

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Supratim Bhattacharya

S.A. 441 of 2016

**Amanulla Molla & Ors.
-Vs.
Monoranjan Mridha & Anr.**

For the Appellants : Mr. Anirban Mitra
 Mr. Susenjit Banik
 Mr. Amit Halder
 Mr. Amit Ray
 Ms. Madhumita Sadhukhan

For the Respondent : Mr. Wasim Akram

Heard On : 18.04.2024

Judgement Delivered On : 15.07.2024

Supratim Bhattacharya, J.:

1. The judgment dated 30.09.2015 passed by Ld. First Appellate Court that is the Court of the Additional District and Sessions Judge, Fast Track 1st Court Basirhat, North-24-Parganas in Title Appeal no. 26 of 2011 has given rise to the instant appeal. Through the said judgment the Ld. First appellate court has dismissed the said appeal on contest without any cost thereby affirming the judgment passed by the Ld. Trial Court.
2. The appellants herein were the plaintiffs before the Trial court and appellants before the First Appellate Court while the respondents

herein were the defendants before the Trial Court and respondent before the First Appellate Court.

3. Facts of the lis

The appellants /plaintiffs are claiming to be the owner of the suit property that is 12 shataks of land situated within the district of North-24-Parganas erstwhile P.S. Hasnabad presently P.S. Hingalgunj Mouja – Bnakradobar, having the Revisional Settlement *khatian* No. 479, LR *khatian* No. 287/2, Dag No. 79 which is mentioned in the schedule of the plaint. They are claiming to be the owners of the suit property having purchased from Nidrabala, Bholanath, Baikuntha, Renu and Rina who are the wife, sons and daughtes of Gangadhar Baidya, who happened to be the son of Muktabala having inherited the property from her father Gobinda Sardar.

On the contrary the plaintiffs are claiming themselves to be the rightful owners of the suit property.

This tussle between the appellants/plaintiffs and the respondents / defendants as regards to 12 shataks of land has given rise to the *lis*.

4. Facts before the Trial Court

The appellants/plaintiffs have given rise to the *lis*, being Title Suit No. 18 of 2006, by filing the plaint on 15.02.2006 seeking declaration, possession and injunction. Through the said plaint the appellants/plaintiffs have claimed to be the owners of the suit property.

The defendants had entered appearance before the Trial Court and had contested the suit by filing written statement thereby controverting the claims of the appellants.

On the basis of the pleadings of the plaintiffs and the defendants the Ld. Trial Judge had framed the following issues.

“ *Issues*

- 1. Is the suit maintainable in its present form?*
- 2. Have the plaintiffs any cause of action to file the suit?*
- 3. Have the plaintiffs’ right, title and possession over the suit land?*
- 4. Are the plaintiffs entitled to get the decree as prayed for?*
- 5. To what other relief/reliefs are the plaintiffs entitled?”*

After obtaining evidence both oral and documentary on behalf of both the parties the Ld. Trial Judge that is the Ld. Civil Judge (Jr. Divn), Basirhat, North-24-Parganas had reached to the conclusion and delivered the judgment on 11.03.2011 that as the plaintiffs are not in possession of the suit land while the defendants are in possession of the suit land and as the plaintiffs have sought for mere declaration of their title in respect of the suit land without any prayer for recovery of the possession and giving any explanation thereto, the plaintiffs are not inclined to any decree for declaration and injunction as prayed for because of the bar laid down under Section 34 of the Specific Relief Act.

5. Facts before the First Appellate Court

Being aggrieved by and dissatisfied with the judgment passed by the Ld. Trial Court the plaintiffs preferred the first appeal which has also been contested by the respondents/defendants. The Ld. First Appellate Court framed the following points for determination:

“1. Whether the Ld. Court below is justified in dismissing the suit on bona fide ground?”

2. Whether the Ld. Court below is justified in dismissing the issues no. 1 to 5 against the appellants/plaintiffs?”

After elaborate discussion the Ld. First Appellate Court has found that the plaintiffs/appellants are not in possession of the suit land as such the plaintiffs are barred under Section 34 of the Specific Relief Act from seeking only declaration and injunction in respect of the suit property, so the Ld. First Appellate Court has found no reason to reverse the judgment of the Ld. Trial Court as such the title appeal has been dismissed on contest without any cost.

6. Being aggrieved by the Judgment passed by the First Appellate Court, the plaintiffs/appellants have preferred the instant second appeal.

7. The instant second appeal has been admitted and the following question of law has been framed:

“1. Whether the Ld. Courts below were justified in dismissing the plaintiffs’ suit due to bar under Section 34 of the Specific Relief Act without considering that the plaintiffs have prayed for confirmation of their possession in addition to declaration

of their title in the suit property and their title in the suit property was found by both the courts below or not?”

8. Being assisted by Mr. Anirban Mitra who has been actively helped by Mr. Susenjit Banik, Mr. Amit Ray, Ms. Madhumita Sadhukhan and Mr. Amit Halder for the appellants/plaintiffs and Mr. Wasim Akram for the respondents, this Court has vividly gone into all the aspects of the *lis*.
9. The Ld. Counsel representing the appellants/plaintiffs during his exhaustive submission has stated:
 - i) That the appellants/plaintiffs have filed this declaratory suit for declaration of right, title, interest and possession of the suit property and the bone of contention is 12 decimal of land.
 - ii) The Ld. Counsel has further submitted that the suit property belonged to one Gobinda Sardar whose name was recorded in the Revisional Settlement Record of Rights (RS ROR) after the death of Gobinda Sardar the property devolved upon his son that is Adhar and two daughters namely Durgabala and Muktabala. As Adhar and Durgabala both have expired having no legal heir as a result the entire property devolved upon Muktabala who expired leaving behind her only son namely Gangadhar Baidya as her sole legal heir. The name of Gangadhar is recorded in the Land Reforms Records of Rights (LR ROR). On the death of Gangadhar his wife Nidrabala sons

Bholanath and Baikuntha and his two daughters namely Renu and Rina inherited the suit property. Subsequently these legal heirs transferred the suit property in favour of the plaintiffs by way of registered deed of sale being 2498 dated 11.05.2005.

- iii) The Ld. Counsel has further submitted that the plaintiff took possession of the suit property and since then the plaintiffs have been possessing the suit land by paying rent to the Government and their names are recorded in the LR ROR.
- iv) The Ld. Counsel has also submitted that the respondents/defendants have no right, title and interest in the suit land .
- v) He has further submitted that Muktabala died prior to the demise of Gobinda Sardar and Gobinda Sardar died leaving behind Adhar and Durgabala as his legal heirs and subsequently .
- vi) The Ld. Counsel has placed the following citations which are as follows:
 - 1. (2022) 6 SCC 52.
 - 2. (2013) 9 SCC 319.
 - 3. (2006) Scc Online Cal 234.

10. The Ld. Counsel representing the respondents has submitted the following:

- i) That the appellants/plaintiffs have instituted the *lis* praying for declaration of right, title and interest in respect of the suit property without praying for recovery of possession.
- ii) He has further submitted that the suit land originally belonged to Gobinda Sarkar and he had one son namely Adhar Sardar and two daughters namely Muktabala and Durgabala.
- iii) He has further submitted that Muktabala expired prior to expiry of her father namely Gobindo Sardar.
- iv) He has further submitted that Adhar Sardar expired issueless as a result Durgabala obtained the entire 12 decimals in Dag no. 79.
- v) He has further submitted that Hemnath, who is the owner of the adjacent plot that is Dag No. 78 comprising of 17 decimals of land, adopted Durgabala and the said Hemnath repaired the house and started living with Durgabala in Dag no.79.
- vi) He has further submitted that Durgabala had granted permissive possession in respect of the dag no.79 to Hemnath comprising of 12 decimals of land and the same has been recorded in the record of rights.
- vii) The Id. Counsel has further submitted that thereafter the respondents have been residing in dag no. 78 and have been cultivating the land situated in dag no. 79.

- viii) The Id. Counsel has further submitted that tax is being paid by the respondents and the respondents are in possession of the land for more than 40 years.
- ix) The Ld. Counsel has further submitted that the plaintiff witness no. 2 that is the father of the plaintiff has admitted that the suit has been filed for getting back the possession of the suit land and the appellants/plaintiffs have never sought for recovery of khas possession of the suit land.
- x) The Ld. Counsel has further submitted that PW3 namely Parvej Gazi during his cross-examination has stated that Adhar and Durgabala both have been possessing the suit property and has also stated that the plaintiffs have been residing in the land adjacent to the suit land.
- xi) The Ld. Counsel has further submitted that Section 34 of the specific Relief Act , 1963 states that no court shall make any such declaration where the plaintiff being able to seek further relief than mere declaration of title and the instant lis has been filed praying for title and permanent injunction without praying for recovery of khas possession and as it has been found that the appellants plaintiffs are not in possession of the suit property so the appellants are not entitled to get any relief as prayed for.

- xii) He has stressed upon the point that two witnesses on behalf of the appellants /plaintiffs have admitted the fact that the respondents/defendants are in possession of the suit property.
- xiii) The Ld. Counsel has relied upon a judgment of the Hon'ble Apex Court which is AIR 1998 SC 970.

Banking upon the aforesaid submission the Ld. Counsel for the respondent has prayed for dismissal of the instant appeal.

- 11.** Heard the Ld. Counsels representing the appellants and the respondents and from their submission it transpires that the moot point to be considered in this instant appeal is as to whether the First Appellate Court has reached to the conclusion correctly or not thereby affirming the judgment of the Ld. Trial Court.
- 12.** From the substantial question of law it transpires that it is to be considered as to whether the appellants/plaintiffs are in possession of the suit property or not and if it is found that the appellants/plaintiffs are not in possession of the suit property then whether the appellants/plaintiffs can be granted the relief only of declaration and injunction without seeking for any consequential relief that is recovery of possession where there being bar in respect of the same under Section 34 of the Specific Relief Act, 1963.
- 13.** First of all this Court delves deep into the fact to reach to the finding as to who is in possession of the suit property. The plaintiffs themselves could not say anything instead the father of the plaintiffs

has deposed elaborately. It has been mentioned by the First Appellate Court and it is fact that the PW2 namely Tainaddin Molla during his cross-examination had deposed that they have filed this suit for getting possession. As such the Ld. First Appellate Court has come to the finding that the appellants /plaintiffs are not in possession of the suit property, which in the view of this Court is also the correct finding as the evidence adduced by the witness on behalf of the plaintiff has to be taken as sacrosanct and relying on such evidence a dispute is to be adjudicated. So it is evident that the appellants/plaintiffs are not in possession of the suit property. Now the second part of the issue that is as to whether a person being not in possession of a suit property can be granted the relief seeking only declaration and injunction. In this context Section 34 of the Specific relief Act is applicable. Said Section 34 of the Specific relief Act states as follows:

“34. Discretion of court as to declaration of status or right.—

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: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

- 14.** So from the aforementioned section it transpires that a Court shall not make any declaration herein declaration of title where the plaintiff being not in possession ought to have sought for recovery of possession but has not done so.
- 15.** From the record it transpires that the appellants/plaintiffs have not sought for amendment of the plaint seeking any consequential relief that is recovery of possession. A party to a litigation can amend a plaint at any stage of the proceeding and even at the stage of second appeal but the appellants have not sought for any amendment of the plaint seeking incorporation of the prayer for recovery of possession and there being bar to the grant of relief merely as regards to declaration as such the same cannot be granted. So this court is of the view that the appellants/plaintiffs are not entitled to the relief/reliefs which they have sought for, which has been the view of the Ld. Trial Court and also of the Ld. First Appellate Court.
- 16.** In this regard this court relies upon the judgment delivered by the Hon'ble Apex Court in the case between Vasantha (dead) through legal representative vs. Rajalakshmi @ Rajam (dead) through legal representatives reported in (2024) 5 SCC 282. Paragraphs 51 to 54 of the said judgment which are as follows:

“51. In Venkataraja v. Vidyane Doureradjaperumal [Venkataraja v. Vidyane Doureradjaperumal, (2014) 14 SCC 502 : (2015) 1 SCC (Civ) 360] (two-Judge Bench), the purpose behind Section 34 was

elucidated by this Court. It was observed that the purpose behind the inclusion of the proviso is to prevent multiplicity of proceedings. It was further expounded that a mere declaratory decree remains non-executable in most cases. This Court noted that the suit was never amended, even at a later stage to seek the consequential relief and therefore, it was held to be not maintainable. This position of law has been reiterated recently in Akkamma v. Vemavathi [Akkamma v. Vemavathi, (2021) 18 SCC 371] (two-Judge Bench).

52. This Court in Arulmigu Chokkanatha Swamy Koil Trust v. Chandran [Arulmigu Chokkanatha Swamy Koil Trust v. Chandran, (2017) 3 SCC 702 : (2017) 2 SCC (Civ) 334] (two-Judge Bench), while reversing the High Court decree, observed that because of Section 34 of the SRA, 1963, the plaintiff not being in possession and claiming only declaratory relief, ought to have claimed the relief of recovery of possession. It was held that the trial court rightly dismissed the suit on the basis that the plaintiff has filed a suit for a mere declaration without relief for recovery, which is clearly not maintainable.

53. That apart, it is now well settled that the lapse of limitation bars only the remedy but does not extinguish the title. Reference may be made to Section 27 of the Limitation Act. This aspect was overlooked entirely by the High Court in reversing the findings of the courts below. It was not justified for it to have overlooked the aspect of limitation, particularly when deciding a dispute purely civil in nature.

54. Adverting to the facts of the present case, on a perusal of the plaint, it is evident that the plaintiff was aware that the appellant herein was in possession of the suit property and

therefore it was incumbent upon him to seek the relief which follows. The plaintiff himself has stated that Defendant 1 was in possession of the subject property and had sought to transfer possession of the same to Defendant 2, thereby establishing that he himself was not in possession of the subject property. We are not inclined to accept the submission of the learned counsel for the respondent on this issue. We note that after the death of the life estate holder in 2004, there was no attempt made by the original plaintiff to amend the plaint to seek the relief of recovery of possession. It is settled law that amendment of a plaint can be made at any stage of a suit [Harcharan v. State of Haryana, (1982) 3 SCC 408 (two-Judge Bench)] , even at the second appellate stage [Rajendra Prasad v. Kayastha Pathshala, 1981 Supp SCC 56 (1) (two-Judge Bench)] .”

17. It is also fact that the appellants/plaintiffs have not come before the Court of law with clean hand. It has been mentioned in the plaint that the plaintiffs are in possession while during the time of adducing evidence it has been deposed that the plaintiffs have filed the suit for possession.

It is settled proposition of law that a person who seeks relief must follow the clean hand doctrine. In this instant case the appellants/plaintiffs have not come with clean hands.

It is also settled proposition of law that a person who does not come with clean hand is not entitled to the relief/reliefs sought for.

In this regard this Court refers to the Judgment delivered by the Hon'ble Apex Court in the case between V. Chandrasekaran and Anr. Vs. Administrative Officer and Ors. reported in (2012) 12 SCC 133 paragraph 44 to 48 of the said judgment states as follows:

“44. *The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a court of equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores, means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852], Noorduddin v. K.L. Anand [(1995) 1 SCC 242] and Ramniklal N. Bhutta v. State of Maharashtra [(1997) 1 SCC 134 : AIR 1997 SC 1236].)*

45. *The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the Court.*

46. *In Dalip Singh v. State of U.P. [(2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324] this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.*

47. *The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315] and Amar Singh v. Union of India [(2011) 7 SCC 69 : (2011) 3 SCC (Civ) 560] .)*

48. *In Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira [(2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126] this Court taking note of its earlier judgment in Ramrameshwari Devi v. Nirmala Devi [(2011) 8 SCC 249 : (2011) 3 SCC (Cri) 481 : (2011) 4 SCC (Civ) 1] held : (Maria Margarida case [(2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126] , SCC p. 393, para 81)*

"81. False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our courts. If pragmatic approach is adopted, then this problem can be minimised to a large extent."

The Court further observed that wrongdoers must be denied profit from their frivolous litigation, and that they should be prevented from introducing and relying upon false pleadings and forged or fabricated documents in the records furnished by them to the court."

- 18.** From the above discussion it transpires that the Ld. First Appellate Court has not misdirected itself as such this Court finds no reason to interfere with the findings of the Ld. First Appellate Court.

19. Thus the instant appeal being no. **S.A. 441 of 2016** stands **dismissed** and the Judgment of the Ld. First Appellate Court is **affirmed**.
20. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.
21. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)