1922.

HIRANANDAN OJHA v. RAMDHAR SINGH.

DAS, J.

It was argued that this case ought not to be governed by the Transfer of Property Act. That may be so; but as the distinction has not been recognized in any of the cases which has been decided in this country, I am not prepared to say that it extended to this country. That distinction rested in England on very technical rules of conveyancing, and it is open to us to take the view that the rule formulated in section 114 of the Transfer of Property Act gave effect to the existing law in the country. The question is not free from difficulty; and I am not prepared to dissent from the view which has been taken by the learned Subordinate Judge. I would dismiss the appeal; but, in the circumstances, without costs.

The cross-objection was not pressed and is dismissed.

ADAMI, J.—I agree.

Appeal dismissed.

LETTERS PATENT.

Before Dawson Miller C. J., and Bucknill, J.

BISHUN PRAGASH NARAIN SINGH

v.

SHEOSARAN TELI.*

1922.

February, 1.

Record-of-Rights—Presumption as to correctness of entry in, rebuttal of—entry contrary to general law—Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 103B.

The presumption attaching to an entry in the Record-of-Rights is not rebutted merely by shewing that the entry is contrary to the general law on the subject with which the entry deals.

Therefore, where the Record-of-Rights contained an entry that the trees belonged to the tenants, *held*, that the mere fact that ordinarily the law gives to the landlord the full right in respect of the timber was not sufficient to rebut the presumption arising from the entry.

* Letters Patent Appeal No. 13 of 1921.

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BISHUN PRAGASH NARAIN SINGH v. SHEOSARAN TELI.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

Sultan Ahmed (with him *H. Prasad*), for the appellant.

Gour Chandra Pal, for the respondents.

DAWSON MILLER, C. J.—In my opinion the decision of the learned Judge now under appeal was right. The plaintiff, the landlord, brought this suit against his tenants for a declaration that the entire timber of the trees upon the disputed holding belonged to him and not to the tenants.

The learned Munsif decided in favour of the tenants

The Additional District Judge before whom the case came on appeal reversed that decision and decided in favour of the landlord.

On appeal to this Court the matter came before a single Judge who came to the conclusion that the District Judge had wrongly placed the onus in the suit What happened was that the record-of-rights was in favour of the tenants and contained an entry to the effect that the trees belonged to the tenants. The Munsif came to the same conclusion and was no doubt influenced by the entry in the record-of-rights. When the matter came before the District Judge he was of opinion that the record-of-rights could not create any presumption against what he called the law of the land which gives to the landlord the full right in respect of the timber, and that in such circumstances the onus was upon the tenants to show some custom or circumstances curtailing that right. In my opinion there can be no doubt that the onus in the first instance in this case, were there nothing else, would be upon the tenants to establish that the trees belonged to them because according to the ordinary law the trees belong to the landlord. When they produced the record-of-rights I think that they discharged the burden of proof

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DAWSON MILLER, C. J.

which was upon them and shifted that burden on to the shoulders of the landlord. Then the question arises whether the landlord has sufficiently discharged the onus thus cast upon him. He contends that he has sufficiently discharged that onus merely by proving that the general law of the land is that he is entitled to the trees. That, however, is not, in my opinion, sufficient in the present case to entitle him to say that he has discharged the burden. It must be presumed that when the Assistant Settlement Officer heard the parties and arrived at the conclusion that the trees belonged to the tenants he had taken into consideration the question of whether there was or was not a custom whereby the right in the trees belonged to the tenants, or whether possibly they acquired that right in some other way as by some agreement, between the landlord and themselves. We do not know, because the evidence is not before us, what the reasons were which induced the Assistant Settlement Officer to form the opinion which he did, but one is entitled to assume that at all events he had good ground for forming that opinion until the contrary is proved, and it does not seem to me that it is sufficient to set aside the presumption arising from the record-of-rights merely to show that in most cases the trees and the right to the trees would belong to the landlord and to deny that there are exceptional cases. It may well be that the Assistant Settlement Officer came to the conclusion that there was a custom proved and if that is so then it seems to me clearly that the onus is upon the landlord to show the contrary and it is not for the tenants again to come here and prove a custom. I think, therefore, that the learned Judge in sending this case back to the Judge of the District Court was perfectly right, because instead of considering whether that entry in the record-of-rights had been rebutted or not the learned District Judge assumed that because by the general law the trees belonged to the landlord, therefore, there was nothing more to be said and that the onus was then upon the tenants to prove that this was

an exceptional case. In my opinion that decision was wrong for the reasons I have already given and the decision of the learned Judge of this Court was right and I think that this appeal should be dismissed with costs.

BUCKNILL, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Adami, J.J.

MAHARAJ KUMAR JAGAT MOHON NATH SAH DEO. 1922.

February, 1.

v.

KALIPADA GHOSH.*

Defamation—legal practitioner, privilege of—civil liability in India, common law rules applicable to.

Statements of legal practitioners made in the course of their professional duty are absolutely privileged even though the statements are maliciously defamatory and irrelevant.

Sullivan v. *Norton*(1), approved.

Munster v. *Lamb*(2), followed.

The rules of the English Common Law apply to questions of civil liability for defamation in India.

Satish Chandra Chakravarti v. *Ram Dayal De*(3), approved.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Das J.

DAS, J.—This was an action by the appellant for recovery of Rs. 1,00,000 as damages from the respondent. The learned District Judge without going into the evidence has dismissed the suit on the ground that the plaint disclosed no cause of action. We must accordingly assume for the purpose of our decision

* Appeal from Original Decree No. 163 of 1919, from an order of C. H. Reid, Esq., Judicial Commissioner of Chota Nagpur, dated the 5th May, 1919.

(1) (1887) I. L. R. 10 Mad. 28 (F. B.) (2) (1882-83) 11 Q. B. D. 588.
(3) (1921) I. L. R. 48 Cal. 388 (F. B.)