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constitutes a contradiction to a statement made by the witness in his deposition at such inquiry or trial. These two circumstances must co-exist before an accused is entitled under the proviso to section 162(1) to such a copy.

Then contradictions vary so greatly in importance that it is advisable for the Magistrate holding an inquiry under Chapter XVIII to indicate when directing under the proviso that a copy of a witness's statement to the police be furnished to the accused, whether the contradictions between that statement and the deposition of the witness are or are not so important as to render it expedient to postpone the cross-examination of the witness under section 208(2). If the defence is informed forthwith that the contradictions, if any, are not material, the mere grant of a copy of the statement of the witness to the police will not be any ground for failure on the part of the accused to avail himself forthwith of the liberty to cross-examine the witness then accorded to him.

Commitment quashed.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

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Dec., 21.

ABHIRAM BEDANTA

v.

CHINTAMANI BEDANTA.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *section* 103B—*Orissa Tenancy Act*, 1913 (*Bihar and Orissa Act II of* 1913), *section* 117—*Proviso—Record-of-Rights—Presumption as to accuracy, whether rebutted by previous Record or by repudiation by parties.*

In the Provincial Settlement plaintiff was recorded in respect of .143 acres of land including an area of .010. In

* *Circuit Court, Cuttack.* Appeal from Appellate Decree no. 39 of 1925, from a decision of Babu Jatindra Nath Ghosh, Additional Subordinate Judge of Cuttack, dated the 7th March, 1925, confirming a decision of Babu Gopal Chandra De, Munsif of Kendrapara, dated the 19th March, 1924.

the Revisional Settlement the defendant was entered in respect of this latter area and plaintiff sued for a declaration of his title and for recovery of possession.

Both settlements were made under the Bengal Tenancy Act, 1885, section 103B of which gives a statutory presumption of correctness to the entries in a Record-of-Rights. *Held*, that where there are two Record-of-Rights prepared at different times, entries in both of them will be presumed to be correct entries of facts existing at the time the entries were made, and that there is nothing in law which entitles a party to say that the entry in the subsequent record is rebutted by the entry in the previous record.

Raghunath Misra v. *Ram Behera* (1), distinguised.

The statutory presumption attaching to an entry in a Record-of-Rights is not rebutted by the mere fact that both parties to a litigation challenge its accuracy.

Murali Dhar Aditya v. *Thakur Das Mondal* (2), followed.

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

J. N. Bose and *Suba Rao*, for the appellant.

B. N. Das and *L. Mahanti*, for the respondents.

KULWANT SAHAY, J.—The dispute in this case relates to .010 acres of land recorded in the Revisional Survey in plot 96/709. In the Provincial Settlement the plaintiff was recorded in respect of .143 acres of land including the land in dispute in plot no. 96. His case is that the entry in the Revisional Settlement as regards .010 acres of land in the name of the defendant in plot 96/709 was wrong and the suit was instituted for declaration of the plaintiff's title and recovery of possession. Both the Courts below have held that the plaintiff had failed to prove his title and possession within twelve years.

In second appeal it has been contended that the presumption of correctness attached to the entry in the

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Provincial Settlement is not rebutted by the entry in the Revisional Settlement inasmuch as the Settlements in the present case were made under the provisions of the Bengal Tenancy Act and there is, in the Bengal Tenancy Act, no provision similar to the provision contained in section 117 of the Orissa Tenancy Act. The proviso to section 117 of the Orissa Tenancy Act provides that

> "If any entry in a record-of-rights is altered in a subsequent record-of-rights, the latter entry shall be presumed to be correct until it is proved by evidence to be incorrect, but the previous entry shall be admissible as evidence of facts existing at the time such entry was made."

It is true that there is no such specific provision in the Bengal Tenancy Act, but this provision in the Orissa Tenancy Act does not in any way affect the provisions contained in the Bengal Tenancy Act. Section 103B of the Bengal Tenancy Act gives a statutory presumption of correctness to the entries in the record-of-rights. When there are two records-of-rights prepared at different times, entries in both of them will be presumed to be correct entries of facts existing at the time the entries were made. There is nothing in the law which would entitle a party to say that the entry in the subsequent record is rebutted by the entry in the previous record. Reliance has been placed upon a decision of this Court in *Raghunath Misra* v. *Ram Behera* (1). It is not clear as to whether their Lordships were considering the provisions of the Bengal Tenancy Act or of the Orissa Tenancy Act. Reference has been made to section 103B of the Bengal Tenancy Act and it has been held that where the plaintiffs were recorded as rafa tankidars in the Provincial Settlement records and as tankidars in the records of the Revisional Settlement, the entry in the Provincial Settlement records was sufficient to rebut the presumption arising from the entry in the records of the Revisional Settlement inasmuch as there was no procedure by which the status of the plaintiff could have

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been changed from that of a rafa tankidar to that of a tankidar in the interval between the two settlements.

This decision, however, does not affect the question now before us. There is no question as regards an alteration of status between the time of the entry in the Provincial Settlement and that in the Revisional Settlement. The question is as to who was in occupation or in possession of the land as tenant at the time of the Provincial Settlement and at the time of the Revisional Settlement. There was no question of status involved in the case and therefore the only question is as regards possession and I, therefore, hold that the entry in the Revisional Settlement record cannot be considered to have been rebutted by the entry in the Provincial Settlement record.

The next point argued is that as both parties challenge the correctness of the entry in the Revisional Settlement the presumption of correctness is rebutted. As regards the defendant, what he alleged was that there were certain trees standing on plot 96/709 which was entered in his name, but those trees were not shown in the Revisional Settlement. From this it is argued that the defendant does not admit the correctness of the entry in the Revisional Settlement. The presumption raised by the entry in the record-of-rights is a statutory presumption and the fact that both parties alleged that the entry was incorrect in certain respects, will not take away the statutory presumption attached to it. In *Murali Dhar Aditya* v *Thakur Das Mondal* (1) an observation was made by the learned Judges of the Calcutta High Court to the effect that where both the plaintiff and the defendant in a suit repudiate an entry in the record-of-rights, the presumption arising from the record-of-rights may be held to have been rebutted. This would depend on the circumstances of each case and no hard and fast rule can be laid down. The presumption attached to the

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entry under the law must stand and the question as to whether the presumption had been rebutted by evidence adduced in the case must depend upon facts and circumstances in each case. We have, moreover, got the finding in the judgment of the learned Subordinate Judge to the effect that the entry in the Revisional Settlement was made on the admission of the plaintiff. There is also a finding upon the evidence that the plaintiff had failed to prove possession within twelve years of suit. On these findings this second appeal must be dismissed with costs.

MACPHERSON, J.—I agree. The findings of the first Court were that on all the evidence oral and documentary the plaintiff had failed to rebut the presumption attaching to the entry in the Revisional record-of-rights in favour of the defendant, which indeed had been made with the assent of the plaintiff and that the plaintiff had not been in possession within twelve years of the institution of the suit. These findings were affirmed on appeal. On each of these findings the suit must fail. As regards the plea advanced before us that the entry in the Revisional record-of-rights is rebutted by the entry in the Provincial record-of-rights, the position is that the former was by no means the only item of the evidence in favour of the defendant on which the Courts had to determine the facts and the appreciation of the facts by the lower appellate Court on materials proper for its consideration is binding in second appeal. But even if there had been nothing more before it than the two competing entries in the Provincial and Revisional records-of-rights with a presumption attaching to each of correctness at the date at which it was finally published, it cannot be said as a matter of law that the earlier entry is to be preferred to the later entry. The decision in *Raghunath Misra* v. *Ram Behera* (1) appears to me, with all respect, not to be correct. In the first place, the question is not one of law and in the

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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.

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.

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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 declares .....that 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.