

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Partha Sarathi Sen
CO 37 of 2025
With
CAN 1 of 2025

Mridul Kanti Das and Ors.
Vs.
Mosaraf Hossain.

For the petitioners :

Mr. Saptangshu Basu , Sr. Adv.,
Mr. Rajat Das, adv.,
Mr. Bijay Bikram Das, Adv.

For the O.P:

Mr. Partha Pratim Roy, Adv.,
Mr. Debasish Mukhopadhyay, Adv.,
Ms. Madhushri Dutta, Adv.,
Ms. Shristi Sarkar, Adv.

Last Heard on :

18.08.2025

Judgement on :

21.08.2025

PARTHA SARATHI SEN, J:-

1. In this revisional application as filed under Article 227 of the Constitution of India the order no.22 dated 14.01.2025 as passed by the learned Civil Judge, Junior Division, Jalpaiguri in Title Suit no. 458 of 2022 is assailed.

2. By the impugned order learned trial court rejected the defendant nos. 38 to 42's application under Order 7 Rule 10 of the Code of Civil Procedure for return of plaint.

3. The defendant nos. 38 to 42 of the said suit felt aggrieved and thus preferred the instant revisional application.

4. At the time of hearing Mr. Basu, learned Senior Advocate appearing on behalf of the revisionists at the very outset draws attention of this Court to the copy of the plaint as filed in Title Suit no. 458 of 2022 before the learned trial court as has been annexed at page nos. 14 to 30 of the instant revisional application.

5. It is submitted by Mr. Basu that from the materials as placed before this Court it would reveal that it is the plaint case that the plaintiff is the owner of the suit property particulars of which has been mentioned in the schedule of the plaint by way of inheritance. It is further submitted by Mr. Basu that from paragraph no.11 of the plaint it would reveal that it is the further plaint case that in respect of the suit property defendant nos.1 to 37 have executed five registered deeds of conveyance in favour of the present revisionists i.e. the defendant nos. 38 to 42.

6. Drawing attention to paragraph no. 10 it is further submitted by Mr. Basu that it is the further plaint case that the plaintiff was unlawfully dispossessed from the suit property by the defendant nos. 38 to 40 and after entering into the suit property the defendant nos. 38 to 40 have constructed a pucca wall over a portion of the suit property and made some pucca corrugated tin shed structure over the self same property.

7. It is the further submission of Mr. Basu that from the prayer portion of the said plaint it would reveal that plaintiff has prayed for declaring the said

five registered deeds of conveyance as void and not binding upon the plaintiff with further prayers for recovery of khas possession of the suit property, permanent injunction and other ancillary reliefs.

8. It is submitted by Mr. Basu that on careful perusal of the averments as made in the plaint it would reveal that the alleged act of the defendant nos. 38 to 40 as well as execution of the five registered deed of conveyance by the defendant nos. 1 to 37 in favour of the defendant nos. 38 to 42 have really cast a shadow of doubt in the alleged title of the plaintiff over the suit property and therefore the trial court in order to grant the decree as prayed for ought to have come to a finding regarding the alleged title of the plaintiff over the suit property that is to say by declaring the title of the plaintiff over the suit property.

9. At this juncture Mr. Basu draws attention of this Court to Section 7 (vi) (a) of the West Bengal Court Fees Act, 1970 (hereinafter referred to as 'the Court Fees Act', in short). It is submitted by Mr. Basu that in the event the provisions of Section 7 (vi) (a) of the Court Fees Act is perused in the context of the plaint case in Title Suit no. 458 of 2022 it would reveal that without declaring the title of the plaintiff over the suit property the relief prayed for in the plaint cannot be granted and therefore the learned trial court while passing the impugned order ought to have considered that the valuation of the said suit should have been as per the provisions of Section 7 (v) of the Court Fees Act i.e. the learned trial court ought to have come to a finding that the value of the

said suit should be the market value of the land which is beyond the pecuniary jurisdiction of the learned trial court.

10. It is thus submitted by Mr. Basu that the learned trial court while disposing the application under Order 7 Rule 10 CPC has failed to visualize the aforementioned legal position and thus committed serious error of fact as well as of law in holding that the valuation of the said suit is correct.

11. Placing his reliance upon the reported decision of **Sadarali Biswas and Anr. Vs. Wazed Ali Mondal and Ors.** reported in **(2013) 1 ICC 787: (2013) 2 CHN 481** and **Smt. Nilima Bose vs. Santosh Kumar Ghosh** reported in **AIR 1997 Cal 202** it is argued by Mr. Basu that the learned trial court while passing the impugned order ought to have looked into to the substantive reliefs as prayed for in the plaint and the learned trial court ought to have made an enquiry with regard to the court fees payable considering the nature of the suit as filed before him.

12. It is further submitted by Mr. Basu that the learned trial court while disposing the said application under Order 7 Rule 10 CPC ought to have come to a finding that the relief as sought for in the plaint cannot be the sole criteria for determination of court fees especially when an objective standard of valuation is available for assessing the value of the suit so as to enable the plaintiff to pay *ad valorem* court fees.

13. Mr. Basu thus submits that it is a fit case for allowing the instant revisional application by setting aside the impugned order.

14. Per contra, Mr. Roy, learned advocate appearing on behalf of the plaintiff/respondent in course of his submission also draws attention of this Court to the copy of the plaint as has been annexed with the instant revisional application. Attention of this Court is also drawn to the petition under Order 7 Rule 10 CPC which was disposed of by the learned trial court by the impugned order. It is submitted by Mr. Roy that from the averments made in the plaint as well as from the prayer portion of the self same plaint it would reveal that the plaintiff has not prayed for cancellation of five registered deeds of conveyance as executed by defendant nos.1 to 37 in favour of the defendant nos. 38 to 42 since the plaintiff is not the executant in any such registered deeds of conveyance.

15. It is further submitted by Mr. Roy that in Title Suit no. 458 of 2022 the plaintiff has prayed for declaration that the said five registered deed of conveyance are void and not binding upon the plaintiff with a further prayer for recovery of khas possession of the suit property by evicting the defendants from the same.

16. It is thus submitted by Mr. Roy that since in the said suit the plaintiff has not sought for any decree for declaration there cannot be any predicament on the part of the plaintiff to value the said suit under Section 7 (vi) (a) of the Court Fees Act. It is further submitted for grant of the reliefs as prayed for in the said suit declaration of title of the plaintiff over the suit property is not mandatory.

17. In course of his argument Mr. Roy places his reliance upon the two reported decisions namely; ***Arobindo Saha And Ors. vs. Nowser Ali Khan*** reported in ***2015 SCC Online Cal 8343*** and ***Subh Karan Sharma @ Ridhkaran Sharma Vs. Shree Shree Iswar Lakshmi Naryan Jew and Shree Shree Ishwar Chandi Thakurani*** reported in ***AIR 2019 Cal 63***.

18. It is argued by Mr. Roy that in the reported decision of ***Subh Karan Sharma (supra)*** a co-ordinate bench of this court expressly held that since the plaintiff was a third party to the deeds in question the suit for declaration that the scheduled mentioned instruments were all vague, illegal, invalid, fraudulent and collusive instruments could not be governed under Section 7 (iv) (b) of the Court Fees Act and did not tantamount to seeking cancellation of the deed in question.

19. It is further contended by Mr. Roy that in the case of ***Arobindo Saha (supra)*** the division bench of this court held that if possession from a trespasser is sought to be recovered on the basis of declaration of title of the plaintiff, then only the plaintiff is required to value the suit on the basis of actual market price of the suit property and he is also required to pay *ad valom* court fees of the suit property. It is further submitted by Mr. Roy that applying the said test the Hon'ble Division Bench of this court further held that since the plaintiff has filed a suit for recovery of possession from trespasser without seeking a declaration of his title in the suit property and further since grant of such relief to the plaintiff is not dependent upon any declaration about his title

in the suit property, he could maintain the suit by following the relief in the suit as per his own choice.

20. It is thus submitted by Mr. Roy that since in plaint as filed in Title Suit no. 450 of 2022 the plaintiff who is the opposite party before this Court has not prayed for declaration of his title, learned trial court is very much justified in passing the impugned order refusing to return the plaint as prayed for.

21. It is thus submitted by Mr. Roy that the instant revisional application is devoid of any merit and the same may be dismissed.

22. This Court has meticulously perused the entire materials as placed before this Court. This Court has also given its due consideration over the submissions of the learned advocates for the contending parties.

23. For effective adjudication of the instant *lis* this Court at the very outset proposed to look to the provisions of Order 7 Rule 10 of the Code of Civil Procedure which is quoted hereinbelow in verbatim:-

“10. Return of Plaint-(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint. - On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

24. Section 7 of Court Fees Act reads as under:-

“S.7. Computation of fees payable in certain suits.- *The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows-*

i....

ii....

iii....

iv. in suits-

a....

b. for declaratory decree and consequential relief;- to obtain a declaratory decree or order, where consequential relief is prayed,

c....

d...

e.....

In all such suits the plaintiff shall state the amount at which he values the relief sought.

v. for possession of land, buildings or gardens:-In suits for the possession of land, buildings or gardens, not being suits referred to in clause (vi)-

(a)according to the value of the subject-matter, and such value shall be deemed to be fifteen times the net profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden, whichever is lower;

(b)if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden;

Explanation. - In this paragraph 'building' includes a house, outhouse, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever;

(vi) For recovery of possession of immovable property; In a suit for recovery of possession of immovable property from-

(a)a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit- according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 11;

b.....

vii....

viii.....

ix.....

x....

xi.....

xii....”

25. Keeping in mind the above proposition of law if I look to the factual aspects as involved in the instant revisional application it reveals that it is the case of the plaintiff that he is the owner of the suit property from which he has been wrongly dispossessed by the defendants nos. 38 to 40 whereupon the defendants have made illegal construction. It is the further plaint case that in respect of the suit property five registered deeds of conveyance were executed by the defendant nos.1 to 37 in favour of the defendant nos. 38 to 42 though the vendors of the said registered deed of conveyance have got no right, title and interest over the suit property.

26. It thus appears to this Court and as rightly argued by Mr. Basu that the aforementioned alleged action of the defendants really casts a shadow of doubt

over the right, title and interest of the plaintiff in respect of the suit property. It thus appears to this Court that the learned trial court cannot grant any of the reliefs to the plaintiff as prayed for in the said plaint without determining the alleged right, title and interest of the plaintiff over the suit property irrespective of the fact that the plaintiff has not sought for any decree of declaration of his right, title and interest over the suit property.

27. In considered view of this Court the reported decision of **Arobindo Saha (supra)** as cited from the side of opposite party/plaintiff is practically helpful for the revisionist herein inasmuch as in the reported decision of **Arobindo Saha (supra)** a division bench of this Court expressed the following view:-

"8. Let us now consider this part of the submission of Mr. Bhattacharya in the light of the provision contained in Section 7(vi)(a) of West Bengal Court Fees Act, 1970 which runs as follows:-

"7. (vi) for recovery of possession of immovable property: In a suit for recovery of possession of immovable property from-

(a) a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit-according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 11."

9. Section 7(vi) (a) of West Bengal Court Fees Act, 1970 thus makes it clear that if possession from a trespasser is sought to be recovered on the basis of declaration of title of the plaintiff, then the plaintiff is required to value the suit on the basis of the actual market price of

the suit property and he is also required to pay ad valorem court fees on the valuation of the suit property.

10. The said provision thus makes it clear that if the plaintiff files a suit for recovery of possession from a trespasser without seeking any declaration of his title in the property or in a case where grant of relief prayed for by the plaintiff is not dependent upon declaration of his title in the suit, then the plaintiff is not required to value the suit on the basis of the actual market price of the suit property. Under such circumstances, he can value the suit on the basis of the valuation of the relief claimed in the suit.

11. Thus if we apply this test in the present case, then we find that since the plaintiff has filed a suit for recovery of possession from trespassers without seeking any declaration of his title in the suit property and further since grant of such relief to the plaintiff is not dependent upon any declaration about his title in the suit property, he can maintain the suit by following the relief claimed in the suit as per his own choice. That be the position, we have no hesitation to hold that the suit has been properly valued and sufficient court fees has been paid by the plaintiff in the suit.”

28. Admittedly, in the case of **Arobindo Saha (supra)** a division bench of this Court expressly held that in a suit for recovery of possession from trespassers without seeking any declaration the said suit can be valued under Section 7(vi) (a) but as noticed by this Court in the forgoing paragraph that in the factual circumstances as involved in the plaint case of Title Suit no. 458 of 2022 no such relief can be granted to the plaintiff/opposite party herein without determining the right, title and interest of the plaintiff over the suit

property and therefore in considered view of this court the suit cannot be valued under Section 7 (vi) (a) of the Court Fees Act.

29. In the reported decision of **Nilima Bose (supra)** a co-ordinate bench of this Court has rightly noticed that in the case of **Samsher Singh vs. Rajendra Prasad** reported in **AIR 1973 SC 2348** the Hon'ble Supreme Court expressly held that 'the court in deciding the question of court fees should look into the allegations in the plaint to see what is the substantive relief that is asked for.'

30. Paragraph 14 of the reported decision of **Nilima Bose (supra)** is as under:-

"It is, therefore, clear that the manner in which the relief is sought for and couched in the plaint shall not be the sole criterion for determination of court-fees and that the provision of Section 7 (vi)(a) of the Court Fees Act shall not operate as a bar for revision of the valuation by the court if the basis of such valuation is provided in the plaint itself."

31. Keeping in mind the proposition of law as decided in the case of **Nilima Bose (supra)** and **Samsher Singh (supra)** it thus appears to this Court that though in Title Suit no. 458 of 2022 the plaintiff has not sought for decree for declaration of his right, title and interest over the suit property however the same is mandatorily to be decided by the trial court in order to grant reliefs to the plaintiff as prayed for in such plaint.

32. In view of the discussion made hereinabove this Court is of considered view that the valuation of the suit as made under Section 7(vi)(a) is not correct

and the said suit ought to have been valued under Section 7 (v) of the Court Fee Act i.e. according to the market value of the suit property.

33. On perusal of the schedule of the suit property in Title Suit no.458 of 2022 it reveals that the said suit property is measuring about 1.20 acres at Mauja Binnaguri, District Jalpaiguri the market value of which is definitely beyond the pecuniary jurisdiction of the learned Civil Judge, Junior Division at Jalpaiguri.

34. In view of the discussion made hereinabove the instant civil revisional application being CO No. 37 of 2025 is hereby allowed.

35. Consequently, the impugned order no. 22 dated 14.01.2025 as passed in Title Suit no. 458 of 2022 by learned Civil Judge, Junior Division, Jalpaiguri is hereby set aside.

36. Consequently, the application under Order 7 Rule 10 CPC as filed by the defendant nos. 38 to 42 is hereby allowed.

37. Consequently the learned Civil Judge, Junior Division at Jalpaiguri is directed to return the plaint of the Title Suit no. 458 of 2022 to the plaintiff for presentation to the court having appropriate territorial and pecuniary jurisdiction after maintaining the procedure as mentioned Order 7 Rule 10 (2) of the Code of Civil Procedure.

38. With the disposal of the instant revisional application the interim order of stay as passed earlier in connection with the revisional application stands hereby vacated.

39. All pending interlocutory applications are also disposed.

40. Liberty is given to the learned advocate for the revisionist to communicate the server copy of this judgement to the learned trial court.

41. Learned trial court is hereby directed to act on the server copy of is judgement.

42. Department is directed to communicate a copy of this judgment to the learned trial court forthwith.

43. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J)