

second place, it cannot in the absence of other considerations (which in the ruling cited do not appear to have existed) be said to be even reasonable to prefer the earlier entry, since the presumption is that it would not have been altered by the officer revising the record-of-rights unless for good reason. Such might be either that the position had changed or that the former entry was, in spite of the presumption of correctness attaching to it, proved to his satisfaction to be erroneous.

1926.

ABHIRAM
BEDANTA
v.
CHINTAMANI
BEDANTA.

MAG-
PIERSON, J.

To my mind the statutory presumption of correctness attaching to an entry in the record-of-rights is certainly not rebutted and generally is hardly even weakened by the fact that it is challenged or repudiated wholly or in part by both parties to a litigation. In law that presumption can under the amendment of 1907 only be rebutted by *evidence* that it is incorrect. And the result of experience is that an entry which both parties assail, generally represents with substantial accuracy the actual facts as an unprejudiced observer has found them on the spot.

REVISIONAL CIVIL.

Before Das and Adami, J.J.

KUMAR JOGENDRA NARAIN SINHA

v.

KALI KINKER SINHA.*

1926.

Dec., 1, 23.

Santal Parganas Settlement Regulation, 1872, (Beng. Reg. III of 1872), section 5—civil court, whether can take cognizance of an administration suit—suit for removal of executor, whether is a suit for land—section 5, bar imposed by.

Section 5, Santal Parganas Settlement Regulation, 1872, provides :

“ From the date on which.....the Lieutenant-Governor declaresthat a settlement shall be made of the whole or any part of

* Civil Revision no. 517 of 1926, from an order of Babu M. R. Chaudhuri, Subordinate Judge of Pakur, dated the 31st August, 1926.

1926.	the Santal Parganas, until the date on which such settlement is declared
KUMARto have been completed, no suit shall lie in any civil court
JOGENDRAin regard to.....
NARAIN	(a) any land or any interest in, or arising out of, land, or
SINHA	(b) the rents or profits of any land, or
v.	(c) any village headship or other office connected with any land,
KALI KINKER	in the area covered by such firstmentioned notification;
SINHA.	

Held, that a suit for the removal of an executor and for vesting the estate in a receiver pending the disposal of the suit is not a suit for land, and is not, therefore, barred by section 5.

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

Sir Ali Imam (with him *Manohar Lal* and *Hasan Jan*), for the applicants.

N. C. Sinha, N. C. Ghosh and *N. C. Roy*, for the opposite party.

Cur. adv. vult.

22nd Dec.
1926.

DAS, J.—This application is directed against the order of the learned Subordinate Judge dated the 31st August, 1926, by which he has held that his court has jurisdiction to entertain the suit. I have great objection to the court trying a case piecemeal and I should decline to interfere with the order passed by the learned Subordinate Judge on the ground that the petitioners will have ample opportunity to contest the order hereafter. But it is not necessary for me to throw out the application on this ground as I am of opinion that the order of the learned Subordinate Judge is right and that this application should fail on merits.

The contention of the learned Counsel for the petitioners is that section 5 of Regulation III of 1872 bars the jurisdiction of the civil courts inasmuch as a settlement is proceeding in regard to the disputed lands. If the suit of the plaintiff be considered as a suit for land then obviously the civil court has no jurisdiction. But in my opinion the suit is purely an

administration suit and cannot be considered a suit for land. The learned Counsel draws my attention to the allegations in the 12th, 23rd and 27th paragraphs of the plaint and also to prayer Ka. So far as the 12th paragraph of the plaint is concerned the plaintiff alleges that he has become one of the owners of the properties of the Maheshpur estate under the will of Kumar Indra Narain Singh and he claims that he is entitled to have his rights determined over them. But this allegation is followed by the allegation that

" he has the fullest right to see whether or not the said estate is being properly looked after and managed by the defendants as executors and in case of improper management to take steps to look after and manage them properly so that his own rights may be protected and properly looked after "

These allegations in my opinion do not raise a question of title to the property in dispute. This is an allegation necessary for him to make to enable him to maintain an administration suit. A party having no interest cannot maintain an administration suit and it is necessary for the plaintiff to show that he has sufficient interest in the estate to enable him to maintain a suit against the executors. The will of Indra Narain Singh is part of the plaint and there can be no doubt as to the interest of the plaintiff in the Maheshpur estate. There can be no dispute in regard to his interest in the estate. But there is dispute as to the right of management of the estate. In the 23rd paragraph of the plaint the plaintiff alleges that

" the duty of managing the estate and working under the terms of the will cannot be in the hands of the defendants as executors of the same "

It is settled law that a suit for the removal of the executors and for vesting the estate in a receiver pending the disposal of the suit is not a suit for land. In the 27th paragraph of the plaint the plaintiff states that he has a 4-annas share in the properties in suit. As I have said before this is a necessary allegation to show his interest to maintain an administration suit.

1926.

 KUMAR
 JOGENDRA
 NARAIN
 SINHA

v.

KALI KINKER
 SINHA.

Das, J.

1926.

 KUMAR
 JOGENDRA
 NARAIN
 SINHA
 v.
 KALI KINKER
 SINHA.

Prayer Ka merely asks the Court to determine the rights of the parties; but considering the whole plaint it is quite clear that such determination is required for the purpose of administration. I am satisfied that the suit cannot be regarded as a suit for land and I must dismiss the application with costs.

ADAMI, J.—I agree.

Application dismissed.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, J.J.

UCHHAB JENA

v.

UPENDRA NAIK.*

1926.

 Dec., 14, 15,
 22.

Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), sections 16, 31 and 250 (e)—Occupancy holding, transfer of, not binding on landlord unless consent obtained—Purchaser at private sale, ejection of by fractional co-sharer landlords.

Under the Orissa Tenancy Act, 1913, where an occupancy holding or a portion thereof, situated outside a permanently-settled estate, is transferred by private sale, the transfer is not binding on the landlord, and the transferee is a trespasser, unless the landlord has consented, or is deemed under the statute to have consented to the sale.

Giridhari Naik v. Kashi Tindi, (1) distinguished.

Madhu Radhan v. Jagu Jena (2) and *MacPherson v. Debibhusan Lal* (3) distinguished and declared to be overruled quoad hoc by *Jugeshar Misra v. Nath Koeri* (4).

Such a transferee is liable to be ejected at the instance of some of the co-sharer landlords to the extent of their share

**Circuit Court, Cuttack.*—Appeal from Appellate Decree no. 85 of 1925, from a decision of Babu Jatindra Nath Ghosh, Additional Subordinate Judge of Cuttack, dated the 13th February, 1925, confirming a decision of Babu Ramesh Chandra Mitra, Munsif, 2nd Court of Puri, dated the 21st January, 1924.

(1) (1917) 2 Pat. L. J. 476.

(2) (1919) 4 Pat. L. J. 294.

(3) (1917) 2 Pat. L. J. 580.

(4) (1922) I. L. R. 1 Pat. 817.