

M/L.21.
August 4, 2025.
MNS.

SA No. 26 of 2024
+
CAN 1 of 2023

Hafijur Sk. and others
Vs.
Dipali Mondal

Mr. Kamal Krishna Pathak,
Mr. Souvik Maji

... for the appellants.

1. The present Second Appeal has been preferred against a judgment of affirmance.
2. Both the courts below decreed the suit for eviction filed by the plaintiff/respondent for recovery of possession from the defendants/appellants.
3. Learned counsel appearing for the defendants/appellants contends that the appeal should be admitted on several questions of law.
4. First, learned counsel contends that the suit was valued merely at Rs.100/- whereas the title of the plaintiff was required to be declared, since the same was disputed in the written statement and the defendants/appellants set up a defence claiming title through their predecessor-in-interest and their names have been recorded in the records of rights all along, which has been admitted by the plaintiffs' witness as PW1.

5. Alternatively, it is contended that the suit, as framed, being merely for recovery of possession, without a declaration of title being prayed for, ought to have been construed as one under Section 6 of the Specific Relief Act, 1963 in which case the suit would be palpably barred by limitation.
6. The question of limitation, it is argued, would also arise in the event the suit is treated to be one under Section 5 of the said Act, since the alleged title deed executed by the predecessor-in-interest of the defendants/appellants in favour of one Ram Charan Mondal, who was the predecessor-in-interest of the plaintiff, in the year 1990, would be the date of commencement of the cause of action of the suit.
7. Learned counsel further contends that in a suit for recovery of possession simpliciter, the date of dispossession and recovery of possession had to be proved by evidence by the plaintiff/respondent, who was the *dominus litis*, which they failed to prove by evidence.
8. In the present case, both the courts have proceeded on the basis of presumption, without any specific evidence being led as to the date and circumstances of dispossession, which also vitiates the impugned decrees as per learned counsel for the appellants.

9. However, we are unable to agree with the submission of learned counsel for the appellants on all the above counts.

10. First, there can be two broad categories of suits for recovery of immovable property – first, straightway under Section 6 of the Act, where the very premise of the relief of recovery of possession is only the fact of dispossession of the plaintiff, without any claim to title, and secondly, suits for recovery of possession where a claim of title is also involved.

11. The first category is covered by Section 6, and the second by Section 5, of the Specific Relief Act, 1963.

12. The second category of suits under Section 5 can, again be classified into two sub-categories, being suits in which declaration of title is not specifically sought or prayed for but in view of the defence case disputing the title of the plaintiff, the question of title has to be decided incidentally prior to granting recovery of possession, on the one hand and, on the other, where the plaintiff seeks straightaway the relief of declaration of title and consequentially, recovery of possession.

13. The present suit is of the first sub-class of the second category, where although the relief sought is of recovery of possession and no prayer for declaration of title is made, in view of the defence taken by the defendants/appellants in their written

statement, the question of title of the plaintiff/respondent is disputed and, thus, requires adjudication.

14. Thus, the question of title had to be necessarily adjudicated in the present case prior to the grant of recovery of possession, due to such being question raised in the defence and, as such, despite no clear relief of declaration of title having been sought, the title of the parties became a relevant issue, thus bringing the suit within the fold of Section 5 of the 1963 Act.

15. As to the alleged undervaluation of the suit, even in if a declaration of title is sought, self-evaluation can be made by the plaintiff in the plaint, however, subject to any objection thereto being taken by the defendants/appellants.

16. The question acquires the character of mixed a question of fact and law and the defect of undervaluation, if any, is a curable defect. It is well-established in law that if a technical objection as to a curable defect is to be taken by the defendants in the suit, the same has to be taken at the earliest possible opportunity, so that the court can grant an opportunity to the plaintiff to cure the defect.

17. Taking such point for the first time in a second appeal is not permissible in law.

18. Even otherwise, the question of limitation does not arise since as per the cause of action disclosed in the plaint, the question of seeking recovery of possession only arose when the plaintiff was dispossessed upon her title being disputed by the defendants/appellants.

19. Thus, we do not find any error of law or substantial question of law involved in the matter to justify the admission of the Second Appeal.

20. Accordingly, SA No. 26 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

21. Consequentially, CAN 1 of 2023 is dismissed as well.

22. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)