

JPD. 9.
July 25, 2025.
MNS.

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side

SAT No. 7 of 2021

Sri Sadhan Jha and others
Vs.
Sri Bhupen Roy @ Azla

Mr. Rima Sarkar

... for the appellants.

Mr. Bhaskar Ray Mahasaya,
Mr. Ambalika Ghosh

...for the respondent.

1. The present Second Appeal has been preferred against a judgment of affirmance, whereby both the courts below have dismissed the suit filed by the plaintiffs for eviction of the defendant on the ground that the latter is a trespasser.

2. From the concurrent findings of both the courts below, we find that the ownership of the property of one Santosh Kumar Jha, the predecessor-in-interest of the plaintiffs, is admitted by both parties. Whereas the defendant produced a transfer deed in his favour, executed by the said Santosh Kumar Jha, nothing to rebut the said evidence was produced on behalf of the plaintiffs.

3. Learned counsel for the appellants raises a question as to whether both the courts below erred in law in holding that the court fees payable would be in terms of Section 7(v)

of the West Bengal Court fees Act, 1970 (in short “the 1970 Act”) and not under Section 7(vi) of the 1970 Act, since a dispute as to title was raised in the suit and a declaration in that regard was necessary for the purpose of granting the relief sought in the plaint.

4. It is submitted that neither of the courts below have ascertained the valuation of the property for the purpose of assessing the correct court-fees to be payable, which would itself raise a question of law.

5. Upon a careful perusal of the judgments of both the courts below, we find that the concurrent findings of the courts below regarding the defendant having been able to establish his title in respect of the subject property, thus thwarting the claim of the title of the plaintiffs, is unassailable.

6. The technical point of court fees, which is now sought to be raised by the appellants, does not have a material bearing on the outcome of the suit, since even if the same was held in favour of the appellants, the *ad valorem* court fees be payable under Section 7(v) of the 1970 Act would be higher than that put in by the plaintiffs themselves.

7. Thus, even in such a case, since the plaintiffs consciously framed the suit without claiming a declaration of title and did not pay *ad valorem* court fees, the result would be that the suit would have to be dismissed on such ground as well.

8. Hence, even if such issue was decided by this Court, as argued by the appellants, the outcome of the verdicts of both the courts below would remain the same.

9. Thus, we do not find any substantial arguable question of law having been raised in the appeal which touches the merits of the matter or hits at the root of the *lis*.

10. Accordingly, SAT No. 7 of 2021 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

11. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)