

D/L.6.
November 17, 2025.
MNS.

SA No. 81 of 2025
+
CAN 1 of 2025

Samsul Haque @ Samsul Islam and others
Vs.
Aminul Islam alias Aimul Islam

Mr. Partha Pratim Roy,
Ms. Poulami Chakraborty

... for the defendants/appellants.

1. The present Second Appeal is directed against a judgment of reversal.
2. The learned trial Judge dismissed the suit for declaration of title and permanent injunction filed by the plaintiff/respondent primarily on the ground that the plaintiff could not prove his possession and, as such, the suit was barred by law for not seeking any relief of recovery of possession, going by the principle of the proviso to Section 34 of the Specific Relief Act, 1963 (in short “the 1963 Act”).
3. The Appellate Court, on the other hand, reversed such findings and came to the conclusion that since the link deed, showing transfer of the suit property in favour of the mother/predecessor-in-interest of the defendants/appellants, could not be produced by the defendants/appellants, the title of the defendants/appellants through their mother could not be

proved. Thus, the title of the plaintiff/respondent was proved by dint of his purchase deed.

4. With regard to possession, the learned First Appellate Court held that the plaintiff has established his possession, by taking into consideration two aspects of the matter - first, the entry of the name of the predecessor-in-interest of the plaintiff/respondent in the CS Records of Rights and secondly, the oral evidence of the plaintiff's witness.

5. Learned counsel for the appellants before us seeks to impress upon this Court that the credibility of the plaintiff's witness was at stake, since he admitted that he was deposing on the instruction of the plaintiff.

6. However, we are unable to accept such contention.

7. It is often seen that when the deposition is originally adduced in Bengali vernacular but translated into English during transcription, the true import of the nuances of the words used by the witness are lost in translation.

8. The word "instruction" is somewhat ambiguous and may mean either that the witness came to depose upon being so asked by the plaintiff or that he was deposing at the behest and as per specific instruction of the plaintiff.

9. There is no reason why the second view should be chosen over the first, in the absence of any other corroborative evidence to shake the credibility of the plaintiff's witness otherwise.

10. Moreover, CS Records of Rights and entries therein carry both forward and backward presumption of correctness, unless rebutted by cogent evidence.

11. The factual backdrop of the present case is that the CS Records of Rights stood in the name of the predecessor-in-interest of the plaintiff whereas the LR Records of Rights stood in the name of the mother/predecessor-in-interest of the defendants.

12. In such circumstances, in the absence of any link deed showing the transfer of title in favour of the mother of the defendants, it was the initial onus and the burden of proof of the defendants/appellants to explain how and why the entry in the Records-of-Rights was changed in the name of the defendants' mother. In the absence of such explanation and/or any foundational fact to justify such alteration of name in the L.R. Records-of-Rights, one of the plausible views on the facts of the case was accepted at by the learned appellate Judge by arriving at the conclusion that the plaintiff was in possession, on a conjoint reading of his predecessor's name in the CS Records and the title deed executed in the plaintiff's favour. It is well-settled that the second appellate court does not lightly interfere with the factual findings of the first appellate court if such view is plausible on law.

13. Following such principle and since even otherwise the learned Trial Judge erred in law in holding that the suit is barred by the proviso to Section 34 of the 1963 Act because at the time of filing of the suit it was the plaint

case that the plaintiff was in possession and as such no prayer for recovery of possession was required to be made and even finally the plaintiff was held to be in possession.

14. Accordingly, we do not find any substantial question of law being involved in this matter.

15. SA No. 81 of 2025 is, thus, dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

16. Consequentially, CAN 1 of 2025 stands dismissed as well.

17. There will be no order as to costs.

18. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)