

DL. April 27,
7. 2022

S.A.T. 183 of 2017

Sri Samar Karmakar & ors.

Vs.

Sri Haralal Roy & ors.

Mr. Tapash Kumar Bhattacharya,
Mr. Sukumar Ghosh,
Ms. Moumita Ghosh,
...for the appellants.

This second appeal has come up for admission.

The plaintiff/respondent no. 1 filed a suit for declaration that the defendants have no right, title and interest over the disputed property as well as for a decree of permanent injunction restraining the defendants from disturbing his peaceful possession over the suit property.

In the second appeal, the only issue raised was that the suit was barred under Section 34 of the Specific Relief Act as the plaintiff/respondent no. 1 has not claimed recovery of possession of the property in suit. Both the courts below have come to a definite finding that the defendants could not be able to adduce any evidence – oral or documentary - to show that they were in possession of the suit property. Both the courts below found that there is no dispute with regard to the title of the plaintiff and the plaintiff being in possession of the suit property as reflected in the Record of Rights, a suit simplicitor for injunction would have been sufficient.

The learned advocate appearing on behalf of the appellants has relied upon a decision of the Hon'ble Supreme Court

in the case of **Mehar Chand Das vs. Lal Babu Siddique & ors.** reported in **A.I.R. 2007 S.C. 1499**. In order to appreciate applicability of the said decision in the instant case, we set out paragraphs 11 and 12 of the said decision hereinbelow :-

“11. The defendant-appellant, therefore, had been in possession of the suit property. in that view of the matter the plaintiffs-respondents could seek for further relief other than for a decree of mere declaration of title.

12. The High Court, in our opinion, committed a manifest error in not relying upon the decision of this court in Vinay Krishna (supra). The said decision categorically lays down the law that if the plaintiff had been in possession, then a suit for mere declaration would be maintainable: the logical corollary whereof would be that if the plaintiff is not in possession, a suit for mere declaration would not be maintainable.”

It would appear from the facts of the cited case that the appellant was treated to be a tenant by the respondents. The suit property, according to the respondents, was a tenanted one. The possession of the appellant, therefore, was denied and disputed. It was also an admitted position that the suit for eviction filed against the appellant was dismissed by the civil court on May 27, 1977. This fact would certainly require the plaintiffs to claim recovery of possession apart from any other reliefs. On such consideration, the suit for eviction found to be not maintainable.

In the instant case, the facts are completely different from the cited case and the defendants had never been able to prove that they were in actual possession of the property in suit.

In view of the above, we do not find any substantial question of law involved in this appeal and, as such, the same is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)