

JPD-14
Ct No.01
24.07.2025
(sss)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

SAT 8 of 2024
With
CAN 1 of 2024

Minu Barman and Ors.
vs
Sudhir Barman and Ors.

Mr. Bikramaditya Ghosh,
Mr. Hirak Barman,
Ms. Supriya Singh,
Mr. Vivek Saha

.... for the Appellants.

Ms. Suman Sehanabis (Mandal),
Ms. Anwesha Chakraborty,
Ms. Aritri Chakraborty

.....for the Respondents.

1. The present second appeal has been preferred against a judgment of affirmance, whereby both the courts below dismissed the suit of the plaintiffs/appellants, for declaration of title and permanent injunction, primarily on two grounds. First, both the courts held that the suit was bad for non-joinder of the other co-owner, being the brother of the appellants, and secondly, that the suit property, as per the description in the plaint, was unidentifiable.

2. Learned counsel appearing for the appellants cites *India Umbrella Manufacturing Co. and Ors. vs.*

Bhagabandei Agarwalla (Dead) By Lrs. Savitri Agarwalla (Smt) and Ors. reported at (2004) 3 SCC 178 for the proposition that it is well-settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. It was further held that this principle is based on the doctrine of agency and one co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of the other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement.

3. Learned counsel argues that in a suit to protect the property, even one of the co-owners may maintain the suit unless it is proved that the other co-owners resist such attempt.

4. As regards the description of the property, learned counsel submits that the property was sufficiently described in the schedule of the plaint.

5. From a bare perusal of the schedule of the plaint, we find that the same does not give any boundaries to the property and the nature of the property and its exact measurements and location cannot be identified from the schedule. Thus, both the courts below were justified in coming to the concurrent finding in that regard.

6. The second proposition sought to be argued by the appellants, although interesting, is specious.

7. The doctrine of agency holds good in a suit for eviction against tenants/licensees/trespassers, because of the simple reason that in defence, there is very limited scope for a tenant/licensee/trespasser to dispute the title of the plaintiffs/owners. Moreover, the scope of an eviction suit is confined to whether the plaintiffs have a better title than the defendants and/or otherwise come within the purview of the concerned Rent Control Act, if applicable. No question of title is required to be decided directly and substantially in a suit for eviction.

8. In contrast therewith, in a suit specifically filed for declaration of exclusive title of the plaintiffs in a property, it is the title which is the paramount question which has to be decided by the court. In such suits, as in the present case, if the plaintiffs, being only some of the co-owners in respect of the property, seek a declaration of exclusive ownership, the suit is bad *ex facie* on such count alone. The suit property in the present case was never partitioned by metes and bounds and therefore, the claim of exclusive title of some of the co-owners regarding the entire property is not maintainable.

9. Secondly, in such a suit, whatever decree is passed would directly and substantially affect the other co-owners of the property. As such, the other co-owners

come within the definition of “proper parties” in such a suit. Thus, the suit is bad for non-joinder of the other co-owners.

10. In such view of the matter, we find that both the courts below were justified in coming to the concurrent findings on the above issues. Also, there is no substantial question of law involved in the appeal.

11. Accordingly, SAT 8 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

12. CAN 1 of 2024 is consequentially disposed of as well.

13. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)