

IN THE COURT OF DISTRICT JUDGE, SONBHADRA.

Present:- Rajat Singh Jain, HJS, (ID. No. UP 6519)

Civil Appeal No.- 02 of 2018

CNR No.- UPSB01-000073-2018

1. Anil Kumar Singh, aged about 40 years
2. Rakesh Kumar Singh, aged about 35 years
3. Brijesh Kumar Singh, aged about 30 years

All sons of Late Satya Narayan Singh, R/o Renukoot,
Tehsil Duddhi, District Sonbhadra

... ..Appellants

Versus

1. Hindalco Industries Limited, Renukoot, Sonbhadra through
Senior vice-president (legal) Hindalco Industry Limited, Renukoot,
Sonbhadra.

... ..Respondent

JUDGEMENT

1. Challenge in this first civil appeal is to the order dated 13.12.2017 passed by Civil Judge (Senior Division) Sonbhadra in O.S. No. 143 of 1999 Hindalco Industries Limited Vs. Satya Narayan Singh (died during pendency) Anil Kumar Singh and others

2. For sake of convenience, the parties shall be addressed as per their original status before the learned trial court, i.e., the respondent/plaintiff as the plaintiffs and the deceased defendant/his legal heirs/appellants as the defendant.

3. Brief facts leading to the present appeal are that the plaintiff filed a suit O.S. No. 143 of 1999 Hindalco Industries Limited Vs. Satya Narayan Singh on 30.10.1999 with averments that the plaintiff is a registered company under the Companies Act, 1956. There was a land (Nazul Bhumi) in Pargana and Tehsil Duddhi, situated at eastern and western sides of Robertsganj-Chopan-Pipari metalled road and there was a dense forest on that land and no human dwelling was there. That jungle was occupied by wild animals. The

plaintiff was in search of land for establishing Aluminium factory and therefore, she applied to the Government of Uttar Pradesh and in furtherance of that prayer the Government granted 771 acres forest land situated at eastern and western side of Robertsganj-Chopan-Pipari metalled road under the Government Grants Act, 1895 and consequently conveyance deed was executed in plaintiff's favour on 09.09.1962. The total 771 acres of land is situated in villages Jokahi and Tharpathar, both within Pargana and Tehsil Duddhi, District Sonbhadra. Out of the total land, 526 acres land was towards western side of the Chopan-Pipari metalled road and 245 acres on eastern side of the said road. The plaintiff cleared the forest over the passage of years and erected plant on the land situated at western side and over a passage of time, constructed quarters on the land situated towards eastern side of the road. With the passage of time, the said area was started calling as Renukoot. In 526 acres land there is a playground and other constructions of the plaintiff and there is a 12 feet high pukka boundary wall at eastern side of the playground with a gate therein. The land situated between the said boundary wall and metalled road is also plaintiff's property being part of 526 acres of land. The defendant or any other person does not have any concerned whatsoever with the said land. The said portion of plot is recorded as Arazi no. 158, declared abadi, in village Jokahi (Renukoot), and plaintiff's name is recorded over the said land in revenue records.

4. The plaintiff further averred in the plaint that on 27.10.1999 the defendant started erecting constructions on the vacant land of the plaintiff, more particularly shown with letters A B C D in the map annexed with plaint lying between eastern boundary wall of the playground and metalled road. When security personnel of the plaintiff intervened then the defendant clashed with them. Thereafter, the suit was filed seeking injunction.

5. During pendency of the suit, the plaintiff sought amendment of the plaint which was allowed and as per amended plaint it was averred that the defendant erected certain structure on land shown with letters A B C D in map annexed with the plaint and the said structure be demolished at the expenses of the defendant.

6. The defendant contested the plaint inter-alia on the ground that the contents of the plaint are wrong and in fact the disputed property is not situated on 771 acres of land granted to the plaintiff under the Government Grants Act and there is no demarcation of the property. In fact, the land of the plaintiff is approximately one and half kilometre towards North of the disputed property. He further stated that he erected constructions on Arazi no. 158 situated at village Jokahi on an area of 16 X 18 feet approximately 35-40 years back and when the said constructions were erected as per the need, the width of the metalled road was less. The defendant pays house tax to the local government and in fact plaintiff never objected to the said constructions rather there was acquiescence by the plaintiff and thus, the suit is barred by acquiescence and estoppel. It was further stated that the constructions were not started on 27.10.1999. The defendant mentioned boundaries of the disputed property as bounded in the East by road, in the West by boundary wall of Hindalco industries (plaintiff), in the North by house of Mahendra Pratap and in the South by bookshop of Soni Ji situated in ward No. 14.

7. During pendency of the suit, the defendant died, and his three sons were impleaded as his legal heirs.

8. The defendant (his sons) filed additional written statement 77-Ka denying amended portions of the plaint and reiterated that plaintiff never objected to the said constructions and there was another civil suit O.S. No. 61 of 1999, Mahendra Pratap Singh Vs. Bechan and others in the court of Civil Judge (Junior Division), Duddhi, District Sonbhadra which was meant to usurp the property of the defendant but the plaintiff has deliberately concealed about the said suit. The defendant further stated that in additional written statement 85-Ka that Arazi no. 158 situated at village Jokahi is not part of the land granted to the plaintiff under the Government Grants Act on 09.09.1962.

9. On the basis of pleadings of the parties, the learned trial court framed a total nine issues, those issues and these findings given thereon in the impugned judgement are being mentioned below:

Issue No.1- Whether the plaintiff is owner of the land shown with letters A B C D in map annexed with the plaint?

Finding:- Yes, the plaintiff is owner of the said property.

Issue No.2- Whether the constructions erected on land shown with letters A B C D in the map annexed with plaint are liable to be demolished and plaintiff is entitled to get the possession thereof?

Finding:- Yes, as the constructions were erected during pendency of the suit, the same are liable to be demolished and plaintiff is entitled to get the possession.

Issue No. 3- Whether the suit is barred by Sections 34, 38 and 41 of the Specific Relief Act?

Finding:- No.

Issue No. 4- Whether the suit is time barred?

Finding:- No, the plaintiff's suit is not time barred as defendant refused to erect constructions on 27.10.1999.

Issue No. 5- Whether the suit is under value?

Finding:- No, the valuation is correct.

Issue No. 6- Whether the court fee paid is insufficient?

Finding:- No, proper court fee has been affixed.

Issue No. 7- Whether the suit is not maintainable?

Finding:- No, the suit is maintainable.

Issue No. 9- Whether the disputed property is not part of Arazi no. 158 situated at village Jokahi (Renukoot) Pragana and Tehsil Duddhi, District Sonbhadra as stated in additional written statement 85-Ka?

Finding:- Arazi no. 158 is part of the land granted to the plaintiff under the Government Grants Act and the disputed property is situated in that land.

Issue No. 8- Whether the plaintiff is entitled to any relief?

Finding:- Yes, the plaintiff's suit deserves to be decreed for injunction and removable of constructions erected by the defendant.

10. Consequently, the plaintiff's suit was decreed by impugned judgement and decree dated 13.12.2017, hence the defendant has come in appeal through his legal heirs.

11. Heard learned counsels for the parties and perused the record.

12. On the basis of contentious issues, the following points for determination arise in this appeal.

1. Whether the finding of the learned trial court that the suit property is situated in Arazi no. 158 situated at village Jokahi, that was a part of the land granted to the plaintiff on 09.09.1962 under the Government Grants Act is against law, fact and evidence on record?

2. Whether the finding of the learned trial court the constructions on the suit property were new and not 35-40 years old as stated by the defendant is incorrect?

3. Whether the finding of the learned trial court that there was no acquiescence on the part of the plaintiff in erecting of constructions by the defendant is against the evidence available on record?

4. Whether the finding of the learned trial court that the constructions erected on the suit property are liable to be demolished is incorrect?

5. Whether the defendant/appellant is entitled to any relief? If yes, then what.

13. The contentions raised by the learned counsels for the parties shall be mentioned at appropriate places in discussion and findings on each point for determination in the following paragraphs

14. Point for determination No. 1-

A perusal of record reveals that the original defendant, in his written statement, claimed the disputed property situated in Arazi No. 158 at village Jokahi. However, when the plaintiff amended the plaint to the effect that the said 158 number is part and parcel of the land granted to her on 09.09.1962, then legal heirs of the defendant retracted from the earlier statement and stated in additional W.S. 85-Ka that the suit property is not situated in Arazi 158 or that the said

Arazi number is not part of land granted to the plaintiff on 09.09.1962. A perusal of conveyance deed paper no. 11-Ga reveals that 526 acres land towards western side of the Robertsganj-Pipari metalled PWD road between 14 mile one furlong and 42 mile one furlong milestones covering parts of Jokahi block and Murdhwa compartment 8 and 9, bounded in the North by cart-track from Robertsganj-Pipari metalled road to Tharpathar village and 33 K.V. Pipari-Chopan transmission line, in the East by Robertsganj-Pipari metalled road, in the South by Murdhwa compartment 8 and 6 in in the West by 33 K.V. Pipari-Chopan transmission line and another plot of 245 acres situated on the Eastern side of the Robertsganj-Pipari metalled PWD road between 41 and 42 miles one furlong milestones and covers part of Jokahi block boundary of the land bounded in the North by Robertsganj-Pipari metalled road and Jokahi block, in the East by Mahuanar, in the South by Murdhwa compartment 6 and in the West by Robertsganj-Pipari metalled road, was granted to the plaintiff. From the description of grant, it is apparent that there was no other property in between the Robertsganj-Pipari metalled road and land situated on both sided of the granted land. Thus, if the disputed property is situated within that stretch of land adjacent to road, it is definitely a part of land granted to the plaintiff. Earlier the defendant claimed the disputed property in Arazi no. 158 and later retracted and inter-alia stated that it was constructed within the limit of PWD road. A perusal of extract Khatauni of village Jokahi for Fasali years 1408-1413, Arazi Gata no. 158 is shown as Abadi and in remarks column, it is mentioned that the said land no. 158 and some other Gata numbers were declared Abadi for development of industrial area in favour of M/s Hindalco Aluminum Corporation Limited, Renukoot (earlier name of the plaintiff). It is further stated that some Gata numbers were recorded as Abadi in class-6(2) but the said entry be deleted and name of Hindalco Industries Limited be recorded. Thus, there remains no doubt that Arazi Gata no. 158 village Jokahi is definitely owned by the plaintiff and the same is part of 526 acres of land granted to plaintiff on 09.09.1962.

15. Mahesh Chandra Shukla P.W. 1 has stated that suit property is situated in Arazi no. 158 and the disputed house is constructed in an area of 26X18 feet. He further mentioned that the disputed property is bounded in the East by Chopan-Pipari road, in the West by playground of company, and there is 12 feet high boundary wall between the disputed property and playground, in the South by constructions of Mill no.-4 of Hindalco and in the South by roadways bus-stand situated on land of the plaintiff. He further stated that he could not tell width of Chopan-Pipari road. The gate is installed towards north in boundary wall (of playground). He could not tell the distance between the disputed property and Mill no.-4 but it is nearby but not adjacent. Chopan-Pipari metalled road is not owned by company. It is wrong to suggest that the disputed property is not situated in the land owned by the plaintiff.

16. Anil Kumar Singh examined himself as D.W. 1. He stated that no land was granted to the plaintiff under Government Grants Act is claimed by the plaintiff and in any case the said land is neither demarcated nor identifiable. The land of the plaintiff is about 1.5 kilometres towards north of the disputed property. When his father erected construction, the said property was part of the road and at that time width of the road was less but later on that width was increased and some portion was declared within the road, but plaintiff does not have any concern whatsoever with that land. He further stated that the suit property is situated in Arazi no. 158 and his father erected constructions about 35-40 years back and used to pay house tax to the local body. The plaintiff never objected to the said construction and allowed the same by her acquiescence. It is wrong that the constructions were started on 27.10.1999. He again said that the suit property is not situated in Arazi no. 158. He further claimed that there was another suit O.S. No. 61 of 1999 Mahendra Pratap Singh Vs. Bechan and others but despite being both plaintiff and defendant as parties in that suit, the plaintiff concealed the same.

17. In his cross-examination Anil Kumar Singh D.W. 1 has stated that the disputed property is situated on western side of Varanasi-Shaktinagar road, which was earlier known as Robertsganj-

Chopan-Pipari metalled road. Boundary of the plaintiff is towards western side adjacent to the disputed property and thereafter there is a playground. The distance between boundary of playground and western end of Shaktinagar road is about 22-25 feet and the disputed property is situated in this stretch. He could not understand the conveyance deed filed by the plaintiff on record and he denied about the conveyance deed as advised by his counsel. Land belonging to Government or Gram Sabha is called Nazul land. He knows that the State Government has granted land to Hindalco by conveyance deed under Government Grants Act as told by plaintiff. Village Murdhwa is at a distance of 1.5-2 kilometres towards north of the disputed property. Election of Renukoot Nagar Panchayat was conducted first time after 1995. He knows that the whole land owned by the company was declared as Hindalco Industrial Area and some wards of Nagar Panchayat have been made out of that area. Disputed property is outside township area of company. Quarters of Hindalco are on eastern side of the road or at a distance of 300 metres from the disputed property. His father was employee in Hindalco and he was terminated approximately 40-45 years ago. He could not tell boundaries of ward no. 14 although disputed property is situated in ward no. 14. How his father acquired the disputed property, he could not tell. He could not tell boundaries of Arazi no. 158 and his father's name was never on the said Arazi.

18. It is established law that in civil cases the standard of proof is preponderance of probabilities to prove that the initial burden of proof always lies on the plaintiff to prove its case and when it becomes successful in proving its case, the onus shifts to the other party who claims otherwise. The effect of evidence has to be distinguished from the duty or burden of showing to the court what conclusions it should reach. This duty is called the "Onus probandi", which is placed upon none of the parties. In accordance with appropriate provisions of law applicable to various situations, the total effect of evidence is determined at the end of a proceeding not merely by considering the general duties imposed by sections 101 and 102 of the Evidence Act but also the special or particular ones imposed by

other provisions such as sections 103 and 106 of the Evidence Act. In judging whether a general or a particular or special onus has been discharged, the Court will not only consider the direct effect of the oral and documentary evidence led but also what may be indirectly inferred because certain facts have been proved or not proved though easily capable of proof if they existed at all which raise either a presumption of law or of fact. The result of a trial or proceeding is determined by a weighing of the totality of facts, circumstances and presumptions operating in favour of one party as against those which may tilt the balance in favour of another as held by the Hon'ble Supreme Court in **Narayan Govind Gavate Vs. State Of Maharashtra (1977) 1 SCC 133**.

19. In Standard Chartered Bank Vs. Andhra Bank Financial Services Limited (2006) 6 SCC 94 it has been held by the Hon'ble Supreme Court that rule of burden of proof under section 101 Evidence Act is irrelevant when the parties have actually led their evidence (oral and documentary) and that evidence has to be considered by court. When the entire evidence as before the Court, the burden of proof becomes immaterial, and the court has to come to a decision on a consideration of all materials.

20. In Lakshman v. Venkateswarlu; AIR 1949 PC 278, the Privy Council and in **Raghavamma v. Chenchamma; AIR 1964 SC 136**, the Hon'ble Supreme Court have held that "Burden of proof on the pleadings should not be confused with the burden exclusive evidence, which is described as shifting. Burden of proof on the pleadings never shifts it always remains constraints. The initial burden of proving of a prima facie case in his favour is casted on the plaintiff and when he gives such evidence as will support a prima facie case the onus shifts on the defendants to adduce rebutting evidence. As the case continues to develop the onus may shift again to the plaintiff.

21. Again, in Narayan Bhagvantrao Gosavi Balajiwala v. Gopal Vinayak Gosavi; AIR 1960 SC 100, U.O.I. v. Moksh Builders and Financers; AIR 1977 SC 409 the Hon'ble Supreme Court reiterated that "At the end of the case when both parties have led evidence and the conflicting evidence can be weighed to determine

which way the issue can be decided, the question of burden of proof becomes academic”.

22. Similar are the ratios of judgments in **Kalwac Deodattam v. UOI; AIR 1964 SC 880, Heer Lal v. Badkulal; AIR 1953 SC 225, Prem Lata v. Arhant Kumar Jain; AIR 1973 SC 626, Babban v. Shiv Nath; AIR 1986 All 185** that where evidence has been led by the contesting parties on the questioning issue, abstract considerations of onus are out of place, truth or otherwise of the case must always be adjudged on the evidence led by the parties.

23. In **Commr. Of Trade Tax, U.P. Kajaria v. Ceramics Ltd.; (2005) 11 SCC 149**, and **Anil Rishi v. Gurubaksh Singh; AIR 2006 SC 1971**, it has been held by Hon’ble Supreme Court that “Proof means the matter from which the court either believes the existence of a fact or considers its existence so provable that a prudent man should act upon the supposition that it exists. Onus to prove a fact is on the person who asserts it”.

24. Thus, from the above mentioned citations, it is clear that initial burden of proof never shift but when if a fact is established to prove plaintiff’s case, it is for the defendant to rebut the same by evidence. In the present matter, the defendant has taken several inconsistent pleas in his defence, i.e, 1. Disputed property is situated in Arazi no. 158, 2. Disputed property is not situated at Arazi no. 158, 3. Arazi no. 158 is not part of land granted to the plaintiff on 09.09.1962, 4. Disputed property is within the boundary of Robertsganj-Chopan-Pipari metalled road (now Varanasi-Shaktinagar road), but he is required to prove at least one plea to destroy case of the plaintiff.

25. It is also true that a party can take inconsistent pleas in his defence. He has to choose one plea in the end to prove his case or to destroy plaintiff’s case and that is called doctrine of election.

26. The principle variously known as approbate and reprobate, blowing hot and cold or as the equitable principle of election, was referred to by the Supreme Court in **Nagu Bai v. Shyama Rao (1956) S.C.J. 655**, where it was observed that the maxim that a person cannot approbate and reprobate was only one

application of the doctrine of election and its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto.

27. Thus, the defendant is blowing hot and cold whenever inconsistent pleas are taken at least one is to be proved. There is a difference between blowing “Hot and cold” and blow hot and hotter. In later case it is not necessary to elect only one plea but both pleas can be proved and relied on by a party in his defence or basis of claim.

28. In the present matter, the defendant half-heartedly claimed property is situated in Arazi no. 158 but denied the same later and it is apparent that ultimately he adopted the third plea that the suit property is not part of either land granted to plaintiff on 09.09.1962 or Arazi no. 158 but is part of road.

29. The plaintiff further claimed that when the land was granted to her, there was a dense forest in that area and no human dwelling was there. She established industry and quarters for her employees and also erected various facilities. It also appears that there was some dispute regarding boundaries of the land granted to the plaintiff and the State Government regarding fixation of area of Nagar Panchayat Renukoot. It is obvious that certain Abadi and human dwelling developed around the industry set up by the plaintiff as happens at all the places. It is also clear that when the land was granted to the plaintiff, there was no such human dwelling which was later developed. In Writ Petition No. 21164 of 1989, the boundaries of petitioner’s land were fixed between the parties and thereafter a final map was filed and the said writ petition was dismissed in the light of the said compromise. Thereafter in Civil Misc. Writ Petition No. 13333 of 2006 Hindalco Industries Limited Vs. State of U.P. and others, the Hon’ble Allahabad High Court observed that the area adjacent to Pipari-Chopan road was given two different wards of Nagar Panchayat Renukoot by District Magistrate and State Government whereas most of this area was transferred to the present plaintiff by the State Government as is evident from the agreed map. This area cannot be part of any war of Nagar Panchayat Renukoot and

therefore the order of District Magistrate dated 16.02.2006 and that of the State Government dated 10.03.2006 were set aside.

30. In the present matter, the plaintiff discharged its initial burden of proof that there was indeed a grant of 771 acres of land and as per boundaries of the granted land there was nothing in between Robertsganj-Chopan-Pipari road or the land granted. Meaning thereby where the boundary of the road ends, land of plaintiff starts on both eastern and western sides of the road. Area and extent of plaintiff's land may be in dispute but where specific boundaries are given, the same are to be given preference. In **M/s. Roy and Co versus Smt. Nani Bala Dey : AIR 1979 Calcutta 50**, it has been held that in cases of conflict between area and boundary, description of boundary will prevail. Similarly in **Mata Prasad versus Durga Prasad, 1983 All LJ NOC 51** and **Jagdish Prasad versus Mahendra Pratap, 1997 ALR 41**, the Hon'ble Allahabad High Court has held that if there be any conflict between the area and the boundary, the boundary would prevail. There may be some mis-description of mis-measurement of the area but when for any land in addition to an area, boundary is also given, the boundary being identifiable, there may not be any difficulty to locate the land from the boundary. Thus, this court is of the view that there is no extra land in between plaintiff's land and Robertsganj-Chopan-Pipri metalled road.

31. The defendant has further claimed that suit property lies in ward no. 14 of Nagar Panchayat Renukoot but he failed to prove that how he came into possession of that property. Another pleas is that he erected the constructions 35-40 years back but at that time the plaintiff took no objection and allowed the defendant to raise the constructions and therefore now the plaintiff cannot ask for removal of the constructions so erected. These pleas are again inconsistent with the plea of the defendant that the suit property is situated in land of the road and not of the plaintiff's land. Whatsoever may be the case, when the plaintiff succeeded in proving that certain property towards eastern and western sides of Robertsganj-Chopan-Pipari road was granted to the plaintiff and Arazi no. 158 of village Jokahi is part of that land, it was for the defendant to prove that his house is not situated in the said

land. He has merely stated that constructed the property within the boundaries of the road. But there is no evidence whatsoever to prove that the said property lies within the boundaries of the road. Even Anil Kumar Singh D.W. 1 could not tell anything about the location and origin of the property.

32. In **Smt. Bitola Kuer versus Sri Ram Charan [AIR 1978 Allahbad 555]**, it has been held by Hon'ble Allahabad High Court where a suit was on the basis of title and the plaintiff had succeeded in proving her title, she could be denied the relief of possession only if the defendant succeeded in showing that he was an adverse possession of the property in dispute for more than 12 years. From the mere fact that the plaintiff had failed to prove possession over the house in dispute within 12 years of the date of institution of the suit, it could not be concluded that the defendant was in adverse possession over the house in dispute.

33. In **Zafaruddin @ Zafar Qureshi versus Sushil Singh, 2013 (2) ADJ 634 : 2013 (2) AWC 1152**, it has been held by Hon'ble Allahabad High Court that where the plaintiff filed a suit claiming the suit property as ancestral land and the defendant came with a case that the suit property was self-acquired property of his uncle. The plaintiff discharged his initial burden and the defendant could not prove the suit property as self-acquired property of his uncle. It was held that the burden of proof lost significant when both the parties have led evidence and the burden to prove that the suit property was self acquired property of his uncle was on the defendant and the defendant must fail.

34. The defendant further claimed that he used to pay house tax to Nagar Panchayat Renukoot and for that purpose he has filed paper no. 126-Ka/13. This document is a receipt for payment of house tax for years 1995-96, 1996-97, 1997-98 issued on 21.07.1999. There is neither mention of any boundary or location, but the location of the property is mentioned as ward no. 14 Renukoot, Sonbhadra. This receipt has not been proved by the defendant that it relates to the disputed property or it is a genuine receipt. In any case, payment of house tax does not amount to document of title rather its a physical

document which cannot decide any right or title in favour of the defendant. The Hon'ble Supreme Court in **Balwant Singh and another Vs. Daulat Singh AIR 1997 SC 2719** and in **Smt. Sawarni Vs. Smt. Inder Kaur and others AIR 1996 SC 2823** has held that even mutation of a property in revenue record does not create or extinguish title nor has it any presumptive value and title. The Hon'ble Allahabad High Court in **Mohammad Sabir (Since deceased) Vs. Irshad 2006 (2) ARC 327** has held that it is well established that mutation in municipal record is done for the purpose of realization of municipal taxes and such entries cannot determine title to the property.

35. Similarly, In **Ramji Batanji versus Manohar Chintaman [AIR 1961 Bombay 169]**, it has been held by Hon'ble Bombay High Court that entries in municipal jamabandis cannot prove title. In **Faqrudin (Dead) versus Tajuddin [2009 (106) RD 440]**, wherein it has been held by Hon'ble Supreme Court that a revenue entry in revenue records is not a document of title. In **R. V. E. Venkatachala Gounder versus Arulmigu Viswersaraswami and V. P. Temple [AIR 2003 SC 4548]**, it has been held by Hon'ble Supreme Court that an entry in the Municipal record is not evidence of title. The entry shows the person, who was held liable to pay the rates and taxes to the Municipality. The entry may also depend on the scope of the provisions contemplating such entry, constitute evidence of the person recorded being in possession of the property. Such entries spread over a number of years go to show that the person entered into the records was paying the tax relating to the property and was being acknowledged by the local authority as the person liable to pay the taxes.

36. In the present matter, the defendant has not even produced copy of house tax register to show that certain property is recorded in his name as owner and thus a simple house tax receipt without mentioning the full particulars of the property is of no benefit to the defendant. Nobody from Nagar Panchayat was called to prove that the said receipt is regarding suit property and that property is situated in ward no. 14 and not in plaintiff's property.

37. The defendant has also relied on a report of Revenue Inspector (Lekhpal) forwarded by Tehsildar Duddhi on his application dated 07.11.1995, which is paper no. 126Ga/12 on record. In his application, the defendant asked the Tehsildar to issue a certificate regarding his abadi on which he is in possession since last 35-40 years. On this application, the concerned Lekhpal made a report that the defendant is in possession since last 20 years. This report was merely forwarded by Tehsildar. By any stretch of imagination, this cannot be a certificate of title or even of possession. First of all, no provision has been quoted under which Tehsildar could issue such certificate and secondly, this certificate has not been proved. The Hon'ble Allahabad High Court in **Radhey and another versus Board of Revenue and others : 1990 RD 267**, has held that report of Naib Tehsildar is not a public document under section 74 of the Evidence Act, and thus, is not admissible.

38. Thus, the defendant miserably failed to rebut the evidence produced by the plaintiff to prove that the suit property is indeed part of Arazi no. 158 which forms part of the land granted to the plaintiff on 09.09.1962 under Government Grants Act. He also could not prove that the suit property is situated in land of the road.

39. Thus, point for determination no. 1 is answered in negative against defendant in favour of the plaintiff.

40. **Points for determination no. 2 and 3:-** These two points are interconnected, hence are being decided together. The defendant has not stated any particular date on which he started construction on the disputed property. There is nothing on record to show that his constructions are 35-40 years old prior to filing of suit. On the other hand, there is spot inspection report of Advocate Commissioner paper no. 23 Ga. Spot inspection was done on 30.10.1999. There is categorical mention in this report that a lot of labourers were hired by Anil Kumar Singh son of the defendant for construction work and there was half walls without any roof. The defendant did not object to this report. Hence, it shall be deemed to be admitted to the defendant. Thus, the finding of the learned trial court

that the constructions on the disputed property were not 35-40 years old is correct on the basis of evidence on record.

41. The defendant could not show that when he started construction, the plaintiff did not raise any objection to it and allowed the construction to complete. But it is apparent that when the defendant started raising the construction, the plaintiff filed suit and the defendant completed the construction during pendency of suit and not before that.

Therefore, the points for determination no. 2 and 3 are answered in negative against defendant and in favour of the plaintiff.

42. Point for determination no. 4:- The learned trial court found that the defendant erected the constructions during pendency of the suit and this court concurs this finding on the basis of discussion on points for determination no. 1, 2 and 3. The plaintiff proved her title to the suit property and that the defendant erected the constructions during pendency of the suit, hence, the learned trial court was fully justified in direction demolition of constructions erected by the defendant on property of the plaintiff.

43. Therefore, point for determination no. 4 is also answered in negative against the defendant and in favour of the plaintiff.

44. Point for determination no. 5:- On the basis of discussion and findings on points for determination no. 1 to 4, no illegality in impugned judgment and decree of the learned trial court is found, and therefore, the appellants/legal heirs of the defendant are not entitled to any relief in this appeal. The appeal is without merits and deserves to be dismissed with cost throughout.

ORDER

The appeal is dismissed with costs throughout. Consign as per Rules.

Dated:- 24.03.2021

(Rajat Singh Jain)
District Judge,
Sonbhadra.

Judgement signed, dated and pronounced in open court today.

Dated:- 24.03.2021

(Rajat Singh Jain)
District Judge,
Sonbhadra.