
(2025) 12 CAL CK 0073

Calcutta HC

Case No: SAT No. 121 Of 2024

Biren Chalak

APPELLANT

Vs

Narayan Chandra Ray and other

RESPONDENT

Date of Decision: Dec. 8, 2025

Acts Referred:

- Code of Civil Procedure, 1908- Order 41 Rule 11

Hon'ble Judges: Supratim Bhattacharya, J; Sabyasachi Bhattacharyya, J

Bench: Division Bench

Advocate: Samiran Giri, Manimohan Basu, Narayan Chanera Roy, Dhiman Ray, Dip Chanda

Final Decision: Disposed Of

Judgement

Supratim Bhattacharya, J

1. The defendant in a suit for declaration and permanent injunction along with recovery of possession has preferred this Second Appeal against a judgment of affirmance.
2. Learned counsel for the defendant/appellant argues that both the courts below overlooked the principal objection taken by the defendant/appellant to the maintainability of the suit, that is, on the ground of limitation.
3. It is argued that although the plaintiff/respondent no.1 herein pleaded that the plaintiff was granted patta in the year 1993 in respect of the suit property on the strength of which title is claimed by the plaintiff, the defendant, it is submitted, was in occupation of the suit property from the year 1975 by making constructions thereon.
4. However, both the courts below overlooked the bar of limitation in decreeing the suit in favour of the plaintiff/respondent.

5. Secondly, it is contended that there was clear evidence of the defendant/appellant being in possession of the premises by virtue of construction of mud houses, which was overlooked in decreeing the suit against the defendant/appellant.

6. Upon a thorough perusal of the judgments of both the courts below, we find that the appellate court affirmed the decree of the trial court, where it was recorded categorically that PW3, during her evidence, revealed that the mud houses were constructed after the year 2006.

7. That apart, the other evidence was also considered by the courts below.

8. In fact, both the courts below proceeded on the premise that the plaintiff/respondent has title in respect of the suit property by virtue of the patta granted in favour of the plaintiff, by accepting the plaint case of title on the strength of patta while disbelieving the defence case of the defendant being in occupation of the premises since the year 1975, which was not proved by cogent evidence. It is well-settled that in a second appeal, the court does not reappreciate the evidence and/or disturb concurrent findings of fact by both courts.

9. Insofar as the question of limitation is concerned, the courts below proceeded on the premise that upon the possession of the plaintiff/respondent being disturbed in the year 2005 by the defendant/appellant, the suit was filed in the year 2006, that is, within the limitation period from the cause of action. Thus, no bar of limitation is borne out by the materials on record.

10. As such, we also cannot find any fault with the findings of both the courts below on the ground of limitation as well.

11. Accordingly, no substantial question of law is involved in the appeal.

12. Hence, SAT No. 121 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

13. CAN 1 of 2024 stands disposed of consequentially.

14. There will be no order as to costs.

15. At this juncture, learned counsel for the appellant seeks some time to vacate the suit premises upon filing necessary undertakings.

16. It will be open to the defendant/appellant to make such prayer before the Executing Court. If so made, the Executing Court shall decide on the same upon giving an opportunity of hearing to the plaintiff/respondent/decreed-holder.