

SMRITI DEBBARMA (DEAD) THROUGH LEGAL A
REPRESENTATIVE

v.

PRABHA RANJAN DEBBARMA AND OTHERS

(Civil Appeal No. 878 of 2009) B

JANAUARY 04, 2023

[SANJIV KHANNA AND J. K. MAHESHWARI, JJ.]

Suit – Suit for declaration of title – Burden of proof – Trial court decreed the suit holding that the plaintiff had right, title and interest in the subject property and was entitled to khas possession of the property after evicting all the defendants – High Court reversed the judgment of trial court holding that plaintiff on basis of evidence and documents placed on record had not been able to discharge the burden of proof to establish legal ownership and title to the subject property – Held: High Court rightly set aside the judgment and decree of the trial court – The plaintiff took contradictory stands – On the date of filing of the suit, the plaintiff was not in constructive or actual physical possession of the property – The defendants could not be dispossessed unless the plaintiff established a better title and rights over the property – The burden of proof to establish a title in the present case lay upon the plaintiff – s.101 of the Evidence Act states that burden on proving the fact rests with party who substantially asserts in the affirmative and not on the party which is denying it – In terms of s.102 of the Evidence Act, if both parties fail to adduce evidence, the suit must fail – Onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant – The weakness of the defence cannot be a justification to decree the suit – The plaintiff

- A *could have succeeded in respect of the property if she had discharged the burden to prove the title to the property which squarely fell on her – This would be the true effect of ss.101 and 102 of the Evidence Act – Suit in question liable to be dismissed – Evidence Act – ss. 101 and 102.*

Evidence – “Burden of proof” and “Onus of proof” – Discussed.

Dismissing the appeal, the Court

- C **HELD:**1. For the plaintiff to succeed, she has to establish that she has a legal title to the Schedule ‘A’ property, and consequently, is entitled to a decree of possession. The defendants cannot be dispossessed unless the plaintiff has
 - D established a better title and rights over the Schedule ‘A’ property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the
 - E rightful owner. A decree of possession cannot be passed in favour of the plaintiff on the ground that defendant nos. 1 to 12 have not been able to fully establish their right, title and interest in the Schedule ‘A’ property. The defendants, being in possession, would be entitled to protect and save their possession, unless the
 - F person who seeks to dispossess them has a better legal right in the form of ownership or entitlement to possession [Para 30][372-H; 373-A-C]
- G 2. The burden of proof to establish a title in the present case lies upon the plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief. This is mandated in terms of Section 101 of the Evidence Act, which states that burden on proving the
 - H fact rests with party who substantially asserts in the affirmative

and not on the party which is denying it. This rule may not be A universal and has exceptions, but in the factual background of the present case, the general principle is applicable. In terms of Section 102 of the Evidence Act, if both parties fail to adduce evidence, the suit must fail. Onus of proof, no doubt shifts and B the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the C burden of proof lies on the plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit. The plaintiff could have succeeded in respect of the Schedule 'A' property if she had discharged the burden to prove the title to the Schedule 'A' D property which squarely falls on her. This would be the true effect of Sections 101 and 102 of the Evidence Act. Therefore, it follows that the plaintiff should have satisfied and discharged the burden under the provisions of the Evidence Act, failing which the suit E would be liable to be dismissed. [Para 31][373-C-E; 374-A-C]

Poona Ram v. Moti Ram (Dead) through Legal Representatives and Others (2019) 11 SCC 309 : [2019]

1 SCR 671; Nair Service Society Limited v. Rev. Father K.C. Alexander and Others, AIR 1968 SC 1165 : [1968]

3 SCR 163; Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558 : [2006] 1 Suppl. SCR 659;

R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another (2003) 8 SCC 752 : [2003] 4 Suppl. SCR 450; Union of India and Others v. Vasavi Cooperative Housing Society Limited and Others (2014) 2 SCC 269 : [2014] 1 SCR

F

G

H

- A **180** and *Sebastiao Luis Fernandes (DEAD) Through LRs. And Others v. K.V.P. Shastri (DEAD) Through LRs. and Others* (2013) 15 SCC 161 : [2013] 11 SCR 1076 – relied on.
- B *Addagada Raghavamma and Another v. Addagada Chenchamma and Another* AIR 1964 SC 136 : [1964] 2 SCR 933 – referred to.

<u>Case Law Reference</u>			
C	[2019] 1 SCR 671	relied on	Para 30
	[1968] 3 SCR 163	relied on	Para 30
D	[2006] 1 Suppl. SCR 659	relied on	Para 31
	[1964] 2 SCR 933	referred to	Para 31
	[2003] 4 Suppl. SCR 450	relied on	Para 31
E	[2014] 1 SCR 180	relied on	Para 31
	[2013] 11 SCR 1076	relied on	Para 31

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 878 of 2009.

F From the Judgment and Order dated 17.05.2006 of the High Court of Gauhati (Agartala Bench) in F.A. No.40 of 1997.

Rauf Rahim, Ali Asghar Rahim, Advs. for the Appellant.

G Kedar Nath Tripathy, Dr. P. V. Saravanaraja, P. Veerappan, Anand Kumar V., Advs. for the Respondents.

H

The Judgment of the Court was delivered by
SANJIV KHANNA, J.

On 19.06.1986, Smriti Debbarma, as an attorney and on behalf of Maharani Chandratara Devi, had filed Title Suit No. 66 of 1986, *inter alia* praying for declaration that Maharani Chandratara Devi is the owner of the property known as ‘Khosh Mahal’, described in Schedule ‘A’ to the original plaint, as under:

“ S C H E D U L E - A.

Old Dar Tashkishi Taluk No. 178 (now Agartala Town Sheet No. 3), Khatian No. 4882, Dag Nos. 13142, 13144, 13176/26261 and 13144/51733, commonly known as “Khosh Mahal”, within this land measuring One Kani five Gandas two karas, three kranta and ten dhurs only.”

Other reliefs included a declaration that any transfer/conveyance for and on behalf of the plaintiff made by late Bikramendra Kishore Debbarma¹ and his legal representatives, impleaded as defendant nos. 1 to 7 to the civil suit, should be declared illegal and void, and that the defendants and their agents should be restrained from entering, selling or alienating the Schedule ‘A’ property. In addition, the plaintiff had prayed that she has right, title and interest in Schedule ‘B’ property, namely the shares and business of M/s. Hotel Khosh Mahal Limited, Agartala.

2. Post recording of the statement of witnesses, and the report of the Court Surveyor dated 20.01.1995, marked as Exhibit-I, the plaint was amended, and the land mentioned in Schedule ‘A’ was substituted and increased to 2 Kanis 8 Gandas 3 Karas and 8½ Dhurs. Paragraphs 26(A) to 26(D) and paragraphs 27(A) to 27(C) to the plaint were added. The prayer clause was amended to include a direction to the Survey and Settlement authority to delete/expunge the record of rights standing in the name of defendant nos. 8 to 12 as void and inoperative. Prayer for direction to the Director of Settlement and Land Records to issue a record of rights in the name of the plaintiff for the Schedule ‘A’ property, and to confirm the possession of the plaintiff of the Schedule ‘A’ property was made.

3. Earlier, defendant nos. 8 to 12 were impleaded as defendants in the Title Suit *vide* order dated 15.09.1989. These defendants had

¹ Alias “Bidurkarta”.

A

B

C

D

E

F

G

H

- A purchased portions of land *vide* the sale deeds executed by the Managing Director of M/s. Hotel Khosh Mahal Limited. The sale deed in favour of the defendant no.8, marked as Exhibit-E, dated 17.07.1985, is prior to the institution of the suit in question, which was filed on 19.06.1986.
4. Maharani Chandratara Devi was the sixth wife of the late
- B Maharaja Birendra Kishore Debbarma. She was not survived by her children who had predeceased her. Maharani Chandratara Devi did not enter the witness box and depose as a witness. Maharani Chandratara Devi had expired soon after filing of the suit on 27.12.1988.
5. Smriti Debbarma was substituted as the plaintiff, as the legal
- C representative of Maharani Chandratara Devi, who had inherited the Schedule 'A' property and other properties in terms of the Will, marked as Exhibit-4, dated 15.10.1985 of Maharani Chandratara Devi. The Will has not been probated, and was disputed by the defendants before the trial court². Smriti Debbarma, had expired during the pendency of the present appeal and is now represented by her legal representatives.
- D 6. By judgment dated 23.11.1996, the suit was decreed holding that the plaintiff had right, title and interest in the Schedule 'A' property, as amended, and the plaintiff was entitled to *has* possession of the Schedule 'A' property after evicting all the defendants and was entitled to remove all obstructions. Further, any transfer and/or conveyance of
- E any portion of the Schedule 'A' property made by late Bidurkarta and defendant nos. 1 to 7 was illegal and void. Directions were issued to make correction in the records of the office of the Sub-Registrar, Municipal Holdings etc. by deleting the names of M/s. Hotel Khosh Mahal Limited and/or defendant nos. 8 to 12, and that the name of the
- F plaintiff should be recorded in all records relating to the Schedule 'A' property. The defendants, their agents etc. were restrained from entering into the Schedule 'A' property and creating any sort of disturbance in the peaceful possession of the plaintiff over the same. The Survey Report (Exhibit-I) was directed to form part of the decree.
- G 7. However, the trial court did not grant and therefore, is deemed to have rejected the prayer of the plaintiff for a decree in respect of the Schedule 'B' property. The plaintiff did not challenge the decree of the
-
- H ²The trial court accepted the genuineness of the will propounded by Smriti Debbarma. It appears this finding was challenged in the first appeal filed before the High Court of Gauhati and the appeal was allowed, *albeit* the question of the genuineness of the will has not been examined.

trial court dismissing her suit in respect of the Schedule ‘B’ property. A Decree of the trial court to this extent has attained finality.

8. The defendants preferred appeals against the decree in respect of the Schedule ‘A’ property before the Gauhati High Court, which have been allowed by the impugned judgment dated 17.05.2006. This judgment of reversal *inter alia* holds that the plaintiff on the basis of evidence and documents placed on record has not been able to discharge the burden of proof to establish legal ownership and title to the Schedule ‘A’ property. We will elaborate on the evidence and reasons recorded by the High Court subsequently. The judgment also refers to the Tripura Land Revenue and Land Reforms Act which came into force in 1960, and observes that certain rights may have accrued to the state government in respect of the Schedule ‘A’ property. *Albeit* the High Court clarified that the question pertaining to the right, title and interest of the defendants remains to be adverted, and the defendants could approach the appropriate forum.

9. We would now proceed to examine the averments made in the pleadings, including the plaint, and the evidence led by the parties.

10. The plaint and the claim made by Smriti Debbarma, who had deposed as PW-1, is predicated on the Deed of *Patta*, marked as Exhibit-12, executed by Maharaja Durjoy Kishore Debbarma, son of Maharaja Birendra Kishore Debbarma in favour of Bidurkarta on 31.10.1951. Subsequently, Bidurkarta on 25.06.1952 had executed an *Ekrarnama*, marked as Exhibit-5, acknowledging that the rights granted to him under the Deed of *Patta* (Exhibit-12) actually belong to Maharani Chandratara Devi. To this extent, there is no dispute.

11. The plaint refers to and accepts that a charter executed by Maharaja Bir Bikram Kishore Debbarma, incorporated a private limited company, on 24.01.1351 Tripura Era³ or 1941 A.D. , namely, M/s. Hotel Khosh Mahal Limited. Further, M/s. Hotel Khosh Mahal Limited, after its incorporation, had acquired huge properties in Agartala town. The plaintiff claims that she is one of the major shareholders of this company. However, there is no evidence or material on record to show the shareholding of Maharani Chandratara Devi in M/s. Hotel Khosh Mahal Limited. As noted above, the plaintiff’s prayer for a decree in respect of shares and business of M/s. Hotel Khosh Mahal Limited was declined

³ For short, “T. E.”.

- A by the trial court, which decree remains unchallenged by the plaintiff and has been accepted. Paragraph 7 of the plaint states that M/s. Hotel Khosh Mahal Limited was established after taking the land and building of Schedule ‘A’ property, which was given on lease by Maharani Chandratara Devi. The lease had expired long back. Date of execution and the term of the lease is not indicated. No lease deed or surrender document was placed on record and proved. Nevertheless, we would record that the plaintiff accepts that M/s. Hotel Khosh Mahal Limited was in possession of the Schedule ‘A’ property.
- B

12. Maharani Chandratara Devi had appointed Bidurkarta as her

- C attorney *vide* registered power of attorney executed by her on 29.10.1969 because of her ill-health, old age and religious mentality, and as she used to primarily reside at Varanasi, Haridwar and/or Dehradun. Later on, she cancelled this power of attorney on 06.03.1970 and instituted a civil suit T.S. No. 95/72 in 1972 for cancellation of the registered gift deed executed on 12.01.1970 by Bidurkarta transferring her 1/3rd share of
- D the ‘Rupchaya’ Cinema Hall business to Karnakishore Debbarma and Sahadeb Kishore Debbarma. The suit was decreed on 17.06.1983, and the gift deed was cancelled. The facts stated in this paragraph have been established and proved by the plaintiff.

13. The plaintiff states that the hotel business of M/s. Hotel Khosh

- E Mahal Limited had closed down due to heavy losses and mismanagement. Thereupon, the land and building were given to M/s. Indian Airlines Corporation Limited. Bidurkarta used to send rent received from the tenant to Maharani Chandratara Devi. However, with the passage of time, the remittances became far and few, and they eventually stopped. Bidurkarta had, in collusion with the defendants, transferred Schedule
- F ‘A’ property and Schedule ‘B’ business to his wife defendant no.1- Jyoti Debbarma. Defendant no.2- Prabha Ranjan Debbarma, son of Bidurkarta, an I.A.S. Officer and a central government employee, would collect monthly rent from M/s. Indian Airlines Corporation Limited, though he had no connection with the Schedule ‘A’ property.

- G 14. The plaintiff, post the amendment, had claimed that M/s. Indian Airlines Corporation Limited had vacated the property on 30.06.1986. Thereafter, the plaintiff through her workmen and agents had taken possession of the Schedule ‘A’ property and started a guest house under the name and style of ‘M/s. Star Guest House’. However, as the suit

H

was dismissed in default⁴, the defendants took advantage, dispossessed the plaintiff and took possession of the Schedule ‘A’ property. The plaintiff had initiated proceedings under Section 144 of the Code of Criminal Procedure, 1973, in the court of Sub-Divisional Magistrate, Agartala *vide* Miscellaneous No. 75/86, whereby the defendants were restrained from disturbing the possession of the plaintiff. However, *vide* order dated 26.08.1986 passed by the Sub-Divisional Magistrate, Agartala, a police officer was appointed as a receiver. This action of the Sub-Divisional Magistrate, Agartala, it is contended, illegal and improper as the plaintiff had already instituted the suit in question.

15. Defendant nos. 1 to 7 in their written statement had relied upon the Deed of *Patta*, marked as Exhibit-A, executed by Maharaja Durjoy Kishore Debbarma on 11.10.1358 T.E. or 1948 A.D. in favour of M/s. Hotel Khosh Mahal Limited, by which the land admeasuring 3 Kani 8 Gandas 3 Karas and 16½ Dhurs was given on lease for a period of twenty years from 1349 T.E. to 1369 T.E. or 1939 A.D. to 1959 A.D. We shall subsequently refer to the Deed of *Patta* (Exhibit-A) and also examine the challenge to the genuineness of this document by the plaintiff before this Court. Relying on this document, the written statement pleads that Schedule ‘A’ Property is owned by M/s. Hotel Khosh Mahal Limited. By an agreement dated 25.03.1953, Bidurkarta, as the Managing Director of M/s. Hotel Khosh Mahal Limited, had leased out the business/property to Maharani Chandratara Devi. This lease was terminated in August 1968 and thereafter by a fresh agreement, the business was leased to defendant no. 2 - Prabha Ranjan Debbarma, son of Bidurkarta. M/s. Indian Airlines Corporation Limited had started paying rent to defendant no. 2. These lease deeds, including board resolutions, etc. are not placed on record and proven. The fact that from 1968 onwards rent was paid by M/s Indian Airlines Corporation Limited to defendant no. 2 is accepted by the plaintiff-appellant.

16. Thus, as per defendant nos. 1 to 7, the property in possession and occupation of M/s. Hotel Khosh Mahal Limited is different and distinct from the land, which is the subject matter of the Deed of *Patta* (Exhibit-12), and which as per the *Ekrarnama* (Exhibit-5) is owned by Maharani Chandratara Devi.

⁴The Title Suit No. 66 of 1986 was dismissed in default *vide* order dated 28.04.1988. A restoration petition in Misc. Case No. 69 of 88 for the Title Suit No. 66 of 1986 was filed by the plaintiff and the Title Suit No. 66 of 1986 was restored *vide* order dated 13.07.1989, which also disposed of Misc. Case No. 69 of 88.

- A 17. Defendant no. 8 had filed a separate written statement and had accepted that he had acquired the land *vide* registered sale deed dated 17.07.1985, (Exhibit-E), from the Managing Director of M/s. Hotel Khosh Mahal Limited. Defendant no. 8 had thereupon constructed a building to the notice and knowledge of the plaintiff. The plaintiff had at that time neither raised an objection nor claimed right, title or interest over the purchased land. Defendant no. 8 had got his name mutated in the Survey and Settlement office *vide* Khatian No. 30912, marked as Exhibit-F, dated 16.05.1989. Defendant no. 8 has been in possession of the purchased property.
- C 18. Defendants no. 9 to 11 had similarly submitted that the plaintiff had no right, title, and interest over the Schedule 'A' property. They had acquired the right, title and interest over the portions of the Schedule 'A' property on the strength of the purchased/sale deed executed by the Managing Director of M/s. Hotel Khosh Mahal Limited. Further, they had got published the record of rights of the land in their favour from the government. Defendant no. 11 in his additional written statement had claimed that he was not in possession or owner by way of purchase of any land included in Schedule 'A' of the plaint, or the schedule mentioned in the Will (Exhibit-4). Defendant no. 11's wife had purchased a small piece of land from defendant no. 1, but this land does not fall within any plots mentioned in Schedule 'A' of the plaint or the Will (Exhibit-4).
- E Defendants nos. 9 to 11 had questioned the genuineness of the Will (Exhibit-4).
- F 19. The aforesaid narration reveals that there are essentially two interconnected issues which arise for consideration. The first aspect relates to the demarcation of land given on lease *vide* the Deed of *Patta* (Exhibit-12) and the *Ekrarnama* (Exhibit-5), on the basis of which the title suit was filed by Smriti Debbarma as the attorney and on behalf of Maharani Chandratara Devi. The second issue relates to the burden of proof and whether the plaintiff has succeeded in discharging the burden by establishing her title for a declaratory decree of ownership and her G right to possession of the Schedule 'A' property.
- H 20. The impugned judgment in our opinion has rightly examined the aspect of demarcation and identification of Schedule 'A' property *viz.* the identity of the land mentioned in the Deed of *Patta* (Exhibit- 12) and the *Ekrarnama* (Exhibit-5), and upon consideration of the evidence and material on record held that the plaintiff has not been able to establish

her title and ownership over the Schedule ‘A’ property. We would refer to the reasoning given by the High Court in this regard and add some reasons of our own.

21. First, the Deed of *Patta* (Exhibit-12) dated 31.10.1951 and the *Ekrarnama* (Exhibit-5) dated 25.06.1952, demarcate and refer to the property as under:

“
Deed of Patta

xx xx xx

(Schedule boundaries)

Land measuring one kani five ganda two kara two kranta ten dhur with tashkishi taluki title included in Touji No. 178 in my name having an annual revenue of Rs. 30/- (Rupees thirty) within sheet no. 3, situated within Nutan Haveli Town, Pg, Agartala

Bounded on the north by Mogra Road

West South

on the/and/by khas ‘pati’

on the east by the passage for going to Maharajganj bazar

Within this boundary lies 246¹ X 90 ft land measuring one kani five ganda two kara two kranta ten dhur, appertaining to the portion marked (gha) of Dag no. 3412.”

xx xx xx

Ekrarnama

xx xx xx

F

(Schedule Property)

I, in the name of Sri Bikramendra Kishore Deb Barma have been given ‘bandobasta’ with tashkhishi dar taluki title at an annual revenue of Rs. 100/- (One Hundred Rupees) of land measuring 1 kani 5 ganda 2 kara 2 kranta 10 dhur, in total having tashkhishi dar taluki title no. 178 of Sadar Collectorate, in the name of Maharaj Kumar Srilo Srijuto Durjoy Kishore Deb Barma, at an annual deposit of Rs. 30, within Nutan Haveli Town sheet no. 3 under Sub-Registry Agartala Pg. and P.S. Agartala.

G

H

- A Bounded on north Mogra Road
 On the West and south by Khas Patit,
 On the east by the passage of Maharajganj Bazar.
 Within this boundary lies 1 kani 5 ganda 2 kara 2 kranta 10 dhur of
 B land measuring 2061 X 90 ft, in the portion marked (kha) of dag
 no. 3412. Be it stated that value of the property is Rs. 2500 (Rupees
 Two Thousand Five Hundred only)

xx xx xx”

- C The aforesaid description does not refer to any constructed building,
 C and the building Hotel Khosh Mahal in particular. If the Deed of *Patta*
 (*Exhibit-12*) and the *Ekrarnama* (*Exhibit-5*) were pertaining to the
 property where Hotel Khosh Mahal had been constructed, it is normal
 and natural that this position would have been specifically indicated and
 mentioned.
- D 22. Secondly, the trial court had appointed a surveyor, who had
 D given his report marked Exhibit-I dated 20.01.1995 on the basis of a site
 inspection done on 18.12.1994 in the presence of the parties. The relevant
 portion of the report observes:

- “ xx xx xx
- E The area of the identified land under C.S. Plot Nos. 13142, 13143,
 E 13144, 13145, 26261 stands for 2 Kanies 8 ganda 3 karas 8 $\frac{1}{2}$
 dhurs only whereas the area of the land in the said “Ekrarnama”
 was mentioned as 1 Kani 5 Gandas 2 Karas 2 Krantas only.
- F In the exhibit “A” of the Defdt. i.e. Regd. “Patta” created in the
 F year 1948 for the land measuring 3 Kanies 8 gandas 16 $\frac{1}{2}$ dhurs
 only under the then C.S. Plot No 3424/P, 2863/P, 2661/P, 3426,
 2662/P, 2663 was described bounded by:-
 North:- Fallow Khas land in the Southern side of ‘Smriti Mandir’.
 G East:- Central Road.
 G South:- Front land of Homestead of Kumar Mahendra Mohan
 Deb Barma.
 G West:- Adjacent North side land of Kumar Mahendra Mohan Deb
 Barma.
- H

There is the similarity of the North & East boundary of the identified Suitland and/land described in the Exhibit "A" of the Deffdt. The Ruin of "Smriti Mandir" is found after one or two plots of the northern side of the identified land. The Central Rd. is found in the Eastern side of the suit land i.e. C.S. Plot No. 13142. The South and West boundaries as described in the Exhibit "A" of the Deffdt. and the present boundaries of the suit land do not tally, there may be total change of Record Right and shape of the land in the lapse of so many years from 1948.

It may kindly be noted that neither the Defdt. nor the plttf. were able to produce any Certified copy of the map of the then C.S. Plot No. 3412 (P) described in the "Ekrarnama" exhibit No.5 or then C.S. Plot Nos. 3424/P, 2868/P, 2661/P, 3426/P 2663 of the then mouja "Nutan Habeli".

In absence of such Certified copy of the maps and difference in described boundaries of land in "Ekrarnama" created in the year 1952 it is not possible to point out that the identified land by the plaintiff is the land covered by "Ekrarnama" i.e. exhibit No.5 of the pltff.

However, there is almost similarity of area of land described in "Ekrarnama" of the plaintiff and the land under present C.S. Plot No. 13144 within the identified land by the pltff. The area under C.S. Plot No. 13144 is 1 Kani 3 gandas only. Whereas the "Ekrarnama" was created for 1 Kani 5 gandas 2 Karas 2 Krantas only.

XX

XX

XX"

The trial court, in our opinion, has wrongly held that the Survey Report (Exhibit - I) supports and accepts the case of the plaintiff. The said finding was factually incorrect. The High Court has rightly held that the Survey Report (Exhibit - I) is against the plea and contention of the plaintiff. As per the Survey Report (Exhibit-I) quoted above, the description of the Schedule 'A' property, where the building Hotel Khosh Mahal is located is different from the description given in the schedule of the Deed of Patta (Exhibit-12) and Ekrarnama (Exhibit-5). The description of the land and identification in the Patta (Exhibit - A) in favour of M/s. Hotel Khush Mahal Limited is as under:

H

A

“

PATTA**(Executed on 11-10-1358 T.E.)****(= 1948 A.D.)**

xx

xx

xx

B

This deed of Patta of Taksishi Taluk within the territory of independent Tripura, under Sadar Sub Registry and Police-Station appertaining to Agartala Nutan Haveli town, land measuring 3 Kani 8 Gandas 3 Karas 16 ½ Dhurs, measured in 8 Cubit length ‘Nal’ (Chain) = 12 x 10 (‘Nal’) is executed in favour of HOTEL KHOSH MAHAL LIMITED on a Lease for 20 (Twenty) years

C

from 1349 T.E. to 1369 T.E.

xx

xx

xx

DESCRIPTION OF THE LAND

D

Land situated in Natun Haveli Town, bounded as follows:-

In the North- ‘Khas Land’ to the South of Smriti-Mandir.

In the East- Central Road

In the South- Front part of residence of Kumar Mahendra

E

Mohan Deb barma Bahadur
In the West- Northern Part of the said residence of Kumar Mahendra Mohan Debbarma Bahadur

Within the said above boundary-

Plots:- 2846 (p), 2668 (p), 3423 (p), 3424 (p), 2863 (p),

F

2661 (p), 3426, 2662, 2663.

xx

xx

xx”

G

23. Thirdly, post the submission of the Survey Report (Exhibit-I), the plaintiff in 1995 had amended the plaint and post the amendment, had increased the measurements mentioned in Schedule ‘A’ from 1 Kani 5 Gandas 2 Karas, 3 Krantas and 10 Dhurs, to 2 Kanis 8 Gandas 3 Karas and 8½ Dhurs. Consequent to this amendment, the figures now recorded in Schedule ‘A’ corresponded with the measurements mentioned in the Deed of Patta (Exhibit-A), which patta was executed in 1948 in favour of M/s. Hotel Khosh Mahal Limited. The trial court in the

H

impugned judgment has overlooked this discrepancy by observing that the quantity of land was immaterial as the basic dispute is whether the Schedule ‘A’ property belonged to the plaintiff or to M/s. Hotel Khosh Mahal Limited. The trial court, in support, observed that earlier land was measured by eye estimation and the quantity of land in actual possession would always be in excess of what is written in the instrument. Scientific survey began in Tripura in 1960. It is difficult to accept this reasoning in light of the fact that the Deed of *Patta* (Exhibit-A) refers to the measurement and demarcation of land which is vastly different from both point of view of location as well as the total measurement of land mentioned in the Survey Report (Exhibit-I). The assumption made by the trial court is fallacious and flawed, for the documents in question, i.e. the Deed of *Patta* (Exhibit-A), is earlier in point of time, whereas the Deed of *Patta* (Exhibit-12) and *Ekrarnama* (Exhibit-5) were executed later on. The difference in area recorded is substantial. No corrigendum to correct the area in the Deed of *Patta* (Exhibit-12) and *Ekrarnama* (Exhibit-5) was made at any point of time.

24. Fourthly, the power of attorney executed by Maharani Chandratara Devi dated 16.10.1985 and relied upon by Smriti Debbarma had equally identified the land in question, the land which belonged to her, as under:

“ S C H E D U L E – ‘B’.

Building and land known as “Khosh Mahal” pertaining to District-West Tripura, P.S. West Agartala in the town of Agartala Dag No. 3412- Area- 2061 X 901 – land measuring 1 (one) kani 5 (five) gandas 2 (two) karas, 2 (two) krantas 10 (ten) dhurs; erstwhile Hotel Khosh Mahal now M/s. Indian Airlines Corporation, Agartala Office, Land recorded in the name of late Bikramendra Kishore Deb Barma as Benamdar of Maharani Chandratara Debi (Principal).”

No doubt, Schedule ‘B’ in the power of attorney statedly executed by Maharani Chandratara Devi refers to ‘*Khosh Mahal*’ but the area in the measurement given is vastly different. The area and location mentioned in the power of attorney corresponds with the area and location mentioned in the Deed of *Patta* (Exhibit-12) and *Ekrarnama* (Exhibit-5). Thus, the contention that the area and location were wrongly mentioned in the Deed of *Patta* (Exhibit-12) and the *Ekrarnama* (Exhibit-5) is an

A

B

C

D

E

F

G

H

- A afterthought, and the said stand was taken after the discrepancies highlighted in the Survey Report (Exhibit-I) had come on record.

25. Learned counsel appearing for the appellant-plaintiff had submitted that the Deed of *Patta* (Exhibit-A) is a fabricated document. In support, he referred to the contents of this document and, in particular,
- B our attention was drawn to the fact that the lease given to M/s. Hotel Khosh Mahal Limited was for a period of twenty years from 1349 T.E. to 1369 T.E. or 1939 A.D. to 1959 A.D. It was highlighted that the Deed of *Patta* (Exhibit A) refers to dates 1351 T.E. or 1941 A.D. as the year when M/s. Hotel Khosh Mahal Limited was established⁵. We feel that
- C the appellant-plaintiff should not be permitted and allowed to raise this plea, as this contention was not raised before the trial court or the High Court. The Deed of *Patta* (Exhibit-A) is a registered document/instrument. The document enjoys the presumption, being more than thirty years old, in terms of Section 90⁶ of the Indian Evidence Act, 1872⁷. Moreover, the plaintiff had not impleaded M/s. Hotel Khosh Mahal Limited as a party to the civil suit.

26. Counsel for the appellant-plaintiff has also drawn our attention to the letter marked as Exhibit-C dated 11.04.1968 purportedly sent by Maharaja Durjoy Kishore Debbarma as an attorney of Maharani Chandratara Devi. It is highlighted that Maharaja Durjoy Kishore E Debbarma had expired in 1962, which has been accepted by Maharani Chandratara Devi, who had deposed as PW-1 in her cross-examination in the Civil Suit T.S. No. 95/72, marked as Exhibit-13. The plaintiff could be correct that this letter is forged, and we would not rely upon the

F ⁵We have taken these dates from the translated copy of the Deed of *Patta* (Exhibit-A), assuming them to be correct.

G ⁶**Section 90: Presumption as to documents thirty years old.**- Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that persons handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

H ⁷*Explanation.*- Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

H ⁷For short, "Evidence Act".

same. However, it is also a matter of record that M/s. Hotel Khosh Mahal Limited has been recorded as the owner and possessor of the Schedule 'A' property in the revenue records *vide* entry of 1974, marked as Exhibit-15. The revenue entries were challenged by the plaintiff only in the year 1994 in Revenue Case No. 4 of 1994. As noted above, Maharani Chandratara Devi had filed a Civil Suit T.S. No. 95/72 in 1972 after having cancelled the power of attorney in favour of Bidurkarta for cancellation of gift deeds executed by Bidurkarta. Given the fact that she doubted the intent and acts of Bidurkarta, she would have known and should have pressed her claim in respect of the Schedule 'A' property, more so when she was admittedly not being paid any rent since 1968. The gap of 18 years in the filing of the present civil suit has not been explained by the appellant-plaintiff⁸.

27. The plaintiff has relied upon the deposition of Kishalaya Kishore Debbarma, son of Bidurkarta, who had deposed as DW-1, and accepted that rent received from M/s. Indian Airlines Corporation Limited till 1968 was paid to Maharani Chandratara Devi. This is correct and accepted by defendant nos. 1 to 7. These defendants have stated that in 1953 the Schedule 'A' property was given on lease by M/s. Hotel Khosh Mahal Limited to Maharani Chandratara Devi, which lease was extended till 1968. The defendants have not proved this fact by any documents or lease deed to the said effect. The defendants have also not placed on record the resolutions, if any, passed by the Board of Directors of M/s. Hotel Khosh Mahal Limited. The present status of the company is rather ambiguous and unknown. This would reveal chinks in the defence of the defendants, *albeit*, as elucidated below, the plaintiff cannot succeed in the present suit on the basis of the weakness of the defendants' case. We would first refer to the plaint, then the evidence on record, which has been partly noticed above, and the legal position on burden of proof.

28. The plaintiff had taken a contradictory stand. In the plaint it is pleaded that the M/s. Hotel Khosh Mahal Limited was established by the management after taking the land and building of Schedule 'A' property on lease from Maharani Chandratara Devi, virtually accepting that M/s. Hotel Khosh Mahal Limited were in possession. At the same time, the plaintiff had pleaded that M/s. Hotel Khosh Mahal Limited was established in 1941, and in 1951 Chandratara Devi had acquired

⁸Earlier, but post stoppage of payment of rent in 1968, Maharani Chandratara Devi had on 29.10.1969 executed a power of attorney in favour of Bidurkarta.

- A lease hold right in the Schedule ‘A’ property from Maharaja Durjoy Kishore Debbarma *vide* Deed of *Patta* (Exhibit- 12). The pleading by the plaintiff is acceptance of the fact that when M/s. Hotel Khosh Mahal Limited was established in 1941, and subsequently Schedule ‘A’ property got vested with it. In 1941, the plaintiff was clearly not the owner or in possession of the Schedule ‘A’ property/Khosh Mahal. Construction of the hotel building on the land, it is apparent, was undertaken and done by M/s. Hotel Khosh Mahal Limited. The plaintiff has made no such claim.

29. As per the plaint, the Schedule ‘A’ property was given on lease by Maharani Chandratara Devi to M/s. Hotel Khosh Mahal Limited.

- C The plaintiff, however, has not placed any document on record in support of this claim that Maharani Chandratara Devi had given Schedule ‘A’ property on lease to M/s. Hotel Khosh Mahal Limited. Equally, defendant nos. 1 to 7 have not been able to establish and show that M/s. Hotel Khosh Mahal Limited had given the property on lease to Maharani Chandratara Devi. Be that as it may, we would accept as pleaded by the
- D plaintiff that M/s. Hotel Khosh Mahal Limited was in possession of Schedule ‘A’ property, though the nature and right to possession is disputed. Further, the plaint accepts that after 1968 M/s. Indian Airlines Corporation Limited had paid the rent to defendant no. 2 – Prabha Ranjan Debbarma till M/s. Indian Airlines Corporation Limited had vacated the property on 30.06.1986. The plaintiff’s claim that thereupon she had taken possession of Schedule ‘A’ property through her workmen and agents and started a guest house in the name and style of ‘M/s. Star Guest House’ is unsubstantiated, or rather implausible. Not only there is no document or evidence to support the assertion, the possession would normally be given to the landlord to whom rent is being paid. Findings recorded supra support the case of the defendants. Further, it is clear that defendant no. 8 *vide* the registered sale deed (Exhibit-E) dated 17.07.1985, had come in actual physical possession of a portion of the Schedule ‘A’ property. The sale deed was executed on behalf of M/s. Hotel Khosh Mahal Limited. Similarly, defendant nos. 9 to 11 have stated that they have purchased portions of the Schedule ‘A’ land on the basis of purchase/sale deeds executed in their favour by M/s. Hotel Khosh Mahal Limited. In this factual background, we would accept the claim of the defendants that on the date of filing of the suit the plaintiff was not in constructive or actual physical possession of the Schedule ‘A’ property.

30. In the above factual background, for the plaintiff to succeed,
- H she has to establish that she has a legal title to the Schedule ‘A’ property,

and consequently, is entitled to a decree of possession. The defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the Schedule ‘A’ property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner.⁹ A decree of possession cannot be passed in favour of the plaintiff on the ground that defendant nos. 1 to 12 have not been able to fully establish their right, title and interest in the Schedule ‘A’ property. The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them has a better legal right in the form of ownership or entitlement to possession.

31. The burden of proof¹⁰ to establish a title in the present case lies upon the plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief¹¹. This is mandated in terms of Section 101¹² of the Evidence Act, which states that burden on proving the fact rests with party who substantially asserts in the affirmative and not on the party which is denying it. This rule may not be universal and has exceptions¹³, but in the factual background of the present case, the general principle is applicable. In terms of Section 102¹⁴ of the Evidence Act, if both parties fail to adduce evidence, the suit must fail.¹⁵ Onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence,

⁹See *Poona Ram v. Moti Ram (Dead) through Legal Representatives and Others* (2019) 11 SCC 309 and *Nair Service Society Limited v. Rev. Father K.C. Alexander and Others*, AIR 1968, SC 1165.

¹⁰See Paragraph 19 in *Anil Rishi v. Gurbaksh Singh*, (2006) 5 SCC 558 where the expression—‘burden of proof’ is used in three ways, namely, (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either, or both of the others.

¹¹See *Addagada Raghavamma and Another v. Addagada Chenchamma and Another*, AIR 1964 SC 136.

¹²**Section 101: Burden of Proof.**- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

¹³See Sections 103, 104 and 105 of the Evidence Act.

¹⁴**Section 102: On whom the burden of proof lies.**- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

¹⁵See *Anil Rishi v. Gurbaksh Singh*, (2006) 5 SCC 558.

- A but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title.¹⁶ The weakness of the defence cannot be a justification to decree the suit.¹⁷ The plaintiff could have succeeded in respect of the Schedule ‘A’ property if she had discharged the burden to prove the title to the Schedule ‘A’ property which squarely falls on her. This would be the true effect of Sections 101 and 102 of the Evidence Act.¹⁸ Therefore, it follows that the plaintiff should have satisfied and discharged the burden under the provisions of the Evidence Act, failing which the suit would be liable to be dismissed. Thus, the impugned judgment by the High Court had rightly allowed the appeal and set aside the judgment and decree of the trial court. We, therefore, uphold the findings of the High Court that the suit should be dismissed. We clarify that we have not interfered or set aside any observations of the High Court *in re* the Tripura Land Revenue and Land Reforms Act, or defendants’ claim etc. Notably, M/s. Hotel Khosh Mahal Limited is not a party to the present proceedings.
- B
- C
- D

32. In view of the aforesaid discussion and legal position, the present appeal must be dismissed. We order accordingly. In the facts of the case, there will be no order as to costs.

Bibhuti Bhushan Bose
(Assisted by : Preetam Bharti, LCRA)

Appeal dismissed.

¹⁶ See *R.V.E. Venkatachala Gounder v. Arulmigu Visweswarawami & V.P. Temple and Another*, (2003) 8 SCC 752.

¹⁷ See *Union of India and Others v. Vasavi Cooperative Housing Society Limited and Others*, (2014) 2 SCC 269.

¹⁸ See *Sebastiao Luis Fernandes (DEAD) Through LRs. And Others v. K.V.P. Shastri (DEAD) Through LRs. And Others*, (2013) 15 SCC 161.