

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Appellate Jurisdiction)
S.A. No. 42 of 2012

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Ramdhani Ram @ Ramdhani Sao & Others **Appellants**
Versus
Brahmadeo Bind & Others **Respondents**

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

.....
For the Appellants : Mr. Anil Kumar, Sr. Advocate.
: Miss Chandana Kumari, Advocate
For the Respondents :
.....

08/25.02.2021.

Heard, learned senior counsel for the appellant, Mr. Anil Kumar assisted by Miss Chandana Kumari.

The appeal has been preferred by the defendant / respondent /appellant against the judgment dated 23.03.2012 and decree dated 03.04.2012 in Title Appeal No.04/2009 passed by learned District Judge-II, Garhwa allowing the appeal.

Learned senior counsel for the appellant has submitted that plaintiff filed the suit for declaration, that he is raiyat and in possession of the suit land and also prayed to declare that the demand opened in the name of the defendant first set is bogus, illegal and void.

Learned senior counsel for the appellant has submitted that though the defendant / respondent / appellant has taken plea with respect to law of limitation as well as application of Section 34 of the Specific Relief Act. The issue was also framed by the learned Trial Court as issue nos. 2 and 4, which reads as follows:

2. Is the suit barred by the Law of limitation, waiver, estoppel and acquiescence?

4. Is the suit hit by the provision of u/s 34 of the Specific Relief Act,?

While adjudicating the issues, the learned Trial Court in paragraph-8 of the impugned judgment has not whispered anything about the issue no.2 i.e. limitation and issue no.4 i.e. application of section 34 of the Specific Relief Act.

The plaintiff preferred Title Appeal No.04/2009 before the learned lower Appellate Court, where both issues were considered as

issue nos.2 and 4, but while adjudicating the issues at paragraph-17, the Lower Appellate Court has also not whispered about the law of limitation in filing the suit for declaration of demand opened in the name of defendants first set, as illegal and void. So far issue no.4 with regard to Section 34 of the Specific Relief Act is concerned a wrong finding has been given contrary to the judgement passed by the Apex Court in the case of ***Vinay Krishna Vs. Keshav Chandra & Another reported in 1993 3 SCC 129*** para-14 of which is profitably quoted hereunder:-

“14. The plea of permissive possession is not stated anywhere in the plaint. Therefore, we cannot permit at this stage such a plea to be raised. In Md. Aftabuddin Khan's case AIR 1977 Orissa 69 (supra) what was held is to the following effect (para 15):

Long arguments had been advanced before us that a suit merely for a declaratory relief when the plaintiffs were out of possession was not maintainable. Reliance had been placed on the provisions of [Section 34](#) of the Specific Relief Act. While Mr. Dutta contended that the said bar applied to the suit, Mr. Mahapatra for the respondent claimed that it was not a suit covered by [Section 34](#) of the Specific Relief Act. It is true that the plaintiffs had alleged that they were still in possession notwithstanding the alienation. The Court, however, found that plaintiffs were not in possession. Undoubtedly, plaintiffs were obliged to ask for recovery of possession in order to have an effective decree. Mr. Mahapatra's contention that the bar of [Section 34](#) of the Specific Relief Act would not arise where in the plaint there is an assertion that possession is with plaintiff though as a fact it is not, does not appeal to us as a sound proposition in law. Finding this defect and relying upon the general prayer in the plaint and keeping in view the power of the Court to grant such reliefs as a party before it may be found entitled to, the Court directed the plaintiffs to recover possession on payment of the requisite Court-fees. We agree with Mr. Dutta that if an amendment of the plaint had been asked for, it would have been more appropriate than the Court exercising suo motu jurisdiction. But we are not inclined to agree that the Court had no jurisdiction to do what has been done. Mr. Dutta was not in a position to indicate to us what prejudice has been caused to the defendants by not requiring the plaintiffs to make a formal application for amendment for addition of the relief of recovery of possession and in not giving an opportunity to the defendants to file a counter. In

this view of the matter, we are not inclined to accept the contention of Mr. Dutta that the learned single Judge committed an error of jurisdiction in allowing the relief of recovery of possession.

*This decision has no application to the facts of this case for the simple reason that therein it was found that no prejudice had been caused to defendants by not requiring the plaintiffs to make a formal application for amendment of the plaint. In the case in hand, it has been found that defendants Keshav Chandra and Jagdish Chandra as well as the tenants were in possession and that Keshav Chandra was in possession of part of the property in his own right and that Jagdish Chandra had no right or title to House No. 52. In order that a decree could be passed for possession in respect of the portion of the House No. 52 which was in possession of Jagdish Chandra, it is necessary to determine the portion of House No. 52 which was in possession of Jagdish Chandra as well as the portion in which Keshav Chandra was entitled to remain in possession. This could be done only after the plaint had been amended and, therefore, without an amendment of the plaint, a decree for possession could not be passed in respect of the portion of House No. 52 in possession of Jagdish Chandra. As a matter of fact suit No. 37/65 was filed for ejectment of the defendants. No doubt that suit came to be consolidated along with the present suit. But once the bar under [Section 42](#) of the Specific Relief Act became operative, in that the title itself was in jeopardy, no relief could be granted with reference to ejectment. The High Court is right in this conclusion in this regard. Therefore, the consolidation does not improve the position of the plaintiff. It was held in Supreme General Films Exchange's case (*supra*) quoting the earlier ruling of this Court in [Vemareddi Ramaranghava Reddy v. Konduru Seshu Reddy](#) that [Section 42](#) of the Specific Relief Act is not exhaustive and independent of that section a declaratory relief can be granted. It requires to be noted that in that case the suit was for declaration that the compromise decree was not binding on the deity. Hence, it fell outside [Section 42](#) of the Act. Supreme General Exchange's case itself related to a lease. But we are confronted in the present situation with a declaration of title in relation to immovable property which is specifically covered under [Section 42](#) of the Specific Relief Act. So, this again does not lend any support to the appellant."*

Learned senior counsel for the appellant has submitted that present Section 34 of the Specific Relief Act, 1963 is the same as

Section 42 of the Specific Relief Act 1877, which reads as follows:-

“42. Discretion of Court as to declaration of status or right. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Bar to such declaration. Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation. A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee”.

Learned senior counsel for the appellant has submitted that in view of the judgment passed by the Apex Court in the case of ***Gurnam Singh & Ors. Vs. Lehna Singh (2019) 7 SCC 641***, the judgement dated 23.03.2012 and decree signed on 03.04.2012 in Title Appeal No.04/2009 is contrary to the law pronounced by the Hon’ble Supreme Court, as such, the appeal may be admitted.

The instant second appeal is **admitted** on the following substantial question of law:-

1. *Whether the courts below have given finding with regard to law of limitation as well as Section 34 of the Specific Relief Act in accordance with law or the same is contrary to the judgment passed by the Apex Court ?*

2. *Whether after framing an issue by the Courts below, it is incumbent upon the courts below to give a categorical finding on the basis of evidence adduced by the parties and non adjudication of the issue vitiate the entire judgement ?*

The appellant is at liberty to frame other substantial question of law at the time of final hearing of the appeal.

Let the Lower Court Records be called for.

Let notice be issued to the respondents under both process i.e. under registered cover with A/D as well as under ordinary process, for which requisites etc. must be filed within a period of four weeks.

(Kailash Prasad Deo, J.)