

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FA No. 214 of 2022

Sri Rabindra Nath Mondal and others
-VS-
Lakshmikanta Parmanya and others
...

For the appellants : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Ms. Bipasha Bhattacharyya, Advs.

For the respondents : Ms. Kavita Rani,
Ms. Krishna Yadav, Advs.

Heard on : July 1, 2026 and July 2, 2026.

Judgment on : July 2, 2026.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred against a decision decreeing the suit filed by the plaintiffs/respondents for declaration of title and recovery of possession.

2. An earlier partition suit between the parties culminated in a final decree, in terms of which possession of the respective allocated portions of the parties were handed over to them.
3. According to the plaintiffs/respondents, subsequently on August 31, 2006, the plaintiffs/respondents were unlawfully dispossessed from the property on the strength of an order passed by an Executive Magistrate, apparently under Section 147 of the Code of Criminal Procedure.
4. The said order was challenged in criminal revision before this Court. The revisional Court held that the dispossession was unlawful, however, remanding the matter to the Executive Magistrate to pass appropriate orders.
5. Thereafter, the matter travelled back and forth between this Court and the Executive Magistrate several times. However, the finding as to the dispossession of the plaintiffs being unlawful was sustained all along.
6. Thus, on the strength of their title, the plaintiffs/respondents filed the instant suit on April 11, 2011 seeking declaration of their title as well as recovery of possession.
7. The learned trial Judge disbelieved the case of the defendants/appellants regarding their purported adverse

possession of the suit property as well as that possession was handed over merely symbolically to the plaintiffs/respondents.

8. Learned counsel appearing for the appellants argues that in view of the frame of the suit, since title of the parties had already been declared in the earlier partition suit, the relief of declaration of title of the plaintiffs/respondents was redundant and that the plaint was an outcome of clever drafting on the part of the plaintiffs/respondents, to wriggle out of the rigours of Section 6 of the Specific Relief Act.
9. In effect, thus, the suit was one for recovery of possession simpliciter under Section 6 of the Specific Relief Act, 1963 (in short “the 1963 Act”) and, hence, the limitation stipulated therein of six months from the date of dispossession applied.
10. Overlooking the said fact, the learned trial Judge passed the decree of eviction.
11. Learned counsel appearing for the defendants/appellants cites a judgment of a learned Single Judge of this Court in the matter of *Gurdeep Singh Vs. Chaturbhuj Pandey and another* (CO 3100 of 2014), where the learned Single Judge, *inter alia*, observed that it is elementary that the title to the property is, generally, of no consequence in a suit instituted under Section

6 of the said Act as the key feature thereof is the dispossession of the plaintiff or of any person through whom the plaintiff claims, provided the dispossession is in respect of an immovable property and such dispossession is without the consent of the person in possession otherwise than in due course of law.

12. Learned counsel also relies on another portion of the said judgment, wherein the learned Single Judge observed that it would be more appropriate that the right of a landlord to recover possession of the tenanted premises from the trespasser, who has forcibly dispossessed the tenant, be seen as a right conferred by the expression "he or any person claiming through him may, by suit, recover possession thereof" appearing in Section 6(1) of the said 1963 Act.

13. The dispossession, it was held, has to be of the person in possession, but the action may be instituted by a person who has been dispossessed or by any person claiming through the person who has been dispossessed. The landlord of the dispossessed tenant can, in such circumstances and by virtue of the locus recognized in the relevant expression, be entitled

to recover possession from the trespasser who has forcibly dispossessed the tenant otherwise than in due course of law.

14. In the said judgment, the learned Single Judge went on to observe that a person possessing a superior title than the person dispossessed without his consent otherwise than in due course of law may be entitled to recover possession of the property under Section 6 of the said Act from the wrong-doer who has caused the dispossession, or even from any other person subsequently put into possession by such wrong-doer, provided the person dispossessed does not seek to recover his lost possession.

15. On the strength of the said decision, it is contended that the plaintiffs/respondents, claiming superior title over the defendants/appellants, come under the mischief of the 1963 Act.

16. It is reiterated that the suit ought to have been construed to be one under Section 6 of the 1963 Act.

17. Learned counsel appearing for the plaintiffs/respondents controverts the arguments of the appellants/defendants and contends that the suit was filed not under Section 6 but under Section 5 of the 1963 Act.

18. Upon careful consideration of the arguments of the parties, we cannot accept the contentions of the defendants/appellants.

19. For a proper appreciation of the matter, Sections 5 and 6 of the 1963 Act are set out below:

“5. Recovery of specific immovable property.- A person entitled to the possession of specific immovable property may recover it in the manner provide by the Code of Civil Procedure, 1908 (5 of 1908).

6. Suit by person dispossessed of immovable property.- (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought –

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

20. Whereas Section 6 of the 1963 Act is a remedy provided to a dispossessed person irrespective of title, Section 5 recognizes the right to seek possession of immovable property of a person who is entitled to such possession.
21. Thus, the right to file a suit for recovery of possession under Section 6 is available even to a trespasser and is premised solely on the prior possession of the plaintiff. Even if such prayer is not coupled with a legal right to be in such possession, Section 6 gives an outlet to an unlawfully dispossessed person to seek restoration of such possession.
22. However, the said right comes with the rider that the suit under Section 6 has to be instituted within six months from the date of dispossession, apparently to test the urgency of the plaintiff to justify such action.
23. On the other hand, Section 5 is not available to a person who does not have a legal right to the possession of the immovable property from which he is dispossessed.
24. The language of Section 5 is qualified by the expression “entitled to possession”, making it amply clear that a plaintiff in a suit under Section 5 of the 1963 Act has to have a prior

entitlement at the juncture when the dispossession occurred as well as when the suit is filed.

25. Thus, for a person entitled to possession in an immovable property, both the remedies, under Sections 5 and 6 of the 1963 Act, are available, whereas, in contrast, to a person who does not have legal entitlement to possession in the property, only Section 6 is available as a prompt remedy in order to set right the wrong which has been done to him by unlawful dispossession.
26. However, the above two regimes, contemplated under Sections 5 and 6, does not necessarily mean that a person legally entitled to possession in a property as per law is mandated to file a recovery of possession suit only under Section 6 of the 1963 Act and not under Section 5.
27. Section 5, conspicuously, uses the expression “entitled to”, thereby meaning that the person seeking possession has to have a pre-existing entitlement to the property, thus obviating any necessity for the plaintiff to seek a further declaration of title.
28. Keeping in view the aforesaid distinction between the two provisions, we are required to look into Articles 64 and 65 of

the Schedule of the Limitation Act, 1963 (in short “the Limitation Act”).

29. In terms of Article 64, in respect of a suit for possession of immovable property based on previous possession and not on title, the limitation period is of twelve years from the date of dispossession.
30. On the other hand, under Article 65 of the Schedule of the Limitation Act, in a suit for possession of immovable property or any interest therein based on title, the limitation period is twelve years from the date when the possession of the defendant becomes adverse to the plaintiff.
31. Thus, the present suit, in the plaint of which it was never indicated that it was being filed under Section 6 of the 1963 Act, has to be construed to be one under Section 5 of the 1963 Act, simply because the suit is filed on the basis of prior entitlement of the plaintiffs on the strength of the earlier partition decree.
32. This Court agrees with the contention of the appellants that the prayer for declaration of title made by the plaintiffs/respondents in the present suit was completely

superfluous and redundant, since title of the parties had already been declared in the earlier partition suit.

33. Thus, the present suit was essentially for recovery of *khas* possession.

34. Section 5 of the 1963 Act confers the right on the plaintiffs/respondents to institute the said suit, since the plaintiffs/respondents were persons “entitled to the possession of specific immovable property” as envisaged in the said Section.

35. The claim of the plaintiffs for recovery of possession in the partition suit is not irrespective of title, rather, on the strength of the entitlement of the plaintiffs by virtue of the earlier partition decree.

36. Even otherwise, it would be an absurd interpretation of Section 6 of the 1963 Act if it is to be held that the said provision is the only provision available to a title holder to get an eviction against an unlawful occupier. Holding so would restrict the limitation period for a lawful title holder to get back the possession of his/her property to six months as stipulated in Section 6 of the 1963 Act, in stark contrast with the limitation

period of twelve years as provided in Article 65 of the Schedule of the Limitation Act.

37. Hence, such interpretation, being absurd and irreconcilable, cannot be accepted by this Court.

38. Taking into account the full ambit of Sections 5 and 6 of the 1963 Act, coupled with Articles 64 and 65 of the Schedule of the Limitation Act, the only possible conclusion would be that a suit for recovery of *khas* possession filed against an unlawful occupier by a title holder comes within the trappings of Section 5 of the 1963 Act, read conjointly with Article 65 the Limitation Act, and not under Section 6 of the 1963 Act.

39. The reliance of the appellants on *Gurdeep Singh* (supra), with respect, is misplaced. In the said judgment, the learned Single Judge was considering a situation where a superior title holder (landlord in the said case) instituted a suit for an eviction against a person alleged to have unlawfully dispossessed the tenant of the plaintiff.

40. In such circumstances, the learned Single Judge distinguished between two possible scenarios where the superior title holder (landlord), being entitled under Section 6 of the 1963 Act, files a suit and gets back possession,

thereafter retaining the same. Such retention was held to be sacrosanct in case the tenant of the plaintiff, who was actually dispossessed from physical possession, had voluntarily given up such possession to a third party and had no interest to recover back such possession, as opposed to a situation where a tenant was in physical possession and thereafter dispossessed but was interested to get back such possession, upon which the landlord filed a suit for eviction, in which case it was held that the landlord/superior title holder had to give back the possession to the tenant, who was originally in possession, after getting a decree under Section 6 of the 1963 Act.

41. The said proposition, thus, has nothing to do with the *lis* at hand.
42. Even otherwise, we find from the impugned judgment that the tenor of the defence case in the trial court was adverse possession, which the defendants/appellants miserably failed to prove.
43. The dispossession occurred on August 31, 2006 and the suit was filed on April 11, 2018, that is, within the period of twelve years of limitation from the date of dispossession as well as from the date when the possession of the

appellants/defendants became adverse to that of the plaintiffs/respondents.

44. Hence, it cannot be said that the suit was barred by limitation and/or not maintainable otherwise.

45. Insofar as the factual aspects of the case are concerned, we find an elaborate discussion by the learned trial Judge in the impugned judgment. The learned trial Judge categorically came to the finding, upon adverting extensively to the materials and evidence on record, that sufficient proof of prior title and possession had been furnished by the plaintiffs/respondents.

46. In such view of the matter, we do not find any illegality or irregularity in the impugned judgment.

47. Accordingly, FA No. 214 of 2022 is dismissed on contest, thereby affirming the impugned judgment and decree dated March 3, 2022 passed by the learned Civil Judge (Senior Division) at Basirhat, District - North- 24 Parganas in Tile Suit No. 110 of 2018.

48. Interim orders, if any, stand vacated.

49. There will be no order as to costs.

50. A formal decree be drawn up accordingly.

51. The Office is directed to send down the trial court records, if lying in this Court, immediately.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)