

D/L.23.
March 10, 2026.
MNS.

SAT No. 193 of 2025
+
CAN 2 of 2025

Smt. Chhaya Bittal and others
-VS-
Smt. Suparna Sinha and others

Mr. Chittapriya Ghosh,
Ms. Priyanka Saha
... for the appellant.

1. A very interesting point is raised by the appellants in the present appeal.
2. The second appeal has been preferred against the concurrent findings of both the courts below whereby the suit filed by the plaintiffs/respondents for recovery of possession, on the allegation that the defendants/appellants are trespassers in respect of the suit property, for mesne profits and for ancillary reliefs, was decreed in part, thereby granting the relief of recovery of possession.
3. Learned counsel appearing for the appellants argues that in terms of Section 7(v) of the West Bengal Court-fees Act, 1870 (in short

“the 1870 Act”), in case of any suit for possession of lands, buildings or gardens, not being suits referred to in clause (vi) thereof, the suit should be evaluated on the premise of the value of the subject matter.

4. On the other hand, clause (vi) (a) of Section 7 provides that in case of a suit for recovery of immovable property from a trespasser, where no declaration of title has either been prayed for or is necessary for disposal of the suit, the valuation will be according to the amount at which the relief sought for has been valued in the plaint.

5. It is submitted that in the present case, the suit was erroneously valued within the contemplation of sub-clause (vi) of Section 7 although a specific issue was framed by the learned trial Judge as to whether the plaintiffs/respondents are the owners of the suit property, thus bringing it within the ambit of the exception carved out in Section 7 (vi) (a), as a consequence of which the provisions of clause (v) would be attracted.

6. However, although such point was raised as a ground in the memorandum of the Title Appeal before the learned First Appellate Court, the same was not decided on merits.
7. In terms of the language of sub-clause (a) of clause (vi) of Section 7 of the 1870 Act, in a suit for recovery of possession of immoveable property from a trespasser, “where no declaration of title to property is either prayed for or necessary for disposal of the suit”, the suit shall be valued according to the amount at which the relief sought is valued in the plaint. Thus, if a declaration of title is necessary for disposal of the suit or prayed for, the suit goes outside the ambit of clause (vi) and automatically enters into the domain of clause (v) of Section 7 of the 1870 Act.
8. The question which arises is whether the said point can be raised for the first time in appeal.
9. The objection as to valuation of the property is in the nature of an objection as to pecuniary jurisdiction of the Court, since, although not

directly pertaining to the jurisdiction of the court, it hits at the very maintainability of the suit on a curable premise. Thus, such objection is required to be taken at the first possible opportunity before the Trial Court.

10. In the event, the objection was taken at the first instance, the plaintiffs would not be taken by surprise and could very well have cured such defect subject to being so directed by the Court.

11. Thus, since the point was not specifically taken by the plaintiffs/respondents before the learned Trial Court but for the first time in the Title Appeal, the same cannot be entertained at this juncture.

12. Moreover, the usual premise of valuation of the suit is the manner in which the reliefs are couched in the plaint.

13. There is no whisper of any challenge to the title of the plaintiffs as well as no relief claimed in respect of declaration of title of the plaintiffs in terms of the plaint. Thus, the first limb of the exception carved out in clause (vi) (a) of Section 7 is not applicable in the present case.

14. Moreover, in a suit for recovery of possession from a trespasser, the plaintiffs only have to establish better title than the defendants in order to get a decree from the Court and need not necessarily establish their title to the suit property or obtain a declaration to that effect.

15. Hence, strictly speaking, it cannot also be said that the declaration of title to property was “necessary” for disposal of the suit as per its frame. As such, even the second limb of exception in clause (vi) (a) of Section 7 is attracted.

16. As such, the question raised by the appellants in the present appeal is not an arguable question of law at all.

17. Thus, it is evident that no substantial question of law is involved in the present matter.

18. Accordingly, SAT No. 193 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

19. Consequentially, CAN 2 of 2025 is also disposed of.

20. There will be no order as to costs.

21. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

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