

AD- 7
Ct No.10
16.06.2025
(SSS)

SA 158 of 2022

Kishore Kumar Barman
Vs.
Shanta Das and Anr.

Mr. Sukanta Das
....For the appellant.

1. The present second appeal has been preferred against a judgment of affirmance. The plaintiff/appellant filed a suit for declaration of title without seeking recovery of possession, despite having admitted that the defendants/respondents have encroached upon the suit property.
2. The courts below proceeded on the premise that the suit was barred under the proviso to Section 34 of the Specific Relief Act, 1963.
3. Learned Counsel for the appellant, in his usual fairness, submits that although in the first appeal, an application for amendment of the plaint seeking to introduce the relief of recovery of possession was sought, the same was turned down, which order was affirmed in revision by a learned Single Judge of this court.
4. As such, in view of the proposed amendment sought by the plaintiff/appellant having been turned down, there is no scope of granting any relief to the plaintiff/appellant, since the suit was indeed barred by the proviso to Section 34 of the Specific Relief Act

in the absence of any prayer for recovery of possession on the basis of the admitted position in the plaint that the defendants were in possession of the suit property, whether by encroachment or otherwise.

5. Both the courts below were, thus, justified in returning the concurrent finding that the suit was barred under the proviso to Section 34 of the Specific Relief Act, 1963.

6. Thus, no substantial question of law is involved in the appeal.

7. Accordingly, SA 158 of 2022 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure without any order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)