



2026:CHC-AS:375-DB

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**F.A.T. No. 469 of 2025
IA No: CAN 1 of 2025**

**Sanjiv Nandan Sahaya and Others
- Versus -
Poonawalla Fincorp Limited and Another**

For the appellants	:	Mr. Probal Kumar Mukherjee, Sr. Adv., Mr. Gopal Pahari, Ms. Mandeep Kaur, Ms. Piyali Kaulavi, Mr. Jagatjyoti Nag
For the State	:	Mr. Suman Kr. Dutt, Sr. Adv., Mr. Siddhartha Banerjee, Mr. Dwaipayan Basu Mallick, Mr. Arkaprava Sen, Ms. Sambita B. Chatterjee
Heard on	:	04.02.2026 & 25.02.2026
Reserved on	:	25.02.2026
Judgment on	:	09.03.2026

Sabyasachi Bhattacharyya, J.:-

1. In the present appeal, the plaintiffs in a suit for declaration of their lawful possession in respect of the suit property and consequential injunction protecting such possession have



challenged a deemed decree, whereby an application under Order VII Rule 11 of the Code of Civil Procedure (for short, “the Code”) filed by the defendants/respondent nos. 1 and 2 was allowed, rejecting the plaint of the said suit.

2. Learned senior counsel appearing on behalf of the plaintiffs/appellants argues that the learned Trial Judge acted without jurisdiction in entering into the merits of the suit upon consideration of documents which were neither referred to nor relied on and/or annexed to the plaint in rejecting the same, on a misconception of the scope of Order VII Rule 11 of the Code.
3. It is contended that although the present suit has been filed exclusively in respect of Premises No. 24/7/1, Raja Santosh Road, the learned Trial Judge rejected the plaint on the premise that previous litigations and orders passed in respect of Premises No. 32, Raja Santosh Road, a different property, were suppressed by the plaintiffs/appellants, which amounts to perversity as per the plaintiffs/appellants.
4. Moreover, the learned Trial Judge, it is submitted, arrived at the conclusion that the plaintiffs have failed to reach the standard of cause of action made out in the plaint so that the plaint can be entertained and that the cause of action disclosed is not “properly framed”, whereas Clause (a) of Order VII Rule 11 stipulates non-disclosure of cause of action as a ground for rejection of the plaint. The quality of the cause of action, it is



argued, ought not to have been looked into by the learned Trial Judge while deciding an application under Order VII Rule 11.

5. That apart, learned senior counsel argues that the learned Trial Judge adverted to documents filed along with the application under Order VII Rule 11 of the Code, in the absence of any pleadings in that regard from the end of the defendants/respondents by way of a written statement as yet. It is submitted that unless such documents are properly brought on record by being marked as exhibits and an opportunity is given to the plaintiffs/appellants to controvert the same, also by adducing evidence, the plaint could not have been rejected at the outset. At best, the grounds on which the plaint was rejected might be germane at the time of final hearing of the suit, on a full-fledged trial on evidence.
6. Learned senior counsel takes the court through the pleadings in the plaint of the present suit and contends that the reliefs sought therein pertain to the possession of the plaintiffs/appellants and it has not been stated anywhere that the ownership of the plaintiffs has been challenged by the defendants. Thus, the learned Trial Judge erred in law in holding that the suit envisages the denial of the plaintiff's title.
7. It is contended that the pendency of a partition suit in respect of a portion of the present suit property is not germane, since the plaintiffs/appellants have not sought a declaration of their title.



In view of the frame of the suit, based on the threat to the possession of the plaintiffs/appellants from the defendants/respondents, the learned Trial Judge erred in law in arriving at the finding that the outcome of the partition suit was necessarily to be disclosed and/or that the other co-owners were to be impleaded in the present suit. The learned Trial Judge, it is submitted, based on such purported non-disclosure/non-impleadment, came to the conclusion that there was suppression of material facts by the plaintiffs and rejected the plaint.

8. As such, the appellants contend that the impugned deemed decree ought to be set aside and the suit directed to be tried in regular course.
9. Learned senior counsel appearing for the defendants/respondent nos. 1 and 2, on the other hand, argues that even apart from the documents which were not a part of the plaint or relied on therein, the documents referred to in the plaint itself and annexed thereto are sufficient to indicate that the suit is palpably vexatious and ought to have been nipped in the bud.
10. Learned senior counsel draws the court's attention to a comparative study of the judgment and decree passed in an earlier suit, bearing Title Suit No. 17 of 2002, which has been referred to in the plaint of the present suit. In the present



plaint, it has been categorically admitted that Title Suit No. 17 of 2002 (initially numbered as Title Suit No. 54 of 1989) was decreed on December 14, 2017 and the said decree is binding on the parties. Admittedly, the earlier suit bearing Title Suit No. 17 of 2002 pertained to Premises No. 32, Raja Santosh Road and that the question as to whether the plaintiffs/appellants have encroached upon the said property was finally decided by holding that there was no such encroachment. From the tenor of the present plaint as well as the judgment passed in the said earlier suit, it is evident that the question of identity of the suit property therein was raised and finally decided in the said judgment. The question as to whether Premises No. 32, Raja Santosh Road and the present suit property, that is, Premises No. 24/7/1, Raja Santosh Road are identical fell for consideration and was finally decided in the said suit.

- 11.** By placing reliance on the decree passed in the earlier suit, it is pointed out that the boundaries of the subject property of the said suit were identical with the present suit, although the number of the premises was shown to be different. Even the sketch map annexed to the plaint of the present suit and marked as Annexure "X" thereto, it is urged, is identical to the map which was referred to in the earlier decree. Thus, the plaintiffs/appellants, it is argued, are seeking to re-agitate the self-same question which was conclusively adjudicated upon in



Title Suit No. 17 of 2002. Relying on the principle that a person cannot be vexed twice on the self-same cause of action, learned senior counsel contends that the learned Trial Judge was justified in rejecting the plaint of the present suit.

- 12.** Upon hearing learned counsel for the parties, the Court comes to the following conclusions:
- 13.** The learned Trial Judge rejected the plaint both under Clauses (a) and (d) of Order VII Rule 11 of the Code.
- 14.** Clause (a) contemplates rejection of a plaint where it “does not disclose” a cause of action. However, the learned Trial Judge proceeded to enter into a qualitative analysis of the cause of action disclosed in the suit, coming to conclusions such as “Cause of action disclosed here is not properly framed”, “I find that the Plaintiffs failed to reach the standard of cause of action made out in the plaint so that the plaint can be entertained”, “the point of baseless cause of action resulting into meaningless litigation is discouraged”, etc.
- 15.** While so observing, the learned Trial Judge observed that the plaintiffs have brought the cause of action in such a way that the defendants are denying the title of the plaintiffs and are disturbing the peaceful possession of the plaintiffs as well.
- 16.** However, from a comprehensive perusal of the plaint pleadings, we find that a chain of events, giving rise to a cause of action, has been disclosed in the plaint. The build-up of events, as



narrated in the plaint, lead logically to the cause of action and the reliefs sought in the present suit.

- 17.** The suit property is comprised of land area of 1534.385 Sq. Mt. together with several recorded huts with 21 Ft. wide passage connecting the said premises to Raja Santosh Road, at Municipal Premises No. 24/7/1, Raja Santosh Road.
- 18.** In Paragraph No. 3 of the plaint, it is stated that prior to 1981, one Syed Iman Ali, Begum Gulanar Bibi, Zamila Khatoon, Mamuda Khatoon and Jabeda Khatoon were the owners of land and structures at the said premises.
- 19.** In Paragraph No. 4, it is pleaded that by a conveyance dated December 2, 1981 (giving the particulars of the registration) and by another conveyance dated December 21, 1981 (also giving the particulars of the registration), the right, title and interest to and in landed property of an area of 18 cottahs and 35 sq. ft. equivalent to 1207.274 sq. meters of land, together with several huts and a 21 ft. passage connecting the premises, were conveyed to the members of the Sahaya Family, the predecessors-in-interest of the present plaintiffs/appellants. The rest of the suit property is alleged to have remained in possession and occupation of the plaintiffs since the month of December, 1981 without any interruption.
- 20.** In Paragraph No. 5 of the plaint, it is stated, *inter alia*, that the plaintiffs and/or their predecessor-in-interest were and are in



lawful possession of the said property. In several paragraphs thereafter, the plaintiffs have narrated about a previous suit, bearing Title Suit No. 54 of 1989, which was subsequently renumbered as Title Suit No. 17 of 2002, in the Court of the learned Civil Judge (Senior Division), Ninth Court at Alipore.

- 21.** It has been stated thereafter in the plaint that the judgment and decree passed on December 14, 2017 in the said suit, which was in respect of 32, Raja Santosh Road, are in full force and are binding on the parties. In Paragraph No. 17 of the plaint, it has been stated that having failed to obtain the decree for recovery of possession (in the said earlier suit), the defendants are now wrongfully and illegally trying to forcibly obtain possession.
- 22.** It has further been alleged that the defendants/respondent nos. 1 and 2 have employed their own security guards to create an impression to the persons of the locality that they are in possession of the said property, which is guarded by the security persons employed by the said defendants. It has been alleged further that although the security guards employed by the respondent nos. 1 and 2 are not encroaching into the plaintiffs' property, they are creating pressure by remaining just outside the gate of the said property, "watching and besetting" the said premises and disturbing the ingress to and egress from the said property, wrongfully and illegally.



- 23.** In Paragraph No. 18 of the plaint, it has been alleged that the plaintiffs have approached the police authorities several times, who have made it clear that they are not in a position to take any active step in the matter to protect the property of the plaintiffs without a specific order of the court.
- 24.** In Paragraph No. 26 of the plaint, it is alleged that the cause of action of this suit first arose when, after the aforementioned judgment and decree dated December 14, 2017, the defendants “started to recover” the possession having resort to extra legal methods.
- 25.** On the strength of such averments, the plaintiffs seek the following reliefs:
- a) Leave under Order II Rule 2 of the Code of Civil Procedure, 1908;*
 - b) A decree for declaration that the plaintiffs are lawfully entitled to possession of and remain in possession of the said property situate at 24/7/1, Raja Santosh Road, Ward No. 74 of the Kolkata Municipal Corporation, Police Station-Chetla (formerly New Alipore), District- South 24-Parganas, Pin-700027 more fully described in the schedule to this plaint and to use and enjoy the same without any interference and disturbance from the defendants, their servants and agents;*
 - c) A decree for perpetual injunction restraining the defendants, their servants and agents from disturbing and/or interfering with the plaintiffs’ possession, occupation, use and enjoyment of the said property situate at 24/7/1, Raja Santosh Road, Ward No. 74 of*



the Kolkata Municipal Corporation, Police Station- Chetla (formerly New Alipore), District- South 24- Parganas, Pin-700027 more fully described in the schedule hereto;

- d) Perpetual injunction restraining the defendants and their servants and agents from in any way disturbing the free ingress to and egress from the said premises; which particularly described in the Schedule hereto;*
- e) Temporary injunction;*
- f) Costs;*
- g) Such further or other relief or reliefs to which the plaintiffs are entitled to;"*

26. Thus, from a bare perusal of the plaint of the instant suit, it is evident that a logical chain of events, comprising a bundle of facts forming the cause of action for the present suit, has been sufficiently pleaded in the plaint. The said chain of events disclose sufficient cause of action for the remedies sought in the suit.

27. The learned Trial Judge, in the impugned order, has *inter alia* proceeded on the basis that the cause of action has been brought in such a way that the defendants are denying the title of the plaintiffs and that the plaintiffs have not disclosed in the plaint as to how they gather right, title and interest and possession in respect of the Suit Schedule Property.

28. However, as indicated above, sufficient pleadings have been narrated in the plaint to disclose not only the source of title but also the history of possession of the plaintiffs.



- 29.** Moreover, contrary to the findings of the learned Trial Judge, the plaintiffs have not claimed any relief in respect of their title and have not averred in the plaint that their title is being disputed by the defendants. The primary relief claimed in the suit is declaration of the plaintiffs' lawful possession in the suit property and the ancillary relief is a consequential perpetual injunction restraining the defendants, their servants and agents from disturbing and/or interfering with such possession.
- 30.** Thus, ample cause of action has been disclosed in the suit to justify the reliefs claimed therein. Hence, Clause (a) of Order VII Rule 11 of the Code is not satisfied at all.
- 31.** Secondly, the learned Trial Judge took into account documents annexed to the application of the defendants/respondent nos. 1 and 2 under Order VII Rule 11, which are extraneous to the plaint, having neither been referred to or relied on nor annexed/filed with the plaint. It is well-settled that, for the purpose of adjudicating an application under Order VII Rule 11 of the Code, the court can only look at the averments made in the plaint as a whole and, at best, any documents which have been filed therewith and/or annexed thereto or even referred to therein.
- 32.** However, the learned Trial Judge flouted such settled legal principle by taking into consideration several documents including an indenture between one Jyoti Kumar Rajgharia and



the present defendant no.1-Company, a Deed of Conveyance of the year 1961, which purportedly establishes the chain of title of Jyoti Kumar Rajgharia, a land acquisition proceeding in respect of Premises No. 32, Raja Santosh Road, an order passed by a learned Single Judge of this Court and judgments and decrees passed in other suits, to come to the conclusion that there has been suppression of material facts by the plaintiffs. On the premise of the said documents, the learned Trial Judge proceeded on the premise that the “version of the Defendants supports the allegation of suppression of material truth”.

- 33.** Apart from the facts that the version of the defendants is not material for deciding an application for rejection of plaint, the several documents taken into consideration by the learned Trial Judge at the behest of the defendants/respondent nos. 1 and 2, which are not a part of or have relied on in the plaint, could not be taken into consideration at all while deciding an application under Order VII Rule 11 of the Code. If any extraneous documents are relied on, those have to have corresponding foundational pleadings in the written statement of the defendants and have to be brought before the court by way of formal proof as evidence in the suit, at the time of trial. Only upon a trial on evidence and upon giving opportunity of rebuttal and hearing to both the parties, can the Civil Court ascertain the veracity of such documents. The allegation of suppression,



in the present case, is inextricably linked with a consideration of the legal effect of the documents on merits, which exercise can only be undertaken at the trial of the suit, and not at the threshold stage, when the existence of the foundational facts supporting such documents have not even been pleaded. Such an exercise cannot be undertaken while deciding an application under Order VII Rule 11 of the Code and is completely beyond the scope of the said provision.

- 34.** Even to decide on the validity and veracity of such purported documents and the effect thereof on the cause of action pleaded in the plaint, trial on evidence is essential. Only upon such documents coming on record as formal evidence can the court look into the same even for the purpose of ascertaining whether such documents are germane for adjudication of the suit.
- 35.** Adjudicating at the threshold that the plaintiffs are guilty of suppression of material facts linked with documents extraneous to the plaint is *de hors* the scope of Order VII Rule 11 of the Code.
- 36.** Thus, the learned Trial Judge erred in law in taking into consideration of such documents.
- 37.** Moreover, there is not an iota of reasoning in the impugned order as to why the plaint was rejected under Clause (d) of Order VII Rule 11, which envisages the rejection of a plaint where the



suit appears from the statements in the plaint to be barred by any law.

- 38.** The learned Trial Judge has not even spelt out as to what is the legal bar that vitiates the institution of the suit, let alone explaining how such bar is evident from a plain reading of the plaint as a whole.
- 39.** The learned Trial Judge referred to the previous suit bearing Title Suit No. 17 of 2002, which admittedly pertains to Premises No. 32, Raja Santosh Road, which is not the suit property as described in the plaint of the present suit.
- 40.** In the narrative leading to the cause of action for the present suit, the plaintiffs/appellants have merely stated about such suit, indicating that it was held by a Revisional Court in connection with the earlier suit that the apprehension of the present plaintiffs/appellants as to the present defendants (who were plaintiffs in the earlier suit) seeking to impress upon the court that in the garb of Premises No. 32, Raja Santosh Road, the said plaintiffs were trying to recover the present suit property situated at Premises No. 24/7/1, Raja Santosh Road was unfounded. Since the plaintiffs in the earlier suit had taken a specific stand that the said suit was restricted to Premises No. 32, Raja Santosh Road, and such admission was recorded in an earlier Revisional application, a learned Single Judge of this Court, in CO No. 1455 of 2011, observed that such submissions



would bind the plaintiffs in the earlier suit at all stages of the proceeding.

- 41.** Accordingly, the earlier suit was decreed in part, declaring the title of the present defendant nos. 1 and 2 (plaintiffs therein), but not granting recovery of possession, upon disbelieving the case made out in the said suit regarding alleged encroachment by the present plaintiffs on the Premises No. 32, Raja Santosh Road.
- 42.** Such disclosure in the present plaint, by itself, does not necessarily signify that the present suit is barred by any law, for the simple reason that the earlier suit was in respect of an entirely different premises than the present suit.
- 43.** As such, the learned Trial Judge proceeded on a misconception of law in holding that the cause of action disclosed in the present suit is baseless and the plaintiffs are guilty of suppression. As observed earlier, the quality or standard of the cause of action, which was held not to be up to the mark by the learned Trial Judge, is not a matter of any relevance at the stage of Order VII Rule 11, unless it is palpably evident from the plaint that the suit is vexatious.
- 44.** We do not find any chink in the chain of events comprising the cause of action for the present suit from the statements made in the plaint.



45. Thus, we do not find that the plaint is liable to be rejected either under Clause (a) or Clause (d) of Order VII Rule 11 of the Code.
46. However, although the impugned judgment and deemed decree cannot be supported on the reasons given by the learned Single Judge, this Court would be failing in its duty if it does not take into consideration the argument to which the defendants/respondent nos. 1 and 2 have confined themselves in the appeal, although such case was not specifically argued, nor adverted to in the impugned judgment and deemed decree.
47. Learned senior counsel for the defendants/respondent nos. 1 and 2 has drawn the attention of this Court to the Schedules of the present suit, as depicted in the plaint, and that of Title Suit No. 17 of 2002. For the sake of convenience, the two Schedules are set out hereinbelow:

<i>Title Suit No. 775 of 2020 (present suit)</i>	<i>Title Suit No. 17 of 2002 (earlier suit)</i>
<i>ALL THAT the land area of 1534.385 Sq. Mt. Together with several recorded huts together with 21 Ft. Wide passage connection the said premises to the Raja Santosh Road at the limits of Ward No.74 of the Kolkata Municipal Corporation within the jurisdiction of Sub-Registrar at Alipore, under P.S. New Alipore now Chetla, District – 24 Parganas (South) is butted and bounded by</i>	<i><u>SCHEDULE A ABOVE REFERRED TO IN THE PLAINT.</u> Original Premises No.32, Raja Santosh Road measuring more or less 2 Bighas 12 Cottahs 12 Chittacks 13 Sq. Feet within Police Station Alipore (now New Alipore), District – 24 Parganas (S) butted and Bounded as follows– <u>On the North:</u> Partly by premises No. 36, Raja Santosh Road, partly by premises No. 34, Raja Santosh</i>



<i>ON THE NORTH:- By Raja Santosh Road and the portions of the premises No.30, Raja Santosh Road;</i> <i>ON THE EAST:- By premises No.32, Raja Santosh Road;</i> <i>ON THE SOUTH:- By premises No.24/7, Raja Santosh Road and portions of 13, Alipore Avenue;</i> <i>ON THE WEST:- By premises No.14, Alipore Avenue and portions of 30, Raja Santosh Road;</i> <i>A copy of the site plan of the said property which is the subject matter of this suit is annexed hereto and marked Letter – “X”.</i>	<i>Road and partly by a common passage lying between premises No. 36 Raja Santosh Road and premises No. 40-C Raja Santosh Road, partly by Raja Santosh Road and partly by premises nos. 30, Raja Santosh Road and 28, Raja Santosh Road;</i> <i><u>On the South:</u> Partly by premises No. 14, Alipore Avenue and partly by premises No. 13, Alipore Avenue and partly by vacant plot of land being premises No. 24/7, Raja Santosh Road;</i> <i><u>On the East:</u> By premises No. 40-C, Raja Santosh Road and</i> <i><u>On the West:</u> partly by premises No. 14, Alipore Avenue and partly by premises No. 30, Raja Santosh Road as delineated in the map or plan marked ‘A’.</i> <i><u>Schedule B Above Referred to in the plaint.</u></i> <i>South Western portion of the premises No. 32, Raja Santosh Road measuring more or less 1 Bigha 1 Cottah 5 Chittacks 32 Sq. Feet within Alipore P.S. (now New Alipore), District – 24 Parganas (S), Butted and bounded as:</i> <i><u>On the North:</u> Premises No. 30, Raja Santosh Road and remaining part of premises No. 32, Raja</i>
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	<i>Santosh Road;</i> <i>On the East: Premises No. 32A, Raja Santosh Road,</i> <i>On the South: By premises No. 24/7, Raja Santosh Road and premises Nos. 13 and 14, Alipore Avenue;</i> <i>On the West: Premises Nos. 14, Alipore Avenue and 30, Raja Santosh Road.</i> <i>As delineated in map or plan marked 'B'.</i>
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- 48.** In Title Suit No. 17 of 2002, the plaintiffs therein (present defendants/respondent nos. 1 and 2) sought declaration of their title and ownership in respect of the entire suit premises (comprised in Schedule “A” thereof) and a decree for *khas* possession of Schedule “B” property, a part thereof.
- 49.** It is argued by the respondents herein that the property comprised in Schedule “B” of Title Suit No. 17 of 2002 is identical with the subject-matter of the present suit.
- 50.** However, although there are substantial similarities in the description of the two, there are dissimilarities as well.
- 51.** The subject-matter of the present suit includes a 21 Ft. wide passage and specifies the Kolkata Municipal Corporation ward number, whereas those were absent in the Schedules to the



plaint of the earlier suit. The area of the two properties are also not the same.

- 52.** There are subtle differences in the boundaries of the two properties as well. Whereas the northern boundary of the present suit is delineated by Raja Santosh Road and portions of Premises No. 30, Raja Santosh Road, the northern boundary of “B”-Schedule of the earlier suit is comprised of only Premises No. 30, Raja Santosh Road and the remaining part of 32, Raja Santosh Road. The northern boundary of Schedule-“B” property in the earlier suit did not include the road itself, that is Raja Santosh Road.
- 53.** Similarly, whereas the eastern boundary of the present suit property is demarcated by Premises No. 32, Raja Santosh Road, the eastern boundary of Schedule-“B” property of Title Suit No. 17 of 2002 comprised of Premises No. 32A of the self-same road
- 54.** In the southern boundary, Premises No. 14, Alipore Avenue is missing in the present suit, whereas the same was mentioned in the earlier suit.
- 55.** Although the western boundary of the two properties are similar, whereas the present suit mentions “portions of” 30, Raja Santosh Road, such qualification of the said premise is not found in the earlier suit.
- 56.** The site plan of the present suit property, annexed with the plaint and marked with the letter “X”, despite being roughly



similar in shape with the plan marked “B” in the earlier suit, the said plan is not found to be a part of the certified copy of the decree in the previous suit, a copy whereof is handed over to us. However, even if affording the benefit of doubt to the defendants/respondent nos. 1 and 2 we accept the copy of such Plan “B” handed over by them as correct, we find that, although the general contours and shapes of the two sketches are similar, a comparison by the naked eye of the two cannot ensure that the two plots are exactly identical.

57. The test for rejection of a plaint on the high ground of suppression has to be satisfied to the hilt inasmuch as such suppression should be evident on the face of the plaint. Without a local investigation being held upon comparison of the title deeds of the present plaintiffs as well as those of the defendants/respondent nos. 1 and 2 with the Schedule properties of the two suits, it cannot be said conclusively that the two properties are *ex facie* identical.

58. Thus, the court taking up an application under Order VII Rule 11 of the Code could not be in a position, without a local investigation and/or trial on evidence, to come to the conclusive finding that subject matters of the earlier suit and the present one are exactly identical and that the plaintiffs/appellants herein are trying to vex the defendants twice on the self-same cause of action by fraudulently describing Premises No. 32, Raja



Santosh Road, the identity of which was finally adjudicated upon in Title Suit No. 17 of 2002, with Premises No. 24/7/1, which has been described to be the subject-matter of the present suit.

- 59.** Hence, it would not be prudent for the court, at the premature stage of deciding an application under Order VII Rule 11 of the Code, to reject the plaint at the threshold, either on the ground of *res judicata* or on the ground that the plaint is vexatious, on the premise that the self-same property which was conclusively adjudicated upon in a previous suit has been sought to be fraudulently numbered to seek a fresh adjudication on the same, thereby denying the plaintiffs/appellants the opportunity to establish the contrary by trial on evidence.
- 60.** The standard yardstick in adjudication of applications for rejection of plaint is that the bar of law and/or non-disclosure of cause of action and/or the vexatious nature of the suit alleged must be evident at the first blush on a composite reading of the plaint as a whole. However, in the present case, in the event the court is to reject the plaint on any of the above grounds, a conclusion has to be arrived at regarding such bar being palpable on the face of the plaint. As discussed above, such a conclusion cannot be arrived at on a mere reading of the plaint or the documents referred to therein, without granting the parties an opportunity to lead evidence and a thorough



adjudication on the factual aspects of the matter regarding the identity of the subject-matters of the two suits.

- 61.** Hence, the arguments of the respondents on such score cannot be accepted at this stage.
- 62.** The appropriate course of action would be for the learned Trial Judge to take up the suit for adjudication on trial and, if the issue of identity of the subject-property and/or suppression of material facts is raised in the pleadings of the defendants/respondents by way of their written statement(s), to frame proper issue on the same and, if necessary, to decide the said issue first, prior to embarking on an adjudication on the other issues.
- 63.** Thus, in view of the above observations, the impugned judgment and decree rejecting the plaint of the present suit cannot be sustained.
- 64.** Accordingly, FAT No. 469 of 2025 is allowed on contest, thereby setting aside the impugned judgment and deemed decree dated August 22, 2025 passed by the learned Civil Judge (Senior Division), First Court at Alipore, South 24 Parganas in Title Suit No. 775 of 2020, whereby the plaint of the said suit was rejected.
- 65.** The learned Trial Judge shall now adjudicate the said suit on its own merits by way of a regular and full-fledged trial on evidence. While doing so, the learned Trial Judge may frame and decide



issues on the identity of the subject properties involved in the present suit and Title Suit No. 17 of 2002 and/or *res judicata*, if necessary and permissible in terms of the pleadings of the parties, and decide the same prior to the other issues involved in the suit.

66. We make it amply clear that this Court has not entered into the merits of any of the questions raised before us and it would be open to the Trial Court to come to its own conclusions upon trial on merits, by taking evidence and if necessary by appointing a Survey-passed Advocate Commissioner to compare to the properties in the context of the title deeds of the parties and the Schedules of the two suits.
67. Consequentially, CAN 1 of 2025 is also disposed of.
68. Interim orders, if any, stand vacated.
69. There will be no order as to costs.
70. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)