

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

Present:

**The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Biswaroop Chowdhury**

**SAT 20 of 2025
with
IA No.CAN 2 of 2025**

**Sri Tenzing Thinlay Bhutia
-Versus-
Shri Bidur Tamang & anr.**

For the Appellant : Mr. Momenur Rahaman,
Mr. Bikash Singha

Hearing is concluded on : 16th December, 2025.

Judgment On : 16th December, 2025.

Tapabrata Chakraborty, J.

1. Records reveal that the plaintiffs/respondents in the present appeal preferred a suit for declaration and injunction being O.C. (Injunction) Suit No.14 of 2022. Upon contested hearing, the said suit was dismissed. Aggrieved thereby, the plaintiffs preferred an appeal being O.C. (Appeal) No.04 of 2024 which was disposed of by the judgment dated 20th May, 2025 setting aside the judgment delivered by the learned trial Court and issuing a decree of declaration that the

plaintiffs have right, title and interest over the suit properties. However, the decree of injunction over the suit properties was refused.

2. Mr. Rahaman, learned advocate appearing for the defendant/appellant strenuously argues that the learned first Appellate Court erred in law in declaring that the plaintiffs have the right, title and interest over the suit properties though there was no prayer to that effect in the plaint. The learned first Appellate Court, accordingly, went beyond the pleadings and reliefs claimed in the suit and such erroneous exercise of jurisdiction raises a substantial question of law in the present appeal.

3. He further argues that the plaintiffs have miserably failed to establish their right, title and interest over the suit properties through proper and well-defined chain of title deeds from the original recorded owner of the suit properties and in view thereof the plaintiffs could not establish any infringement of legal right warranting interference in the first appeal moreso when they were not in physical possession of the suit properties.

4. We have heard Mr. Rahaman, learned advocate appearing for the appellant and considered the materials on record.

5. A perusal of the plaint would reveal that the plaintiffs, *inter alia*, prayed for a decree of declaration to the effect that they are entitled to renovate their property and also for a mandatory injunction directing the defendant to let the plaintiffs to start their renovation work peacefully without any discourse or coercion and to vacate the

properties. The learned trial Court by the impugned judgment decided the point of maintainability of the suit against the plaintiffs observing, *inter alia*, that the suit was barred by section 34 of Specific Relief Act, 1963. However, the issue as to whether the plaintiffs have any right title and interest over the suit properties was answered in favour of the plaintiffs dealing with the deeds on the basis of which ownership was claimed. The suit was ultimately dismissed refusing to declare the right, title and interest of the plaintiffs over the suit properties and denying the prayer for mandatory injunction.

6. The learned first Appellate Court, however, was of the opinion that having found that the plaintiffs were the absolute owners of the suit properties, the learned trial Court ought not to have denied to grant such decree for declaration on a purported reasoning that no purpose would be served by giving such declaration even though such declaratory decree may not be non-executable in the facts of the case. On the basis of such reasoning, the judgment of the learned trial Court was set aside and it was directed that the appellants '*do get the decree of declaration that they have right title and interest over the suit properties*'. However, the first Appellate Court held that the appellants are not entitled to get the decree of injunction over the suit properties as they are not in possession of the same.

7. The ownership of the suit properties is inextricably bound with the right of an owner to renovate his property and/or to utilize the property in any other manner. Upon a composite perusal of the

averments made in plaint along with the reliefs, as claimed, it cannot be ruled out that the plaintiffs were seeking appropriate declaration and direction towards utilization of their land on the basis of their ownership. In the said conspectus, we are unable to accept the contention of Mr. Rahaman that on the rudiments of a declaration for renovation as sought for, the learned first Appellate Court could not have declared the right, title and interest in the said property.

8. The factual findings of the first Appellate Court are based on evidence and this Court cannot substitute its own findings upon re-appreciation of evidence.

9. For the aforesaid reasons, we are of the opinion that no substantial question of law arises in the appeal and that accordingly, no interference is called for.

10. The appeal and the connected application, if any, are dismissed.

11. There shall, however, be no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Biswaroop Chowdhury, J.) (Tapabrata Chakraborty, J.)