

22.11.2022
SL No.6
Court No.8
(gc)

**SA 26 of 2011
CAN 1 of 2004 (Old No: CAN 10127 of 2004)**

Laxman Chakroborty & Ors.

Vs.

Akshay Mukherjee

The matter was adjourned on the earlier occasion on the prayer of the learned Counsel for the appellants. We made it clear in our earlier order that no further adjournment shall be granted.

The appellants are not represented.

In view of our earlier observation, we proceed to decide the admission of the second appeal.

The second appeal is arising out of an appellate decree dated 17th November, 2003 affirming the judgment and decree dated 28th February, 2002 by the learned Civil Judge, Junior Division, Howrah in T.S. No.208 of 1991. The said suit was filed for declaration and permanent injunction. The plaintiff claims to be the owner of the suit property by virtue of deed of gift executed on 11th July, 1991. According to the plaintiff, the defendants used to reside as licensee in a room contiguous to the plaintiff since the time of the predecessor of the plaintiff. The gift deed was marked as Exhibit-5. From the recital of the gift deed it would appear that the entire land with structure situated in dag no.2556, kh. No. 1078 has been transferred along with the easementary rights to the

plaintiff. On the other hand the defendants are claiming that they are living and enjoying the possession of the suit property since long over the statutory period i.e. for more than 20 years and they have acquired possession by possessing right adversely to the owner of the suit land. The defendants are thereby claiming acquisition of title by way of adverse possession.

During trial, the defendants have produced several documents which have been marked as exhibits to show that the defendants have been residing in the said locality and they are in the suit room for last several years. The defendants, however, did not deny the execution of the deed of gift. The said deed of gift was duly registered. Before the Trial Court it was urged that the plaintiff and the defendants are the joint owners of the property in question.

In view of the deed of gift and absence of any evidence to show that the possession of the defendants is hostile, the learned Trial Judge decreed the suit. In order to succeed in a plea for adverse possession, a party is required to prove that his possession is *nec vi, nec clam, nec precario*, that is, peaceful, open and continuous. These three conditions are not fulfilled in the instant case. If the defendants are claiming ownership on the basis of adverse possession notwithstanding the acceptance and admission of the deed of gift, the aforesaid three conditions are required to be fulfilled. The First Appellate Court in affirming the judgment of the Trial Court has

taken into consideration the aforesaid factors. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. The ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

The Trial Court as well as the First Appellate Court has clearly held that the appellants have failed to establish their title over the suit property. A registered deed of gift clearly demolishes the right or any claim of the defendants/appellants as owner of the property in question. Their entry to the suit property was not hostile. They were in permissive occupation. They have failed to establish that their continuation in possession is in denial of title of the true owner and with the knowledge of the true owner. The possession has to be in public and to the knowledge of the true owner as adverse having not been established plea of acquisition of title by adverse possession by the appellants' faith.

Where there is permissive possession given by the owner the defendant's claim that the same had become adverse, it has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose 12 year hence from that date. **(See Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan**

reported at (2009) 16 SCC 517: AIR 2009 SC 103, Narasamma Vs. A. Krishnappa reported at 2020(15) SCC 218 (Para 17)).

There is no substantial question of law involved in the second appeal. Accordingly, the second appeal stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission stage, the application also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)