

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction**

APPELLATE SIDE

FAT 353 of 2019

**Padmabati Shaw & Anr.
Vs.
Sri Prodyut Kumar Saha & Ors.**

Present : **The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

For Appellants : Mr. Saptansu Basu, Sr. Adv,
Mr. Aniruddha Mitra, Sr. Adv.,
Mr. Aditya Chakraborty,
Mr. Anirban Ghosh

For Respondent No.1 : Mr. B. N. Jaiswal,
Mr. Taraknath Pal

Heard on : **17-04-2025 & 24-04-2025.**

Judgment on : **24-04-2025.**

Sabyasachi Bhattacharyya, J:

1. The present first appeal has been preferred against a judgment and decree passed in a suit for declaration of tenancy right and other consequential reliefs. The defendant nos.2 and 3 are the appellants herein.

2. Learned Senior Counsel appearing for the appellants, *inter alia*, argues that the learned trial Judge did not have territorial jurisdiction to pass the decree.
3. It is contended that such point was taken at the outset and was framed as an issue, in particular, issue no.5, read with issue no.1.
4. While deciding the same, the learned trial Judge proceeded on the premise that the suit is not one for land and is not covered by Section 16 of the Code of Civil Procedure and, accordingly, turned down the objection as to jurisdiction.
5. Since the issue of territorial jurisdiction pertains to the very premise of the powers of the trial Court to entertain and decide the suit, we choose to take up such question first for adjudication, since in the event the said question is decided in the affirmative and the objection is sustained, there would not be any occasion to go into the other issues, as the learned trial Judge, then, would not have jurisdiction to decide the other issues on merits.
6. Learned counsel for the respondent no.1/plaintiff argues that the suit was in the nature of one for specific performance.
7. It is submitted that the predecessor-in-interest of the parties was a tenant in respect of the suit property and, as such, the plaintiff sought a declaration of his right of joint tenancy with regard to the property and, as such, the suit is not one in respect of immovable property. Learned counsel for the respondent no.1/plaintiff further argues that

no issue as to territorial jurisdiction was framed by the learned trial Judge.

8. However, we are unable to agree with learned counsel for the respondent no.1/plaintiff on the last count, since issue no.1 framed by the learned trial Judge was whether the suit was maintainable in its present form and issue no.5 was whether the court had jurisdiction to try the suit.
9. While deciding such issues, the learned trial Judge categorically adverted to the arguments and counter arguments of the parties on territorial jurisdiction and ultimately came to the conclusion that the suit was not covered by Section 16 of the Code of Civil Procedure.
10. We also cannot accept the argument of the plaintiff to the effect that the suit is one for specific performance. A suit for specific performance is covered by the Specific Relief Act, 1963 and in the absence of any agreement as such having been pleaded by the parties, there is no scope of construing the suit to be one for specific performance.
11. The principal relief, that is, relief (a) in the plaint was a decree for declaration that the plaintiff and the proforma defendant nos. 6 to 10 are joint tenants of two shop rooms and four godowns at no.24A, 24C and 24D, R. G. Kar Road, Kolkata-700 004, more fully described in the schedule thereunder. The schedule more expansively describes the above immovable property.

12. Thus, the suit was filed specifically claiming determination of right to and interest in an immovable property. Section 16(d) of the Code of Civil Procedure provides precisely for such suits and stipulates that suits for the determination of any right to or interest in immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate.
13. It is an undisputed position that the property-in-question, which is the subject matter of the suit, was previously located within the Tala Police Station and thereafter has been reassigned to the Ultadanga Police Station, regarding none of which the City Civil Court, which passed the impugned judgment, has determination.
14. In such view of the matter, we find that the learned trial Judge erred in law in assuming territorial jurisdiction where it had none. Due to such reason, the findings and conclusions rendered and reached by the learned trial Judge respectively on all the other issues are vitiated by lack of jurisdiction and as such, are required to be set aside even without going into the merits of such findings. In fact, the learned trial Judge acted beyond his charter in deciding the other issues on the premise of a wrong adjudication on the issue of territorial jurisdiction. As such, the impugned judgment and decree cannot be sustained on the ground of jurisdiction.
15. It is, however, made clear that this judgment is rendered on the ground that the learned trial Judge did not have territorial jurisdiction

to entertain the suit and, hence, to adjudicate the other issues involved on merits. Thus, nothing in our judgment shall preclude the plaintiffs from instituting a fresh suit, subject to limitation, before the appropriate and competent civil court having jurisdiction. If so issued, subject to the law of limitation, the said competent court shall be at liberty to decide all the other issues on merits independently and in accordance with law, without being influenced in any manner by any of the observations made on such issues either by this Court or by the learned trial Judge in the the impugned judgment.

16. Accordingly, FAT 353 of 2019 is allowed on contest against the respondent no.1/plaintiff and ex parte against the other respondents in the light of the above observations, thereby setting aside the impugned judgment and decree dated May 29, 2019 passed by the learned Judge, Fourth Bench, City Civil Court at Calcutta in Title Suit No.291 of 2004.
17. There shall be no order as to costs.
18. Let a formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)