A SHRI PARTAP SINGH (DEAD) THROUGH LRS. & ORS.

v.

SHIV RAM (DEAD) THROUGH LRS.

(Civil Appeal No. 1511 of 2020)

B FEBRUARY 20, 2020

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Himachal Land Revenue Act, 1954: ss. 32(2)(a) , 34 – Record-of-rights and periodical record – Presumption in favour of entries therein – Rebuttal of – Held: Presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed – Reliance cannot be placed on the oral evidence to rebut the statutory presumption as the credibility of oral evidence vis-a-vis documentary evidence is at a much weaker level – Burden of proving relationship of tenancy is on the person who asserts such a relationship as per s. 109 of the Evidence Act – On facts, no relationship of landlord and tenant is mentioned in the revenue record – In the absence of entry in the revenue record, which is also expected to contain the entry of rent and possession, the tenancy cannot be treated to be in existence only on the basis of oral evidence – Burden of proving the relationship was on the defendant – Presumption of truth attached to the revenue record can be rebutted only on the basis of evidence of impeccable integrity and reliability – Defendant failed to rebut the presumption of truth on the basis of reliable, trustworthy and cogent documentary evidence to prove the relationship of a tenant – High Court erred in allowing the defendant's appeal relying upon oral evidence to rebut the statutory presumption of truth attached to the revenue record – Order of the High Court is set aside and the judgment passed by the first appellate court is upheld.

Allowing the appeal, the Court

HELD: 1.1 As per Section 32(2)(a) of the Himachal Land Revenue Act, 1954, record-of-rights, i.e. Jamabandi, shall include the name of persons who are landowners, tenants or assignees of land revenue and also the rent, land revenue, rates, cesses or

other payments due from and to each of those persons and to the Government. On the other hand, the periodical record, i.e. Khasra Girdawari, as mentioned in Section 34 of the Act, is to be prepared every year as the proof of the statements, as mentioned in sub-section (2) clause (a) of Section 32, which includes the name of the landowners, tenants and the rent and land revenue payable. In terms of Section 45 of the 1954 Act, the record-of-rights as prepared in terms of Sections 32 and 34 of the 1954 Act carries a presumption of truth. Still further, any person who is aggrieved by any entry in the record-of-rights or in a periodical record has a right to invoke the jurisdiction of the Civil Court for correction of the entries in terms of Section 46 of the 1954 Act. [Para 15][703-E-F]

1.2 The detailed procedure for recording of periodical record-of-rights as well as the record-of-rights in terms of Sections 32 & 34 of the 1954 Act has been prescribed. The record-of-rights contains entries of the revenue record for the four years. Such record-of-rights carries the presumption of correctness in terms of Section 45 of the 1954 Act and also Section 35 of the Indian Evidence Act, 18721. Section 109 of the Evidence Act further contemplates that whether there exists a relationship of landowner and tenant and the burden of proving such a relationship is on the person who affirms it. [Para 16][703-G-H; 704-A]

1.3 In the State of Himachal Pradesh, Jamabandi, under Section 32 of the 1954 Act as well as Khasra Girdawari, under Section 34 of 1954 Act, both are record-of-rights in terms of Section 32 of the 1954 Act, and have statutory presumption of truth. [Para 17][704-E-F]

1.4 The instant is a case where no relationship of landlord and tenant is mentioned in the revenue record though required in terms of Section 32(2)(a) of 1954 Act. In the absence of entry in the revenue record, which is also expected to contain the entry of rent and possession, the tenancy cannot be treated to be in existence only on the basis of oral evidence of the witnesses examined by the defendant. The burden of proving the relationship was on the defendant. Such burden cannot be said to be rebutted only by oral evidence. The witnesses may lie but the documents

do not, is a golden rule. The presumption of truth attached to the revenue record can be rebutted only on the basis of evidence of impeccable integrity and reliability. The oral evidence can always be adduced contrary to the revenue record but such oral testimony will not be sufficient to hold that the statutory presumption stands rebutted. The presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidence to rebut the statutory presumption as the credibility of oral evidence vis-a-vis documentary evidence is at a much weaker level. [Paras 18, 24][705-D-F; 707-G]

1.5 The High Court erred in law in allowing the defendant's appeal relying upon oral evidence to rebut the statutory presumption of truth attached to the revenue record. The onus of proof was placed on the defendant by the trial court. The burden is on the person who asserts such a relationship as per Section 109 of the Evidence Act. The defendant has failed to rebut the presumption of truth on the basis of reliable, trustworthy and cogent documentary evidence to prove the relationship of a tenant. The order of the High Court is set aside and the judgment and decree passed by the First Appellate Court is affirmed. [Paras 25, 26][708-A-C]

Vishwa Vijai Bharti v. Fakhrul Hasan & Ors. **(1976) 3 SCC 642;** *Bhimappa Channappa Kapali (Dead) by LRS. v. Bhimappa Satyappa Kamagouda (Dead) by LRS.* **and Others (2012) 13 SCC 759;** *Guru Amarjit Singh v. Rattan Chand and Others* **AIR 1994 SC 227 – relied on.**

Harish Chander and Others v. Ghisa Ram and Another **(1981) 1 SCC 431;** *Sodhi Transport Co. and Others v. State of U.P. and Others* **(1986) 2 SCC 486;** *Kumar Exports v. Sharma Carpets* **(2009) 2 SCC 513 – referred to.**

Case Law Reference

(1981) 1 SCC 431	**referred to.**	**Para 17**
(1986) 2 SCC 486	**referred to.**	**Para 21**

(2009) 2 SCC 513	**referred to.**	**Para 22**	A
(1976) 3 SCC 642	**relied on.**	**Para 23**	
AIR 1994 SC 227	**relied on.**	**Para 23**	
(2012) 13 SCC 759	**relied on.**	**Para 23**	

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1511 of 2020.

From the Judgment and Order dated 19.09.2016 of the High Court of Himachal Pradesh at Shimla in RSA No. 258 of 2006.

C Ms. Bina Madhavan, Ms. Sweena Nair, M/s. Lawyer S. Knit & Co, Advs. for the Appellants.

Abhimanyu Jhamba, Ms. Thonpinao Thangal, Ms. Hemlata Ranga, Hatneimawi, Saroj Shaji, Mohit Poswal, Samir Ali Khan, Gagan Gupta, Advs. for the Respondents.

D The Judgment of the Court was delivered by

HEMANT GUPTA, J.

1. The present appeal is directed against an order passed by the High Court of Himachal Pradesh on 19th September 2016 whereby the defendant's second appeal was allowed and the suit for a permanent injunction, mandatory injunction and rendition of accounts was dismissed.

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2. The suit was filed by plaintiff No. 1 claiming himself to be the owner of land measuring 53 Bighas 11 Biswas and plaintiff No. 2 claiming herself to be the owner of land measuring 12 Bighas 16 Biswas. The plaintiff No. 1 claimed to be ex-ruler of an erstwhile princely state of Dhami and that had been getting his property managed through various persons. The assertion of the plaintiffs is that the defendant was appointed as a Manager to look after and manage the property and was liable to render accounts to the plaintiffs after each crop harvest i.e. twice a year. The defendant had been rendering the accounts and used to be paid 10% management charges of the income of properties. The defendant was also required to maintain a register for keeping the account of income and expenditure as well as an inventory of the property of the plaintiffs.

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3. The plaintiffs allege that there was misfeasance by the defendant, therefore, they terminated the agency and asked him to hand

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over the charge of the properties. In view of the said assertion, the suit for a permanent injunction, mandatory injunction and for possession of 8 plots of land measuring 13 Bighas 14 Biswas was filed.

4. In the written statement, the defendant asserted that he is a tenant and that suit is exclusively triable by the Revenue Court. He further stated that he is paying one half Galla batai in respect of land measuring 13 Bighas 2 Biswas for the last 12 years. The relevant assertion made by the defendant reads thus:

> "2. That in view of the submissions made in the subsequent paras of this written statement, it is manifestly clear that this is a dispute between a land owner and a tenant and as such, this Court has got no jurisdiction to try and determine the suit. The suit is exclusively triable by Revenue Court and, therefore, it deserves to be stayed.
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> On Merits
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> The facts which have not been specifically admitted shall be deemed to have been denied by necessary implication in the written statement hereinbelow.
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> 1. Para 1 is admitted to the extent that the Plaintiff is the owner of the land described in this para of the Plaint. However, it may be submitted that the Defendant is a tenant on payment of ½ Galla-batai in respect of land measuring 13 Bighas 2 Biswas Kitas 7 Khewat Khatauni No.1/1 Khasra Nos. 50(6 Biswas), Khasra No. 51 (3 Biswas) Khasra No. 302/52/1 (2 Bighas), Khasra No. 302/52/3 (17 Biswas), Khasra No. 303/52/1 (6 Bighas 17 Biswa), Khasra No. 52(2 Bighas 10 Biswas) and Khasra No. 68 (9 Biswas) situate in Village Kannauri, Pargana Dhamer, Tehsil and District Shimla for the last more than 12 years. The Defendant has nothing to do with the other land described in this para of the Plaint. The entries made in the Jamabandi 1981-82 referred to in this para in respect of the land described in this para of the written statement are not correct and are contrary to the facts on the spot."

5. The learned trial court framed as many as 12 issues but for the purpose of deciding the present appeal, Issue No. 3 is relevant which reads thus:

"Whether there is a relationship of landlord and tenant between the parties as alleged. If so, regarding what property?"

6. The plaintiff appeared as PW-1 and examined some other witnesses. The plaintiffs in evidence produced the revenue record i.e. Jamabandi (Ex.P/1 to Ex.P/4) and Khasra Girdawari (Ex.P/5 to P/12) wherein the property in dispute has been shown to be in the ownership and possession of the plaintiffs.

7. The learned trial court considering the oral evidence led by the defendant returned a finding that the presumption of truth to the revenue record, specially Jamabandi, stands rebutted as the witness of the defendant has deposed that the defendant is in possession on payment of one half Galla batai. The defendant has examined Iqwal Ali (DW-2) and also examined Tulsi Ram(DW-5), in support of the defendant's plea that he is a tenant on payment of one half Galla batai. Iqwal Ali (DW-2) claims himself to be in possession prior to induction of the defendant as tenant whereas Tulsi Ram and Gosaun are said to be the persons who were collecting rent for the plaintiffs. Such witnesses have deposed that they were paying rent on behalf of the defendant. On the basis of the evidence recorded, the learned trial court returned a finding that though plaintiffs have proved themselves to be the owners of the suit land but the land measuring 13 Bighas 2 Biswas was found to be in possession of the defendant as a tenant, thus granted decree for prohibitory injunction except in respect of land found in possession of defendant as tenant.

8. The first appeal against the said judgment was allowed by the learned District Judge on 26th May 1997. However, in the second appeal preferred by the defendant, the High Court remitted the matter to the First Appellate Court to examine the following two questions:

"1. Whether the defendant is in possession of the land measuring 13 Bighas 2 Biswas (detailed above) as a tenant or a trespasser?

2. Whether the plaintiffs are entitled to a decree for possession of the said land?"

9. The learned Additional District Judge after the remand allowed the appeal, *inter alia*, for the reason that the pleading did not show when the tenancy was created and, if so, whom and what were the terms and conditions of the tenancy.

A 10. It may be noticed that the plaintiffs have claimed the defendant to be the Manager of their Estate but there is concurrent finding that plaintiffs have failed to prove that the defendant was their Manager. The defendant has admitted the ownership of the plaintiffs over the suit land but asserted himself to be the tenant. The onus of proof of Issue No. 3 was on the defendant. The ownership of the plaintiffs over the suit land not being in dispute, the onus of proof of relationship of landlord and tenant was rightly placed on the defendant. Therefore, the question required to be examined is as to whether the entries in revenue record such as Jamabandi (Ex.P/1 to P/4) and Khasra Girdawari (Ex.P/5 to P/12) carrying presumption of truth stand rebutted by the oral testimony. Some of the provisions of the Himachal Land Revenue Act, 1954[1] read as under:-

"**32. Record-of-rights and documents included therein.**

(1) Save as otherwise provided by this Chapter, there shall be a record-of-rights for each estate.

(2) The record-of-rights for an estate shall include the following documents, namely:-

(a) Statements showing, so far as may be practicable:

(i) the persons who are land-owners, tenants or assignees of land revenue [in the estate of who] receive any of the rents, profits in the estate, or who are entitled to the produce of the estate, or to occupy land therein;

(ii) the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto; and

(iii) the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the Government;

(b) a statement of customs respecting rights and liabilities in the estate.

(c) a map of the estate; and

(d) such other documents as the Financial Commissioner may, with the previous sanction of the State Government prescribe.

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[1] For short "1954 Act"

Section 34. [Periodical] Record. – (1) The Collector shall cause to be prepared by the patwari of each estate yearly, or at such other intervals as the Financial Commissioner may prescribe, an edition of the record of rights amended in accordance with the provisions of this Chapter.

(2). This edition of the records of rights shall [omitted the Act no. 21 of 1976] comprise the statements mentioned in sub-section (2) clause (a) of Section 32 and as such other documents, if any, as the Financial Commissioner may, with the previous sanction of the State Government prescribe.

(3) For the purpose of the preparation of the annual record, the Collector shall cause to be kept up by the patwari of each estate a register of mutations and such other register as the Financial Commissioner may prescribe.

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Section 45. Presumption in favour of entries in records-of-rights and [periodical] records. - An entry made in a record-of-rights in accordance with the law for the time being in force, or [periodical] record in accordance with the provisions of this Chapter and the rules thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor:

Provided that notwithstanding anything contained in this section any entry made, in the areas comprised in Himachal Pradesh immediately before 1st November, 1966 [during the period between the first day of April, 1948 and the first day of April, 1956] in record-of-rights or in [a periodical] record where by the land is shown as under self cultivation shall not be presumed to be true.

Section 46. - Suit for declaratory decree by persons aggrieved by an entry in a record. -if any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights or in a [periodical] record, he may institute a suit for a declaration of his right under Chapter VI of the Specified Relief Act, 1963."

A 11. The High Court allowed the defendant's appeal and held that there is nothing on record to establish that the defendant was appointed as a Manager and that he was not a tenant. The High Court held as under:

> "19. ……The plaintiffs have not brought on record any
B documentary evidence which demonstrates that the defendant was managing the property of the plaintiffs as Manager and not as a tenant. The plaintiffs have placed on record copies of jamabandi, Ex.P-1 to P-4 and copies of khasra girdawari, Ex.P-5 to P-12, which depict that the suit land is in ownership and
C possession of the plaintiffs. No doubt presumption of truth is attached to the copy of jamabandi, but this presumption is always rebuttable.
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> 28. From the above, it stands fully established on record that the
D plaintiffs used to receive galla batai from the defendant for the land measuring 13.2 bighas and the presumption of truth attached to the revenue entries showing the plaintiff as owner -in-possession of the said land stands rebutted. Even otherwise, also as far as the possession of the defendant qua the suit land is concerned, it
E is admitted by the plaintiff, but the case of plaintiff is that the defendant was his servant. At the same time, as has been observed hereinabove, the plaintiff has failed to bring any document on record with respect to the appointment of the defendant as a servant, salary paid to him and conclusion is that the defendant
F was a tenant of the plaintiff on the land to the extent of 13.2 bighas."

12. The presumption of truth attached to the Jamabandi was said to be rebutted on the basis of a statement of original defendant Shiv Ram (DW 1) who claims to be in possession of the suit land from last 15-16 years. He deposed that prior to him, Iqwal Ali (DW-2) was in
G possession of the suit land. Iqwal Ali (DW-2) deposed that he used to cultivate the land prior to the defendant. Tulsi Ram (DW-5) and Gosaun were stated to be the servants of plaintiff No. 1 and, in that capacity, they used to collect the rent from the defendant for payment to the plaintiff.

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13. The defendant also examined Lalita Chauhan (DW-8), Revenue Officer, who has produced the record of the revenue proceedings relating to correction of the revenue entries. The High Court relied upon the statements recorded in such revenue proceedings to hold that in an inquiry conducted by Kanungo, pursuant to the application moved by the defendant, there was a recommendation for correction of the revenue record.

14. The record produced by Lalita Chauhan (DW-8) for correction of Khasra Girdawari entries is not relevant and admissible before the Civil Court. The proceedings before the Revenue Officer for correction of revenue record are summary in nature. The statements recorded by the Revenue Officer during the proceedings for correction of revenue record are not *per se* admissible in evidence. Maybe the evidence of the witnesses could be used to confront the witness being a previous statement if such a statement is made on oath. Therefore, the reference of corrections of Khasra Girdawari proceedings is wholly unwarranted when such entries are not proved to be incorrect.

15. As per Section 32(2)(a) of the 1954 Act, record-of-rights, i.e. Jamabandi, shall include the name of persons who are landowners, tenants or assignees of land revenue and also the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the Government. On the other hand, the periodical record, i.e. Khasra Girdawari, as mentioned in Section 34 of the 1954 Act, is to be prepared every year as the proof of the statements, as mentioned in sub-section (2) clause (a) of Section 32, which includes the name of the landowners, tenants and the rent and land revenue payable. In terms of Section 45 of the 1954 Act, the record-of-rights as prepared in terms of Sections 32 and 34 of the 1954 Act carries a presumption of truth. Still further, any person who is aggrieved by any entry in the record-of-rights or in a periodical record has a right to invoke the jurisdiction of the Civil Court for correction of the entries in terms of Section 46 of the 1954 Act.

16. The detailed procedure for recording of periodical record-of-rights as well as the record-of-rights in terms of Sections 32 & 34 of the 1954 Act has been prescribed. The record-of-rights contains entries of the revenue record for the four years. Such record-of-rights carries the presumption of correctness in terms of Section 45 of the 1954 Act and also Section 35 of the Indian Evidence Act, 1872[2]. Section 109 of the

[2] For short "the Evidence Act"

A Evidence Act further contemplates that whether there exists a relationship of landowner and tenant and the burden of proving such a relationship is on the person who affirms it. The relevant provisions of the Evidence Act read as under:

> "**35. Relevancy of entry in public record or an electronic record made in performance of duty.**—An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.
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> **109. Burden of Proof as to relationship in the cases of partners, landlord and tenant, principal and agent.-** When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it."

17. In the State of Himachal Pradesh, Jamabandi, under Section 32 of the 1954 Act as well as Khasra Girdawari, under Section 34 of 1954 Act, both are record-of-rights in terms of Section 32 of the 1954 Act, and have statutory presumption of truth. How that presumption can be inferred has come up for consideration before this Court in ***Harish Chander and Others*** v. ***Ghisa Ram and Another***[3].This Court held that the entries in the Jamabandi carry presumption of truth but such presumption is rebuttable. Once that presumption is raised, still another comes to the aid of respondent No. 1 by reason of the rule contained in Section 109 of the Evidence Act, namely, that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship has ceased, is on the party who so asserts. It was held as under:

> "2. ……Apart from the oral evidence there is no material on the record which may indicate the falsity of any of the entries in the

[3] (1981) 1 SCC 431

revenue records and we are of the opinion that the lower courts were fully justified in relying on them.

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6. No suspicion can attach to the entries in the Jamabandi for the year 1959-60, nor have the contents of that document been assailed before us. A presumption of truth attaches to those entries in view of the provisions of Section 44 of the Punjab Land Revenue Act. That presumption is no doubt rebuttable but no attempt has been made to displace it. Further, once that presumption is raised, still another comes to the aid of Respondent 1 by reason of the rule contained in Section 109 of the Indian Evidence Act, namely, that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship has ceased, is on the party who so asserts. It may therefore be legitimately presumed that the plaintiff continued to possess the land as a tenant till the institution of the suit."

18. The present is a case where no relationship of landlord and tenant is mentioned in the revenue record though required in terms of Section 32(2)(a) of 1954 Act. In the absence of entry in the revenue record, which is also expected to contain the entry of rent and possession, the tenancy cannot be treated to be in existence only on the basis of oral evidence of the witnesses examined by the defendant. The burden of proving the relationship was on the defendant. Such burden cannot be said to be rebutted only by oral evidence. The witnesses may lie but the documents do not, is a golden rule. The presumption of truth attached to the revenue record can be rebutted only on the basis of evidence of impeccable integrity and reliability. The oral evidence can always be adduced contrary to the revenue record but such oral testimony will not be sufficient to hold that the statutory presumption stands rebutted.

19. This Court in ***Vishwa Vijai Bharti*** v. ***Fakhrul Hasan & Ors.***[4] held that the entries in the revenue record ought to be generally accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent entries. This Court held as under:

[4] (1976) 3 SCC 642

A "14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry in to their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry is the revenue record states but the entry is open to the attack that it was Made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."

C 20. This Court in a judgment reported as ***Guru Amarjit Singh*** v. ***Rattan Chand and Others***[5] was examining a dispute of relationship of landlord and tenant. A copy of more than thirty years old lease deed was produced to prove the relationship between landowner and tenant. However, the revenue record did not show any payment of rent but only existence of terms of lease to pay rent. This Court held that non-
D production of the receipts of payment of rent clearly indicates that there was no relationship between landlord and tenants.

21. In a judgment reported as ***Sodhi Transport Co. and Others*** v. ***State of U.P. and Others***[6], this Court was considering Section 28-B of the Uttar Pradesh Sales Tax Act, 1948 which raises a presumption of
E sale of goods in a manner prescribed therein. This Court considered Section 4 of the Evidence Act and also the previous judgments and held as under:

"14. A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule
F concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced
G evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human

[5]AIR 1994 SC 227

H [6](1986) 2 SCC 486

knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances."

22. In another judgment reported as ***Kumar Exports*** v. ***Sharma Carpets***[7], this Court examined the presumption of fact in proceedings under Section 138 of the Negotiable Instrument Act, 1881. It was held that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. It was held as under:

"21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Section 118 and 139 of the Act will not again come to the complainant's rescue."

23. The presumption of truth attached to the revenue record can be rebutted if such entry was made fraudulently or surreptitiously (***Vishwa Vijai Bharti's case***) or where such entry has not been made by following the prescribed procedure ***(Bhimappa Channappa Kapali (Dead) by LRS.*** v. ***Bhimappa Satyappa Kamagouda (Dead) by LRS. and Others***[8]**)**. Even in ***Guru Amarjit Singh***, where thirty years old lease deed was produced, this Court had not accepted the proof of the relationship between landowner and tenant in absence of receipt of payment of rent.

24. Therefore, we find that the presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidence to rebut the statutory presumption as the credibility of oral evidence vis-a-vis documentary evidence is at a much weaker level.

[7] (2009) 2 SCC 513
[8] (2012) 13 SCC 759

A 25. In view thereof, we find that the High Court has erred in law in allowing the defendant's appeal relying upon oral evidence to rebut the statutory presumption of truth attached to the revenue record. The onus of proof was placed on the defendant by the learned trial court. The burden is on the person who asserts such a relationship as per Section 109 of the Evidence Act. The defendant has failed to rebut the B presumption of truth on the basis of reliable, trustworthy and cogent documentary evidence to prove the relationship of a tenant.

26. Consequently, the order of the High Court is set aside and the judgment and decree passed by the First Appellate Court is affirmed. The appeal is allowed. C

Nidhi Jain Appeal allowed.