

6th April,
2026
(AK)
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S.A. 123 of 2024
IA No: CAN 1 of 2024

Uttam Kumar Dey and others
Vs.
Mamata Mallick (Sarkar)

Mr. Buddhadeb Ghosal, Sr. Adv.
Mr. Kanai Lal Dutta
...for the appellants.

Mr. Sarbananda Sanyal
Mr. Samrat Chakraborty
...for the respondent.

1. This appeal will be heard on the following substantial questions of law:
 - i) Whether the learned First Appellate Court substantially erred in law in invoking Order VII Rule 7 of the Code of Civil Procedure to reverse the judgment of the trial court, since the said provision merely enumerates that it shall not be necessary to ask for general or other relief which may be always given as the court may think, in view of the specific finding of the trial court to the effect that the suit as a whole, as framed, was not maintainable, since it was filed for permanent injunction whereas the trial court came to the conclusion that the defendants/appellants and not the plaintiff are in possession of the subject property.

- ii) Whether the learned First Appellate Court substantially erred in law in observing that the present *lis* does not involve any facet of Section 51C of the West Bengal Land Reforms Act, 1955, which was one of the other grounds on which the trial court dismissed the suit, in view of the order of the Appellate Authority under Section 54 of the said Act having been produced before both the courts, which indicates that a challenge to the recording of the appellants' name in the records of right had already been turned down by the Appellate Authority, which could not be reopened by the civil court.
 - iii) Whether the suit, as framed, ought to have failed in any event, in view of the categorical finding of the trial court, which was not reversed by the First Appellate court, to the effect that the defendants/appellants are in possession of the suit property whereas no relief of recovery of possession was sought, rather, permanent injunction was sought without any prayer for declaration, in the teeth of there being a dispute as to the title of the parties.
2. Since learned counsel for the respondent seeks to file an opposition to CAN 1 of 2024, we direct the respondent to file her affidavit-in-opposition to CAN 1 of 2024 within a week from date; reply, if any, shall be filed within a week thereafter.

3. The application shall be listed before the appropriate learned Single Judge having determination, subject to being mentioned by the parties, after the above timeline for filing of affidavits is over.
4. There shall be stay of operation of the impugned judgment and decree passed by the First Appellate Court, subject to the parties maintaining status quo as regards the suit property, till disposal of the application.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)