

**Smt. Ila Bhattacharjee alias Ila Rani
Bhattacharjee & Anr.
Vs.
Sri Suresh Chandra Kayal & Anr.**

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The appellants are not represented, nor any accommodation is prayed on his behalf.

The appeal was earlier listed on October 1, 2021, but none had appeared on behalf of the appellants to move the appeal for admission. Thereafter the matter was again appearing in the list since September 7, 2022. We, however, propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmation dated December 21, 2005 passed by the learned Civil Judge(Senior Division), Diamond Harbour, South 24 Parganas in Title Appeal No. 77 of 2000 arising out of judgment and decree dated September 15, 2000 passed by the learned Civil Judge (Junior Division), Second Court, Diamond Harbour, South 24 Parganas in Title Suit No. 219 of 1997 is the subject matter of challenge in this appeal.

The plaintiff filed the suit for recovery of possession. The facts of the plaintiff's case in short is that the suit plot measuring 74 decimals described in the schedule to the plaint originally belonged to Hirendranath Kayal, father of the plaintiff and the pro-forma defendant no. 3 and that he transferred half-share of the suit plot in favour of the plaintiff on the strength of a deed of gift dated 05.03.1954. Subsequently, he transferred the remaining half share of the suit plot in favour of Mohanlal Kayal, the pro- defendant no.

3 by a deed of gift. While possession the suit plot, the plaintiff and the pro-defendant no. 3 effected an amicable partition of the suit plot in the month of Baisakh 1365 B.S. In that partition the plaintiff got the eastern half of the suit plot and the pro-defendant Mohanlal Kayal got the Western half of the suit plot. While possessing the eastern half of the suit plot, the plaintiff excavated a tank in some portion of eastern half and converted the remaining portion of eastern half of the suit plot into “danga” land with the earth accumulated due to excavation of the tank. Thereafter he constructed a house comprising four brick built room thatched with tiles, varanda, cow-shed, bathroom and privy and he used to stay there off and on and during his absence the rooms were kept under lock and key. Actually, the plaintiff used to reside in his ancestral house at Goanara Gobindapur permanently. The plaintiff had intimacy with the defendant no. 2, an employee of the police department. During his posting at Diamond Harbour Smt. Ila Bhattacharyya, wife of the defendant no. 2, approached the plaintiff for permitting them to reside at the suit house temporarily. Ultimately, on 05.02.1990 the plaintiff gave them permission to reside in the suit house. The defendant nos. 1 and 2 started residing in the suit house since 01.03.1990. On 15.12.1996 the plaintiff revoked the licence and asked them to vacate the suit house. In spite of revocation of licence the defendant did not vacate the suit house. In fact they have been possessing the suit property described in the schedule to the plaint as trespassers after revocation of licence. Hence, the suit has been filed for the reliefs indicated above.

The defendant no. 1 has contested the suit by

filing written statement and an additional written statement. The other defendants have not opted to contest the suit. The contesting defendant has denied all the material allegations of the plaintiff. The positive case of the contesting defendant is that the defendant no. 2, the husband of the defendant no. 1, approached the plaintiff for selling the suit land and the house consisting of two brick built rooms thatched with tiles standing thereon. The plaintiff agreed to sale the suit land and the house standing thereon at a consideration of Rs.8,000/- pursuant to such agreement, the plaintiff accepted Rs.2,000/- as earnest money in July 1976 and delivered possession of the suit property in favour of the defendants and that the defendant nos. 1 and 2 started possessing the suit property since July 1976 and that they paid the balance consideration money by instalments and instalments were paid upto November 1980. After payment of entire balance amount the plaintiff did not execute a sale deed in favour of the defendants in respect of the suit property rather he avoided the matter on various pleas.

It was further contended that the defendant filled up the property by earth and constructed few rooms in the said plot of land. The defendants claimed that they have been possessing the suit property adversely with the knowledge of the plaintiff since the month of July 1976 and thereby acquired title in the suit property by adverse possession. The Trial Court disbelieved the claim of possession on the basis of the evidence which includes the order dated 13th June, 1997 passed in M.F Case no. 410 of 1997 and the report of the B.L &L.R.O, Diamond Harbour (Exhibit-7). The said report shows that basis of possession was not

based on the title. The parties were at loggerhead and the possession of the appellants were never accepted by the plaintiff.

The Trial Court held that the appellants having not acquired any title by way of adverse possession including into the basis of the claim for possession. The defendant no. 1 contended that she and her husband possessed the suit property since the month of July 1976, but the defendant nos. 1 & 2 could not produce any document in support of their possession. In view of the fact that the plaintiff was able to establish right, title and interest in the suit property by virtue of Exhibit-1 corroborated by the evidence of P.W 1.

Moreover, it is significant to mention that the defendant no. 2 did not contest the proceeding nor did he adduce any evidence in the proceeding, although it was alleged that the defendant no. 2 approached the plaintiff for purchasing the suit property and the plaintiff had entered into an agreement for sale of the suit property with the defendant no. 2 at a consideration.

Taking into consideration the aforesaid factors, the Trial Court decreed the suit on contest. The first appellate court also agreed to the said findings of the learned court below.

There is a clear finding of fact by the first appellate court as well as by the trial court with regard to the ownership of the plaintiff in respect of the suit property and occupation of the defendants as permissive. The said finding is based on cogent evidence.

In view thereof, we do not find any reason to interfere with the concurrent findings of fact arrived at by both the courts below. Moreover, we find no substantial question of law involved in this appeal

for which the same is required to be admitted.

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

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)