

SA 104 of 2010

Ct-08

**Madan Tudu & Ors.
Vs.
Rasamoni Soren since deceased
Padmabati Soren & Ors.**

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Mrs. Sulekha Mitra
Mr. Manas Kumar Das
... For the Appellants

The appellate judgment and decree dated 11th January, 2008 passed by learned Additional District 1st Court, Purulia in Title Appeal No. 45 of 2007 affirming the judgment and decree dated 21st March, 2007 passed by learned Civil Judge (Junior Division), Additional Court, Purulia, in Title Suit No. 530 of 2000 filed by the plaintiffs is the subject matter of challenge in this second appeal.

The decree of affirmation based on concurrent findings of fact are not likely to be interfered with in the second appeal unless the appellant able to demonstrate perversity or illegality

The plaintiffs filed the suit for declaration of their permanent rayati right in the suit tanks described in the schedule to the plaint and for permanent injunction restraining the defendant nos. 1 to 20 from disturbing or interfering in any manner with regard to the possession and enjoyment of the said tanks. In the suit the plaintiffs prayed ownership in the said tanks, which remain undisputed. The title in respect of the suit property has been elaborately dealt with by the trial court and also indicated with some details by the first appellate court. The defendants realising its weak defence on merits in the suit put up a defence of adverse

Possession in the alternative.

It is elementary that permissive user cannot claim adverse possession. The said defendants' use of the tanks for the purpose of drinking water was permissive but the moment they started interfering with the right, title and interest of the plaintiffs and started catching fish from the said tanks the plaintiffs resisted.

Before the trial court as well as the first appellate court issues were raised with regard to the non-joinder of necessary parties which, in our view, has rightly been answered by the trial court and the first appellate relying upon the decision of one of our former Chief Justices P.B. Mukharji in the case of ***Lal Mohammad Biswas Vs. Emajuddin Biswas & Ors., reported in AIR 1964 Cal 548.*** In which the Hon'ble Chief Justice observed *"The real nature of such a suit is for removal of the obstructions put by the defendants on the village road. The persons who obstruct are the only proper and necessary persons to be joined as defendants in such a suit. Hundred and thousand of the villagers who have done nothing to obstruct such a way are neither necessary nor proper parties."* The said decision is squarely applicable in the instant case and the defendants cannot enlarge the scope of the suit by taking defence that all the villagers used the said tanks for the purpose of drinking water. The other objection was with regard to the maintainability of the suit. It is elementary that recording in the C.S record and L.R record are not conclusive. The plaintiffs have placed their title on the basis of the documents executed in their favour by their predecessors-in-interest.

Undoubtedly those documents are of much higher evidentiary value than the entries in the ROR with regard to the right, title and interest in respect of the property in question. Hence, such objection has been rightly overruled by both the courts below. In our view, concurrent findings of facts are based on cogent, reliable, documentary and credible evidence. Accordingly, we are not inclined to admit the second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

