

M/L.14.
April 6, 2026.
MNS.

SA No. 17 of 2025

Dipak Biswas and another
Vs.
Meghnath Sardar, since deceased, duly
represented by the legal heirs Shankari Bala
Sardar and others

Mr. Dhananjay Banerjee,
Mr. Shehansu Majumder,
Mr. Archan Dutta

... for the appellants.

1. The present second appeal has been preferred against a judgment of affirmance, whereby both the courts below decreed the suit filed by the original plaintiff/respondent for declaration of the plaintiff's title as well as for recovery of *khas* possession.
2. Learned counsel for the defendants/appellants assails the impugned judgments on several counts.
3. First, it is submitted that, from the cross-examination of the plaintiff himself as PW1 dated February 24, 2016, it is evident that the plaintiff admitted that the defendants/appellants were in possession of the suit property from the year 1993 and had been paying panchayat tax, which is patently contradictory to the plaint case to the effect that the plaintiff was in possession all along and was dispossessed only on December 25, 2011.
4. Thus, it is argued that although the courts below proceeded on an erroneous premise in granting recovery of *khas* possession on the prayer of the plaintiff, in view of

the plaintiff having demolished his own case in cross-examination.

5. Secondly, it is argued that since the suit was primarily one for recovery of possession, the same was undervalued and ought to have been dismissed on such count.

6. Also, on merits, it is argued that the defendants/appellants established by cogent evidence that they have been in possession of the suit property all along and had not dispossessed the plaintiff.

7. However, we cannot agree with learned counsel for the appellants on any count.

8. First, insofar as the supposed admission of possession of the defendants from 1993 in the cross-examination of the PW1 is concerned, nothing much hinges on such admission, even if it be treated to be so, since at the end of the day, the original plaintiff (through whom the present respondents, his heirs, claim title to the suit property) was armed with a *patta*, which was marked as an exhibit in the suit, granted in his favour the year 1997 and on the strength of the same, had title to the suit property.

9. Thus, the plaintiff was, in any event, entitled to recover possession from the defendants/appellants since admittedly, the defendants/appellants were in possession of the suit property at least on the date of filing of the suit.

10. Even otherwise, from the judgment of the courts below, it is found that such so-called admission was

explained away by the PW1 in a different part of his evidence, where the PW1 contradicted the stand of the defendants that they were in possession since 1993. Even if there was a stray 'admission' in one part of the cross-examination of the PW1, it is settled law that the court cannot cull out a stray statement made in the deposition of a witness, divorced from the tenor of the rest of the statements made by the witness.

11. That apart, on appreciation of the evidence, both the courts have come to their finding on the preponderance of probabilities, and as such, since there is no glaring error in such conclusion, it is not for the second appellate court to substitute its views for that of the first two courts.

12. Secondly, regarding valuation of the suit, both the courts correctly found that recovery of possession was a consequential relief and the principal relief sought in the suit was declaration of the plaintiff's title on the strength of a *patta* and as such the court-fees paid and the valuation of the suit as shown in the plaint were correct.

13. Insofar as the reliance of the defendants on the evidence to try to establish their possession in respect of the suit property is concerned, the same is a pure question of fact and a matter of appreciation of evidence.

14. Since concurrent findings of facts were returned by both the trial court as well as the first appellate court, there is no scope for the second appellate court to interfere with the same within the limited scope of a second appeal.

15. Hence, we do not find any substantial question to have been raised in the second appeal.

16. Accordingly, SA No. 17 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

17. There will be no order as to costs.

18. Urgent certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)