
(2008) 09 GAU CK 0067

In the Gauhati High Court

Case No : Second Appeal No's. 59 and 68 of 1992

Tandonbi Devi and Others

APPELLANT

Vs

Kalamu Singha and Another

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Assam Temporarily (Settled Area) Tenancy Act, 1971 — Section 3(3)
Evidence Act, 1872 — Section 111, 114, 115, 68
Registration Act, 1908 — Section 52, 58, 59, 60, 60(2)
Transfer of Property Act, 1882 — Section 54

Citation : (2010) 5 GLR 367 : (2009) 3 GLT 260

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : A.K. Goswami, H.S. Thangkhew, S. Banik, B. Sarma, N. K. Singh, A. Roshid and R.K.D. Choudhury, for the Appellant;

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—These appeals, being Second Appeal No. 59 of 1992 and 68 of 1992, by the original plaintiff (Smt. Tandonbi Devi) and the defendant (Sri Kalamu Singh) in Title Suit No. 60/1986, respectively, are directed against the judgment dated 23.3.1992 and the decree drawn on 26.3.1992 by the learned Additional District Judge, Cachar in. T.A. No. 2/1989, partly decreeing the suit of the plaintiff by modifying the judgment passed on 19.12.1988 and decree drawn on 5.1.1989 by the learned Assistant District Judge, No. 1, Silchar (now Civil Judge) in the suit. Since both the appeals are arising out of the same judgment and decree passed by the learned Additional District Judge in T.A. No. 2/1989, they are taken up together for hearing and disposal, as agreed to by the learned Counsel for the parties.

2. Smt. Tandonbi Devi, the predecessor-in-interest of the present appellants in Second Appeal No. 59/1992, who are the respondents in Second Appeal No. 68/1992, instituted T.S. No. 60/1986 in the court of the learned Assistant District Judge, No. 1 at Silchar against Sri Kalamu Singh, the appellant in Second Appeal

No. 68/1992 and respondent No. 1 in Second Appeal No. 59/1992, praying for a decree declaring the plaintiff as the occupancy tenant in respect of the land measuring 17 Bighas, 4 Kathas, 1 Chatak, described in Schedule 1 thereto; for declaration that the defendant No. 1 (Kalamu Singh) has no tenancy right over any portion of the suit land described in Schedule 1 and also for cancellation of the sale deed No. 53/1979 allegedly executed by Babahan Singh (son of Tandonbi Devi) on 08.1.1979 in favour of Kalamu Singh (defendant No. 1), contending inter-alia that Angahan Singh, the husband of Tandonbi Devi, took settlement of the suit land from the landlord (pro forma defendant No. 2) and was possessing the same by paying regular rent. After the death of his son, Dinomoni Singh possessed the suit land as tenant and the final khatian No. 27 was issued in his name. Dinomoni Singh died leaving behind his mother Tandonbi Devi (plaintiff) and his minor son, namely Babahan Singh (alias Babahal Singh), as heirs and accordingly their names were mutated in the final khatian in place of Dinomoni Singh. Babahan Singh died on 8.1.1979 and, therefore, Tandonbi Devi (plaintiff) inherited his share over the property under the provisions of the Hindu Succession Act and as such became the occupancy tenant in support of the entire land, there being no other heir, which land she has been possessing as before. But the defendant No. 1 Kalamu Singh on 9.5.1984 collusively got his name mutated in respect of 14 Bighas, 8 Kathas, 9 Chatak of land in the revenue record (Khatian), which is part of the suit land allegedly by right of purchase. It has further been contended that on enquiry, she came to know that the defendant No. 1, Kalamu Singh, created a forged sale deed in the name of Babahan Singh on 8.1.1979 and got the deed registered on commission on 9.1.1979, though Babahan Singh died on 8.1.1979 after prolonged illness, for which an application was filed before the Deputy Commissioner for cancellation of the name of the defendant No. 1 from the Khatian but the Deputy Commissioner vide his order dated 2.7.1986 directed the plaintiff to file civil suit, for which the suit has been instituted.

3. The pro forma defendant No. 2, the landlord in respect of the suit land, namely M/s. Gupta and Mitra Estate, did not contest the suit by filing any written statement. The defendant No. 1, Kalamu Singh, however, contested the suit by filing written statement, contending inter-alia that there is no cause of action for the suit, that the suit is not maintainable and that it is barred by limitation. The defendant No. 1 in the written statement has further contended that as during the lifetime of Angahan Singh, the plaintiff Tandonbi Devi, deserted him after the birth of their son Dinomoni Singh and married one Nandakumar Singh, the entire property belonging to Angahan Singh devolved on Dinomoni Singh, on his death, which was subsequently devolved upon Babahan Singh on the death of Dinomoni Singh. The further case of the defendant No. 1 Kalamu Singh is that Babahan Singh by executing a sale deed on 8.1.1979, which was registered on commission on 9.1.1979 transferred the land, measuring 14 Bighas, 8 Kathas, 9 Chataks of land. It is also the case of the defendant No. 1 in the written statement that he was possessing the suit land even before execution of the sale

deed and continued to be in possession after the purchase. The defendant also denied that Babahan Singh died on 8.1.1979 and that the said sale deed is forged one. The further case of the defendant No. 1 in the written statement is that the plaintiff, Tandonbi Devi being an unchaste woman, she did not inherit any property on the death of her husband, Angahan Singh, and as such she had no legal right to be the successors of property of Late Angahan Singh.

4. The trial court on the basis of the pleadings of the parties framed the following 7(seven) issues:

1. Is there any cause of action for the suit?
2. Is the suit maintainable in its present form?
3. Whether the suit is properly valued and proper court fees are paid?
4. Whether the plaintiff has right, title and interest over the suit land?
5. Whether the sale deed No. 53 of 1979 at. 8.1.1979 is liable to be cancelled?
6. Whether the defendants are in possession of the land in dispute?
7. To what relief, if any, are the parties entitled?

5. Upon appreciation of the evidences on record, both oral and documentary, the learned Trial Judge vide judgment dated 19.12.1988 decreed the suit on contest with cost against the defendant No. 1, Kalamu Singh and ex parte without cost against the pro forma defendant No. 2, M/s. Gupta and Mitra Estate, declaring plaintiff's right of tenancy over the entire Schedule-1 land measuring 17 Bighas, 4 Kathas, 1 Chatak and also canceling the sale deed dated 8.1.1979 (Exhibit-A) by declaring the same to be not genuine. Being aggrieved, Kalamu Singh (appellant in Second Appeal No. 68/1992) preferred Title Appeal No. 2/1989 before the learned District Judge, Cachar at Silchar, which was subsequently transferred to the learned Additional District Judge, Cachar at Silchar. The learned First Appellate Court, upon hearing the learned Counsel for the parties and on consideration of the materials available on record vide judgment dated 23.3.1992 partly allowed the appeal by modifying the judgment and decree dated 19.12.1988 and 5.1.1989, respectively passed by the learned Trial Judge, declaring the occupancy tenancy of the plaintiff (Tandonbi Devi) over 50% of the Schedule-1 land and of the defendant/appellant, Kalamu Singh, over the remaining 50% of the said Schedule-1 land, by holding that the plaintiff, Tandonbi Devi, has failed to prove that the sale deed is forged one.

6. I have heard Mr. A.K. Goswami, the learned senior counsel appearing on behalf of the appellants, who are the successors-in-interest of Smt. Tandonbi Devi (plaintiff), in Second Appeal No. 59/1992 and who are the respondents in Second Appeal No. 68/1992 and also Dr. N.K. Singh, the learned Counsel appearing on behalf of Kalamu Singh (defendant No. 1), the appellant in Second Appeal No. 68/1992, who is also the respondent No. 1 in Second Appeal No. 68/1992. M/s Gupta and Mitra Estate despite service of notice did not contest the

Second Appeal No. 59/1992, who is, however, not a party respondent in Second Appeal No. 68/ 1992.

7. Second Appeal No. 59/1992, filed by the plaintiff in T.S. No. 60/ 1986, has been admitted for hearing vide order dated 5.6.1992 on the following substantial questions of law:

1. Whether execution, attestation, presentation, identification, requisition of Exhibit-A have been proved to be in accordance with law and can confer a valid title upon the respondent No. 1?

2. Whether on the face of Exhibit-4, i.e., the death certificate issued under Births, Deaths and Marriages Registration Act. 1886, the defendant could discharge its burden to disprove the death of Babahan?

8. Second Appeal No. 68/1992 has been admitted for hearing vide order dated 23.6.1992, by observing that:- "the appeal will be heard on the substantial questions of law as enumerated in the memo of appeal."

In the memorandum of appeal filed in the Second Appeal, the following substantial questions of law are mentioned:

1. Whether the learned appellate court below was justified in decreeing the suit holding under the Hindu Succession Act plaintiff was entitled to inherit equally along with her grandson after the death of her son Dinarnani when she deserted her minor son at the age of 2 years and the husband and remarried with one Nanda Kumar Singh of Pangram leaving the abode of her husband for good?

2. Whether a Hindu female can acquire tenancy right without establishing her possession over the suit land under the Hindu Succession Act when in the present case finding of the appellate court below is that defendant is in possession of the suit land long before the date of execution of the sale deed exhibit A, i.e., from 1958?

3. Whether the learned court below were justified in decreeing the suit when plaintiff miserably failed to establish from what date the suit land devolved in her or the date of death of her son Dinomani?

4. Whether the learned appellate court below was justified in decreeing the suit when plaintiff was estopped in claiming the right of tenancy in the suit land by her conduct, i.e., by becoming an attesting witness while in execution of sale deed for the same suit land by her grandson Babahal Singh in favour of defendant?

9. Mr. Goswami, the learned senior counsel has submitted that on the face of the certificate (Exhibit 4) issued by the competent authority under the provisions of the Births, Deaths and Marriages Registration Act, 1886 ("1886 Act"), the learned Lower Appellate Court ought not to have rejected such certificate on the ground that the same was nothing but an after thought, only on the basis of the date of issuance of such certificate being 1.9.1984. According to Mr. Goswami,

since such a certificate was issued by the competent authority under the 1886 Act, its genuineness is to be presumed unless of course the same is rebutted by the person challenging it. It has been submitted by the learned Sr. counsel that the defendant No. 1, Kalamu Singh, has failed to lead any evidence to rebut such presumption of genuineness of Exhibit-4 and, therefore, the learned Lower Appellate Court ought not to have rejected the said certificate being Exhibit-4. Moreover, according to Mr. Goswami, the fact that the sale deed being Exhibit-A is a fraudulent one is also apparent on the face of it as the same is shown to have been registered on 9.1.1979, after the registering authority enquired about the due execution of such sale deed from Babahan Singh, who died on 8.1.1979, from which it appears that somebody else has presented himself as Babahan Singh on 9.1.1979. It has further been submitted by Mr. Goswami that in any case, it appears from the evidence of the scribe of the sale deed (Exhibit-A), who has been examined as DW-3 that Babahan Singh was not in a position to hold the pen on 8.1.1979 and, therefore, he was not in the mental status to execute the sale deed out of his own free will, hence, no title at all can be passed on the defendant No. 1 on the basis of such a sale deed.

10. Mr. Goswami further submits that though the defendant No. 1, Kalamu Singh, in course of his deposition has stated that after the execution and registration of the sale deed he was taken to the original landlord, namely the pro forma defendant No. 2, by Babahan Singh, and informed him about the transfer of the land, the defendant No. 1 did not examine either the landlord or any other person as witness to prove the same, so as to rebut the presumption of death of Babahan Singh on 8.1.1979 pursuant to the Exhibit-4 certificate issued by the competent authority under the provisions of the 1886 Act. It has further been submitted by Mr. Goswami that as mere marking of the document as exhibit does not amount to prove its contents, the defendant No. 1, Kalamu Singh, has to prove that such document was executed by Babahan Singh, which he has failed to do, even though the plaintiff may not dispute her thumb impression on such document. Mr. Goswami further submits that since the plaintiff has disputed the execution of the said sale deed being Exhibit-A as a whole, non-denial of her thumb impression in the said document would have no effect as the denial of the execution of the sale deed means the denial of the signature/thumb impression of all the persons contained therein.

11. Placing reliance on the decision of the Apex Court in Krishna Mohan Kul @ Nani Charan Kul and Another Vs. Pratima Maity and Others, it has been submitted by Mr. Goswami that it is always obligatory for the purchaser, who claims benefit under the document to prove due execution of the document in accordance with law, which the defendant No. 1 has failed to prove by examining any witness to such document. On the other hand, according to Mr. Goswami, it is evident from the deposition of the DW-3, the writer of the sale deed, Exhibit-A, that he did not know Babahan except through Kalamu Singh. Mr. Goswami in support of his contention that mere marking of the document as exhibit would not tantamount to proof of all the contents or the facts stated in a document, the

truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue, has placed reliance on a decision of the Apex Court in *Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, Mr. Goswami* placing reliance on a decision of this Court in *Boloram Kumar and Ors. v. Dandiram Kumar and Ors.* AIR 1950 Assam 1 has further submitted that there cannot be any declaration of right of the defendant over any specific portion of Schedule-1 land, by virtue of the sale deed (Ext. A), even if such sale confers right on the defendant in respect of the share of Babahan Singh.

12. It has also been submitted by Mr. Goswami, the learned senior counsel that the learned courts below have rightly come to the conclusion that the plaintiff cannot be disinherited from the property on the ground that she led an unchaste life, even if she was an unchaste lady, which, however, according to Mr. Goswami, could not be proved by the defendant No. 1, Kalamu Singh. Mr. Goswami submits that the questions as mentioned by the appellant in Second Appeal No. 68/1992 in his memo of appeal cannot be treated as the questions of law, not to speak of the substantial questions of law, those being purely the question of fact and, hence, the appeal preferred by Kalamu Singh (defendant No. 1) deserves to be dismissed.

13. Dr. Singh, the learned Counsel, on the other hand, has submitted that since the plaintiff, Tandonbi Devi, was a witness to the sale deed being Exhibit-A, executed by her son, Babahan Singh, the suit filed by her is barred by estoppel u/s 115 of the Evidence Act, as she cannot question the due execution of such sale deed, as has been done in the plaint filed by her. According to Dr. Singh, plaintiff Tandonbi Devi, even during the course of the trial of the suit or any time thereafter, never disputed her thumb impression in the said sale deed. Therefore, according to Dr. Singh, the defendant No. 1, Kalamu Singh, became the rightful owner in respect of 14 Bighas, 8 Kathas 9, Chataks of land by virtue of the sale deed being Exhibit-A executed by Babahan Singh, son of the plaintiff, Tandonbi Devi. It has further been submitted by Dr. Singh that the plaintiff having miserably failed to prove that Exhibit-A sale deed was a forged document, the burden of proving the same being on the plaintiff, the learned Lower Appellate Court ought not to have decreed the suit of the plaintiff in respect of the 50% of the suit property described in Schedule-1 and ought to have declared that the title over 14 Bighas, 8 Kathas, 9 Chataks of the land out of the Schedule-1 land is on the defendant No. 1, Kalamu Singh, by virtue of the sale deed being Exhibit-A.

14. It is the further contention of Dr. Singh that the plaintiff even could not prove the date of death of Babahan Singh, which she claims to be 8.1.1979, by adducing any cogent evidence and, therefore, the learned Lower Appellate Court has rightly refused to believe the certificate issued by the authority under the 1886 Act, being Exhibit-4, as the defendant could by adducing evidence rebut the presumption of date of death of Babahan Singh. Dr. Singh referring to Exhibit-

G, i.e., the application filed on 19.10.1984 by the plaintiff before the revenue authority for cancellation of the order of mutation dated 1.4.1983 passed in favour of the defendant No. 1, has submitted that the learned First Appellate Court, while disbelieving the plaintiff's story that Babahan died on 8.1.1979 has rightly placed reliance on the said document, which does not divulge the date of death of Babahan Singh. Dr. Singh further submits that since the sale deed being Exhibit-A is a registered document registered under the provisions of Registration Act, 1908 ("1908 Act"), the presumption must be in favour of its due execution and registration unless the same is rebutted by the person questioning such execution and registration, which in the instant case, the plaintiff has failed to do. Dr. Singh, therefore, submits that the plaintiff is not entitled to declaration of her right over the entire Schedule-1 land as the title in respect of 14 Bighas 8 Kathas 9 Chataks land passed on to the defendant No. 1 by virtue of the Exhibit-A. Dr. Singh in support, of his contention relating to the estoppel u/s 115 of the Evidence Act has placed reliance on a decision of the Andhra Pradesh High Court in Allam Gangadhara Rao Vs. Gollapalli Gangarao, , State of Orissa High Court in M.K. Raghavan Vs. The Municipal Council and Another, and State of Madras High Court in D. Damodaran Vs. D. Leelavathi Ammal and Another,

15. Countering the argument of Dr Singh, relating to estoppel, it has been submitted by Mr. Goswami that such a plea having not been taken specifically in the written statement, no issue having been framed and no evidence having led before the trial court and such plea having also not been raised even before the first appellate court, cannot now be allowed to be raised in Second Appeal. It has further been submitted that in any case the ingredients of Section 115 of the Evidence Act having not been proved by the defendant No. 1, the plaintiff cannot be estopped from challenging the sale deed (Ext.A). Mr. Goswami further submits that the sale deed being not required to be attested by any attesting witness under the Transfer of Property Act, even if the plaintiff had attested the document as witness, non-denial of her thumb impression would have no effect at all in the eye of law.

16. The learned Trial Judge decreed the suit of the plaintiff in its entirety declaring her occupancy right in respect of the entire Schedule-1 land measuring 17 Bighas, 4 Kathas, 1 Chatak and canceling the sale deed being Exhibit-A by holding that it is not genuine, on the basis of the Exhibit-4, i.e., the certificate issued by the competent authority under the provisions of the 1886 Act, and consequently, by holding that since Babahan Singh, the son of the plaintiff, expired on 8.1.1979, there is no question of his being present when the document was presented for registration on 9.1.1979 and also there is no question of verifying about its due execution by the Registrar on 9.1.1979, as reflected in the Registrar's note on the back page of the sale deed being Exhibit-A. The learned Lower Appellate Court, however, on the basis of the evidences adduced by the parties has disbelieved the Exhibit-4, death certificate, by taking into account its date of issue being 1.9.1984, i.e., more than five years from the date of alleged death of Babahan Singh, and also Exhibit-G dated 19.10.1984,

i.e., the application filed by the plaintiff before the revenue authority for cancellation of the order of mutation granted in favour of the defendant No. 1, which does not disclose the date of death of Babahan Singh. The learned Lower Appellate Court while doing so took into consideration the evidences adduced by the defendant No. 1 and the fact that plaintiff Tandonbi Devi never disputed her thumb impression in the said sale deed being Exhibit-A. The learned Lower Appellate Court has held that the plaintiff has failed to prove that the Exhibit-A is forged, by adducing any evidence in that regard. The learned First Appellate Court, however, rejected the case of the defendant No. 1 that by virtue of Exhibit-A sale deed the right in respect of 14 Bighas, 8 Kathas 9, Chataks of land out of the Schedule-1 land has been transferred to him. The learned Lower Appellate Court declared the plaintiff's occupancy right over the 50% of the Schedule-1 land on the basis of her right of inheritance and held that the defendant No. 1 has acquired right over the remaining 50% of the land as the defendant No. 1 was found to be in possession and acquired occupancy tenancy right and was an agriculturist. The learned Lower Appellate Court, however, rejected the claim of the defendant No. 1 that the plaintiff Tandonbi Devi cannot inherit the suit property in Schedule-1 as she is an unchaste lady, by holding firstly, that the defendant No. 1 could not prove that she abandoned her husband and married another person and secondly, on the ground that even if she is an unchaste lady, her right of inheritance under the provisions of Indian Succession Act, 1956 cannot be taken away.

17. Section 54 of the Transfer of Property Act, defines "sale" as the transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Such transfer, in case of tangible Immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In case of tangible Immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of property. In the instant case, the land in respect of which Exhibit-A sale deed was executed on 8.1.1979 is valued at more than one hundred rupees. Therefore, to constitute "sale" within the meaning of the Transfer of Property Act, such sale deed is to be registered under the provisions of the 1908 Act, so as to confer title on the purchaser. To constitute a valid sale it is not required under the law to execute the same in presence of the attesting witness. It is also not the requirement of law that to prove the sale any such attesting witness is to be examined, even if some witnesses had attested the document. Therefore, the provisions of Section 68 of the Indian Evidence Act would not be attracted. However, non-denial of the signature and thumb impression of such witnesses to such document would definitely be an important, factor to be taken into consideration in the matter of the question relating to the execution of such document by the vendor. A sale can be proved by proving the signature or thumb impression of the vendor and also the contents thereof. The signature or the thumb impression of the vendor can be proved by a person who knows his

signature or the thumb impression, as the case may be.

18. The plaintiffs case is that the sale deed (Ext.A) is a fraudulent one as there cannot be any registration of such sale deed as claimed to be done on 9.1.1979, on being admitted by the vendor Babahan Singh about his due execution, as noted by the Registrar in his endorsement dated 9.1.1979, as Babahan Singh according to the plaintiff, died on 8.1.1979. The plaintiff in support of his contention has produced the certificate of death issued by the competent authority (Exhibity-4) under the provisions of 1886 Act.

19. The initial burden is, therefore, on the plaintiff (appellant in Second Appeal No. 59/1992) to prove that the said sale deed being Exhibit-A is a forged document as alleged in the plaint. When fraud, misrepresentation or undue influence is alleged by a party in a suit. normally, the burden is on him to prove such fraud, undue influence or misrepresentation. However, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence, the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, and he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide, because a person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the court watches with jealousy all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. The said principle is ingrained in Section 111 of the Indian Evidence Act, 1872, which means - he who bargains in a matter of advantages with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. [Krishna Mohan Kul (supra)].

20. In the instant case, it is not the case of the plaintiff that the defendant No. 1 (the respondent in Second Appeal No. 59/1992 and appellant in Second Appeal No. 69/1992) was in a fiduciary relationship with the plaintiff and he was in a position of active confidence. Therefore, the provision of Section 111 of the Indian Evidence Act is not attracted. The burden lies on the plaintiff to prove the fraud as alleged in the plaint. It is evident from the judgment passed by the learned First Appellate Court that the plaintiff has failed to prove the fraud, inasmuch as the plaintiff has failed to prove the date of death of Babahan Singh being 8.1.1979. The materials available on record including the evidence of the witnesses examined by the parties disclose that the plaintiff never disputed her thumb impression on the sale deed being Exhibit-A. She also in her deposition did not challenge the thumb impression of Babahan Singh in the sale deed (there is no dispute that Babahan Singh and Babahal Singh is one and the same person). What she has stated in her statement that the defendant No. 1 has made a false deed in respect of the suit land and got the khatian issued in his name. The plaintiff has also not taken any steps to get the thumb impression of Babahan Singh in the sale deeds including the thumb impression taken by the

Registrar while registering the said sale deed on 9.1.1979, examined by the handwriting expert so as to prove that those are not the thumb impressions of Babahan Singh, though she admitted that the admitted thumb impressions of Babahan Singh are available on record.

21. The plaintiff heavily relies on the certificate issued by the competent authority under the provisions of 1886 Act (Exhibit-4) to prove fraud and also her case that Babahan Singh cannot put his thumb impression on 9.1.1979, he having expired on 8.1.1979 and, therefore, there is no question of verifying by the Registrar as to the due execution by him. As noticed above, the learned First Appellate Court has refused to rely on such certificate being Exhibit-4 on the ground that though according to the plaintiff, Babahan died on 8.1.1979, the said certificate was obtained on 1.9.1984, i.e., more than five years from the date of the alleged death of Babahan Singh, and also on the ground that she never in the application filed on 19.10.1984 (Exhibit-G), i.e., the application filed before the revenue authority, disclosed the date of death of Babahan Singh.

22. Section 114 of the Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (c) in Section 114 of the Evidence Act provides that the court may presume that the judicial and official acts have been regularly performed. The certificate (Exhibit-4) was undoubtedly issued under the provisions of 1886 Act and, therefore, it has to be presumed that it has been regularly issued as required under the Act. Such presumption, however, is rebuttable presumption. In the instant case, the defendant No. 1 has led oral evidence as to the execution of the sale deed by Babahan Singh on 8.1.1979 and also proved the registration of such sale deed being Exhibit-A. The defendant No. 1 has led specific evidence that Babahan Singh was alive on 8.1.1979 as well as on 9.1.1979. That apart, the said sale deed as required under the law has been registered under the provisions of the 1908 Act.

23. Section 60 of the 1908 Act provides for endorsing a certificate containing the word "registered" together with the number and page of the book in which the document has been copied, when any document is presented for registration under the provisions of the Act. Sub-section (2) of Section 60 provides that such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided by this Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned. Section 59 requires the registering authority to affix the date and his signature to all endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same day. Section 58 lays down the particulars to be endorsed on documents admitted to registration. Therefore, when a document is registered under the provisions of the Registration Act, its

due execution and registration has to be presumed, unless of course is rebutted by the party challenging it by adducing cogent evidence. In the case in hand, the registering authority in the sale deed Exhibit-A has given the certificate and also the endorsement as required under the law. For better appreciation the certificate endorsed by the registering authority on 9.1.1979 on the said sale deed is quoted below:

Having visited the residence of Sri Babahal Singha, son of late Dinomoni Singha at village-Uderbond, P.S. Uderband, Hindu Manipuri, I have this day examined the said Sri Babahal Singha, who has been identified to my satisfaction by Sri Babusena Singha, son of Nandakumar Singh of same place (illegible) and the said Sri Babahal Singha admitted the execution of this document.

24. The thumb impressions of Babahan Singh as well as Babusena Singh (witness) were taken by the registering authority on 9.1.1979. The plaintiff could not rebut the presumption to be drawn about the due execution of the sale deed by adducing any evidence. In view of the aforesaid discussion, coupled with the fact that the Exhibit 4 certificate was obtained on 1.9.1984, i.e., more than five year of the alleged death of Babahan Singh, i.e., 8.1.1979 and also that in the application (Exhibit G) dated 19.10.1984, no mention has been made relating to the date of his death, the story put forwarded by the plaintiff that Babahan Singh died on 8.1.1979, in my considered opinion, has rightly been disbelieved by the learned First Appellate Court by refusing to believe the Exhibit-4, as the defendant could rebut the presumption about the death of Babahan Singh on 8.1.1979. As noticed above, the plaintiff never disputed her thumb impression on the said sale deed (Ext.A). The contention of Mr. Goswami, therefore, in this regard, cannot be accepted.

25. There is no dispute to the proposition of law that mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue [Ramji Dayawala & Sons (supra)]. In the instant case, the plaintiff has not disputed the contents of the Exhibit-A sale deed. The grounds on which the plaintiff has challenged the document is that Babahan Singh having expired on 8.1.1979, there is no question of his being present on 9.1.1979 when the document was registered. The case of the plaintiff in that regard, for the reasons recorded above, has already been rejected. Having not disputed any facts or contents of the document being Exhibit-A, the decision of the Apex Court in Ramji Dayawala & sons (supra) as cited by Mr. Goswami, the learned senior counsel is not applicable in the instant case.

26. Sri Kalamu Singh, the defendant No. 1 (appellant in Second Appeal No. 68/1992) has challenged the judgment and decree passed by the learned First.

Appellate Court, on the ground that by virtue of the sale deed being Exhibit-A, he is entitled to the land measuring 14 Bighas, 8 Kathas, 9 Chataks covered by Exhibit-A. It is the case of the defendant that the plaintiff, Tandonbi Devi, having led an unchaste life is not entitled to inherit the property originally belonging to her husband or the property left behind by her son, born out of her wedlock with Angahan Singh. Such contention of the defendant No. 1, in view of the provisions of the Indian Succession Act, 1956, which is applicable in the instant case, cannot at all be accepted. That apart, the defendant No. 1, as it appears from the impugned judgment and decree passed by the learned First Appellate Court has failed to prove that the plaintiff led an unchaste life, which finding is duly supported by the evidences on record. Whether the plaintiff lead an unchaste life or not is a question of fact, which in fact cannot be disbursed in a second appeal as the second appeal lies only on the substantial questions of law and not even on the questions of law. The learned Counsel appearing on behalf of the defendant No. 1 also could not draw the attention of this Court to any part of the evidence to demonstrate that such finding recorded by the learned First Appellate Court is anyway perverse. In any case, even if the plaintiff led an unchaste life, she cannot be deprived of her right of inheritance under the provision of the Indian Succession Act, 1956. Therefore, plaintiff would inherit the property left behind by her son Dinomoni Singh with Babahan Singh, son of Dinomoni Singh, both being the Class-1 heirs and accordingly, their share would be 50% each on such property. Though Babahan Singh by the Exhibit-A sale deed transferred the land measuring 14 Bighas, 8 Kathas, 9 Chataks, the defendant No. 1 would be entitled to the share of Babahan Singh only being 50% of the Schedule-1 property, as he cannot derive title over more than the share to which Babahan Singh is entitled to. It is also evident from the judgment and decree passed by the learned First Appellate Court as well as the materials available on record that the defendant No. 1 is in possession of the land and he is an agriculturist. As because the defendant No. 1 is a Government servant, it cannot be said that he is not an agriculturist within the meaning of the Assam Temporarily Settled Areas Tenancy Act, 1971, unless of course it is proved that such person is not an "agriculturist within the meaning of Section 3(3) of the said Act. In the instant case, there is no evidence in that regard.

27. The contention of Dr. Singh that as the plaintiff Tandonbi Devi put her thumb impression in the sale deed being Exhibit-A, she is estopped from claiming the right of tenancy over the Schedule-1 land, which includes the land involved in Exhibit A sale deed and also from challenging such sale deed as fraudulent and consequently, the defendant No. 1 shall derive the right in respect of 14 Bighas, 8 Kathas, 9 Chataks of land covered by the sale deed being Exhibit-A she being the witness to the execution of the sale deed by her grand-son Babahan Singh, cannot be accepted, as, such a plea has neither been raised in the written statement, except stating that suit is barred by estoppel, nor any issue has been framed or any evidence was led by the defendant No. 1. Such plea was also not raised before the first appellate court.

28. Section 115 of the Indian Evidence Act, provides that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. It is not the case that the plaintiff Tandonbi Devi by her declaration act or omission intentionally caused or permitted the defendant No. 1 to believe the thing to be true and to act upon such plea. The plaintiff is only the witness to the execution of such sale deed executed by Babahan Singh, her grand-son. Therefore, the provisions of Section 115 of the Indian Evidence Act cannot at all be applied so as to non-suit the plaintiff. The decision cited by Dr. Singh on the question of estoppel being not applicable in the facts of this case and also in view of the aforesaid discussion, are not discussed in this judgment.

29. In the case in hand, it is the finding of fact that the defendant No. 1 is in possession of the land since long and the plaintiff was never in possession. The learned first appellate court has, in view of the aforesaid discussions, rightly decreed the suit by declaring occupancy right of the plaintiff over 50% of the Schedule Land, on the basis of her right of inheritance and that of the defendant No. 1 over the remaining 50%, without specifying the exact portion thereof. No decree for recovery of khas possession has also been passed. In fact no such decree has been prayed for in the suit by the plaintiff. Both the plaintiff and the defendant No. 1 shall, therefore, have joint right in equal shares over the suit property. In that view of the matter, the decision of this Court in Boloram Kumar (supra) is not applicable in the present case, though there is no dispute to the proposition of law laid down therein.

30. In view of the aforesaid discussions, both the appeals are dismissed. However, having regard to the facts and circumstances of the case, the parties are directed to bear their own cost.