

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMAT 145 of 2016

With

CAN 2 of 2023

Nanda Rani Purkait

Vs.

Soukat Ali Sekh

For the Appellant : Mr. Souradipta Banerjee
Mrs. Fatima Hassan

Heard on : 09.09.2024, 11.09.2024, 18.09.2024

Judgment on : 14.05.2025

Ananya Bandyopadhyay, J.:-

1. The instant suit was instituted by the plaintiff seeking recovery of khas possession in respect of a property alleged to have been illegally occupied by the defendant. The suit property, situated at Mouza Boaria, Dag Nos.2 and 3, J.L. No.89, Khatian No.156, P.S.- Falta, District- South 24-Parganas, comprised an area of approximately 32 cottahs. The plaintiff's claim to the said property emanated from a deed of sale executed by one Sri Binoy Chandra Gurh on 5th June, 1962, registered in Book No. I, Volume No. 36, at pages 43-44, in the office of the Sub-Registrar at Diamond Harbour. Consequent upon the said purchase, the plaintiff's name was duly recorded in the records of the BL & LRO, and it was asserted that the plaintiff had been regularly discharging tax liabilities in

respect of the said land to the South 24-Parganas office. The suit property was delineated into two parts: Schedule 'A', comprising approximately 30 cottahs of land with defined boundaries, and Schedule 'B', consisting of a wooden shop room constructed over Dag Nos.2 and 3, similarly bounded by identifiable premises and a main road.

2. It was the categorical assertion of the plaintiff that the defendant, without any semblance of legal authority, forcefully entered into possession of the suit premises. Despite approaching the appropriate Executive Magistrate under Section 144(2) of the Code of Criminal Procedure, no effective relief was granted to the plaintiff. Thereafter, the plaintiff approached the Hon'ble High Court in W.P. No.14045(W) of 2001, wherein it was held that the matter partook of a civil nature, and liberty was granted to the plaintiff to seek relief in a competent civil forum. Although repeated demands were made by the plaintiff, notably on 5th June 2005, requesting the defendant to vacate the premises, such requests were refused. The plaintiff was thus constrained to initiate a suit for recovery of khas possession and for appropriate ancillary reliefs. It was relevant to note that the defendant, despite being served, failed to file a written statement within the statutory timeline and was consequently debarred from contesting the suit on factual grounds, being limited only to raising legal objections.

3. By judgment dated 30th June, 2012, the Learned Civil Judge (Junior Division), First Court, Diamond Harbour, was pleased to decree Title Suit No.80 of 2006 in favour of the plaintiff. The Court held that the plaintiff had successfully discharged the burden of proving title to the suit

property, having adduced both oral and documentary evidence in support of their claim. The deposition of PW-1, Sri Sannyashi Purkait, on behalf of his mother - the recorded purchaser - corroborated the plaintiff's claim to ownership and possession. The said evidence was fortified by PW-2, who deposed to the contents and execution of the deed of sale dated 6th May, 1962 executed by Binoy Gore, and also confirmed that the suit plots stood recorded in the relevant LR ROR in the plaintiff's name. The documentary corpus produced included: Exhibit 1 (Deed of Sale No.3554 dated 06.05.1962), Exhibits 2 and 2(a) (rent receipts), Exhibit 3 series (LR RORs pertaining to Khatian Nos.156, 263, and 102), and Exhibit 4 (certified copy of order dated 26.11.2001 passed by the Hon'ble High Court in W.P. No.14035(W)/2001).

4. Upon due consideration of the evidence adduced, the Learned Trial Court found the defendant to be a trespasser simpliciter in respect of the 'B' Schedule premises and was further pleased to hold that the plaintiff had established valid title over both Schedule 'A' and Schedule 'B' properties. The Court observed that the suit, being one for khas possession from a rank trespasser, fell within the purview of Section 7 Clause 6(a) of the West Bengal Court Fees Act, 1970, under which the suit was to be valued as per the plaintiff's estimation. However, the Trial Court recorded that the plaintiff had not disclosed the precise area of the 'B' Schedule property, thereby rendering the valuation and court fee paid insufficient. Nonetheless, the Learned Judge, having found the plaintiff's title unimpeachable, decreed the suit with costs assessed at Rs.200/-, directed the defendant to hand over khas possession of the Schedule 'B'

property within forty-five days from the date of judgment, and permanently restrained the defendant from alienating or parting with possession of the suit property in favour of any third party. A preliminary decree for mesne profits was also passed in favour of the plaintiff, to be calculated from the year 2000 until actual delivery of possession.

5. In the judgment impugned dated 31st March, 2014, rendered in Title Appeal No.89 of 2011, the Learned Additional District Judge, Diamond Harbour, while affirming the material findings recorded by the Learned Trial Court, was pleased to observe that the defendant was a rank trespasser and that the plaintiff had successfully established title to the suit property, particularly the 'B' Schedule premises. The appellate court further upheld the admissibility and evidentiary value of the documents marked as Exhibits 1 through 4, specifically noting the congruence between the plot numbers in the sale deed and the corresponding entries in the R.S. records. The appellate court also took judicial notice of the fact that the defendant had failed to produce any documentary evidence in support of possession or to substantiate the assertion that the land stood vested in the State. The permissibility of amending the schedule to the plaint during execution, as laid down in 2010 (2) CHN (Cal) 604, was duly relied upon.

6. However, the appellate court took exception on two principal grounds. Firstly, it noted with concern that the plaint failed to specify the measurement or area of the Schedule 'B' property. The absence of such measurement, in the opinion of the appellate forum, rendered the decree incapable of execution, as it failed to identify the suit premises with

sufficient certainty. Secondly, the appellate court held that in light of the absence of any stated area, the suit could not be properly valued under Section 7 Clause 6(a) of the West Bengal Court Fees Act, 1970, and that no meaningful estimation could be arrived at without such foundational particulars. Consequently, while refraining from setting aside the decree in its entirety, the Learned Appellate Court remanded the matter to the Learned Trial Court with liberty to the plaintiff to amend the plaint by incorporating the specific measurement and description of the Schedule 'B' property and to make appropriate valuation and court fee payment in accordance with law.

7. Aggrieved by the said order of remand, the learned advocate appearing for the plaintiff submits that the Learned Appellate Judge failed to consider the mandatory requirement of conducting an inquiry under Section 11 of the West Bengal Court Fees Act, 1970, prior to arriving at any conclusion regarding deficiency of court fees. It was further urged that the remand was unwarranted in view of the specific and unambiguous description of the Schedule 'B' property, which comprised a single wooden shop room, identified in the plaint as "Wooden Fuen", with all four boundaries clearly demarcated so as to preclude any confusion regarding its identity.
8. It was contended that the nature of the property being a constructed structure - not vacant land - dispensed with the necessity of indicating exact measurements for the purpose of court fee computation, particularly in a suit for recovery of khas possession against a trespasser. It was further argued that once the appellate court had unequivocally affirmed the status of the defendant as a rank trespasser, and upheld the

evidentiary basis of the plaintiff's title, it was improper to remand the matter solely on a technical objection as to measurement and valuation. The Learned Counsel for the plaintiff also submitted that the decree, as framed by the Learned Trial Court, was capable of execution, as the Schedule 'B' property had been described with sufficient specificity. The insistence on remand for rectifying what was described as a non-substantive omission was stated to cause unnecessary delay and prejudice to the plaintiff, who had already secured a decree on merits. Lastly, it was contended that the Learned Appellate Court misdirected itself in its interpretation of the precedents cited at the bar, thereby occasioning a miscarriage of justice.

9. The Learned Advocate representing the respondent did not appear before this Court on several occasions. This Court vide Order dated 09.09.2024 observed as follows:-

“.....As per the report submitted by the concerned police station, despite service of notice, none appears for the legal heirs and/or representative of the sole respondent.”

10. Subsequently, the instant case was taken up for hearing ex parte.

11. This Hon'ble Court vide Order dated 07.11.2016 observed as follows:-

“We admit the appeal as substantial questions of law are involved in this appeal. We have gone through the provisions of Section 7(vi) of the West Bengal Court Fees Act, 1970 and in our opinion having regard to the aforesaid statutory provision, the appeal shall be heard on the following questions of law:

- a) Whether in a suit for recovery of possession of immovable property from a trespasser, failure to mention in the schedule to the plaint the actual area in respect of which relief is claimed in the suit would render the plaint defective even if the description*

given otherwise makes the property indentifiable, for the reason that it would be not possible for the Court to value the suit for the purpose of payment of Court fees to the plaintiff?

- b) To what extent the provisions of Section 11 of the West Bengal Court Fees Act could be applied by the Court in a case where valuation is made in terms of Section 7(vi)(a) of the West Bengal Court Fees Act, 1970, the suit being for recovery of possession of immovable property with no relief claimed for declaration of title and there being no finding that declaration of title is necessary for disposal of the suit?"*

12. Section 7 Clause 6(a) of the West Bengal Court Fees Act, 1970 is replicated as follows:-

"7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

....

*(vi) In a suit for recovery of possession of immovable property from-
(a) a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit-according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 11;"*

13. Section 11 of the West Bengal Court Fees Act, 1970 is stated as follows:-

"If the Court is of opinion that the subject-matter of any suit has been wrongly valued, it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose."

14. The property in dispute had been described in Schedule 'A' and Schedule 'B' respectively as follows:-

"Schedule – 'A'

All that a piece and parcel of land measuring about 52 cottahs in mouza Bearia, Dag No.2 and 3 under Khatian No.156, J.L. No.89, P.S.- Falta, District 24 Parganas (South) butted and bounded as follows:-

On the North: Land of Sanjoy Mondal. On the South: Land of Purnima Rurkait. On the East: Land of Kanai Mondal. On the West: Main Road.”

“Schedule – ‘B’

All that one shop room (Wooden fram) in Mouza Boarie, Dag No.2 and 3 under Khatian No.156, J.L. No.89, P.S.- Falta, District 24 Parganas (South) butted and bounded as follows:-

On the North: Shop room of Mukul. On the South: Shop of Moti Bairagi. On the East: Land of Plaintiff. On the West: Main Road.”

15. The appellant-plaintiff had absolute title over the Schedule ‘A’ property inclusive of the Schedule ‘B’ property wherefrom the respondent trespasser was to be evicted. The location of the shop room as described in Schedule ‘B’ can be conspicuously identified in segregation, exclusivity and isolation since it had been surrounded by shop room of one Mukul on the North, shop room of one Moti Bairagi on the South, land of plaintiff on the East and the main road on the West. The purpose for execution should be to identify the locale of the shop room which can be appropriately accomplished barring the exact measurements since the identification of the shop room in possession of the respondent being a part of the Schedule ‘A’ property was sufficient enough to be recognized.

16. Under such circumstances, the failure to mention the actual area in respect of which the relief is claimed against recovery of possession of immovable property from a trespasser will not render the plaint defective since the description of the shop room in Schedule ‘B’ attributes the same to be identifiable and it serves the intent and purpose as enumerated in Section 11 and Section 7(vi)(a) of the West Bengal Court Fees Act, 1970, since no further relief was claimed for declaration of title over the

disputed shop room, the adjudication to determine and declare the right title and interest over the disputed shop room was not required for the disposal of the suit as the same had been filed for recovery of possession of immovable property from a trespasser.

17. Further remand to the Trial Court would only result in procrastination of the issues without justification.
18. In view of the above discussions, the judgment and decree dated 31st March, 2014 passed by the Learned Additional District Judge, Diamond Harbour, South 24-Parganas in Title Appeal No.89 of 2011 is set aside whereas the judgment and decree dated 30th June, 2011 passed by the Learned Civil Judge (Junior Division), 1st Court, Diamond Harbour, South 24-Parganas in Title Suit No.80 of 2006 is upheld.
19. The instant appeal being F.M.A.T. 145 of 2016 along with its connected application are disposed of accordingly. Decree to be drawn up.
20. There is no order as to costs.
21. The Trial Court Records along with a copy of this judgment be sent down to the Learned Trial Court for necessary action.
22. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)