

D/L.36.
July 7, 2025.
MNS.

SA No. 16 of 2025
+
CAN 1 of 2025

Sri Sajib Maity
Vs.
Kalpana Mondal

Mr. Kushal Chatterjee,
Mr. Debrup Choudhury

... for the appellant.

Mr. Apurba Kumar Ghosh

...for the respondent.

1. The present second appeal has been preferred against a judgment of affirmance, at the behest of the defendant/licensee in an eviction suit.
2. Learned counsel for the appellant argues that both the courts below failed to take into consideration the fact that the plaintiff, claiming to be the wife of the original owner, who was the maternal uncle of the defendant/appellant, was the second wife of the original owner during subsistence of his prior marriage.
3. It is submitted that although in the written statement it was specifically pleaded that the plaintiff was not the owner of the suit property, both the courts below failed to take into consideration the fact of the marriage of the plaintiff with the original owner

being void, due to subsistence of the previous marriage.

4. Learned counsel argues that although there was no specific pleading as to the plaintiff being the second wife during subsistence of the first marriage of her husband, who was the original owner, the rudiments of challenge to ownership was there in the written statement.
5. It is contended that even if there is no specific pleading but the basis of the primary pleadings are found in the written statement, the courts, despite issues not being specifically framed, can decide on the issue if both parties argue on such issue at length and adduce evidence thereon.
6. Learned counsel places reliance on *Bachhaj Nahar Vs. Nilima Mandal and another*, reported at (2008) 17 Supreme Court Cases 491, where the Supreme Court observed, *inter alia*, that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. It was held that as the very requirements indicate, this should only be in exceptional cases where the court is fully satisfied that the pleadings and issues

generally cover the case subsequently put forward and that the parties, being conscious of the issue, had led evidence on such issue.

7. It is further submitted that the PW1, in her evidence, virtually admitted about the subsistence of the first marriage at the point of time when she contracted marriage with the original owner, which was not looked into by both the courts below.
8. However, we are unable to agree with the submissions of learned Counsel for the appellant for the following reasons:
9. The proposition sought to be portrayed to have been laid down in the cited report was in the specific context that a case not specifically pleaded can be considered only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and the parties, being conscious of the issue, had led evidence on such issue.
10. Apart from the fact that there is a concurrent finding of both the courts below in the present case regarding dissatisfaction as to sufficient pleadings being there for the purpose of leading evidence on the issue of the marriage of the plaintiff being void, we also find from the records that the issues framed did not even cursorily touch the question of subsistence of the prior marriage at the point of time when the plaintiff got married to the original

owner. The only two issues framed by the trial court in the case at hand, which could arguably come even near the said question, were the first issue, which was whether the suit is maintainable in its present form, and the second issue as to whether the plaintiff had any cause of action to file the instant suit.

11. However, such issues are too omnibus and general in nature to prompt the court to come to a conclusion that those gave sufficient notice to the plaintiff about the point sought to be argued by the defendant/appellant now.

12. That apart, the courts below considered the evidence at length. Particularly, the learned Trial Judge came to the specific finding that the defendant/appellant, in his cross-examination as DW1, admitted that he had stated in his affidavit-in-chief that Kalpana Mondal, the plaintiff/respondent, is the owner of the suit property. It is further recorded by the Trial Court that the defendant also stated in his cross-examination that he does not know exactly whether Sambhunath Mondal executed any Will in his favour, despite him having sought to run a case that there was a Will executed in his favour.

13. It is also recorded by the learned Trial Judge that the defendant/appellant did not deny the fact that the plaintiff is the widow of deceased Sambhunath

Mondal, the original owner, nor did the defendant claim that there exists other legal heirs of Sambhunath Mondal.

14. Thus, since the defendant/appellant himself admitted that Kalpana Mondal is the owner of the suit property and did not deny that the plaintiff was the widow of the deceased original owner, it does not now lie in the mouth of the defendant to resile from such position and place reliance on the vague and general pleading in his written statement that the plaintiff is not the owner of the property.

15. The appellate court was justified in observing that the court cannot look into the evidence of PW1 with regard to the subsistence of a prior marriage at the time when she got married, since the issue did not find place in the pleadings at all. It is well-settled that no proof beyond the pleadings can be looked into.

16. Although it is trite law that even if specific issues are not framed but both parties go into trial knowing fully well the issues involved and adduce evidence thereon, the courts can decide on such issue, the said principle is diluted in the present case in view of the pleadings of the defendant having not specifically mentioned anything about the subsistence of a prior marriage at the point of time when the plaintiff married her husband and/or even as to the marriage of the plaintiff with her husband

being a nullity or void in the eye of law. The bare mention of the plaintiff not being the owner of the property is absolutely blanket and omnibus in nature and cannot comprise of the rudiments of the pleading that the plaintiff's marriage was void, for which she was not the owner of the property.

17. Even in the cited report, the Supreme Court ultimately came to the finding that the pleadings necessary to establish an easement by prescription, as required therein, were not found in the pleadings of the parties.

18. The Supreme Court reiterated that in the absence of a specific claim by the plaintiffs based on an easementary right, the first defendant therein did not have an opportunity to demonstrate that the plaintiff had no easementary right. As in the said case, in the present case, the defendant merely touched in his pleadings the issue of the plaintiff not being an owner, without averring anything regarding her marriage being void and/or there being a prior marriage subsisting in respect of the owner at the time of his second marriage with the plaintiff.

19. Rather, the defendant, in his evidence, admitted that the plaintiff was the owner of the suit property and never denied that the plaintiff was the widow of the deceased original owner.

20. It is also noteworthy that in neither of the courts below did the defendant/appellant take out an application for amendment of his plaint to incorporate such pleadings. For the first time, in the present second appeal, such an application has been made.

21. However, it is well-settled that the limited scope of factual consideration by the second appellate court is circumscribed by Section 100, read in conjunction with Section 103, of the Code of Civil Procedure and no question of fact can be permitted to be raised for the first time unless it directly pertains to a substantial question of law which is already available from the materials and pleadings before the courts below.

22. Thus, we do not find even the rudiments of any pleading challenging the validity of the marriage of the plaintiff and consequentially her not being the valid wife of the owner.

23. The amendment in that regard, sought for the first time before the second appellate court, cannot be allowed, since it would tantamount to allowing the defendant/appellant to alter the entire complexion of the defence case and introduce a new point which was well within the knowledge of the defendant/appellant at all material points of time.

24. Furthermore, we find from the records that the courts below relied on Exhibits 3 and 4, which are

receipts produced by the plaintiff/respondent to the effect that government rent and tax was paid in respect of the suit property by the plaintiff/respondent. Thus, at least the plaintiff had established a better title than the present defendant/appellant before the courts below.

25. In such view of the matter, the cited judgment does not help the appellant in any manner. We do not find any question of law, let alone substantial, or any material basis in the pleadings to give rise to such question of law, regarding which the plaintiff was sufficiently put on notice by the defendant at the relevant point of time prior to trial.

26. As such, there is no occasion for us to interfere with the concurrent findings of facts of both the courts below. Hence, since no substantial question of law is involved, SA No. 16 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

27. In view of our above observations, CAN 1 of 2025, seeking amendment of the written statement at the second appellate stage, is also dismissed.

28. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)