

Jyotirmoy Banerjee & Anr.
Vs.
Sub-Divisional Land and Land Reforms
Officer (EP L) Asansol & Ors.

Mr. Pinaki Dhole
... for the appellants.

The unsuccessful litigant in both the Courts below have filed the instant Second Appeal under Section 100 of the Code of Civil Procedure claiming that substantial questions of law are involved in the impugned judgement.

Both the Courts negated the claim of the plaintiffs/appellants as they miserably failed to prove the case made out in the plaint by cogent evidence. The plaintiffs/appellants asserted their right by way of adverse possession, as they are not in possession and occupation of the suit property for more than 30 years. Since an application was taken out in the year 2009 for correction of Record of Rights or in other words mutating the name of the appellants in the records maintained by the authority and having refused to do so, the Sub-Divisional Land and Land Reforms Officer (EP L), Asansol has been impleaded as 1st defendant, the 1st respondent herein.

Admittedly the owner of the property was not impleaded as party in the said proceeding. A plea was taken in the written statement that the suit is bad for non-joinder of necessary party, which appears to have taken a back sheet as both the Courts proceeded to consider as to whether the plaintiffs/appellants have perfected the title by way of adverse possession.

As indicated above that no convincing materials were produced before the Court which may remotely have some bearing on the issue of adverse possession nor there is any proof of such possession being adverse to the true owner.

Mr. Pinaki Dhole, learned Advocate appearing for the plaintiffs/appellants, submits that both the Courts have miserably failed to consider the important piece of evidence, i.e. a letter addressed to the appellants showing the address of the suit premises, which goes to show that the possession of the appellants have been duly established and recognized. Both the Courts negated such claim, as mere possession in the property does not ipso facto confer any right on the person in possession to claim the title by way of adverse possession.

It is no longer *res-integra* that mere long possession in the property does not automatically perfect the right, title and interest in respect of the property by way of adverse possession. The plea of adverse possession is based on three legal maxim, i.e. *Nec vi*, *Nec clam*, *Nec precario* meaning thereby that the possession must be open, continuous and hostile. In order to perfect the title by way of adverse possession such possession must be open, hostile, continuous and uninterrupted to the knowledge of the true owner. It is a ninth principle of title based on possession when the true owner having conscious of the fact that somebody has claimed possession adverse to him, yet he remain silent and did not take any steps to assert his right. All along the name of the principal owner was recorded in the Record of Rights and attempt to mutate or correct the Record of Rights appears to have been done in the year 2009 and, therefore, as on the date of filing of the suit, the

right conferred under the Limitation Act was not fructified. The Court must scrupulously look into the claim launched on the premise of adverse possession and it is only after strong evidence is adduced, the decree can be passed in favour of a person asserting such right. It is more so when a person being a owner is deprived of his right, title and interest in respect of the property without any consideration merely on a silence being projected despite having aware of such right and invasion thereof by a third party. The element of animus possiderandi is one of the factor to be borne in mind, as such element is intricately embodied in the concept of adverse possession and the onus lies on the person to prove the same. The first entry in the property has to be wrongful and the same must perpetuate for more than twelve years to ripe to full fledged title.

Mere addressing a letter at a premises may be suggestive of the occupation and possession, but does not throw any light on the possession being adverse to the true owner in absence of other ingredients required to be proved. The possession, how long it may be, cannot be converted into adverse possession in absence of the aforesaid ingredients having brought and proved by a person asserting the title. Even if we overlook the fact that the principal owner has not been impleaded as party, which ought to have been, we do not find that the appellants have been able to prove their case on merit.

We thus do not find any substantial question of law involved in the instant appeal.

The appeal is dismissed.

(Harish Tandon, J.)

(Kausik Chanda, J.)

