

IN THE HIGH COURT AT CALCUTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present : The Hon'ble Justice Biswajit Basu

S.A. 575 of 1999

Sri Arun Kumar Jana & Ors.

-Vs-

**Smt. Saraswati Patra, since deceased
her heirs and legal representatives
Rabindra Patra & Ors.**

For the appellants : Mr. Narayan Chandra Mandal,
Ms. Mousumi Chatterjee,
Mr. Bhaskar Mondal.

For the respondents : Mr. Rabindranath Mahata,
Mr. Aritra Shankar Ray.

Heard on : September 08, 2021

Judgment on : September 08, 2021

Biswajit Basu,J. :

The present second appeal is at the instance of the defendants in a suit for declaration and permanent injunction. The said suit being the Title Suit No. 219 of 1990 was decreed on July 22, 1996 whereby the plaintiffs' title over the suit property was declared with a further decree of permanent injunction restraining the defendants from interfering with the

plaintiffs' possession over the suit property and a decree for recovery of khas possession of the 10 decimal of land on the southeast corner of the suit property was also passed.

The appeal from the said decree by the defendants/appellants being Title Appeal No.90 of 1996 was dismissed by the Appeal Court below vide judgment and decree dated March 22, 1999.

The present Second Appeal was admitted on the following question of law:-

“Whether in view of the finding of the Learned Courts below to the effect that the plaintiff was not in possession of a part of the suit property, the suit was maintainable to the said extent, as no prayer for recovery of possession had been prayed for in the suit.”

The present second appeal was once allowed by the learned Single Judge by the judgment and order dated August 30, 2016. The said judgment, however, was recalled on an application filed by the plaintiffs/respondents for review being R.V.W. No. 54 of 2017.

The appeal now has been placed before this Court for hearing afresh.

Mr. Narayan Chandra Mondal learned advocate for the appellants submits that except the substantial question of law already formulated he is not proposing to formulate any other substantial question of law.

Mr. Mahato learned counsel for the plaintiffs/respondents submits that the lower Court records connected with the present second appeal was sent down after the appeal was allowed earlier. He files a copy of the amended plaint of the suit to contend that it is not correct that the plaintiffs did not pray for a decree of recovery of possession, the said payer was subsequently incorporated in the plaint by way of amendment and the application for said amendment was treated as a part of the plaint.

The photocopy of the plaint and the application for said amendment are taken on record. On perusal of the said documents it appears that prayer of the plaintiffs for such amendment was allowed by the learned Trial Judge, therefore, the records speak that the plaintiffs did pray for a decree of recovery of possession of the part of the suit property in respect of which such decree of recovery of possession has been passed.

That being the position, substantial question of law so formulated is not involved in the present second appeal.

S.A. 575 of 1999 is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)