

West Bengal Form No. 3702
High Court Form No. (J) 3

HEADING OF THE JUDGEMENT OF APPEAL

District: HOOGHLY

IN THE COURT OF: ADDITIONAL DISTRICT JUDGE 2ND COURT

Present: Nayyar Azam Khan, Addl. District Judge 2nd Court, Serampore
(WB01302)

Tuesday the 09th day of June 2026

Title Appeal No. 60 of 2021 (CIS No.- 68/2019)

Arising out of judgement and decree dated 03.10.2019 in Title Suit
No. 506 of 2016 by the learned Civil Judge, (Junior Division), 4th
Court, Serampore.

Satya Ranjan Das.....Appellant

- Vs -

D.L.&L.R.O. Hooghly & OrsRespondent

The first appeal came up for hearing on 08.4.2026 & 03.6.2026 in the
presence of :-

Sri. Pradip DuttaLd. Advocate for the Appellant

And having stood for consideration to this day, the Court delivered
the following

J U D G E M E N T

1) Challenging the judgement and decree of dismissal of suit in Title
Suit No.506 of 2016 dated 03.10.2019, the plaintiff as Appellant has
preferred the first appeal under section 96 of the Code of Civil
Procedure on 16.12.2019. The brief facts of the plaint filed by the
plaintiff on 15.11.2016 for declaration and injunction are narrated herein
below for efficacious adjudication of this appeal.

The suit scheduled land measuring 06 decimals in R.S. Plot No. 2249/3006 in Mouza Makhla within P.S. Uttarpara District Hooghly originally belonged to Raja Janaki Nath Roy & Ors. by demarcation. Thereafter the said owners settled the said property in favour of one Girish Chandra Das who is the father of the plaintiff who subsequently made construction over the said property started residing therein by paying rent and taxes for the same to the local Municipality. On abolition of the Jamindari system, after coming into effect in 1954 of The West Bengal Estate Acquisition Act, 1953 (hereinafter referred to as W.B.E.A Act) the said Girish Chandra Das became direct raiyat/tenant under the Government but he was wrongly shown as Jabardakhal Kari in the relevant R.S.R.O.R. The said Girish Chandra Das filed an application for correction of the said R.S.R.O.R. on 15.11.1960 but no hearing took place and no order was passed thereto. On the death of Girish Chandra Das, his son Satya Ranjan Das i.e. the plaintiff became the sole owner of the suit property and he got his name mutated in the local Municipality records and started paying taxes for the same in his name. Subsequently the name of the plaintiff got wrongly recorded as Satya Chandra Das instead of Satya Ranjan Das in the R.O.R. as Dakhalkar of the suit property. Thereafter the plaintiff preferred an application before the L.R.T.T. regarding the correction of the R.O.R. pending before the B.L.& L.R.O. since 15.11.1960 which subsequently directed the B.L.& L.R.O. to dispose of the same after giving proper notice to all concerned. Thereafter the B.L.& L.R.O. after hearing all the parties declined to record the name of the plaintiff with respect to the suit property and instead recorded the name of the State in the R.O.R. as the plaintiff failed to produce any court decree with respect to the title of the suit property or any registered deed of patta in support of his title over the suit plot. The said authority further observed that the rent receipt did not per se create any title of the applicant over the suit plot. The plaintiff subsequently sent notice u/s 80 of the C.P.C. to the D.L.& L.R.O. Serampore and B.L.& L.R.O. Serampore for recording his name in the R.O.R. as owner with respect to the suit property on 12.7.2016 who did not do so and the period of 60 days from receipt of the said notice of the said application elapsed after which the plaintiff filed the present suit before the jurisdictional Id trial court praying therein for a decree of declaration that the plaintiff Satya Ranjan Das has absolute right, title, interest and possession over the suit scheduled property, decree that the plaintiff has become direct tenant under the State of West Bengal after promulgation of W.B.E.A. Act and decree of injunction restraining the defendant Government from interfering with the peaceful possession of the plaintiff over the suit property.

2) The defendants entered their appearance in this suit and filed their written statement on behalf of the State in which the following contentions have been made.

The suit is not maintainable and is bad for misjoinder of necessary parties and is also barred under the provisions of The Specific Relief Act and under the provisions of W.B.E.A. Act and The West Bengal Land Reforms Act (hereinafter referred to as W.B.L.R. Act). The plaintiff had filed a petition before this defendant on 12.02.2015 for recording his name in the R.O.R. who subsequently moved a petition before the Id L.R.T.T. in O.A. Case No. 1498 of 2015 for the same which authority had directed this defendant to dispose of the petition of the plaintiff after which the defendant had disposed of the same on 16.12.2015. The R.S.R.O.R. shows that R.S. Khatian No. 626 containing the suit plot was vested in the State of West Bengal by notification under sec. 4 of W.B.E.A. Act and that the said plot was not allowed to be retained under sec. 6 of the said Act. The instant suit is barred under the provision of sec. 57(B) of W.B.E.A. Act read with sec. 9 of the C.P.C. and the Id trial court does not have the jurisdiction to try the present suit. The L.R. R.O.R. has been framed on the basis of the R.S.R.O.R. and so the relevant L.R. record shows the land to be recorded in Collector Khatian as Vested Land. The Id trial court does not have the jurisdiction as regards the correction and revision of R.O.R. as contemplated in sec. 57B(2) of W.B. E.A. Act and sec. 51C of W.B.L.R. Act. The plaintiff should have availed the remedy given in sec. 54 of W.B.L.R. Act if he had been aggrieved by the order of B.L.&L.R.O. The defendant denied that the plaintiff became the direct tenant under the State as claimed in his plaint as once the land is vested prior thereto, such type of claim cannot be entertained. The defendant contended that there was no cause of action in this suit and prayed for its dismissal.

3) On the basis of the rival contentions of the parties, the learned trial Court had framed the following issues :-

- 1) Whether the suit is maintainable in its present form ?
- 2) Whether the plaintiff has 16 annas right, title, interest and possession with respect to the suit property ?
- 3) Whether the plaintiff is a direct tenant under the State of West Bengal after the promulgation of The West Bengal Estate Acquisition Act, 1953 ?
- 4) Whether the plaintiff is entitled to a decree of injunction against the defendants ?
- 5) Whether the defendants had no right to vest the suit property to the State ?
- 6) Whether the suit is barred under the provisions of The West Bengal Land Reforms Act 1955 and The West Bengal Estate Acquisition Act 1953 ?
- 7) Whether the suit is barred under the provisions of The Specific Relief Act ?
- 8) Whether the plaintiff does not have any cause of action to file the instant suit ?

9) Whether the plaintiff is entitled to get the reliefs as prayed for in para 15 of the plaint ?

4) In support of his case in the Trial Court, the plaintiff adduced the evidence of himself who deposed in this suit as P.W.1. who in the course of his deposition in court proved original permission letter dated 09.11.1948 issued by Raja Janakinath Ray & Ors. which was consequently marked with objection in this case as Exhibit 1 and he further proved one Dakhila in the name of Raja Janakinath & Ors. marked Exhibit 2 with objection, notice dated 01.7.1967 issued to Girish Chandra Das marked Exhibit 3 with objection, receipt of application No.4602 dated 30.12.1960 by Revenue Officer Serampore marked Exhibit 4 with objection, three notices dated 12.7.2016 issued by the Id Advocate of the plaintiff to the defendants along with three postal receipts and three A/D Cards marked Exhibit 5 series with objection, Municipal tax receipt in the name of the plaintiff marked Exhibit 6, Notice dated 24.11.2015 given by L.R.T.T marked Exhibit 7, Certified copy of the Order sheet in case No. 09 of 2015 marked Exhibit 8 and Certified copy of the Order sheet dated 02.7.2015 given by W.B.T.T marked Exhibit 9.

On the other hand, the defendants adduced the evidence of B.L. & L.R.O Serampore Smt. Asmita Dasgupta who deposed in this case as D.W.1. The said witness proved the Certified copy of the Order sheets dated 24.11.2015 to 16.12.2015 passed in Case No.9/SRU/2015 marked Exhibit A, Certified copy of R.S Khantian No.626 marked Exhibit B and Certified copy of L.R. Information Slip of Plot No.2802 marked Exhibit C.

After conclusion of the trial and argument of the contesting parties, the learned Trial Court was pleased to pass the impugned judgement thereby dismissing the suit on contest against the defendant without any order of costs.

Being aggrieved by and dissatisfied with the judgement and decree dated 03.10.2019, the plaintiff has preferred the present appeal on the grounds inter alia that the learned Trial Court did not at all consider the oral and documentary evidences adduced in this case and came to a wrong conclusion.

ARGUMENT OF THE CONTESTING PARTIES

5) Ld. Advocate for the appellant submitted the following arguments :

The Id trial court erred in holding that the suit is barred by the provision of sec. 51(c) of W.B.L.R. Act and by the provision of sec. 57B(2) of W.B.E.A. Act. The Id trial court erred in holding that no civil court can entertain any suit or

application concerning any land if it relates to alteration of any entry in the Record of Rights finally published, revised, corrected or modified. The Id trial court failed to consider that the suit property originally belonged to Raja Janaki Nath Ray & Ors. and that they had settled the said property in favour of the father of the plaintiff. The Id trial court erred in holding by presumption that the vesting of the suit property had been done as the suit property in the R.S.R.O.R. and L.R.R.O.R stood recorded in the name of the State. The Id trial court had failed to consider that the name of the father of the plaintiff had been incorrectly recorded as Jabardakhal Kari in the R.S.R.O.R. with respect to the suit property and erred in holding that the father of the plaintiff had no right, title, and interest in the suit property. The Id trial court had failed to consider that the father of the plaintiff had already made an application for correction of R.S.R.O.R but the same stood pending without hearing since 15.11.1960 and that the said Girish Chandra Das continued with his right, title, interest and possession over the suit property by paying taxes and rent continuously. The Id trial court also failed to consider that the name of the father of the plaintiff had been recorded in the R.O.R. as licensee and as per The Easements Act, a licensee having made permanent construction on the licensed property acquires permanent right over the said property.

Ld Advocate for the appellant also submitted that the Id trial courts findings of the Issues No. 2, 3, 4, 5 and 8 to be against the plaintiff were without any legal perception, due to which the impugned judgement and decree should be set aside after allowing the instant appeal. He drew the attention of this court to sec. 60 of The Indian Easements Act 1882, sec. 3A of The WBLR Act, sec. 20 of The Bengal Tenancy Act, 1885 and to sec. 7 of West Bengal Non-Agricultural Tenancy Act

As the instant appeal was heard ex parte against the respondents, there was no argument from the side of the respondents in this appeal.

6) POINT FOR DETERMINATION

Whether or not the judgement and decree dated 03.10.2019 passed in Title Suit No. 506 of 2016 by the learned Civil Judge, (Junior Division), 4th Court, Serampore is sustainable in law and fact ?

DECISION WITH REASONS

7) Having heard the respective counsels of the contesting parties and having gone through the exhibited materials on record, it appears that the

instant case is maintainable in its present form and prayer and that there is nothing adverse therein to hold on the point of maintainability as the instant suit preferred by the plaintiff is a suit of civil nature whose cognizance is neither expressly nor impliedly barred by law. The jurisdictional bar contained in Section 57B of The WBEA Act and Section 51C of The WBLR Act primarily relates to matters entrusted to revenue authorities such as preparation, correction and revision of records. Since the present suit substantially seeks declaration of title and consequential injunction, the learned Trial Court rightly held that the suit was maintainable. This Court concurs with the finding of the learned Trial Court on Issue No. 1. Although the learned Advocate for the appellant did not specifically press the findings on Issue Nos. 6, 7 and 8, this Court considers it necessary to examine the correctness of those findings since they directly affect the legality and sustainability of the decree under challenge.

8) As regards Issue No. 6 whether the suit is barred under the provisions of WBLR Act and WBEA Act, it is trite law that under sec. 51C of WBLR Act the civil court's jurisdiction is barred in the matters relating to alteration of any entry in the Record of Rights finally published, revised, corrected or modified and under sec. 57B(2) of WBEA Act, the jurisdiction of the civil court is barred if there exists any dispute whether a raiyat or an intermediary is not entitled to retain any property or if any matter relates to any alteration of any entry in the record of rights. As the plaintiff in this suit has neither challenged the recording of entries in the record of rights nor agitated the issue as to his entitlement to retain the suit property as a raiyat or intermediary, but has simply prayed for a declaration of title to the suit property as a direct tenant under the State and also sought a decree of injunction for restraining the State to interfere in his peaceful possession of the suit property, the suit is clearly not found to be barred under any of the above Acts. The reliefs claimed in the plaint are not confined to correction of record-of-rights. The principal relief sought is declaration of title. It is well settled that entries in record-of-rights neither create nor extinguish title and disputes relating to title fall within the jurisdiction of the Civil Court unless specifically barred. Since the present suit substantially seeks declaration of title and consequential injunction, accordingly, Issue No.6 is answered in favour of the plaintiff.

9) Sec. 34 of the said Act states that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief but the said provision also contains a proviso that no court shall make any such declaration where the plaintiff, being able to ask further relief than a mere declaration of title omits to do so. In the instant suit, the plaintiff has prayed for a declaration that he has right, title and interests over the suit property after the abolition of the zamindari system and after he became a direct tenant under the State and he has also prayed for the consequential relief of permanent injunction for restraining the defendant/State from interfering with his long peaceful possession of the suit property. Thus, the plaintiff in this suit has not omitted to seek further relief than mere declaration and hence his case is not hit by the above proviso and hence the instant suit is also not found to be barred under the provisions of The Specific Relief Act, 1963. The determination of this issue being No. 7 by the 1d trial court to be in favour of the plaintiff is found to be correct.

10) As regards Issue No. 8 viz whether the plaintiff has any cause of action to file the instant suit, it must be noted that cause of action is determined from the allegations recorded in the plaint, and has nothing to do from the ultimate success of the evidence adduced by the parties in the trial of the suit. In the present case, the plaint filed by the plaintiff discloses his assertion of title over the suit property and its denial by the defendant and also discloses his long possession of the suit property which all give him a valid ground to institute this suit for declaration and injunction against the defendant. The finding on Issue No. 8 by the 1d trial court that the plaintiff may have a cause of action but the same has not been proved beyond all probabilities is legally unsound. Thus, the determination of the 1d trial court regarding this issue to be against the plaintiff is found to be incorrect as the plaintiff has cause of action to file the instant suit.

11) For brevity and convenience, let us dwell upon Issue Nos. 2, 3 & 5 together. The plaintiff as P.W.1 has stated in his affidavit-in-chief filed in this case that the suit scheduled land measuring 06 decimals originally

belonged to Raja Janaki Nath Roy, Rajendra Nath Roy and others and that in course of time the above owners divided the properties amongst themselves in different part and block by determination and that on 09.11.1945, the suit scheduled land was settled in favour of his father Girish Chandra Das by the above owners after which his father made construction thereon and started paying taxes for the same to the local Municipality. P.W.1 further averred that upon abolition of the zamindari system his father became a direct tenant/raiyat with respect to the suit property but his name was wrongly shown in the R.S.R.O.R. as Jabardarkhal Kari with respect to the said property after which his father had filed an application for correction of the said record but no hearing took place and the matter remained pending since 15.11.1960. P.W.1 further averred that after the death of his father he got his name mutated in the municipality and was paying taxes for the said property and that his name was incorrectly recorded in the R.O.R. as Satya Ranjan Das instead of Satya Chandra Das as Dakhalkar of the said suit property. According to the plaintiff, upon abolition of intermediary interests his father became entitled to continue as a direct tenant under the State. P.W.1 in the course of his evidence proved the original permission letter dated 09.11.1948 issued by Raja Janaki Nath Roy & Ors. which was marked Exhibit 1 and he further proved the Dakhila in the name of the above owners marked Exhibit 2 and the municipal tax receipt in his name with respect to the suit property marked Exhibit 6 which all prove the rightful possession of the suit property by the father of the plaintiff prior to his death and of the plaintiff thereafter. In his cross examination P.W.1 stated that his father got the suit property by permission from the erstwhile owners/zamindars with permission to make construction thereupon. He further admitted that their names were not recorded in the R.S.R.O.R. and L.R.R.O.R. and that he did not pay Government rent upon the said property but had paid the Panchayat tax and was currently paying the Municipality tax with respect to the suit property. Importantly the plaintiff witness stated that he could not say whether the suit property was vested in the State of West Bengal or not and that he knew that the suit plot was recorded in the name of the Collector. This witness denied the suggestion posed to him by the defendant that he was never a raiyat in the said plot. Most importantly the plaintiff admitted that he did not have any other documents like patta to show his title in the suit property. His further admission during his cross examination that he did not prefer any application before the higher authority for striking out his name from the

L.R.R.O.R. with respect to the suit property and for recording the name of the Collector therein shows that the plaintiff was not recorded as raiyat in the L.R. Record-of-Rights and that the Collector stood recorded therein as the recorded raiyat. The plaintiff on recall on his cross examination further admitted that he did not file any R.O.R. in the name of Satya Chandra Das and that he did not know whether his property had been vested to the State or not. Importantly, this witness plainly stated that he had filed this suit for correction of the record of rights. However, the above statement of P.W.1 appears to reflect his personal understanding of the litigation and cannot override the nature of the reliefs actually claimed in the plaint. The nature of a suit is determined from the plaint and reliefs claimed therein and not from an isolated answer given by a witness during cross-examination.

On the other hand, the defendant witness D.W.1 who was the B.L.& L.R.O. Serampore Uttarpara Block stated in her affidavit-in-chief filed in this case that it appears from R.S. Khatian No. 626 that the suit plot of Mouza Makhla was vested in the State of West Bengal by notification under sec. 4 of W.B.E.A. Act and that the said plot was not allowed to be retained under sec. 6 of the said Act. She also averred further that the Dag No. 2802 has been vested in favour of the State and has been recorded in the name of the Collector under Khatian No.1 and further that the plaintiff did not hold any title deed in his own name and that the rent receipts obtained from the zamindar does not create any sort of title with respect to the suit property and that the father of the plaintiff was not the recorded owner of the suit plot. The defendant admitted that in the old Khatian No. 626 of Mouza Makhla the name of Sarnalata Das was recorded as Jabar Dakhalikar in column No. 13 which is the remarks column and in L.R. Khatian No.1 with respect to the suit plot the name of the plaintiff Satya Chandra Das has been recorded as occupier without any license but the raiyat in the said document is recorded to be the Collector. The defendant further denied therein that as Girish Chandra Das had been allowed to make construction over the suit property on or about 09.11.1948 he became direct tenant/raiyyat of the Government of West Bengal. This witness further in her examination-in-chief proved the certified copy of R.S. Khatian No. 626 as well as the certified copy of the L.R. Information slip which were marked Exhibit B and Exhibit C respectively. In her cross examination this witness stated that she could not say without the relevant documents as to whether Janaki Nath Roy gave the suit property to Girish Chandra Das in the year 1945 and further

stated that she did not find any record of the said transfer. Importantly, this witness stated that in absence of the documents she could not say as to whether the suit property was vested to the State under sec. 10 of W.B.E.A. Act or not but she further stated that as the R.S.R.O.R. and L.R.R.O.R stood recorded in the name of the State with respect to the suit property, it can be presumed that the vesting was done. She also stated therein that she could not say the date of vesting of the suit property upon the State. The defendant importantly stated in her cross examination that she could not say in absence of documents as to whether any notice was served upon the plaintiff prior to vesting and admitted that she did not find any documents in her office relating to the vesting of the suit property upon the State.

12) Considering the above evidences on record, the entire foundation of the plaintiff's claim rests upon the alleged settlement in favour of his father by the erstwhile zamindars on 09.11.1948. The plaintiff relied mainly upon (a) Exhibit 1 - permission letter dated 09.11.1948 (b) Exhibit 2 - rent receipt (c) municipal tax receipts and (d) notices and proceedings before revenue authorities.

Exhibit 1 merely discloses that permission was granted to construct a residential house upon a specified plot. The said document does not constitute a deed of settlement nor does it transfer ownership. Exhibit 2 indicates payment of rent to the zamindar which at best establishes possession as a tenant under the intermediary. Neither Exhibit 1 nor Exhibit 2 establishes proprietary title in favour of the plaintiff's predecessor. The plaintiff has not produced any registered patta, settlement deed, kabuliyat, lease deed or any contemporaneous revenue record recognizing his father as raiyat. The plaintiff's further case is that after abolition of intermediary interests he became a direct tenant under the State. However, no document has been produced to show recognition of the plaintiff's father as a raiyat under the State Government. No rent receipt issued by the State Government has been produced. No finally published record-of-rights recording the plaintiff or his predecessor as raiyat has been brought on record. The plaintiff has also not produced any order passed in the proceedings allegedly initiated in the year 1960 for correction of records. It is true that during cross-examination DW1 admitted inability to produce vesting records and further stated that no vesting file could be traced. Such admission undoubtedly weakens the defence version. Nevertheless, it is a settled principle that in a suit for declaration of title the plaintiff must succeed on the strength of his own case and not on the weakness of the defence. Even if the State fails to establish lawful vesting by satisfactory evidence, such failure does not

automatically confer title upon the plaintiff. The plaintiff was required to establish the source of his title and the continuity thereof after abolition of intermediary interests. On careful scrutiny of the evidence, this Court finds that the plaintiff has established long possession and occupation of the suit property but has failed to establish legal title thereto. The distinction between possession and title is of considerable significance. The evidence adduced may indicate possession over a long period, but possession alone cannot be the basis of a declaration of ownership in absence of proof of title. The learned Trial Court appears to have placed emphasis upon questions of retention under Section 6 of the Estate Acquisition Act and ceiling limits which was not strictly necessary for determination of the controversy. The real question was whether the plaintiff had proved lawful title. Since no legally admissible title document has been produced and no reliable revenue record recognizing the plaintiff or his predecessor as raiyat has been established, the answer must be in the negative. The evidence on record clearly shows that prior to the abolition of the zamindari system the father of the plaintiff was in occupation of the suit property under the erstwhile intermediary. Exhibit 1 demonstrates that permission was granted by Raja Janaki Nath Roy and others to raise construction upon the suit property and Exhibit 2 shows payment of rent to the intermediary. These documents therefore establish a pre-existing relationship between the plaintiff's predecessor and the intermediary and also indicate possession of the suit property prior to abolition. However, mere proof of possession under an intermediary does not by itself establish that the occupant became a direct raiyat or tenant under the State after the coming into force of the West Bengal Estate Acquisition Act. The party asserting such status must establish the factual and legal foundation therefor either by proving the statutory conditions giving rise to such tenancy or by producing contemporaneous records showing recognition of such status. In the present case no such evidence has been adduced. The plaintiff has not produced any document to show that his father was recognized by the State as a raiyat after abolition of intermediary interests. No rent receipt issued by the Government has been produced. No record has been produced to show acceptance of rent by the State. No finally published Record-of-Rights records either Girish Chandra Das or the plaintiff as a raiyat under the State. No order passed by any competent authority recognizing such tenancy has been brought on record. The appellant argued that since permanent construction had been raised upon the suit property, the plaintiff's predecessor acquired a permanent right therein and became entitled to continue as a tenant under the State. Reliance has been placed upon Section 60 of the Indian Easements Act, Section 20 of the Bengal Tenancy Act and Section 7 of the West Bengal Non-Agricultural Tenancy Act. The said contention cannot be accepted in the facts of the present case. Even assuming that the plaintiff's

predecessor acquired protection against arbitrary dispossession by reason of long possession and construction, such circumstance by itself is insufficient to establish that he became a direct raiyat under the State after abolition of intermediary interests. The plaintiff was required to produce some legally admissible material showing recognition of such status by operation of law or by the competent authority. No such material has been produced. Therefore, although the evidence satisfactorily establishes long possession of the plaintiff and his predecessor, it falls short of proving that they became direct tenants or raiyats under the State after the abolition of intermediary interests. Without entering into the question whether the permission granted by the intermediary created an irrevocable licence within the meaning of Section 60 of the Easements Act, this Court finds that such circumstance by itself would not establish the plaintiff's status as a direct raiyat under the State. Thus, the plaintiff is not found to have absolute right, title and interest in the suit property and is also not found to be a direct tenant under the State of West Bengal after the promulgation of The WBEA Act. Hence, the determination of the 1d trial court of Issue No. 2 & 3 to be against the plaintiff is found correct.

13) Before proceeding further, it is necessary to examine the evidence regarding the alleged vesting of the suit property. The specific case of the defendant is that the suit property vested in the State under the provisions of the West Bengal Estate Acquisition Act, 1953 and that the said property was not retained under Section 6 of the said Act. The burden of proving such vesting squarely lay upon the defendant who specifically pleaded the same in its written statement. In this regard, although D.W.1 stated in her examination-in-chief that the suit property vested in the State under Section 4 of the W.B.E.A. Act and was subsequently recorded in the Collector's Khatian, her cross-examination reveals significant deficiencies in the defendant's case. D.W.1 categorically admitted that she could not state the date on which the suit property vested in the State. She further admitted that she could not say whether any notice relating to vesting had ever been served. More importantly, she admitted that she could not find any document in her office relating to the vesting of the suit property and that she was unable to produce any vesting file or connected record. The only basis upon which D.W.1 sought to support the case of vesting was that the R.S. Record-of-Rights and the subsequent L.R. Record-of-Rights stood recorded in the name of the State. Such entries undoubtedly carry a presumption of correctness regarding possession and revenue administration, but it is well settled that entries in a Record-of-Rights neither create nor extinguish title and cannot by themselves establish the factum of lawful vesting where the very foundation of vesting is under challenge. The defendant has not produced any

notification, vesting record, compensation proceeding, retention proceeding, B-form record, or any contemporaneous official document connecting the suit property with any completed vesting proceeding under the W.B.E.A. Act. In the absence of such evidence, this Court is unable to hold that the defendant has successfully established the fact of lawful vesting of the suit property. Accordingly, this Court finds that the State has failed to discharge its burden of proving actual vesting of the suit property. However, such failure on the part of the defendant does not automatically establish the title of the plaintiff. In a suit for declaration of title, the plaintiff must succeed on the strength of his own case and not on the weakness of the defence. Therefore, while the State has failed to prove vesting, the plaintiff is still required to independently establish his own title and legal status in respect of the suit property. The defendant has failed to establish by cogent evidence that the suit property was lawfully vested in the State. Consequently, the finding of the learned Trial Court on Issue No.5 cannot be sustained. However, this Court refrains from recording any positive declaration that the State lacked authority to vest the property, since the issue of title itself has not been established by the plaintiff.

14) As regards Issue No. 4 i.e. whether the plaintiff is entitled to a decree of injunction against the defendant, the above evidences on record show that the plaintiff has failed to prove that he has right, title or interests upon the suit property but they do show that the father of the plaintiff was in long possession of the suit property till his death and thereafter the plaintiff is in possession of the same. The plaintiff including his predeceased father has been in open, continuous and settled possession since 1948 and the State has neither proved vesting nor produced any eviction proceeding nor produced any evidence of its own possession of the suit property. The Supreme Court has held in *Rame Gowda Vs. M. Varadappa Naidu* and in *Krishna Ram Mahale Vs. Shobha Venkat Rao* that settled possession, even without title, is protected against forcible dispossession and the true owner must recover possession through due process of law.

Hence, it is appropriate that the plaintiff be granted a limited injunction thereby restraining the State from his dispossession except by due process of law. The determination of the Id trial court of this issue to be against the plaintiff is not found proper.

15) The learned Trial Court, while dismissing the suit, made certain observations regarding absence of cause of action with which this court is unable to agree. The plaint clearly disclosed a cause of action arising from the refusal of the revenue authorities to recognize the plaintiff's claim. However, existence of a cause of action does not necessarily entitle a plaintiff to a decree. The suit has failed so far as declaration of title is concerned, not because of absence of cause of action but because of failure to establish title. The ultimate conclusion reached by the learned trial Court, namely dismissal of the suit, is found to be partly correct as the plaintiff is now found to be entitled to a grant of injunction in his favour with respect to the suit property. Thus, the observation by the Trial Court and its determination of the matter is partly correct and hence needs limited interference by this appellate court. Accordingly, the point for determination is answered partly in favour of the appellant. The impugned judgment and decree require modification to the limited extent indicated above.

Hence, it is

O R D E R E D

that Title Appeal No. 60 of 2021 is partly allowed ex parte against the respondents but without costs. The impugned judgement and decree dated 03.10.2019 in Title Suit No. 506 of 2016 by the learned Civil Judge (Jr. Divn.) 4th Court, Serampore is hereby modified. The plaintiff is entitled to a decree of permanent injunction restraining the defendant-State, its servants, agents and officials from dispossessing the plaintiff from the suit property otherwise than in accordance with due process of law. This decree shall not be construed as a declaration of title in favour of the plaintiff and shall not preclude the State from initiating appropriate proceedings in accordance with law. The plaintiff shall not create any third-party interest in the suit property on the basis of this decree.

Let a copy of the judgement and Trial Court Record be sent to the Id Trial Court at once.

Dictated & corrected by

Sd/-

Sd/-

Addl. District Judge, 2nd Court,
Serampore.

Addl. District Judge, 2nd Court,
Serampore.