

JPD-18
Ct No.01
21.07.2025
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 189 of 2024

Bole Miya @ Md Bole Mia @ Boley Miya and others
Vs.
Mafiz Mia and others

Mr. Saumyajyoti Dutta,
Ms. Nikita Agarwal

.... for the petitioners

1. Affidavit-of-service filed today be kept on record.
2. Although it transpires that the address given is insufficient, the Court finds from a previous affidavit-of-service that the opposite parties were served at the same address on the previous occasion.
3. Accordingly, the revisional application is taken up for hearing *ex parte*, since the opposite parties choose not to appear despite prior service.
4. The present revisional application under Article 227 of the Constitution of India arises out of a judgment whereby the plaintiffs' suit for restoration of possession under Section 6 of the Specific Relief Act, 1963 (as amended) was dismissed only on the ground of limitation.
5. Although the plaintiffs pleaded in their plaint that they were dispossessed from the suit property on

May 20, 2012 and led evidence to that effect, the learned Trial Judge proceeded on the sole premise of the statements of the two plaintiffs' witnesses, PW 1 and PW 2, in their cross-examination to the effect that the defendants had been possessing the suit property since last six-and-half years and that the defendants took possession of the suit land 6/7 years ago.

6. Learned counsel for the petitioners points out, quite correctly in the view of this Court, that the suit was instituted contemporaneously, within a period of 6 months from the alleged date of dispossession. However, the cross-examination of PW 1 and PW 2 took place in the year 2018, that is, after lapse of about 6 years from the date of filing of the suit. Thus, even on the face of it, the so-called admission of PW 1 and PW 2 regarding the time of dispossession pertained to a period within the range of 6 months prior to the filing of the suit.
7. Thus, the learned Trial Judge committed a patent perversity in relying on such evidence to hold that the suit was barred by limitation.
8. Accordingly, CO 189 of 2024 is allowed, thereby setting aside the impugned judgment and decree dated February 29, 2020 passed by the learned Civil Judge (Junior Division) at Mathabhanga,

District: Coochbehar in Title Suit No. 54 of 2012 and remanding the matter to the trial court for a fresh adjudication of the suit on merits.

9. It is made clear that it will be open to the learned Trial Judge to consider afresh the question of limitation, along with other issues, on the basis of the evidence on record, however, in the light of the observations made above.
10. There will be no order as to costs.
11. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)