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The costs in this Court and the court below, so far as the point in issue in the appeal is concerned, will follow the result.

Let the papers be sent down forthwith and the hearing be expedited.

AGARWALA, J.—I agree.

Appeal allowed.

Case remanded.

APPELLATE CIVIL.

Before Macpherson and Agarwala, JJ.

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July, 14, 17, 18, 19, 20, 24, 25.
August, 9.

SATYA CHARAN SREEMANI

v.

SHIB CHARAN TRIGUNAIT.*

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), sections 80 and 84(3)—presumption of correctness, whether attaches to an entry in the record-of-rights with respect to non-agricultural lands—evidence of rebuttal, sufficiency of—incorrectness of entry, whether can be established by reference to the state of things existing before final publication.

Section 80 of the Chota Nagpur Tenancy Act, 1908, provides :

"(1) The Local Government may make an order directing that a survey be made and a record-of-rights be prepared by a Revenue officer, in respect of the lands in any local area, estate, or tenure or part thereof.

(2) A notification in the *Calcutta Gazette* of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record-of-rights shall be prepared in the prescribed manner."

Held, that unless the notification expressly excludes non-agricultural lands there is nothing in the section to indicate

* Appeal from Original Decree no. 105 of 1930, from a decision of Babu Gajadhar Prasad, Subordinate Judge of Dhanbad, dated the 16th of August, 1929.

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that such lands, situated in the area or estate to be surveyed, are to be excluded, and, therefore, that the presumption of correctness attaches to an entry in the record-of-rights with respect to non-agricultural lands under section 84(3) of the Act.

Raja Sasi Kanta Acharjya Bahadur v. *Sandhya Moni Dasya*(1), *Chand Mia Munshi* v. *Tukamia*(2), *Rai Brindaban Prasad* v. *Captain Maharaj Kumar Gopal Saran Narayan Singh*(3) and *Iswar Chandra* v. *Jogendra*(4), followed.

Raniganj Coal Association, Limited v. *Judoonath Ghose*(5), *E. J. Rooke* v. *Bengal Coal Company, Limited*(6), *Bhola Nath Das* v. *Raja Durga Prasad Singh*(7) and *Bipradas Pal Chowdhry* v. *Azam Ostagar*(8), distinguished.

Under the statute the duty of a court of law is plainly to presume an entry in the record-of-rights to be correct until it is proved *by evidence* to be incorrect. The statute requires that the evidence relied on to rebut the presumption must show definitely that the entry is incorrect, and evidence which merely suggests a doubt as to the correctness of the entry, or evidence about which it is arguable that some other person might have reached a conclusion different from that of the settlement officer, is not sufficient to rebut the presumption of correctness attaching to an entry in the record-of-rights.

Rai Kiran Chandra Roy Bahadur v. *Srinath Chakarvarti*(9) and *Bogha Mower* v. *Ram Lakhan Misser*(10), referred to.

The incorrectness of an entry in the record-of-rights may be established by reference to the state of things existing before the record-of-rights was prepared.

Rama Nath Saut v. *Official Trustee of Bengal*(11), *Adu Mandal* v. *Hira Lal Mistry*(12) and *Chand Ray* v. *Bhagwati Charan Goswami* (13), followed.

(1) (1921) 26 Cal. W. N. 483.
(2) (1923) 28 Cal. W. N. 516.
(3) (1927) 104 Ind. Cas. 514.
(4) (1926) 98 Ind. Cas. 137.
(5) (1892) I. L. R. 19 Cal. 489.
(6) (1901) I. L. R. 28 Cal. 485.
(7) (1908) 12 Cal. W. N. 724.
(8) (1918) I. L. R. 46 Cal. 441.
(9) (1926) 31 Cal. W. N. 135.
(10) (1917) 27 Cal. L. J. 107.
(11) (1925) 29 Cal. W. N. 517.
(12) (1928) 33 Cal. W. N. 196.
(13) (1923) I. L. R. 2 Pat. 814.

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Appeal by the plaintiffs.

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

A. B. Mukherji and *U. N. Banerji*, for the appellants.

Khurshaid Husnain (with him *N. N. Roy* and *Gunendra Nath Roy*), for the respondents.

AGARWALA, J.—The dispute in this suit relates to five small parcels of land situate in mauza Angarpathra in the Manbhum district of Chota Nagpur which belongs to certain persons who may conveniently be called the Trigunaits and who hereinafter will be referred to as the lessors.

In 1894 the lessors granted a mining lease of 100 bighas of land to Jogendra Sreemani and, a few days later, a similar lease of 101 bighas lying east of Sreemani's grant to Nagendra Mitra. In each instance the demised land was divided into two blocks by the railway line which runs through the mauza from west to east. The plaintiff-appellants no. 2, the National Coal Company, are the present sub-lessees of the land leased to Sreemani while the defendant-respondents, who are also Trigunaits and own a one-third share of the proprietary interest, have acquired the leasehold interests of Nagendra Mitra.

On the 8th of January, 1925, the record-of-rights in respect of Angrapathra was finally published. Plots 306, 357 and 358, which plaintiffs allege fall within the boundaries of their grant south of the railway line, were recorded on the basis of possession in the gair-mazrua malik khatian of the defendants-respondents' tenure, and plots 341 and 342, which they allege fall within their grant north of the line were recorded as appertaining to plaintiffs' leasehold but in the possession of the defendants as subordinate tenure-holders to the plaintiffs and as holding "*belagan, kabil lagan*".

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The present suit was instituted on the 2nd of March, 1928, by Satya Charan Sreemani, son of Jogendra Sreemani, and the National Coal Company. Plaintiffs prayed for a declaration of their title to the disputed plots and for recovery of possession and for a declaration that the eastern and southern boundaries of their grants are as shewn in a map prepared by a commissioner appointed for the purpose in Title Suit no. 132 of 1910. The learned Subordinate Judge found that there were no materials before him from which the boundaries between the plaintiffs' and defendants' leasehold lands could be ascertained; that the plaintiffs had never been in possession of the plots in dispute; and that the defendants' title to these plots must be presumed from the fact that they were, and had always been, in possession of them. He therefore dismissed the suit and the plaintiffs have preferred this appeal.

The first contention of the appellants is that in so far as their title to the disputed plots has been recorded in the record-of-rights, the onus of displacing the presumption of correctness attaching to the entry by reason of section 84(*3*) of the Chota Nagpur Tenancy Act, 1908, lies on the respondents. In reply to this contention it was argued on behalf of the respondents that the land in dispute being non-agricultural land the preparation of the record-of-rights was ultra vires the survey authorities and that consequently, no presumption of correctness attaches to the entries in it. In support of the first part of this proposition reference was made to the decisions in *Raniganj Coal Association, Limited* v. *Judoonath Ghose*(1), *E. J. Rooke* v. *Bengal Coal Company, Limited*(2) and *Bhola Nath Das* v. *Raja Durga Prasad Singh*(3). The first of these cases was a suit for recovery of rent and one of the questions which arose was whether it was governed by the general law of

(1) (1892) I. L. R. 19 Cal. 489.
(2) (1901) I. L. R. 28 Cal. 485.
(3) (1908) 12 Cal. W. N. 724.

limitation contained in Article 116 of the Limitation Act, 1908, or by Article 2 of Schedule III of the Bengal Tenancy Act, 1885. The question whether Chapter X of the Bengal Tenancy Act relating to the preparation of the record-of-rights applied did not arise. *E. J. Rooke* v. *Bengal Coal Company*(1) was also a suit to recover rent and the only question agitated was whether the suit was entertainable by the Revenue Court or whether it should have been instituted in the ordinary Civil Court.

In the third case, *Bhola Nath Das* v. *Raja Durga Prasad Singh*(2), the lessor sued for recovery of royalty due under a mining lease and on the question of limitation the court relied on the decision in *Raniganj Coal Association, Limited* v. *Judoonath Ghose*(3). None of these cases assist in the solution of the question now under consideration.

Reference was also made to *Bipradas Pal Chowdhry* v. *Azam Ostagar*(4), *Raja Sasi Kanta Acharjya Bahadur* v. *Sandhya Moni Dasya*(5), *Chand Mia Munshi* v. *Tukamia*(6) and *Rai Brindaban Prasad* v. *Captain Maharaj Kumar Gopal Saran Narayan Singh*(7). In the case of *Bipradas Pal Chowdhry* v. *Azam Ostagar*(4) it was held that section 105 of the Bengal Tenancy Act does not apply to non-agricultural land situated in a mufassal municipality, i.e., that with regard to such land an application for settlement of rents is not entertainable by a Revenue officer in cases where a settlement of land revenue is not being made or is not about to be made. The decision is not an authority for the proposition that the Chota Nagpur Tenancy Act excludes non-agricultural land from survey operations. Furthermore, in that case a record-

(1) (1901) I. L. R. 28 Cal. 485.
(2) (1908) 12 Cal. W. N. 724.
(3) (1892) I. L. R. 19 Cal. 489.
(4) (1918) I. L. R. 46 Cal. 441.
(5) (1921) 26 Cal. W. N. 483.
(6) (1923) 28 Cal. W. N. 516.
(7) (1927) 104 Ind. Cas. 514.

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of-rights had been prepared under section 103 of the Bengal Tenancy Act and there is nothing in the report of the appeal to indicate that it was held, or even contended, that the preparation of the record was ultra vires.

In the case of *Raja Sasi Kanta Acharjya Bahadur* v. *Sandhya Moni Dasya*(1) it was contended that no presumption of correctness attached to an entry in the record-of-rights that certain lands were chandinia or bazar land, the argument being that such land is not subject to the Bengal Tenancy Act. It was found as a fact that the land was agricultural land. Furthermore, it was held that the presumption of correctness attaching to the record-of-rights did arise although their Lordships expressed an opinion that the force of the presumption in the case of bazar lands is not as great as in the case of " matters which are rightly and properly included in the record-of-rights ". A similar view was taken in the case of *Chand Mia Munshi* v. *Tukamia*(2). These two cases were cited with approval in the case *Rai Brindaban Prasad* v. *Captain Maharaj Kumar Gopal Saran Narayan Singh*(3). These cases, so far from supporting the respondents' contention, are cases in which the presumption as to the correctness of an entry in the record-of-rights was treated as arising even with regard to non-agricultural lands. The weight to be attached to a rebuttable presumption necessarily depends on the circumstances of each case. The cases cited, therefore, cannot be taken to be authorities for the proposition that an entry in the record-of-rights, with respect to non-agricultural lands, is, in law, entitled to less weight than a similar entry with respect to agricultural lands.

Section 80 of the Chota Nagpur Tenancy Act, 1908, authorizes the Local Government to direct the preparation of a record-of-rights " in respect of *the*

(1) (1921) 26 Cal. W. N. 483.
(2) (1928) 28 Cal. W. N. 516.
(3) (1927) 104 Ind. Cas. 514.

lands" (not necessarily the agricultural lands) "in any local area, estate, or tenure or part thereof ". Unless the notification expressly excludes non-agricultural lands there is nothing in this provision to indicate that such lands, situated in the area or estate to be surveyed, are to be excluded. Indeed in *Iswar Chandra* v. *Jogendra*(1) it was held that in the absence of a notification of exclusion under section 101, sub-section (*1*) of the Bengal Tenancy Act, the mere fact that land is non-agricultural, as for example, homestead land situated within a municipality, is not sufficient to exclude it from the operation of Chapter X relating to the preparation of the record-of-rights.

Among the particulars which the Revenue Officer may be directed to record under the Chota Nagpur Tenancy Act are—

Section 81(*a*)—the name of each tenant or occupant;

(*c*)—the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier.

Section 84(*3*) requires that

" every entry in a record-of-rights which has been finally published shall be evidence of the matter referred to in such entry and *shall* be presumed to be correct until it is proved, *by evidence*, to be incorrect."

It is not suggested that non-agricultural land was expressly excluded from the survey of Manbhum. The principles followed in the preparation of the record-of-rights of land in the occupation of mine-owners are stated thus in Mr. Gokhale's Final Report of the Survey and Settlement Operations of the District of Manbhum, 1918—25 :—

"(*a*) Where a mine-owner had also taken a lease of the surface, he was automatically given a khewat and

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treated as any ordinary tenure-holder. The uncultivated land on which the colliery actually stood was recorded in the *anabad khatian*.

(*b*) Where the mine-owner had merely obtained permission to occupy a part of the surface for purposes of working the mine or had acquired waste land for mining purposes only, the lands in actual possession of the mine-owner were recorded in a separate khatian. No rent was attested and in the column for status the words ' colliery company ' were written.

(*c*) Where the land occupied by a mine-owner was not demarcated on the ground and its boundary could not be definitely ascertained, the buildings and other details were surveyed and linked up with the surrounding waste land on the map and the name of the mine-owner or colliery company shown against the plot in the *ashiae mashhur* or list of notable objects but no khewat or khatian was prepared. Such cases were very few."

The plaintiffs' right to the surface of the land covered by their grant was established in a previous suit with the lessor (*see* Exhibit 18, the judgment of the High Court).

The next contention of the learned Advocate for the respondents was that, even though the entries must be presumed to be correct until proved to be incorrect, their incorrectness may be established by reference to the state of things existing before the record-of-rights was prepared. In this connection reference was made to *Rama Nath Saut* v. *Official Trustee of Bengal*(1), *Adu Mandal* v. *Hira Lal Mistry*(2) and *Chand Ray* v. *Bhagwati Charan Goswami*(3). In the first of these cases it was held that the presumption under section 103-B of the Bengal Tenancy Act, 1885, may be

(1) (1923) 29 Cal. W. N. 517.
(2) (1928) 33 Cal. W. N. 196.
(3) (1923) I. L. R. 2 Pat. 814.

rebutted by evidence external to the settlement proceedings or evidence of matters apparent on the face of those proceedings, and, in the second case, that an entry in settlement records may be shown to be wrong by reference to the proceedings that had been taken by the revenue authorities. Similarly, in the Patna case, the proceedings which led up to the finally published record-of-rights were held to be admissible for the purpose of rebutting the presumption. The view is now well-established by authority and is not challenged though caution is required in its application to particular cases.

The next stage in the contention on behalf of the respondents was that, when evidence has been adduced by both sides, the presumption is rebutted if the evidence in support of the entry is unreliable. In *Rai Kiran Chandra Roy Bahadur* v. *Srinath Chakravarti*(1), which was cited for the respondents, it was held that when the correctness of an entry is investigated in the civil courts, and the parties adduce evidence on the point in controversy, the entry loses its weight when the evidence discloses *no foundation* for it. In the next case cited on this point, *Bogha Mower* v. *Ram Lakhan Misser*(2) it was held that the fact that the *only evidence* on which the settlement officer based the entry does not support his conclusions is the strongest possible proof that the entry is incorrect. These authorities cannot usefully be applied to the facts of any case unless all the materials on which the settlement officer based his conclusions are known. Under the statute the duty of a court of law is, plainly, to presume an entry in the record-of-rights to be correct until it is proved, by evidence, to be incorrect. The statute requires that the evidence relied on to rebut the presumption must show definitely that the entry is incorrect and, in my opinion, evidence which merely suggests a doubt as to the correctness of the entry, or evidence about which it is arguable that

(1) (1926) 31 Cal. W. N. 135.
(2) (1917) 27 Cal. L. J. 107.

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some other person might have reached a conclusion different from that of the settlement officer, is not sufficient to rebut the presumption of correctness attaching to an entry in the record-of-rights.

The points in dispute between the parties in the present appeal depend upon the correct ascertainment of the boundaries of the plaintiffs' lease on the east and south-east of the land demised.

* * * *

* * * *

The learned court below, on an examination of the evidence afforded by the maps already referred to, came to the conclusion that they were of no assistance in ascertaining correctly the boundary-line between the lands of the contesting parties. With that conclusion I am unable to agree for the reasons already stated. The survey map agrees with the appellants' previous maps in respect of the boundary between the two leases of 1894, in regard to plot 345 in which are included 306 and 358. In this respect the survey record is in support of appellants' contention.

With regard to the question of possession, it is admitted by the plaintiffs that the defendants are in possession of the three disputed plots south of the Railway line, namely, plots 306, 357 and 358. The plaintiffs allege that they were dispossessed from these three plots in 1916 and subsequently. Ashutosh Datta, a defence witness and one of the defendants' servants, stated that the hut on plot 306 was constructed in December, 1916. Satya Charan Sreemani (plaintiff no. 1) deposed that the hut was constructed in 1918 and the magazine on plot 358 in 1916. The only serious criticism of the latter's evidence on this point is that in the suit of 1920 there was no claim in respect of plots 306 and 358. The reason he gives for this is that at that time he was not certain whether he was entitled to the surface rights or not. The surface

rights formed the subject-matter of litigation between the plaintiffs on the one side and the lessors, the receiver of their estate and one Gaeriballabh Bose on the other side. Eventually the High Court in appeal decided that the surface rights in the land covered by their title deed belonged to the plaintiffs. The judgment of the High Court is Exhibit 18. The defendants have not offered themselves for cross-examination, and in view of the admission in the evidence that the hut was not erected until 1916, I see no reason to disbelieve the evidence of the Plaintiff no. 1 and I hold that he was dispossessed from plots nos. 306 and 358 not earlier than December of that year. The suit was instituted on the 2nd of March. 1928, and is therefore within time so far as these plots are concerned.

Like sub-plots 306 and 358, sub-plot no. 357 lies within plot 345 and it has been found to fall within the leasehold land of the plaintiffs. On the eastern side of plot 357 and contiguous to it, in defendants' plot 305, the latter have opened a quarry. In the suit of 1920 the plaintiffs alleged that the defendants had extended this quarry into plot no. 357 and had thus dispossessed them in that year. Satya Charan Sreemani denied in his evidence that the defendants had been in possession of this plot prior to 1920. D. W. 3, Purna Chandra Hazra, on the other hand, states that the quarry had been worked by Nagendra, the original lessee of the defendants' land. In this he is corroborated by Girish Chandra Chandra (D. W. 4) and P. C. Hazra (D. W. 3). The earliest date to which the magazine on plot 358 can be referred is December, 1916. Satya Charan Sreemani admitted that the magazine on plot 358 was constructed in December, 1916, by the defendants. The probability is that this was required in connection with the quarrying operations and would therefore suggest that the defendants were already engaged in quarrying near the place where the magazine was erected. The

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plaintiffs withdrew the suit of 1920 with permission to institute a fresh suit. No fresh suit has been instituted. The evidence in the case, in my opinion, is insufficient to hold that the plaintiffs have been in possession of plot no. 357 within twelve years of the present suit.

The other two plots in dispute, nos. 341 and 342, are north of the Railway line and have been recorded as being in the possession of the defendants. The Revenue Officer noted in Exhibit 22, the decision of the objections under section 83 of the Chota Nagpur Tenancy Act, that the defendants had been realizing tolls for carts passing over these plots since 1917 or 1918. In paragraph 23 of the plaint it was alleged that the plaintiffs had extracted coal from these two plots and that they ran a tramway line and carted coal over them. These allegations were not specifically denied in the written statement, although in paragraph 20 it was denied that the plaintiffs had any right or concern with any of the disputed plots. The evidence in support of the defendants having levied a toll from carts passing over the land consists of the statements of D. Ws. 4 and 5. The former, Girish Chandra Chandra, deposed that he owned a plot of land east of Nagen's land on the north of the Railway line and that he paid commission to the defendants for carts loaded with coal passing over their land. He also stated that the plaintiffs' tram line is the boundary between the lands of the plaintiffs and defendants. D. W. 5 is the defendants' cashier. He deposed that carting commission had been realized since 1914, but that he did not know the land in respect of which the commission was realized. With regard to these two plots plaintiff no. 1 deposed that coal had been extracted from both plots by plaintiff no. 2, that in 1927 the defendants had taken possession of a part of the surface of 341 by erecting a shed on it but that the plaintiffs were still in possession of the whole of plot no. 342 on which they stacked coal, manufactured

soft coke and ran a tram line which also passed over a portion of plot 341. Ashutosh Datta (D. W. 1), a servant of the defendants, denied that the plaintiffs stacked coal on plot 342 and alleged that they had manufactured coke on the plot since the end of 1928 only, i.e. since the institution of the suit. To the same effect is the evidence of the respondents' manager (P. W. 2). Exhibit E is a notice sent by the defendants to the plaintiffs on the 8th of July, 1928, protesting against the latter manufacturing coke on the defendants' land. In cross-examination plaintiff no. 1 stated that the pithead from which these two plots were mined was 100 feet west of plot 342. From this it was argued by the respondents that the pit had nothing to do with plots 341 and 342. They did not, however, take effective steps to disprove the plaintiffs' allegation which, therefore, remains uncontradicted. The pit has been full of water since about 1921. From Exhibit 20, the order of the Attestation Officer, it appears that the latter inspected all the disputed plots. He noticed coal belonging to various collieries stacked on plot 342 but saw no reason to suppose that carting commission had been realized for carting coal over this particular plot.

The conclusion of the Revenue Officer in 1924 in dealing with the objection filed by the present defendants under section 83 was that the latter had managed to take possession of plots 341 and 342 within "the last six or seven years" i.e. in 1917 or thereabout. There is nothing to support the entry in the record-of-rights that the defendants were subordinate tenure-holders under the plaintiffs in respect of these two plots, the entry being based solely on the fact that defendants realized carting commission. The entry which he made in the record is entirely inconsistent with his own finding of adverse possession for six or seven years only. Admittedly defendants do not hold on a grant from appellants. Even assuming that they

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have realized a toll from carts since 1917, this also is not necessarily inconsistent with the plaintiffs' possession. The land has been found to be within the latter's grant and, therefore, the appellants are entitled to possession unless the defendants succeed in establishing a settlement with themselves from the plaintiffs, or that they have acquired a title by adverse possession. They have not set up a title by adverse possession and do not claim under a settlement from the plaintiffs. There is no reliable evidence that the defendants realized carting commission prior to 1917. The plaintiffs' suit was brought within twelve years of this, so that, in view of the finding as to their title, they are entitled to recover possession.

In the result, therefore, I would grant the plaintiffs a declaration that the eastern and south-eastern boundaries of their grant are as shown in the map (Exhibit 4-*b*), made by Upendra Mohan Das Gupta (according to which plots 306, 341, 342, 357 and 358 fall within the plaintiffs' lease), a decree for recovery of possession of plots 306, 341, 342 and 358, and an injunction prohibiting the defendants from entering upon the plaintiffs' leasehold land except plot 357 of the cadastral survey map (in respect of which the plaintiffs have failed to prove they were in possession within twelve years of suit and in respect of which the appeal is therefore dismissed).

The plaintiffs will be entitled to half their costs in both courts. The decree should take note of the extra court-fees realized on the plaint and memorandum of appeal.

MACPHERSON, J.—I agree.

Appeal allowed in part.