

AD-2
Ct No.16
12.11.2024
(SSS)

SA 90 of 2018
With
IA No: CAN 1 of 2017 (Old No: CAN 9468 of 2017)
With
CAN 2 of 2018 (Old No: CAN 2306 of 2018)
With
CAN 3 of 2018 (Old No: CAN 3234 of 2018)
With
CAN 4 of 2018 (Old No: CAN 8732 of 2018)
With
CAN 5 of 2021

Nazemul Haque & Anr.
Vs.
Sabunnessa Bibi and Ors.

Mr. Sourav Sen,
Ms. Adrisnata Chakraborty,
Mr. Muhammad Obaid, Advs.

.....For the Appellants/Petitioners.

Mr. Tanmay Mukherjee,
Mr. Atish Ghosh,
Ms. Antara Dey, Advs.

.....For the Respondent No. 1.

1. Upon hearing learned Counsel for the appellants, we are of the opinion that no substantial questions of law are involved.
2. One of the grounds argued by the learned Advocate for the appellants is that although it was held by the

courts below that the plaintiffs/respondents are not in physical possession of the property, the possession of the defendants/appellants was deemed to be the possession of the plaintiffs as well, in view of them being co-sharers *inter se*.

3. That apart, the question of limitation is sought to be urged.
4. However, we find that the view taken by the courts below in respect of possession is one of the plausible views accepted in law. In so far as limitation is concerned, the courts proceeded on the premise of the cause of action as pleaded in the plaint and held that the suit was filed within time.
5. That apart, learned Counsel for the appellants urges seriously the issue of the Civil Courts apparently sitting in judgment over a final decision under Section 14T(3) of the West Bengal Land Reforms Act. However, both the courts below arrived at a concurrent finding of fact that the property comprised of not only agricultural land, but also *vita* and water bodies.
6. As such, on the strength of title deeds, the title of the plaintiffs/respondents was declared, which does not amount to sitting in judgment over the findings of the Revenue Officer.
7. The appellants also move an application under Order XLI Rule 27 of the Code of Civil Procedure, where it has been pleaded that subsequently, it came to the notice

of the appellants that one Habinunnesa Bibi had two sons, namely Sayad Abul Fazal and Sayed Abul Bazal and that Sayed Abul Bazal executed a Deed of Sale from which it transpires that the share in the property pleaded by the plaintiffs was not correct.

8. However, in the event the said fact is to be considered at this juncture, it would open up a Pandora's box of new facts. That apart, Abul Bazal's statement in a Sale Deed executed by him does not bind Abul Fazal, his brother, who was the father of the predecessor-in-interest of the plaintiffs and as such, it cannot be said that the said application, even if allowed, would have substantial effect on the outcome of the litigation or alter the shares of the plaintiffs as found by the Courts below.
9. Moreover, all the above questions are primarily questions of fact or at best mixed questions of fact and law and not pure questions of law.
10. In view of the above discussions, we are of the opinion that no substantial question of law has been made out for admission of the appeal.
11. Accordingly, SA 90 of 2018 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. All connected applications bearing CAN 1 of 2017 (Old No: CAN 9468 of 2017), CAN 2 of 2018 (Old No: CAN 2306 of 2018), CAN 3 of 2018 (Old No: CAN 3234 of 2018), CAN 4 of 2018 (Old No: CAN 8732 of 2018)

and CAN 5 of 2021 stand disposed of accordingly.

No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)