
(1982) 02 CAL CK 0012
In the Calcutta High Court
Case No : Appeal No. 444 of 1979

Prahladrai Agarwalla and Others

APPELLANT

Vs

Sm. Renuka Pal and Others

RESPONDENT

Date of Decision : 15-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 7 Rule 11

Citation : AIR 1982 Cal 259

Hon'ble Judges : Ramendra Mohan Datta, J;C.K. Banerji, J

Bench : Division Bench

Advocate : P.K. Ghosh, for the Appellant; Gautam Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Banerji, J.—This is an appeal from the judgment and order dated 19th Nov., 1979 of R.N. Pyne. J. dismissing the application made by the appellants, inter alia, for the plaint in the suit herein being rejected and taken off the file; alternatively for stay of the suit till the disposal of Title Suit No. 2297 of 1978 (Prahladrai Agarwalla and Ors. v. Shri Rabindranath Pal and Ors.) pending in the City Civil Court at Calcutta; an injunction restraining the respondents herein from proceeding with the suit herein until the disposal of the said application. Facts material for the purpose of this appeal shortly are that, the respondents are owners of premises No. 23, Acharya Jagadigh Chandra Bose Road. Calcutta, within the Ordinary Civil Jurisdiction of this Court. Their predecessor-in-interest Radhakanta Pal obtained a decree for ejectment in the city Civil Court against Dwariknath Das & Anr., the erstwhile lessees of the said premises. While the said decree was being executed the said Radhakanta Pal died. The respondents as the heirs and legal representatives of the said deceased executed the said decree and obtained possession of the said premises on the 27th Nov., 1978. The case of the respondents is that since then at all material times they lawfully held, seized and possessed the said premises. The suit herein was instituted by the

respondents against the appellants in this Court by invoking the concurrent jurisdiction of this Court with the Presidency Small Cause Court, Calcutta. The relevant paragraphs of the plaint filed in the suit herein which would be material for the purposes of this appeal, are set out below :

"6. By an agreement of tenancy dated Dec. 1, 1978 entered into by the plaintiff No. 2 (being the respondent No. 2 Rabindranath Pal) on behalf of all the plaintiffs (being the other respondents) the defendant No. 3 (being the appellant No. 3 Kailash Agarwalla) was granted the tenancy and as such tenant possession of one shop room on the ground floor of the said premises No. 128, Acharya Jagadish Chandra Bose Road, Calcutta.

7. On or about Dec. 9, 1978, the defendants (being the appellants) wrongfully and/or illegally dispossessed the plaintiffs without their consent and without recourse to law of the entire first floor of the said premises No. 128, Acharya Jagadish Chandra Bose Road, Calcutta, save and except two rooms in possession of one Bimal Homeo Hall Private Ltd., by forcing open the Padlock to the said floor which was put by the plaintiff after obtaining possession of the premises as aforesaid. The defendants have also removed the furniture kept by the plaintiff in the first floor of the said premises wrongfully, illegally and without the consent of the plaintiff,

8.

9.

10. The plaintiffs state that in the premises aforesaid they are entitled to recover possession of the said property notwithstanding any title, right or interest which may be set up by the defendants or by any of them.

11.

12. Further and in the alternative by reason of the premises the plaintiffs have suffered damages caused by the defendants and by each of them in respect of the suit property which the plaintiff assess at Rs. 4,000.00 on and from Dec. 9, 1978 being the date of their dispossession.

13. The plaintiffs are entitled to and claim recovery of possession of suit property and damages as aforesaid from the defendants from the date of dispossession i.e.. Dec. 9, 1978.

14. The plaintiffs' cause of action in this suit arose on Dec. 9. 1978 at premises No. 128, Acharya Jagadish Chandra Bose Road within the jurisdiction of this Hon"ble Court and has been and still is continuing from day-to-day.

15. Inasmuch as the value of the suit property exceed Rs. 50,000.00 and damages claimed by the plaintiffs do not exceed Rs. 5,000.00 this Hon"ble Court has the jurisdiction concurrent with Small Cause Court at Calcutta and the City Civil Court at Calcutta has not the jurisdiction to entertain, try and determine this suit.

16. For the purpose of court-fees this suit has been valued at Rs. 500,00/- for delivery of possession and at Rupees 4,000.00/- for damages and such ad valorem Court-fees has been paid in this suit and the plaintiffs undertake to pay such additional Court-fees as and when the same may be directed by this Hon"ble Court. The plaintiffs claim:

(a) Decree for possession of the suit property being the first floor of the said premises No, 128, Acharya Jagadish Chandra Bose Road, Calcutta save and except two rooms in possession of the said Bimal Homeo Hall (P) Ltd.

(b) Decree for Rs. 4,000,00 as damages,

(c) Receiver.

(d) Injunction,

(e) Costs.

(f) Further or other reliefs." 2. It appears that the appellants Nos. 1 and 2 herein have also instituted a suit against the respondents herein in the City Civil Court being Title Suit No. 2297 of 1978 (Shri Prahladrai Agarwalla and Anr. v. Shri Rabindranath Paul and Ors), inter alia, for a declaration that the appellant No. 1 is the rightful tenant of the first floor flat of premises No. 128, Acharya Jagadish Chandra Bose Road at a monthly rent of Rs. 215/- and the appellant No. 2 is the rightful tenant in respect of the shop room on the ground floor of the said premises No. 128 Acharya Jagadish Chandra Bose Road at a monthly rent of Rs. 40/-.

3. Mr. P.K. Ghose, learned Advocate for the appellants, submitted that the said application in the Court below was made by the appellants for the plaint in the suit herein being rejected and taken off the file and alternatively, for stay of the said suit until the disposal of the suit filed by the appellants in the City Civil Court against the respondents. The suit has been instituted by the respondents by invoking the concurrent jurisdiction of this Court with the Presidency Small Causes Court, Calcutta as would appear from paragraph 15 of the plaint. To keep the suit within the pecuniary limit of the jurisdiction of the Presidency Small Causes Court, Calcutta the suit has been valued for the purpose of court-fees at Rupees 500.00 for delivery of possession and at Rs. 4,000.00 for damages. Such damages are claimed by the respondents in respect of damages done by the appellants to the suit property as will appear from paragraph 12 of the plaint. In paragraph 15 of the plaint the respondents have valued the suit property at exceeding Rs. 50,000.00. A suit for recovery of possession of a property exceeding Rs. 50,000.00 in value could not be entertained by the Presidency Small Causes Court, Calcutta, the pecuniary limits of its jurisdiction being Rs. 5,000.00. The valuation of the suit for delivery of possession at Rs. 500.00 for the purpose of Court-fees is an undervaluation and would not in any event determine the question of jurisdiction. Mr. Ghose referred to Section 18 of the Presidency Small Cause Courts Act as amended by the West Bengal Act XXXII of

1969. The portion relevant for our purposes of the said section reads as under :

"Subject to the exceptions in Section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature when the amount or value of the subject matter does not exceed five thousand rupees."

He also referred to Section 19 of the said Act and to Clauses (d) and (g) of the said section which read as under :

"The Small Cause Court should have no jurisdiction in

(d) Suits for the recovery of immovable property

(g) Suits for the determination of any other right to or interest in immovable property."

4. Mr. Ghose urged that the suit herein is a suit for recovery of Immovable property. The claim for damages is merely an ancillary relief. The immovable property, recovery whereof is claimed in the suit is valued in paragraph 15 of the plaint at exceeding Rs. 50,000.00. The Small Cause Court, therefore, had no jurisdiction to entertain or try such suit. In any event the claim for damages is an alternative claim as pleaded in paragraph 12 of the plaint. Thus, even if the respondents give up their claim for possession, the suit cannot proceed merely on an alternative claim. The claim for damages as framed in the suit arises out of alleged dispossession of the respondents of the property in suit by the appellants and in paragraph 12 of the plaint it is pleaded that the respondent suffered damages caused by the appellants in respect of the suit property which the respondents assess at Rs. 4,000.00 on and from 9th December, 1978 being the date of their alleged dispossession. To decide the question of damages as made in the suit it would be necessary for the Court to determine the right or interest of the parties in the the property in suit which the Small Cause Court has no jurisdiction to decide u/s 19(g) of the said Act.

5. Thus if the Small Cause Court had no jurisdiction to entertain or try the suit, the suit could not be filed in this Court with the Small Causes Court.

6. Mr. Ghose next urged that the application in the Court below was maintainable under Order 7 Rule 11 (d) of the Civil P. C. Alternatively for determination of a preliminary issue as to the jurisdiction of this Court to entertain or try this Suit.

7. Under Order 7 Rule 11 (d) the plaint shall be rejected where the suit appears from the statements in the plaint to be barred by any law. The suit is barred by Section 18 read with Section 19 Clauses (d) and (g) of the Presidency Small Cause Courts Act. The suit is firstly for recovery of Immovable property. The jurisdiction of the Presidency Small Cause Courts to entertain or try the suit in respect of such claim is barred by section 19(d) of the Presidency Small Cause Courts Act and its jurisdiction to try the claim for damages is barred by section 19(g) of the said Act,

8. It was next urged that both the claims in the suit, namely, recovery of

possession and damage arise out of the same cause of action, namely, trespass by the appellants and dispossession of the respondents. Both the claims are therefore joined in the suit under Order 2 Rule 4 (c) of the Civil P. C. otherwise the claim for damages could not be joined with the claim for recovery of possession of Immovable property. The respondents could not have sued only for the damages nor could they relinquish the claim for possession inasmuch as in such case the relief for recovery of possession would be barred under Order 2 Rule 2 Sub-rules (2) and (3). There is no question of return of the plaint under Order 7, R 10, that rule does not apply to this Court, a chartered High Court, as will appear from Order 49, Rule 3 Sub-rule (1) of the Civil P.C. The valuation of the suit for the purposes of Court fees as made in para. 16 of the plaint, is incorrect and the suit has been undervalued. The suit could not be valued either for the purpose of court fees or for any other purpose in respect of delivery of possession at Rs. 500.00 in respect of a property exceeding Rs. 50,000-00 in value.

9. Mr. Ghose urged that the suit herein being a suit for recovery of possession of immovable property from a trespasser without any claim for declaration of title to the property, the Court fees payable under the West Bengal Court Fees Act, 1970 had to be computed u/s 7(vi) of the said Act according to the amount at which the relief sought is valued in the plaint and so far as the claim for damages the Court-fees payable had to be computed u/s 7(i) of the said Act according to the amount claimed. Section 7(i) and Section 7(vi) of the West Bengal Act corresponds to Section 7(i) and Section 7(v-A) respectively of the Court-fees Act, 1870, which sections are not exempted from the operation of Section 8, of the Suits Valuation Act, 1887 and the value of the suit for computation of Court-fees and for the purposes of jurisdiction shall be the same. The respondents having valued the property in suit at a sum exceeding Rs. 50,000.00 could not value the suit either for the purposes of Court fees or jurisdiction at any other sum so as to bring the suit within the Jurisdiction of a particular Court. In any event, the suit as framed not being a suit of a small cause Court nature the respondents could not convert it to a suit of small cause Court nature by arbitrary valuation. It was held by a Division Bench of the Bombay High Court in *Ganappa Putta Hegde Vs. Hammad Saiba*, . That the suit as framed not being of a small cause Court nature did not attain that character because the plaintiff gave up his claim to the declaration. This was a suit where the plaintiff sued the defendant for recovery of Rs. 150.00/- and for a declaration that the mortgage bond executed by him was satisfied. The plaintiff did not pay the court-fees in respect of the said declaration and gave up that claim. The matter ultimately went before the High Court in Second Appeal and it was contended that such appeal did not lie as the suit was of a Small Cause Court nature by reason of the plaintiff having given up his claim for declaration, The High Court negated such contention.

10. It was urged before us that even if the respondents gave up their claim for recovery of possession the suit would not be converted into a suit of a Small Cause Court nature so that this Court would be entitled to entertain or try this

suit in exercise of its concurrent jurisdiction with the Presidency Small Cause Court. The jurisdiction had to be determined on the basis of the suit as filed and not on the basis of what the plaintiff might do or might not do subsequently. It was next urged that the suit having been filed in this Court as a suit entertainable by the Small Cause Court could not be converted into a suit solely entertainable by this Court alone by subsequent amendment of the plaint. It was next urged that even if, Order 7 Rule 11 (d) did not apply, the said application may be treated as an application for trial of an issue under Chapter XIV Rule 6 of the Original Side Rules of this Court and this Court could decide in such application the issue as to the jurisdiction of this Court in the exercise of its concurrent jurisdiction with the Small Cause Court in entertaining the suit herein.

11. It was lastly contended that the order under appeal was without jurisdiction inasmuch as the learned Judge of the Court below proceeded on the basis that the Small Cause Court was entitled to entertain and try the suit if the respondents gave up their claim for recovery of possession which was solely on the basis of an assumption although the respondents had not, in fact, given up any part of their claim in the suit. Subsequent facts would reveal that not only the respondents did not give up any part of their claim in the suit but on the contrary they applied for amendment of the plaint so as to convert the suit to a suit triable by this Court in its Ordinary Original Civil Jurisdiction and not on the basis of concurrent jurisdiction of this Court with the Small Cause Court.

12. Mr. Gautam Chakravarty appearing for the respondents urged that this Court having allowed the amendment of the plaint and payment of additional Court fees, the defect, if any, in the suit was regularised u/s 11 of the West Bengal Court Fees Act, 1970. The Court has power to revise the valuation and determine the correct valuation of the suit and may make an enquiry for that purpose and under Order 7, Rule 11 (b) and (c) of the Civil P. C. the Court may direct the plaintiff to correct the valuation and put in the deficit Court-fees. It was urged that the Court-fees Act was an Act for the computation of Court fees, it had nothing to do with, nor did it confer jurisdiction on Court. The jurisdictional value of a suit had to be determined only under the Suits Valuation Act. The relief as to recovery of possession of the property in suit from the appellants, the trespassers, as no declaration of title had been claimed, was governed by Section 7(vi)(a) of the West Bengal Court Fees Act, 1970 and computation of the Court fees would be according to the amount at which such relief had been valued in the plaint and u/s 8 of the Suits Valuation Act the value determined for Court fees and the value for the purposes of jurisdiction should be the same. If the case of the appellants was that the respondents have undervalued the suit, they would bring the matter to the notice of the Court and the provision of valuation and determination of correct valuation as contained in Sections 11 to 14 of the West Bengal Court Fees Act, 1970 could be applied by the Court,

13. It was next urged that, the entire claim and issue in the suit was not beyond the jurisdiction of the Small Cause Court. Even if the Small Cause Court could

not grant the relief in prayer (a) of the plaint, being the claim for recovery of possession, it could grant the relief in prayer (b) of the plaint, the claim for Rs. 4,000.00 as damages. Thus, it was not a case where the Small Cause Court had no jurisdiction at all to entertain or try the suit but it could entertain and try the suit as to recovery of damages and decide that question. The expression "right to or interest in immovable property" as used in Section 19(g) of the Presidency Small Cause Courts Act, suits for determination whereof was not cognizable by the Small Cause Court under the said section did not mean proceeds of immovable property. The Small Cause Court had jurisdiction to try even questions of title which arose incidentally in a suit even if such question was the principal question but not the sole and only question. In support of such contention Mr. Chakraborty referred to the following decisions of this Court :

(1) In the matter, of Peary Mohun Ghosaul v. Haran Chunder Gangooly reported in (1885) ILR 11 Cal 261.

(2) Makhan Lal Datta v. Goribullah Sardar reported in (1890) ILR 17 Cal 541.

(3) Ashutosh Dey Vs. Foolchand Keshabdeo and Another, .

(4) Amritlal Kalay v. Nibaran Chandra Nayek reported in (1904) ILR 31 Cal 240.

(5) Rajendra Mullick v. Nanda Lal Gupta reported in (1904) ILR 31 Cal 1001.

14. It was urged that Order 7 Rule 11

(d) was not applicable in this case. Rejection of a plaint under that rule was envisaged in a case where from the statement made in the plaint the suit appeared to be barred by any law. There was a fundamental difference between want of jurisdiction in a Court to entertain the suit and the suit being barred by law. Want of jurisdiction in a Court was a matter of procedure under the Civil P. C. That would not bring the suit or any part of the claim in the suit within the mischief of Order 7 Rule 11 (d). Want of jurisdiction could not be equated with the expression "barred by any law". The suit being barred by any law and suit not entertainable by a particular Court because of want of jurisdiction in that Court in that behalf, were two different concepts. Question as to the jurisdiction of the Court could not be agitated under Order 7 Rule 11 (d). Such question could be agitated under Order 7 Rule 10, the specific provision made for such purpose. Under Order VII Rule 10 plaint could not be rejected for want of jurisdiction in a Court in which it was filed but it would be returned for being presented to the Court in which the suit should have been instituted. If this Court had no jurisdiction to entertain the suit, it would be returned for filing in the City Civil Court. Calcutta u/s 14 of the Calcutta City Civil Court Act, Mr. Chakraborty in this connection referred to Section 5 and the non obstante clause in Section 21 and to Clause 17 of Schedule I of the Calcutta City Civil Court Act.

15. It was next urged that the question of jurisdiction decided herein by the Court below on the said application of the appellants was not barred by the principles of res judicata or estoppel and could be urged by the appellants over

again at the hearing of the suit. Mr. Chakravarty relied on the following decisions :--

1. P. Dasa Muni Reddy Vs. P. Appa Rao, .

2. Arjun Singh Vs. Mohindra Kumar and Others, .

3. Sushil Kumar Ghosh and Others Vs. Revenue Officer, Balurghat and Others, .

16. For the meaning of the expressions "bar" and "jurisdiction"" Mr. Chakraburttty referred to Osborne's Judicial Dictionary (5th Edition). At page 44 it is stated : "to bar a right is to destroy or to end it" and at page 178 jurisdiction is defined as "power of Court or Judge to entertain an action". Reference was also made for the same purpose to Stroud's Judicial Dictionary (4th Edition) at page 254 for the meaning of the expression "bar" and to page 1452 for the meaning of the expression "jurisdiction."

17. It was next urged that if the Small Cause Court had jurisdiction to entertain the suit with regard to prayer (b) of the plaint being the claim for damage of Rs. 4,000.00, the suit could be tried and decided by the Small Cause Court in respect of that prayer, while the prayer for recovery of possession could be given up by the respondents or rejected by the Court. It was not a case of total lack of jurisdiction of Small Cause Court to entertain or try the suit. That being the position, part of the plaint with regard to only recovery of possession could not be rejected by this Court on the said application of the appellants. In support of such contention reliance was placed on a decision of this Court in Manick Lal v. Shiva Jute Bailing reported in (1948) 52 CWN 389. Here, the plaintiff filed the suit for the following reliefs :

(a) Declaration that the aforesaid contract is void;

(b) Delivery up of the said contract by the defendants to the plaintiff;

(c) Cancellation of the said alleged contract;

(d) Injunction on the defendants from proceeding with the arbitration or taking any other steps.

18. The defendants made an application under Order 7 Rule 11 (a) of the Civil P. C. for rejection of the plaint on the ground that it did not disclose any cause of action. Das, J. found that the plaint disclosed a cause of action and the plaintiff could obtain relief in the suit with regard to delivery up and cancellation of the contract although the other prayers in the plaint were not maintainable and in that context, his Lordship made the following observation:

"Under Order 7 Rule 11 the Court has no authority to reject parts of the plaint, Therefore even if the prayer for declaration and injunction may not be maintainable, the plaint cannot be rejected or taken off the file, for it discloses a cause of action for cancellation u/s 39 of the Specific Relief Act."

19. The case before us is, not a matter which is governed by Order 7. Rule 11

(a) but governed by Order 7, Rule 11 (d). It is not the case of the appellants that the plaint filed herein does not disclose a cause of action; but their case is that jurisdiction of the Small Cause Court is barred by law, namely, Section 19 (d) and (g) of the Presidency Small Cause Courts Act. The primary and main relief claimed in the suit is recovery of possession on the ground that appellants are trespassers, The claim for damages is merely an ancillary relief based on damages caused by the respondents in respect of the property in suit from the date of dispossession of the respondents by the appellants. Whether the respondents would ultimately give up their claim for recovery of possession or not so as to bring the suit within the cognizance of the Small Cause Court, would not be in our view, a relevant consideration in a case where the suit has been filed in the High Court on the basis of its concurrent jurisdiction with the Small Cause Court. A subsequent event which might or might not happen would not determine the jurisdiction of the High Court to entertain or try the suit on the ground that the suit is cognizable by the Small Cause Court. In our opinion the question has to be considered and decided on the basis of the suit as framed and filed in this Court. It is possible that if this suit was filed in the Small Cause Court, the respondents might have given up a part of their claim to bring it within the jurisdiction of the Small Cause Court, but we are not concerned with such question. We are concerned with a case where the suit has been filed in the High Court on the basis of its concurrent jurisdiction with the Small Cause Court as a suit cognizable by the Small Cause Court. Then again, when the application by the appellants was made, heard and decided the respondents had not given up their claim for recovery of possession. The suit was at that time a suit for recovery of immovable property with a claim for damages. Thus there was no question of part of the plaint being rejected. In that view of the matter the case of *Manik Lal Memani v. Shiva Jute Bailing Co.* (1948) 52 CWN 389 (supra) has no application to this case.

20. Whether the respondents would give up part of their claim which is admittedly not within the cognizance of the Small Cause Court would be a matter of conjecture and speculation and cannot determine the question of jurisdiction. Subsequent events however, show that the respondents not only did not give up the claim for recovery of possession, but amended the plaint in such a way that the suit herein became a suit solely cognizable by this Court. Whether that is permissible or not is the subject matter of the very next appeal appearing before us being Appeal No. 24 of 1980 (*Prahladrai Agarwalla and Ors. v. Smt. Renuka Pal and Ors.*). In our opinion, the said subsequent event also would not decide the questions raised by the appellants before the Court below in the application herein. The same has to be decided on the basis of plaint as it stood at the time when the said application was made, heard and decided. It was next urged by Mr. Chakraborty that an order made under Order 7 Rule 11 was not appealable and he referred to Order 43 Rule 1 of the Civil P. C. It was also urged that an order under Order 7 Rule 11 refusing to reject a plaint and dismissing the application for rejection of the plaint was not a judgment within the meaning of

Clause 15 of the Letters Patent. Such order did not determine any part of the suit. In support of his contention Mr. Chakraborty cited the following decisions.

1. Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York, .
2. Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, .
3. Gaganmal Ramchand Vs. The Hongkong and Shanghai Banking Corporation, .
4. Lal Behari Prosad Chowdhury v. Parasmull Jain reported in (1970) 14 CWN 972.
5. National Screw & Wire Products Ltd v. Syndicate Bank Ltd., reported in (1971) 75 CWN 447.

21. It is not necessary to discuss above decisions in detail. Any order under Order 7. Rule 11 under any of the clauses thereof is clearly not appealable as will appear from Order 43 Rule 1,

22. An order to be a "judgment" within the meaning of Clause 15 of the Letters Patent must be a decision affecting the merits of the disputes between the parties by determining some right or liability although it might be either final or preliminary or interlocutory. The Court below in dismissing the application of the appellants and rejecting their prayer for rejection of the plaint did not determine any right or liability of the parties to the suit which could be said to have affected the merits of the disputes between the parties. The said disputes have to be decided in the suit and it would be open to the appellants to raise all contentions in their written statement which they might desire to urge in the suit at the hearing. In that view of the matter the order under appeal is not, in our opinion, appealable under Clause 15 of the Letters Patent. An application for trial of issues could be made only after written statement has been filed by the defendant and thereupon issues have been settled. That is not the case here. But even if the said application of the appellants be taken as an application for trial of issues under Chapter XIV Rule 8 of the Rules of the Original Side of this Court then also the answer to the question as to the appealability of the order would remain the same. The order would be appealable only if it was a "Judgment" within the meaning of Clause 15 of the Letters Patent, which, as has been noted earlier, it is not.

23. We are, therefore, of opinion that the order under appeal is not appealable and this appeal is, therefore, not maintainable. We should note another point urged by Mr. Chakraborty and we accept his argument that the point of jurisdiction as decided by the Court below on the said application of the appellants was not barred by res judicata and the appellants would be entitled to urge the same over again at the trial of the suit. Reference may be made in this connection to the two decisions of the Supreme Court and also to a decision of this Court.

1. Arjun Singh Vs. Mohindra Kumar and Others, .

2. P. Dasa Muni Reddy Vs. P. Appa Rao, .

3. Sushil Kumar Ghosh and Others Vs. Revenue Officer, Balurghat and Others, .

24. For all the above reasons the appellants cannot succeed in this appeal and the appeal is therefore dismissed with costs.

25. We however make it clear that we have not decided in this appeal any of the other points raised by the parties before us save and except the question of appealability of the order under appeal. The parties would, therefore, be entitled to urge all such points at the hearing of the suit.

Ramendra Mohan Datta, J.

26. I agree.