

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

Present:

The Hon'ble Justice Sugato Majumdar

SA/615/2008

RAMESH DAS & ORS.

VS

KRISHNA CHANDRA GHOSH & ANR.

For the Appellants : Mr. Kumar Jyoti Tewari, Adv.
Mr. Manas Kumar Das, Adv.
Mr. Aniruddha Tweari, Adv.
Mr. Aritra Kumar Thokdar, Adv.

For the Respondents : Mr. Haradhan Mondal, Adv.

Hearing concluded on : 17.02.2026

Judgment on : 19.02.2026

Sugato Majumdar, J :

The instant Second Appeal is preferred against the judgment and decree passed by the Learned Civil Judge, Senior Division, Bolpur, District: Birbhum in Title Appeal No. 27 of 2007 dated 28/04/2008 affirming the judgment and decree passed by the Trial Court.

The Respondent/Plaintiffs filed a suit before the Civil Judge, Junior Division, 2nd Court at Bolpur being Title Suit No. 33 of 2004 and prayed for eviction of the Appellant/Defendants pleading therein that their tenancy was determined in accordance with law. The Trial Court passed the decree for recovery of *khas* possession against the Appellant/Defendants in terms of judgment dated

31/03/2007. The First Appellate Court in terms of the appellate judgment and decree dated 09/05/2008 dismissed the appeal, confirming the judgment and decree passed by the Trial Court.

On being aggrieved and dissatisfied, the instant appeal is preferred. At the time of admission of appeal, following substantial question of law were framed by the Division Bench:

1. Whether the Learned Courts below have committed substantial error of law in not considering the fact that the suit property is situated in a 'hut (market)', which originally belonged to the zamindar of the area and after the promulgation of the West Bengal Estate Acquisition Act, 1953, the said zamindar had no right/capacity to transfer the said 'hut' or any portion thereof, as such the Plaintiff/Respondent being the purchaser from the said zamindar, cannot acquire any right, title and interest over the suit property?
2. Whether the Learned Courts below have committed substantial error of law in holding that there is landlord and tenant relationship between the parties?

Section 4 of the West Bengal Estate Acquisition Act, 1953 provides for notification for vesting of estates and rights of the intermediaries. Section 4(1) of the Act states that the State Government may from time to time by notification declare that with effect from the date mentioned in the notification all the estates and rights of every intermediary in each such estate situated in any district or part of a district, specified in the notification, shall vest in the state free from all encumbrances. Subsequent sub-sections clarified how the notification shall be published and other

particulars on the notification. Section 5 of the Act provides that upon due publication of a notification under Section 4 on and from the date of vesting, the estates and the rights of intermediaries in the estates to which declaration applies shall vest in the State free from all encumbrances. Pre-requisite for vesting under the West Bengal Estate Acquisition Act, 1953 is publication of notification indicating which lands are to be vested, under Section 4 of the Act. Publication of notification in respect of a specific piece and parcel of property is a question of fact. The very act of vesting under the Act follow certain procedural steps which are again question of facts as to their existences. The Appellant/Defendants did not take this plea in their written statement; there is no plea that notification in respect of the suit property had been published and land had been vested. Without these factual backgrounds as well as adjudication on these, there cannot be an abrupt conclusion that the property vested in the State. Absence of pleading by the Appellant/Defendants precluded him from raising this plea in the second appeal stage. The Learned Counsel for the Appellant/Defendants submitted that they had raised dispute on title of the Respondent/Plaintiffs before the Trial Court and Appellate Court though the point of vesting had not been argued in so many words. But for reason stated above, this contention cannot be accepted. Learned Counsel for the Appellant further argued that attornment of tenancy was not properly made. The Learned Counsel relied upon in **Uppalapati Veera Venkata Satyanarayanaraju Vs. Josyula Hanumayamma & Anr. [AIR 1967 SC 174]** and **Apollo Zipper India Ltd. Vs. W. Newman & Company Vt. [(2018) 6 SCC 744]**. The Learned Counsel argued that there was no attornment of tenancy in proper sense; in absence of attornment the landlord tenant relationship.

This issue of attornment or dispute related to attornment had not been raised before the Trial Court. Written statement is silent on specific objection on

attornment of tenancy. Although denied by the DW-1 there was evidence that the Appellant/Defendants tendered rent to the Respondent/Plaintiffs. Again this is a question of fact reflected upon concurrently by the Trial Court as well as the Appellate Court. At this stage, therefore, a new plea cannot be heard. Moreover, DW-1 admitted in evidence that the Respondent/Plaintiffs are the owners of the property. Admittedly, in course of cross-examination, it was stated that the Respondent/Plaintiffs are the owners of the property. Both the issues discussed above in respect of which substantial question of law were framed, are absent in the pleading. The pleas raised by the Appellants in the Second Appeal are not accepted by this Court.

On perusal of the records and concurrent finding of the Trial Court as well as First Appellate Court, this Court concur with the judgments passed by the both the courts and uphold the same.

In other words, the instant appeal stands dismissed.

The Appellant/Defendants shall hand over the possession of the suit premises within sixty days from the date of passing of the decree, in case of failure of which, the Respondent/Plaintiffs shall be at liberty to put the decree in execution before the Executing Court. Liberty is given to the Respondent/Plaintiffs to claim mesne-profit in appropriate proceeding.

The Trial Court Record may be returned.

The instant appeal stands disposed of.

(Sugato Majumdar, J.)