
(2016) 07 TP CK 0006
In the Tripura High Court
Case No : RFA No. 20 of 2015

State of Tripura

APPELLANT

Vs

Smt. Basanti Bala Das

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Specific Relief Act, 1963 — Section 34
Tripura Land Revenue and Land Reforms Act, 1960 — Section 134, Section 135(d),
Section 43(3), Section 99

Citation : (2016) AIRCC 3426

Hon'ble Judges : T. Vaiphei, ACJ. and S.C. Das, J.

Bench : Division Bench

Advocate : D. Chakraborty and H. Laskar, Advocates, for the Appellants; A. Lodh, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

S.C. Das, J. - This first appeal under Section 96 of the Code of Civil Procedure, 1908 is directed against the original judgment and decree dated 28.07.2015 passed by the learned Civil Judge (Senior Division), Court No. 1, Agartala, West Tripura in Title Suit No. 09 of 2008.

2. We have heard learned senior counsel, Mr. D. Chakraborty, assisted by learned counsel, Mr. H. Laskar for the defendant-appellants (hereinafter mentioned as "defendants") and learned counsel, Mr. A. Lodh for the plaintiff-respondents (hereinafter mentioned as "plaintiffs").

3. The plaintiffs instituted Title Suit No. 09 of 2008 in the Court of learned Civil Judge (Senior Division), Agartala, West Tripura seeking declaration of title and recovery of possession of the suit land described in schedule "B" of the plaint.

4. Shorn of unnecessary details the case of the plaintiffs is that their predecessor Khagendra Kumar Das got a patta of the land described in schedule "A" of the

plaint on 22.05.1952 from the then Maharani of Tripura Kanchanprava Debi of Kayami Taluk No. 169, Dar Taluk No. 25 and entered into possession of the land measuring 1.39 acres at Mouja-Badharghat. While said Khagendra Kumar Das alias Khagendra Chandra Das was in peaceful possession of the land, he sold out some parts of it to some others and "B" schedule land remained in his possession.

One Har Kumar Dey of the locality approached Khagendra Kumar Das to donate two kanis of land for setting up of a primary school on condition that the construction expenditure should be provided by the Education Department and the school should be set up within 19.12.1958 and there was an agreement between Har Kumar Dey and Khagendra that if the school is not set up within the time, the gift will be invalid and the land will be returned to Khagendra. Thereafter since the school was not set up, Har Kumar Dey by executing a sale deed dated 22.05.1961 returned the gifted land to Khagendra.

After the Tripura Land Revenue and Land Reforms Act, 1960 (for short "TLR & LR Act") came into force in the year 1961, all Taluki rights were abolished and the Taluki properties were vested in the Government free from all encumbrances. Thereafter the State Government in accordance with the provisions of the TLR & LR Act and rules framed thereunder allotted raiyati khatian to the under raiyats, who were enjoying the land under the Talukdars, i.e., the intermediates. Accordingly, in the year 1974 khatian was prepared in the name of Khagendra Kumar Das, the predecessor of the plaintiffs and after the death of Khagendra and his wife Kamala Sundari Das, the plaintiffs being their children inherited the property and have been possessing the said land.

The defendants wrongfully and illegally recorded "B" schedule land in khas khatian No. 9946 in the name of Education Department and the plaintiffs, therefore, challenged the wrong recording by filing a petition under Section 11(3) of the TLR & LR Act, which was registered as Misc. Case No. 03 of 1984 and by order dated 07.12.1984 the DM & Collector, West Tripura directed that the land should be recorded in the name of Khagendra Kumar Das after deleting the name of Education Department. The defendants thereafter filed an appeal before the Revenue Commissioner and the Revenue Commissioner by order dated 28.04.1989 dismissed the appeal and upheld the order passed by the Collector. A review application was also filed thereafter and that was also rejected. In the meantime, the defendants entered into "B" schedule land and started a school on the land. The plaintiffs made representation for vacating the land and to handover possession, but did not get any response from the defendants.

Thereafter the plaintiffs filed Writ Petition No. 279 of 1990 in the Agartala Bench of the Gauhati High Court seeking direction for acquisition and payment of compensation, which was disposed of by order dated 07.12.1998 observing that the writ Court is not the proper forum to adjudicate upon the dispute and that the dispute can be decided by the civil Court of competent jurisdiction. The plaintiffs preferred Writ Appeal No. 06 of 1999 and that was also disposed of by

order dated 09.06.2004 with the observation that the appellants may file representation to the State Government for acquisition of the land in question and for payment of compensation with further direction to the State Government that the representation, if any, filed be disposed of within a period of three months, alternatively the plaintiffs may approach appropriate forum seeking redress.

Pursuant to that direction of the High Court, the plaintiffs made representation and also issued notice under Section 80(1) of CPC, but the defendants did not respond and hence, the plaintiffs instituted this suit seeking declaration and recovery of possession.

5. The defendants by filing a joint written statement contested the suit, inter alia, contending that Khagendra had gifted the land to Har Kumar Dey, the Secretary of the school committee in the year 1955. That Har Kumar Dey had no authority to enter into an agreement with Khagendra and also had no authority to execute sale deed in favour of Khagendra in the year 1961. The school was established long ago in 1961 after the land was donated and so, the plaintiffs' right was extinguished since the plaintiffs relinquished their right in favour of the State Government as per Section 107 of the TLR & LR Act. The deed executed by Har Kumar Dey in favour of Khagendra on 22.05.1961 was a void deed and thereby the predecessor of the plaintiffs did not acquire any right, title and interest. It is also contended by the defendants that the plaintiffs filed writ petitions against the defendants and those were dismissed and, therefore, the plaintiffs were barred by law in approaching the civil Court seeking decree of recovery of possession.

6. The trial Court considering the pleadings of the parties framed following issues:

"1. Is the suit maintainable in its present form and nature?

2. Is the suit barred by law of limitation?

3. Whether the gift deed dated 19.12.55 as referred to in paragraph 21 of the written statement is a deed of relinquishment within the meaning of Section 107 of TLR & LR Act, 1960?

4. Whether the plaintiffs have any right, title and interest over the suit land?

5. Whether the plaintiffs are entitled to the decree, as prayed for?

6. To what other relief/reliefs the parties are entitled?"

7. In course of trial the plaintiff No. 1 examined herself as PW1 and relied on the following documents, which are marked exhibits :-

"Exbt. 1 series Certified copy of judgment, dated 13.5.1996 passed by the Member, Tripura Sales Tax Tribunal;

Exbt. 2 series General Power of Attorney executed by mother and brother of plaintiff No. 1 in favour of plaintiff No. 1;

Exbt. 3 Certified copy of khatian bearing No. 2524 of Mouja-Badharghat ;

Exbt. 4 Land Revenue receipt;

Exbt. 5 series Judgment and order (oral) in Writ Appeal No.96 of 1999 ;

Exbt. 6 series Order dated 07.03.1986 passed by Revenue Commissioner;

Exbt. 7 series Advocate's Notice dated 17.08.1990:

Exbt. 8 Khatian No. 9946 of Mouja Badharghat.

Exbt. 9 Khatian No. 9946 of Mouja Badharghat."

8. On behalf of the defendants, four witnesses were examined and two documents were exhibited in support of their case, namely, Exbt. -A and Exbt. - B, which are as follows:

"(a) Exbt. A series : Certified copy of registered deed(patta) dated 22.05.1952;

(b) Exbt. B series : Certified copy of registered deed dated 19.12.1955."

9. The trial Court decreed the suit by judgment dated 05.01.2013, which was challenged by the defendants before the High Court by preferring RFA No. 17 of 2013 and the High Court by order dated 29.10.2014 remanded the case allowing the defendants to prove some documents, i.e., an application allegedly filed by Khagendra dated 19.06.1967 before the Attestation Officer of Halka Camp, Badharghat and after the remand of the case DW5 was examined, but no such application dated 19.06.1967 was produced before the Court. Thereafter the trial Court again passed the impugned judgment and decree deciding all the issues in favour of the plaintiffs and accordingly, decreed the suit.

10. Challenging the judgment and decree, the present appeal is filed by the appellants.

11. It is emphatically argued by learned senior counsel, Mr. Chakraborty that in a suit seeking declaration of right, title and recovery of possession, the plaintiff has to prove his/her case strictly to establish the right and title over the suit land. The plaintiff cannot take advantage of any defect or lapses in the pleading or evidence of the defendant. According to Mr. Chakraborty, the plaintiff has to stand on his/her own leg. In the present case, the plaintiffs claimed title to the suit land based on a khatian prepared in the name of their predecessor Khagendra Kumar Das pursuant to a patta allegedly executed by an intermediary in the year 1952. It is argued by Mr. Chakraborty, learned senior counsel that no copy of the patta produced by the plaintiffs. But a copy of patta dated 22.05.1952 has been produced by the defendants, which is marked as Exbt. -A series and it shows that the patta was for a period of five years from 1362 TE (Tripura Era) to 1367 TE, which corresponds to 1952 AD to 1957 AD and so, the right of the plaintiffs' predecessor Khagendra Kumar Das as a pattadar was extinguished after 1957. There is no evidence that after 1957 the intermediary extended the patta for any further period in favour of Khagendra Kumar Das. In

the absence of any such evidence that the period of patta was extended after 1957, Khagendra Kumar Das has no right to claim as a raiyat after the right of the intermediaries was abolished after coming into force of the TLR & LR Act.

It is also submitted by Mr. Chakraborty, learned senior counsel that the TLR & LR Act came into force in the year 1961(25.10.1961) issuing notification in respect of vesting of rights of intermediaries with the Government and the rights of intermediaries were abolished and on the date of such vesting of rights of intermediaries with the Government, Khagendra Kumar Das was no longer a pattadar or an under raiyat of the original intermediary and so, Khagendra had no right to get a settlement of the under raiyati land in his name as a raiyat by operation of law. The suit land was recorded in the name of the Education Department and a school was established in the suit land, which is still in position and the defendants out of greed trying to oust the school and, therefore, falsely claimed the right, title and interest in the suit land by way of filing an application under Section 11 (3) of the TLR & LR Act before the Collector.

It is further submitted by Mr. Chakraborty, learned senior counsel that the order passed by the Collector and affirmed by the Revenue Commissioner does not create an absolute right of the plaintiffs over "B" schedule land since creation of mere Khatian is not at all a proof of right, title and interest and so, the suit for declaration of title and recovery of possession is not maintainable and is liable to be dismissed. It is also argued by learned senior counsel that the trial Court has failed to consider the contents of Exbt.-A series and also failed to consider the consequence of coming into force of the TLR & LR Act and since those are questions of law, the defendants may raise it even at the appellate stage in the absence of any pleadings and evidence on record. The judgment and decree passed by the trial Court suffers from inherent infirmity and, therefore, the judgment and decree is liable to be set aside.

12. On the contrary, Mr. Lodh, learned counsel of the plaintiffs submitted that admittedly Khagendra Kumar Das, the predecessor of the plaintiffs, was a pattadar under an intermediary. The patta was executed in the year 1952. Khagendra Kumar Das continued in possession as a pattadar when the TLR & LR Act came into force. While he was found in possession of the suit land as an under raiyat by virtue of a patta executed by intermediary, by operation of law as contained in Sections 134 and 135 of the TLR & LR Act, the khatian was prepared in the name of the predecessor of the plaintiffs, i.e., Khagendra Kumar Das. The said Khagendra Kumar Das donated two kanis of land to Har Kumar Dey on certain condition to establish a school, but since the school was not established within the time specified in the deed, Har Kumar Dey by a registered deed dated 22.05.1961 returned the land to Khagendra Kumar Das. Those documents clearly show that in the year 1961 there was no existence of any school.

In the year 1974 khatian was prepared in the name of the plaintiffs' predecessor Khagendra Kumar Das since Khagendra was in possession of the land at the time when TLR & LR Act came into force being Talukdari right abolished by operation

of law. Thereafter khatian No. 2528 of Mouja-Badharghat was prepared and finally published on 23.05.1974 in the name of Khagendra Kumar Das showing him as a permanent raiyat. Copy of khatian is marked as Exbt. -3. Khagendra Kumar Das paid revenue to the Government and the land receipt marked as Exbt.- 4 These are the documents enough to prove that after Talukdari right was abolished khatian was prepared in the name of Khagendra Kumar Das for the suit land, which was in his possession. Subsequently, the State-respondents recorded the same land as khas land, which was challenged by filing a petition under Section 11 (3) of the TLR & LR Act before the Collector and it was decided that the record of right prepared in the name of the Government was wrong and the Collector directed correction of the record of right by recording it in the name of the original raiyat. Thereafter khatian No. 9946 of Mouja-Badharghat was prepared, which are marked as Exbt.- 8 and Exbt.- 9 respectively. These are the documents which show that the plaintiffs proved their title over the suit land and the defendants have no right, title and interest over the suit land. The khatian in the name of Khagendra Kumar Das was prepared by operation of law and since it is admitted that Khagendra was an under raiyat, under an intermediary, his right title in the suit land was established by operation of law and he was not required to prove his claim of title from before. The defendants neither pleaded nor adduced any evidence to show that after 1957, Khagendra was not in possession of the suit land. Khagendra entered into the suit land as an under raiyat, under an intermediary, which is admitted and he continued in possession even after elapse of the period of patta and that has been recognised by the State respondents and, therefore, the State-respondents recorded the suit land in the name of Khagendra as a permanent raiyat. Such record of right confers absolute title and the defendants have no right to challenge it. The defendants lost before the Collector as well as the Revenue Commissioner and after the decision by the Revenue Commissioner, which has reached finality, the defendants have nothing to challenge the right of the plaintiffs. The plaintiffs filed writ petitions seeking compensation, but the defendants did not pay compensation and, therefore, the defendants have no other alternative but to pray for recovery of possession of the suit land. The trial Court rightly decreed the suit and the appeal should be dismissed.

13. It is an admitted position that Khagendra Kumar Das, the predecessor of the plaintiffs, pursuant to a patta dated 22.05.1952 entered into the possession of the suit land as an under raiyat, under an intermediary. While he was an under raiyat, admittedly, he had executed a gift deed on 19.12.1955 in favour of one Har Kumar Dey on certain condition to establish a school on the gifted land measuring two kanis, but since school was not established, said Har Kumar Dey by executing a registered deed dated 22.05.1961 returned the gifted land to Khagendra Kumar Das. It is, therefore, clear that during the period from 1952 to 1961 Khagendra Kumar Das was in possession of the settled land under the patta. It does not, therefore, fit in the mouth of the defendants that the predecessor of the plaintiffs, Khagendra Kumar Das was not a pattadar after

1957. Whether the intermediary allowed Khagendra Kumar Das to continue as a pattadar or not is a matter to be pleaded and proved by evidence. The case of the plaintiffs is that Khagendra got settlement of the suit kind as a pattadar in the year 1952 and continued in possession of the suit land as a pattadar till the TLR & LR Act came into force and it was recorded in the name of Khagendra Kumar Das as a permanent raiyat. This is not a mere creation of khatian by the Revenue Authority. It is creation of a khatian by operation of law after extinguishment of right of the intermediary.

14. It is an admitted position that after the TLR & LR Act came into force in the year 1961, the rights of the intermediaries were vested with the Government. Part IV Chapter XI in Sections 133 to 139 deals with the provisions in respect of acquisition of estate and the rights of intermediaries therein. Section 134 prescribes thus :-

"134. (1) As soon as, may be after the commencement of this Act, the State Government may, by notification in the Official Gazette, declare that, with effect from the date specified in the notification (hereinafter referred to as the vesting date), all estates situated in any area or areas and all rights, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrances.

(2) Every notification under sub-section (1) shall also be published in such other manner as may be prescribed.

(3) The publication of notification in the manner provided in sub-sections (1) and (2) shall be conclusive evidence of the notice of declaration to the intermediaries whose interests are affected by such notification."

15. Section 135(d) prescribes thus :-

"135.....

(d) subject to the other provisions of this Act, every tenant holding any land under an intermediary shall hold the same directly under the Government as a raiyat thereof or as a non-agricultural tenant thereof, as the case may be and shall be liable to pay to the Government land revenue equal to the rent payable by him to the intermediary on the vesting date, subject to a maximum of the value of one-eighth of the gross produce which value shall be determined in the manner prescribed:

Provided that the tenant shall become the owner of any building or structure constructed on such land at the expense of the intermediary, on payment of such compensation to the intermediary as is equivalent to its market value on the vesting date, which value shall be determined in accordance with the rules made in this behalf;"

16. A bare reading of the above provision makes it clear that after the commencement of the TLR & LR Act, came into effect by notification in the

official gazette, the right, title and interest of every intermediary in the estate had been vested with the Government free from all encumbrances. The publication of notification shall be the conclusive evidence of the notice of declaration to the intermediaries whose interests were affected by such notification. It is an admitted position that the right of intermediaries were vested with the State Government by notification in the year.

17. There is neither pleading nor evidence before us that the intermediary, who executed the patta in favour of Khagendra Kumar Das, had raised any objection that the patta did not continue after 1957 or that the patta right vested on Khagendra Kumar Das in the year 1952 was abolished after 1957. Rather the gift deed dated 19.12.1955 and sale dated 22-05-1961 makes it clear that Khagendra Kumar Das continued as a pattadar (under raiyat) after 1957. So, the khatian, i.e., Exbt.-3. in the name of Khagendra Kumar Das was prepared and finally published on 23.05.1974 was because of the operation of law as aforesaid in Section 135(d) of the TLR & LR Act. The plaintiffs, therefore, is not required to further prove their chain of title in respect of the suit land. The provision prescribed in Section 135(d) makes it abundantly clear that every tenant holding any land under intermediary shall hold the same directly under the Government as a raiyat thereof.

18. We cannot appreciate the submission of learned senior counsel, Mr. Chakraborty that the plaintiffs have failed to prove their claim of title over the suit land and, therefore, is not entitled to get any decree.

19. Chapter IX of the TLR & LR Act prescribes provision in respect of right of raiyats in land. Section 99 reads as follows:-

"99. (1) For the removal of doubts, it is hereby declared that subject to the other provisions of this Act,-

(a) the rights of a raiyat in his land shall be permanent, heritable and transferable;

(b) the raiyat shall be entitled by himself, his servants, under raiyats, agents or other representatives to erect farm buildings, construct wells or tanks or make other improvements thereon for the better cultivation of the land or its convenient or profitable use;

(c) the raiyat is entitled to plant trees on his land, to enjoy the products thereof and to fell, utilise or dispose of the timber of any trees on his land.

(2) Nothing in sub-section (1) shall entitle a raiyat to use his land to the detriment of any adjoining land which is not his or in contravention of the provisions of any other law for the time being in force applicable to such lands."

20. The above provision makes it abundantly clear that once a person is declared as a raiyat, he acquired a right which is permanent, heritable and transferable. Once by operation of law Khagendra Kumar Das was declared as a raiyat and he

paid revenue to the Government, he should be treated as having with all rights over the land as a permanent raiyat as prescribed in Section 99 of the TLR & LR Act.

21. Section 43(3) of the TLR & LR Act further prescribes that every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct.

22. The defendants recorded the suit land as khas land in the name of the Education Department. The predecessor of the plaintiffs challenged such recording of the suit land as khas, by filing a petition under Section 11(3) of the TLR & LR Act. Section 11 reads as follows:

"11. (1) All lands, public roads, lanes and paths and bridges, ditches, dikes, and fences on or beside the same, the beds of rivers, streams, nallas, lakes and tanks, and all canals and water courses, and all standing and flowing water, and all rights in or over the same or appertaining thereto, which are not the property of any person, and are hereby declared to be the property of the Government.

(2) Unless it is otherwise expressly provided in the terms of a grant made by the Government, the right to mines, quarries, minerals and mineral products including mineral oil, natural gas and petroleum shall vest in the Collector whose order shall, subject to the provisions of this Act, be enjoyment of such rights.

(3) Where any property or any right in or over any property is claimed by or on behalf of the Government, or by any person as against the Government and the claim is disputed, such dispute shall be decided by the Collector whose order shall, subject of the provisions of this Act, be final.

(4) Any person aggrieved by an order made under sub-section (3) or in appeal or revision therefrom may institute a civil suit to contest the order within a period of six months from the date of such order and the decision of the civil court shall be binding on the parties."

23. It is an admitted position that the suit land was recorded in the name of Khagendra Kumar Das as a permanent raiyat after the TLR & LR Act came into force and thereafter the defendants recorded it as khas land in the name of Education Department and challenging that action, the predecessor of the plaintiff's preferred an application under Section 11(3) of the TLR & LR Act and the Collector passed order in favour of predecessor of the plaintiffs. That order was challenged before the Revenue Commissioner and the Revenue Commissioner dismissed the appeal of the defendants. The defendants did not take any action as contemplated in Section 11(4) of the TLR & LR Act. The order passed by the Collector and affirmed by the Revenue Commissioner has reached finality. Thereafter the plaintiffs filed writ petition and writ appeal. In the writ appeal the Division Bench of the then Gauhati High Court in para-6 observed thus:

"6. In the given circumstances, we dismiss the appeal with the observation/

direction that the appellant may, if so advised, file representation to the State Government for acquisition of the land in question and for payment of compensation and the respondent-State shall, on receipt of the said representation, if any filed, dispose of the same within a period of three months in accordance with provisions of law. Alternatively, the appellants may approach appropriate forum for redressal of their grievance."

24. After the aforesaid order the plaintiffs made representation and thereafter issued notice under Section 80 of CPC and then filed the present suit. The suit was decreed by the trial Court and an appeal was filed. It was remanded back by order of the High Court since the defendants intended to produce some documentary evidence, but record shows that no such documentary evidence was adduced by the defendants though prayed before the High Court in appeal. Ultimately, the trial Court passed the impugned judgment and decree.

25. Mr. Chakraborty, learned senior counsel empathetically argued that creation of khatian by itself does not confer title. In support of his contention he has referred the case of R. Hanumaiah & Anr. v. Secretary to Government of Karnataka, Revenue Department & Ors., reported in (2010) 5 SCC 203 : (2010 AIR SCW 4544) and the case of Union of India & Ors. v. Vasavi Co-operative Housing Society Limited & Ors., reported in (2014) 2 SCC 269 : (AIR 2014 SC 937).

26. Learned senior counsel particularly referred paras-19 & 20 of the case of R. Hanumaiah (2010 AIR SCW 4544) (supra), which read as follows:

" 19. Suits for declaration of title against the Government, though similar to suits for declaration of title against private individuals, differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the Government. All lands which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the Government, unless any person can establish his right or title to any such land. This presumption available to the Government, is not available to any person or individual. The second difference is in regard to the period for which title and/or possession has to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit for title against Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by the Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of

ownership or possession against the Government. Any loss of Government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against Government, in a casual manner, ignoring or overlooking the special features relating to Government properties. Instances of such suits against Government being routinely decreed, either ex parte or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the Government contests the suit or not before a suit for declaration of title against a Government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the Government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the Government, grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings that plaint averments which are not denied or traversed are deemed to have been accepted or admitted."

The fact of the reported case is clearly distinguishable to that of the fact of the present case. In that case the plaintiff hail no document of tide and there was no case that the plaintiff acquired title by operation of law. The above observation of the Apex Court came in the given fact of that case. Here in this case, the predecessor of the plaintiffs was an under raiyat, under an intermediary and continued in possession of the land as an under raiyat when TLR & LR Act came into force and the rights of intermediaries were vested with the Government and the Act has prescribed that the under raiyat, who were holding land settled by an intermediary shall be treated as a permanent raiyat and pursuant to that provision of law the predecessor of die plaintiffs Khagendra Kumar Das was treated as a permanent raiyat and khatian was prepared in his name. So, the fact of the present case is clearly different to that of die fact of the reported case.

27. In the case of Vasavi Co-operative Housing Society Ltd. (AIR 2014 SC 937) (supra the Supreme Court in para 22 of the judgment held:

"22. The Plaintiff has also maintained the stand that their predecessor-in-interest was the Pattadar of the suit land. In a given case, the conferment of Patta as such does not confer title. Reference may be made to the judgments of this Court in Syndicate Bank v. APIIC Ltd (2007) 8 SCC 361 : (AIR 2007 SC 3169) and Vatticherukuru Village Panchayat v. Non Venkatarama Deekshithulu, 1991 (Supp) (2: SCC 228 : (1991 AIR SCW 1303).

In the given fact of the above case, the Apex Court has held that the conferment of patta by itself does not confer title. There is no quarrel on the issue. A mere

conferment of a patta cannot create title. So long Khagendra Kumai Das was a pattadar(under raiyat), under an intermediary, he had no right to claim the title over the settled land under the patta. But as soon as the TLR & LR Act came into force and the right of intermediary was abolished and all rights of intermediary were vested with the Government and thereafter by operation of law the pattadars(under raiyats) were treated as permanent raiyat, I am of considered opinion that the ratio of that decision cannot be applied in the given facts and circumstances of this case.

28. Mr. Lodh, learned counsel of the plaintiffs has referred decision of Sudhangshu Mohan Deb v. Niroda Sundari Debidhup & Ors., reported in (2004) 4 SCC 389 : (AIR 2004 SC 1781) and the ratio of the decision of the Apex Court in that case may be applied since the Apex Court has considered the consequence of Sections 134, 135, 136 as well as Section 43 of the TLR & LR Act. Paras 6 and 7 of the judgment read as follows:

"6. From a perusal of the above provisions, it will be seen that all estates in a notified area vest in the Government free from all encumbrances. All right, title and interest of every intermediary in the estates stands extinguished. After the notified date, no one except the State Government is left with any right, title or interest in the subject lands. Once the lands vested in the State Government, the State Government is free to deal with the same in any manner it decides. This may include a decision on the part of the State Government to grant tenancy rights with respect to the lands or any portion thereof in favour of any party on payment of land revenue. It appears that in 1968 the appellant applied for grant of right as a "Raiyat" or as a non-agricultural tenant for the land in the suit on payment of land revenue under Section 136 (2) of the Act. The State Government granted the right as a "raiyat" in favour of the appellant which was evidenced by a "khatiyani" (entry in the revenue records showing tenancy) in appellant's favour. The khatiyani was initially granted on a provisional basis which was after contest finalized in favour of the appellant in 1974. The revenue entry was published in the revenue records which is evidenced by the khatiyani. The effect of grant of khatiyani in favour of the appellant is that his possession of the lands is under the Government and is with the consent of the Government and he is paying land revenue to the Government for the same. In other words the appellant gets a fresh right to possession of the land as a tenant. Section 43 of the Act conveys the consequence of publication of khatiyani. The said Section is reproduced as under:

"43. (1) When a record-of-rights has been prepared, the survey officer shall publish a draft of the record in such manner and for such period as may be prescribed and shall receive and consider any objections which may be made during the period of such publication, to any entry therein or to any omission therefrom.

(2) When all objection have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be

finally published in the prescribed manner.

(3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct."

7. It will be seen from the above provision that once a khatian is finalised and its publication takes place, it is presumed to be correct until the contrary is proved. The final khatian stands published in favour of the appellant which gives the appellant right to remain in possession of the suit-land. This is a fresh right created in favour of the appellant by the State Government in whom the entire land had vested by virtue of Sections 134 and 135 of the Act."

29. The ratio of this decision may fairly be applied in the facts of the present case and we are of the considered opinion that while the predecessor of the plaintiffs was a pattadar and he continued in possession as a pattadar (under raiyat) while TLR & LR Act came into force and the right of the intermediaries was abolished and the State Government prepared khatian in the name of the predecessor of the plaintiffs pursuant to the provisions of Sections 134 and 135 of the TLR & LR Act, and since the defendants have failed to prove their right before the Collector in the proceeding under Section 11 (3) of the TLR & LR Act, which was affirmed by the Revenue Commissioner, the defendants have no case at all. The plaintiffs proved their right, title and interest in the suit land and the trial Court rightly decreed the suit.

30. The trial Court taking into consideration that a school has been set up in the "B" schedule land, directed the defendants to acquire the suit land according to law and to give compensation to the plaintiffs and that direction has not been challenged by the plaintiffs. The judgment and decree passed by the trial Court is affirmed.

31. The appeal stands dismissed with costs.

32. Send back the lower court records along with a copy of this judgment.