

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

Present:

The Hon'ble Justice Sugato Majumdar

**S.A. 238 of 2013
With
CAN 1 of 2013 (old CAN 7454 of 2013)**

**Promod Show
Vs
Monaj Show & Ors.**

For the Appellant	:	Mr. Debasis Sur Mr. Dilip Kumar Dan Mr. Amitava Chowdhury
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For the Respondents	:	Mr. Ayan Banerjee Ms. Debasree Dhamali Ms. Riya Ghosh Ms. Debolina Ghosh
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Heard on	:	11.12.2025
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Judgment on	:	16.12.2025
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Sugato Majumdar, J :

The instant second appeal is filed by the original Plaintiff against the Judgment and the Order of the First Appellate Court dated 26/03/2013.

The plaint case in nutshell is that the Plaintiff is as follow:

- 1) The Plaintiff instituted the original suit against his mother and brother claiming right, title, interest and proprietorship over the business under the name and style of M/s. Shaw Builders.

2) The Plaintiff used to run a business under the name and style of M/s. Shaw Builders. He contended that the business initially was started in the name of his younger widowed sister Sarita Shaw @ Gupta, but subsequently he converted the business in his own name. The Plaintiff was a labourer in a jute mill and he used to ask his younger brother, namely, the Defendant No. 1 to look after the business on his behalf of in his absence. According to the plaint case, The Defendant No. 1 had no right, title and interest over the business but he acted on behalf of the Plaintiff. However, the Plaintiff subsequently noticed that the Defendant No. 1 was trying to set up business in his own name. The Defendant No. 2, namely, the mother of the Plaintiff lodged an objection to the Municipality against the issuance of trade licence in the name of Plaintiff as a result of which, the trade licence was not renewed in the Plaintiff's name. In that circumstances the Plaintiff instituted the suit, praying for a declaration of his right, title and interest over the business named M/s. Shaw Builders.

The widowed sister of the Plaintiff was added as Defendant No.3.

All the Defendants contested the suit by filing written statement denying each and every allegation contained in the plaint.

Sum and substance of the written statement may be summarized as follow:

- a) The suit property where from the business had been carried out belonged to the Defendant No. 2, the mother of the Plaintiff who was an employee at a nearby jute mill.

- b) The Defendant No. 2's contention was that she intended to run a business in the name of her widowed daughter for her benefit and she asked her eldest son that is the Plaintiff to run the business in the name of the daughter. The Defendant No. 2 invested money in setting up the said business under the name and style of M/s. New Shaw Builders from the premises which is now run by his youngest son Defendant No. 1.
- c) Defendant No. 1 has also got trade licence in his own name. The Plaintiff has no right, title and interest over the business alleged.

On the basis of rival pleadings, the following issues were framed:

1. Is the suit maintainable in its present form and law?
2. Has the suit any cause of action?
3. Is the suit barred under the Specific Relief Act?
4. Is the Plaintiff entitled to get any decree as prayed for?
5. To that other relief or reliefs if any the Plaintiff is entitled?

Additional Issue No.6:-

Is the Plaintiff owner/sole proprietor of Show Builders, the business as described in the Ka schedule of the plaint?

The Trial Court dismissed the suit of the Plaintiff. It was observed by the Trial Court that Plaintiff, though admitted that he had been dispossessed from the business did not make any prayer for recovery of possession. The Plaintiff did not make any prayer for amendment of plaint either for recovery of possession or for a declaration of a proprietorship of the new business under the name and style of M/s.

New Shaw Builders. It is further observed by the Trial Court that the suit property was admittedly in the name of the Defendant No. 2. There was no prayer for declaration of the status of the Plaintiff of the said premises. The Trial Court further observed that admittedly there is no existence of the business of the name and style of M/s. Shaw Builders. The Trial Court further observed that it is not possible for the court to grant any declaration on proprietorship over M/s. Shaw Builders which is not in existence presently. There is no further observation that prayer for amendment of plaint was rejected by order dated 21/06/2010 which order remained unaltered. As such, the suit is now infructuous as decided by the Trial Court. It was also observed that the Plaintiff failed to prove that he had been disclosed from the business which is run now by from M/s. New Shaw Builders. Considering material evidences adduced the Trial Court dismissed the suit.

An Appeal was preferred by the Plaintiff against the said Judgment and Order passed by the Trial Court dated 11/02/2011. After considering the reasoning of the Trial Court and evidences adduced by the parties, the First Appellate Court upheld the findings of the Trial Court in terms of the Judgment dated 23/03/2013. Thus, there are concurrent findings of the two courts both of which favoured dismissal of the suit.

At the time of admission of the present second appeal, the following substantial questions of law were framed by the Division Bench:-

1. Whether the Courts below were justified in dismissing the suit on the ground of maintainability of the suit due to the bar under Section 34 of the Specific Relief Act, particularly when it appears from the record that the Plaintiff filed an application for amendment of the plaint for an additional relief by way of recovery of possession of the

suit premises wherefrom he was dispossessed during the pendency of the suit, or not?

2. Whether the learned Trial Court was justified in rejecting the Plaintiff's application for amendment of plaint for introducing an additional relief by way of recovery of possession of the suit premises, when he was allegedly dispossessed from the suit property during the pendency of the suit?

One of the grounds for which the Trial Court dismissed the suit was that neither there was prayer of recovery of possession nor the suit property in the name of the Defendant No. 2. In nutshell, the Plaintiff had no settled claim on the title or possession of the property. In **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRS. & Ors. [(2008) 4SCC 594]**, the Supreme Court of India observed that where cloud is raised over the Plaintiff's title and he does not have possession, a suit for declaration and possession with or without a consequential injunction is the remedy. It was observed that the Plaintiff has no semblance title either possessory or otherwise in respect of the property in question. In that connection adjudication on title or in other way entitlement to right to recover possession demands prior adjudication, in absence thereof prayer for recovery of possession cannot be allowed particularly when there is no *prima facie* evidence of title of the Plaintiff.

Trial Court observed that prayer for recovery of possession was absent in the plaint. Trial Court also observed that prayer for amendment of plaint was rejected in terms of Order dated 21/06/2010 but there is no revision preferred against the said order. Therefore, that order of rejection of amendment application got finality as the Plaintiff accepted that status. Absence of prayer for declaratory decree and recovery of possession when the title of the Plaintiff is neither pleaded nor established stands

on the way of considering the case of the Plaintiff/Appellant favorably. Concurrent finding of both the courts were correct and demand no interference.

Accordingly, the instant second appeal stands dismissed without any costs.

Lower Court Record be returned.

(Sugato Majumdar, J.)