

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

FMA/661/2006

IA NO: CAN/3/2024

BANASHREE SAHA

VS

SUNIA KURMI

with

FMA/663/2006

BANASHREE SAHA

VS

**DISTRICT ENGINEER,
CAL.ELECTRIC SUPPLY**

For the CESC : Mr. Debanjan Mukherjee, Adv.

Hearing concluded on : 12.03.2026

Judgment on : 19.03.2026

Sugato Majumdar, J :

These two First Miscellaneous Appeals have been preferred against the Judgment and Decree passed by the First appellate Court dated 16/02/2006 whereunder the said Court remanded the suits to the Trial Court for re-hearing.

Title Suit No. 225 of 1989 was filed by Smt. Banashree Saha, the Appellant/Plaintiff, in the Court of the Civil Judge, Junior Division, 3rd Court at Howrah, praying for recovery of possession and other reliefs against Smt. Sunia Kumari & Ors. the Defendants therein.

The nutshell of the plaint case was that the Plaintiff purchased the Schedule – A land in terms of a registered deed of sale dated 15/06/1985. The Defendants were licensee in respect of Schedule – B part of the Schedule – A land. The Appellant/Plaintiff directed the Defendants to vacate the suit property which the Defendants failed to do. They also cast cloud on the title of the Plaintiff. Therefore, the Appellant/Plaintiff instituted the suit, praying for declaration of absolute ownership of the Schedule - A and Schedule – B properties, decree for eviction along with other remedies.

The Respondents/Defendants contested the suit by filing written statements denying allegation contained in the plaint. It was contended that on coming into effect of the West Bengal Thika and Other Tenancies and Lands (Acquisition & Regulation) Act, 1981, the property became vested in the State. Therefore, the vendors of the Appellant/Plaintiff had no title in the property to convey to the Appellant/Plaintiff and consequently, the Plaintiff was not the owner of the premises. The Respondents/Defendants denied that they were licensee. It was averred that they had been depositing rent with the Thika Controller. The Respondents/Defendants also set up the defence of adverse possession.

The Respondents/Defendants instituted Title Suit No. 53 of 1993 in the same court, praying that they were the owners of the suit property and the sale deed dated 23/03/1983 as well as 15/05/1985 were void and without any legal force with further declaration that the Appellant/Plaintiff has no right, title and interest over the suit property. There was also prayer of permanent injunction restraining the Appellant/Plaintiff from interfering into the peaceful possession of the suit property. The Appellant/Plaintiff took the same plea as in the plaint case of 225 of 1989.

Title Suit No. 52 of 1992 was filed by the Appellant/Plaintiff against CESC and others for the declaration, permanent injunction and mandatory injunction of electric connection.

Issues were framed and all the three suits were heard analogously.

The Trial Court in terms of Judgment and Decree dated 26/06/2002 decreed the Title Suit No. 225 of 1989 and Title Suit No. 52 of 1992 in favour of the Appellant/Plaintiff and dismissed the Title Suit No. 53 of 1993.

Appeal was preferred against the said Judgment and Decree. The Appellate Court being the Additional District Judge, First Court, Howrah framed two additional issues which are as followed and remanded the matter for re-hearing:

1. Is the property in question of Thika Property?
2. Were the Deeds being Ext.1 and Ext.2 validity in the eye of law?

The First Appellate Court upheld the judgment of the Trial Court of Title Suit No. 53 of 1993 but set aside the Judgment and Decree of the Trial Court in Title Suit No. 225 of 1989 and Title Suit No. 52 of 1992. On being aggrieved and dissatisfied, the instant two first miscellaneous appeals were preferred.

The Learned Counsel for the Appellant/Plaintiff vehemently argued that the Appellate Court failed to appreciate that there was no specific pleading on thika tenancy by the Respondents/Defendants except fleeting statement that the suit property was a thika property. It was further argued that the Appellate Court should decide the matter on merit without remanding the matters.

The Learned Counsel for the Respondent, on the contrary, defended the order of the First Appellate Court on ground that the plea of thika tenancy had been taken

in the written statement of Title Suit No. 225 of 1989 as well as in the plaint of Title Suit No. 52 of 1992. Therefore, issues should be framed in respect of thika tenancy.

Plea of thika tenancy was taken in the written statement of Title Suit No. 225 of 1989 as well as in the plaint of Title Suit No. 52 of 1992. However, except mentioning that the property concerned was a thika property, no specific plea was taken.

The Calcutta Thika Tenancy Act, 1949 was applicable to the Municipality of Howrah also. The Act defined “bharatia” and “thika tenant” as well as “pucca structure”. This Act had been amended from time to time. Subsequently, The Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 came into being, which defined “bharatia”, “landlord” as well as “thika tenant”. Lands destined to be vested were detailed in Section 5(a) to 5(d) of the Act of 1981. The said provision makes clear which lands or properties should be vested. To decide on the point whether the land in question became vested in the State applicability of Section 5 of the Act of 1981 is to be decided. For deciding this factual particulars are needed which are absent, except bold mentioning that the property is a thika property, either in the written statement of the Title Suit No. 225 of 1989 or in the plaint of the Title Suit No. 52 of 1992.

The Trial Court did not frame any issue on thika tenancy. However, the Trial Court considered the applicability of the Thika Tenancy Act without giving the issue of go-by. When the Trial Court had already considered the point of thika tenancy, it is too technical to remand the suit for re-hearing by formally framing such issues. The First Appellate Court also failed to appreciate that whether sufficient pleadings were there in the two suits by the Respondents to reconsider the decided suits.

Secondly, the admissibility of the deeds, namely, the Ext.1 and B could not be disputed as those were the originals documents. The question is whether the deeds were void or not in view of operation of Section 5 of the Act of 1981. That point or better to say consideration of validity of the deeds should be based on conspectus of facts and applicability of law. The Trial Court had already considered that. The Appellate Court swayed too much by argument of the Learned Counsels without application of mind. The judgment and decree passed by the Appellate Court, suffered from infirmity. The Appellate Court should hear the appeals preferred from the Title Suit No. 225 of 1989 and Title Suit No. 52 of 1992. Since the finding in respect of the Title Suit No. 53 of 1993 was not challenged herein, finding in respect of trial suit is not interfered with. However, in terms of the Judgment dated 16/02/2006 finding of the Appellate Court, in respect of the Title Appeal No. 166 of 2002 (Title Suit No. 52 of 1992) and in respect of the Title Appeal No. 165 of 2002 (Title Suit No. 225 of 1989) are hereby set aside.

The First Appellate Court should rehear the appeals on merit and dispose of the same within six months from the date of receiving the Trial Court Record.

The instant appeals are disposed of.

Trial Court Record be sent to the First Appellate Court.

(Sugato Majumdar, J.)