Rs. 10/- has been shown as rent of the suit land and nothing has been pointed out by the learned counsel for the appellants to show that Rameshwar Missir ever paid rent for the land in question. The trial court has considered the explanation of defendant Nos. 1 and 2 in paragraph 32 of onwards of the impugned judgment, and the learned counsel for the appellants has failed to point out any infirmity in the same, except that according to them the entry of a latter date made in two khatians are the conclusive proof of their title and uninterrupted possession which are un rebuttable. I do not find any substance in the said submissions of the learned counsel for the appellants. Entry in the record-of-rights is mere rebuttable piece of evidence. Entries though important evidence, but it cannot be conclusive inasmuch as facts of partition or separation of shares is not a matter dealt with in such records.

10. The trial court on detailed consideration has found that the suit land was Bakast Brit land of Kandhar Shukul, which was later on inherited by his daughter's sons Nand Keshwar Missir and Thakur Missir, who are sons of Bujhawan Missir. It was a rent free land. C.S. Khewat and R.S. Khewat were prepared in the names of sons of Bujhawan Missir and it was recorded as rent free land in their Khas possession. It has also come in evidence that the ancestors of defendant Nos. 1 and 2 Nand Keshwar Missir paid cess to Hathua Raj as well as to the State of Bihar for the land so long he was alive, which is clear from the rent receipts (Exts. A to A(52)) filed on behalf of defendant Nos. 1 and 2. The State of Bihar fixed rent of the suit land in the names of defendant Nos. 1 and 2, who have been paying rent to the State."

23. On the aforesaid observation, learned Single Judge came to the conclusion that there is no infirmity in the findings of the trial court that the entries made in the C.S. and R.S. Khatians in the names of the appellants, i.e. the Missir family, with respect to the suit lands, are farzi and thus, has dismissed the appeal.

24. The question as to what are the effects of entry of record-of-rights, as to whether the presumption of correctness of those entries will be conclusive proof of the title and possession or as to whether those presumptions are rebuttable or not, have been examined several times by different courts. The Supreme Court in Harihar Prasad Singh and Another vs. Deonarain Prasad and Others reported in 1956(4)

B.L.J.R. 306 has observed as follows:-

"x x x x

But even assuming that they were real, that would not materially affect the result, as the true effect of a record-of-rights u/s 103A is not to create rights where non-existed but simply to raise a presumption u/s 103B that such rights exist, and that presumption is one liable to be rebutted. There is a long line of authorities that a person who attacks a record made u/s 103A is incorrect discharges the burden which the law casts on him u/s 103B by showing that it was not justified on the materials on which it is based. Vide *Bogha Mower vs. Ram Lakhan and Eakub Ali vs. Muhammad Ali*. And where, as here no evidence was placed before the authorities when made the record, he has only to produce evidence which satisfies the court that the entry is erroneous. Whether the question is considered with reference to the presumption u/s 120(2) or Section 103B, the position is the same. The plaintiffs who claim that the lands are kamat have to establish it by clear and satisfactory evidence. If the evidence adduced by them is sufficient, as we have held it is, to establish it, the presumption u/s 103-B equally with that u/s 120(2) becomes displaced. In the result, we are of the opinion that the suit lands are the private lands of the proprietor.

x x x x "

25. A Division Bench of this Court had also occasion to examine this matter in the case of *Mostt. Mohni and Others vs. Fariduddin and Others* reported in 1966 BUR 761, relevant passage of which is as follows:-

" x x x x

13. It has, therefore, been rightly urged that the decision in *Jagan Koeri vs. Chairman of the Gaya Municipality* is clearly distinguishable. In support of his contention, learned counsel has relied on a decision of this Court in *Brij Behari Singh vs. Sheo Shankar Jha*, where their Lordships had observed that an entry in a Record-of-Rights neither creates nor extinguishes the right. It is merely a rebuttable piece of evidence. The same principle has also been laid down in the decision of a Special Bench of this Court in *Makhu Lal Marwari vs. Palu Sah* that the Record-of-Rights is not a document of title at all and the entries in such document do not prove exclusive title of a person so recorded. If this is the correct legal position, as it no doubt is, from the authority of the two cases referred to above, it is manifest that the learned trial court was in error in relying on the municipal parchas, Exts. 3 and 3/a, in support of the plaintiff's case. In my opinion, the contention raised by learned counsel must be accepted as correct.

x x x x "

26. Subsequently, this issue was also examined by a Full Bench of this Court in *C.W.J.C. No. 13428 of 1979 (Nand Kumar Rai & Ors. vs. State of Bihar & Ors.)*, C.W.J.C.

No. 2080 of 1970 (Ghure Tiwary & Ors. vs. State of Bihar & Ors.), and CR. No. 847 of 1970 (Nand Kumar Rai & Ors. vs. Ram Singhasan Rai & Ors.) reported in 1974(7) PLJR 27. This Court in its aforesaid decision, after considering the earlier Division Bench decision in the case of Mostt. Mohni and Others vs. Fariduddin and Others (supra) as well as the decision of the apex court in the case of Harihar Prasad Singh and Others (supra), has held as follows:-

"14. xxx An entry in the record of-rights does not create any title in favour of any person. The presumption of correctness of entry could be displaced vide decision of the Supreme Court in (6) Harihar Prasad Singh and Another, vs. Deonarain Prasad and Others (1956 B.L.J.R. 306) and a decision of this Court in (7) Mostt. Mohni vs. Fariduddin (1966 B.L.J.R. 761). It is not necessary to bring a suit to avoid a presumption arising u/s 106-vide (8) Ramgulam Singh vs. Bishnu Pargash Narain Singh (1) Calcutta Weekly Notes 48. Any entry in the record-of-rights neither creates nor extinguishes rights-vide (9) Brij Bihari Singh vs. Sheo Shankar Jha (2) Patna Law Journal 124)."

27. The law of rebuttle of presumption with regard to entries in record-of rights is still intact. Coming to the case in hand, it is true that there are entries in the survey record-of-rights, but according to the trial court as well as the appellate court, the plaintiffs have miserably failed to prove as to how their family acquired their lands and also that they continuously remained in possession thereof. Whereas, the contesting defendants have been able to prove by producing documentary as well as on examination of several witnesses that the property previously belong to Kandhar Shukul and their ancestor Bujhawan Missir was married with his daughter. Subsequently, after death of Kandhar Shukul as well as his widow Mostt. Tarwana the ancestors of defendant Nos. 1 and 2, inherited the same being sons of daughter of Kandhar Shukul and Mostt. Tarwana.

28. Having heard learned counsel for the parties and on consideration of the case as above, we are also of the opinion that the plaintiffs have failed to prove unity of title whereas the contesting defendants have been able to rebut the presumption regarding the entries in Khatians and have been able to prove their case.

29. Mr. Ram Kumar Sharma, learned counsel appearing for the appellants, lastly submits that defendants have failed to examine any person who has special means of knowledge with respect to the relationship between Bujhawan Missir and Kandhar Shukul as well as Mostt. Tarwana as required u/s 50 of the Indian Evidence Act to enable the Court to form an opinion with regard to the aforesaid relationship.

30. In answer to the above, Mr. Srivastava, appearing for the respondents, submits that no issue in this respect was framed at the instance of the plaintiffs. However, the trial court has dealt with this issue in detail in para-30 as well as 31 of its judgment. Several documents and oral testimonies have been considered by the trial court. Ext. G is notice dated 18.7.1996 in Ex. Case No. 11 of 1896 issued against

Lal Bihari Missir., Ext.-H is certified copy of the deposition of witness examined in T.S. No. 282 of 1895 has also been brought on record on behalf of defendant Nos. 1 and 2, wherein Bujhawan Missir has stated in aforesaid suit that he was married with Ganpati 15 years ago. Similarly, certified copy of suit register of the aforesaid suit has also been filed on behalf of the contesting defendants which has been marked as Ext.-K which indicates that Bujhawan Missir of Village-Barnaiya is son-in-law of Kandhar Shukul. The trial court has also taken notice of the evidence of plaintiff No. 1, who has examined himself as P.W. 6 and has stated that Nand Keshwar Missir and Thakur Missir were daughter's sons of Kandhar Shukul in whose names C.S. and R.S. Khewat had been prepared with respect to the suit property. Thus, it is evident that witnesses have admitted that Ganpati is daughter of Kandhar Shukul.

31. According to the respondents, several witnesses have been examined on-behalf of defendant Nos. 1 and 2 on this point. They are D.W. 4 Harkesh Pandey, D.W. 5 Satyadhari Missir, D.W. 6, Shyambaran Singh, D.W. 8 Ram Vishwas Ram, D.W. 12 Sheodhari Mistry and D.W. 22 Bishundeo Missir, i.e. defendant No. 1 himself. All of them have supported the fact that Nand Keshwar Missir was son of Bujhawan Missir.

32. We find substance in the submissions of the respondents and hold that there were sufficient material to prove the relationship between Bujhawan Missir, Kandhar Shukul and Most. Tarwana.

33. Having heard learned counsel for the parties, we find no infirmity or illegality in the concurrent findings of the trial court and the appellate court. In the result, this appeal is dismissed, judgments of the trial court as well as the appellate court are affirmed. However, there shall be no order as to cost.