

Mohammad Noor, aged about 70 years, son of Late Mohammad Nazir, resident of Azad Nagar, P.O. & P.S. Mango, Town Jamshedpur, District East Singhbhum (Jharkhand)

Gopal Jha, son of Basant Jha, resident of Manifit, Oil Mills Quarter No. 29, P.O. & P.S. Telco, Town Jamshedpur, District East Singhbhum (Jharkhand) ... **Defendant/Appellant/Respondent**

For the Appellant : Mr. Indrajit Sinha, Advocate
Ms. Puja Agarwal, Advocate
For the Respondents :

1. Heard the learned counsel appearing on behalf of the appellant.
2. This appeal has been filed against the judgment dated 27.09.2019 (decree signed on 18.11.2019) passed by the learned District Judge-IX, Jamshedpur in Civil Appeal No. 20 of 2015, whereby the Civil Appeal has been allowed. The trial court's judgment is dated 20.03.2015 (decree signed on 27.03.2015) passed by the learned Civil Judge (Junior Division)-I, Jamshedpur in Title Suit No. 21 of 2003, whereby the title suit was decreed in favour of the plaintiff/appellant.
3. The suit was filed seeking a decree of perpetual injunction restraining the defendant from evicting the plaintiff from the possessing of Shop No. 95, Tin Shed Sakchi Market, Jamshedpur, District East Singhbhum fully described in the Schedule of the plaint and also for a decree for recovery of possession of the shop after evicting the defendant from the shop.
4. The learned counsel for the appellant has submitted that during the pendency of the suit, the plaintiff was evicted at the instance of the defendant and therefore a prayer was also made for recovery of possession.

5. The learned counsel has submitted that the learned trial court while decreeing the suit held that the plaintiff was dispossessed by the defendant from 22.03.2003 from the suit shop and the plaintiff has got possessory right and interest over the suit shop. However, so far as the learned 1st appellate court is concerned, the 1st appellate court has reversed the finding by holding that the suit was decided beyond the pleadings and also by observing that the plaintiff of the suit has not filed any claim seeking declaration of his title or right and therefore the suit was barred under Section 34 of the Specific Relief Act. It was also held that the learned trial court has gone beyond the scope of the pleadings of the parties.

6. The learned counsel for the appellant, while assailing the judgment passed by the learned 1st appellate court, has submitted that the plaint was required to be read as a whole and the finding of the court that nobody raised a plea of possessory right is not in accordance with law.

7. After hearing the learned counsel for the parties, this Court finds that the suit was filed seeking perpetual injunction and later on a prayer was also included seeking recovery of possession. No relief was prayed regarding declaration of title or declaration of any possessory right over the suit property.

8. The case of the plaintiff was that he has been running his business in the suit property. The suit property was initially allotted to Late Abdul Rahman who was in urgent need of money and approached Shit Jha for a loan and mortgaged the suit property. Thereafter, Shit Jha gave the schedule shop on rent to the plaintiff in the year 1969. The plaintiff desired his intention to purchase the suit property and accordingly settled with Shit Jha for Rs. 11,000/-. The settlement was arrived between the elder son of late Abdur Rahman, namely, Moinuddin and the plaintiff. As a sequel, the plaintiff paid the amount of Rs. 11,000/- on 04.05.1975 and thus purchased the suit property. Moinuddin kept Rs. 6,000/- only after returning the mortgaged money amounting to Rs. 5,000/- to Shit Jha and allowed the plaintiff to continue in possession as an absolute owner. The plaintiff used to pay rent of the shop to TISCO Limited in the name of

Abdul Rahman and the plaintiff mutated the suit property in his name in Jamshedpur Notified Area Committee in the year 1989 and used to pay tax. The schedule shop was burnt in the year 1992 and the plaintiff reported the matter to the police station and then constructed the burnt shop and continued in possession.

9. The further case of the plaintiff is that the defendant had an evil eye on the suit property. The suit property was again burnt on 23.04.2002 along with other shops and a police case was also registered. However, the plaintiff constructed the burnt shop again and installed shutter in the burnt shop and started further repair works and locked the shop. The defendant in order to grab the shop falsely instituted a case on 16.10.2002 stating that the defendant had purchased the shop from the heirs of Late Abdul Rahman vide sale deed on 07.10.2002 and wanted to repair the burnt shop. Consequently, a proceeding under Section 144 of Cr. P.C. was instituted and the defendant had produced registered sale deed no. 6317 dated 19.10.2002 and the SDM passed the order in favour of the defendant and restrained order against the plaintiff. With the passage of time, the order passed by the SDM lost its force after expiry of statutory period. The plaintiff claims to be the absolute owner of the suit property. During the pendency of the suit, the plaintiff was dispossessed on 22.03.2003 and consequently a prayer was added seeking recovery of possession of the suit property after evicting the defendant.

10. The defendant contested the suit by filing **written statement** and **additional written statement** stating that the suit was not maintainable. The plaintiff had no cause of action and it was barred under the provisions of Specific Relief Act and also barred by limitation and Transfer of Property Act. An objection was also raised regarding valuation of the suit property and payment of court fees. There was an objection in connection with the description of the property also. The statements made in the plaint were completely denied.

11. The specific case of the defendant that the suit property was originally allotted by TISCO Limited to Abdul Rahman on 22.04.1967

who remained in peaceful possession and after his death, his legal heirs came in peaceful possession over the same. The plaintiff was permitted to occupy the suit property by the legal heirs of Abdur Rahman sometimes in the year 1989 on a licensee on the condition that the plaintiff will hand over the vacant possession of the same whenever he will be asked and the plaintiff will have to pay the rent and other charges of the suit holding to the concerned authorities. The legal heirs and successors of Late Abdul Rahman, by executing an agreement of mortgage, had agreed to keep the aforesaid suit shop premises on mortgage with the defendant in lieu of which a sum of Rs. 20,000/- was advanced by the defendant and it was agreed in the said agreement of mortgage dated 18.07.1997 that if the legal heirs of Late Abdul Rahman would fail to return the loan amount, then they will execute and registered a deed of sale in favour of the defendant transferring the suit premises on receipt of fresh consideration amount after adjustment of sum of Rs. 20,000/-

12. It was the further case of the defendant that since legal heirs and successors of Late Abdul Rahman were unable and failed to return the mortgaged money to the defendant within 5 years, they express their desire to sell the suit shop premises to the defendant and accordingly, the legal heirs and successors of Late Abdul Rahman sold the suit shop premises being shop no. 95 vide registered deed of sale bearing deed No. 6317 dated 19.10.2002 .

13. It was the further case of the defendant that on 23.04.2002, a massive fire broke out in the Tin Shed Area where the suit shop was situated and on the same day, the plaintiff handed over the vacant possession of the suit shop premises to the defendant after removing the remaining activities and belongings as it was within the knowledge of the plaintiff that the legal heirs and successors of Late Abdul Rahman were not in a position to return the money taken by them while keeping the suit premises in mortgage with the defendant and the legal heirs of Late Abdul Rahman agreed to sell the suit premises to the defendant and thereafter the defendant came in peaceful possession of the suit property after it was

burnt and was paying rent and other charges to the concerned authorities. It was the further case of the defendant that the suit property being Shop no. 94 has been amalgamated with another shop of the defendant and the defendant was running his Tobacco business over the same.

14. In the additional written statement, the defendant denied the statements made by the plaintiff in the amendment to the plaint and it was denied that the plaintiff was evicted on 22.03.2003 at 6 to 7 a.m. forcefully by breaking and open the lock. The case of the defendant was that the defendant was in possession of the premises from 23.04.2002 when the plaintiff handed over the vacant possession of the suit premises to the defendant.

15. The issues were re-casted by the learned trial court in the following manner: -

“I. Whether the suit is maintainable in its present form or not?

II. Whether the plaintiff has got valid cause of action to sue the suit or not?

III. Whether the suit is barred under the provision of Specific Relief Act as well as limitation or not?

IV. Whether the suit is barred under the provision of Transfer Property Act as well as C.P.C or not?

V. Whether the plaintiff has got possessory right and interest over the suit shop?

VI. Whether the plaintiff was dispossessed from the suit shop by the defendant on 22.03.03?

VII. Whether the plaintiff is entitled to decree for recovery of possession of the suit shop from the defendant?

VIII. To what relief or reliefs, if any the plaintiff is entitled for?”

16. Both the parties adduced oral and documentary evidences.

17. The learned trial court recorded that the following facts are admitted: -

(I) The suit shop No.95 Tin Shed Market, Sakchi, Town Jamshedpur, District-East described in the Schedule of the plaint was allotted to Late Abdul Rahman.

(II) The suit shop burnt two times firstly in the year 1992 and secondly on 23.04.02.

18. Issue Nos. V and VI were taken up together and the learned trial court after considering the materials on record gave a finding that the plaintiff was dispossessed by the defendant on 22.03.2003 from the suit premises and that the plaintiff has possessory right and interest over the suit property and ultimately decreed the suit.

19. The learned 1st appellate court framed the following points for determination: -

*“**Point No. I** – Whether the learned court below has rightly held that plaintiff has got possessory right and interest over the suit shop and whether the Ld. Court below has right provided recovery of possession to the plaintiff or not?*

***Point No. II** – Whether the court below has committed error in holding that plaintiff is entitled for relief or reliefs as claimed?”*

20. While deciding point of determination No. 1, the learned 1st appellate court held that the trial court wrongly held that the plaintiff has got possessory right and interest over the suit shop and the trial court has also wrongly held that the plaintiff was entitled for recovery of possession over the suit property. While coming to the said finding, the learned 1st appellate court discussed the materials on record and held that the documents relied upon by the plaintiff claiming title were all unregistered documents.

21. The learned 1st appellate court held that so far as possessory right is concerned, the pleadings include the plaint and the written statement and the issues are to be framed on the basis of pleadings. The learned 1st

appellate court held that the learned trial court travelled beyond the scope of the pleading of the parties and decided issue no. V in favour of the plaintiff. The learned 1st appellate court recorded that nobody raised possessory right in his pleading and the plaintiff had not sought any relief regarding declaration of possessory right, but on the averment of the evidence, the learned trial court has framed such an issue. The learned 1st appellate court recorded that the documents produced by the plaintiff were not registered document. However, document showed that the plaintiff was in possession of the suit premises till 22.03.2003. The learned 1st appellate court was of the view that the learned trial court had decided the issue on the basis of evidence led on behalf of the defendant and such issue was framed beyond the scope of the pleading and observed that it is settled principle of law that when a plea is not raised in the pleadings, the defects cannot be cured by evidence.

22. The learned 1st appellate court recorded that the plaintiff had not pleaded that they were having possessory right and interest over the suit property. The learned court also recorded that the law is well-settled that if the plaintiff fails to establish his legal right for continuation of possession, he cannot be granted perpetual legal injunction against the owner or manager of the property. The learned 1st appellate court ultimately held that the trial court had wrongly held that the plaintiff has got possessory right and interest over the suit property and also wrongly held that the plaintiff was entitled to recovery of possession of the suit property.

23. The learned 1st appellate court also held that the plaintiff did not claim any declaration of title or right and therefore the suit was barred under Section 34 of the Specific Relief Act and that the learned trial court has wrongly travelled beyond the scope of the pleadings of the parties and ultimately the learned 1st appellate court has set-aside the judgment and decree of the trial court and allowed the appeal.

24. This Court finds that the defendant was claiming title over the suit property by virtue of registered sale deed dated 6317 dated 19.10.2002

executed by the legal heirs of Late Abdul Rahman and the plaintiff was also claiming title by virtue of the settlement, claimed to be transfer by sale, entered between the elder son of Late Abdul Rahman, namely, Moinuddin. The plaintiff only sought a relief of perpetual injunction against the defendant and neither claimed declaration of title nor questioned the validity of the registered sale deed executed by the legal heirs of Late Abdul Rahman in favour of defendant. Admittedly Abdul Rahman was the original allottee of the suit property.

25. The learned 1st appellate court has recorded that the plaintiff in the suit did not claim any declaration of his title or right and therefore the suit was barred under Section 34 of the Specific Relief Act. Apart from that, the learned 1st appellate court also recorded that neither any specific plea was raised with regard to possessory right nor any relief was sought for declaration of possessory right, but only on the averment of evidence, the learned trial court had framed such an issue.

26. This Court finds no error, either in law or in appreciation of pleadings, facts and materials placed on record in the judgment passed by the learned 1st appellate court. This Court finds that the learned 1st appellate court has passed a well-reasoned judgment. Accordingly, no substantial question of law arises in this appeal. Consequently, this 2nd appeal is ***dismissed***.

27. Pending I.A., if any, is closed.

28. Let this order be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Dated: 18.09.2025

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