

28.04.2022
SL No.6
Court No.8
(gc)

**SAT 178 of 2019
With
CAN 1 of 2019
(Old No: CAN 5687 of 2019)**

**Lakshmi Rabidas & Anr.
Vs.
Ramkanu Das & Ors.**

Ms. Baisali Ghoshal,
...for the Appellants.

The second appeal has come up for admission. The appellants are aggrieved by the judgment and decree of the learned Additional District Judge, Fast Track Court-I, Lalbagh, Murshidabad in Title Appeal No.55 of 2018 dated 21st December, 2018 by which the judgment and decree passed by the learned Civil Judge (Junior Division), Additional Court, Lalbagh dated 14th August, 2015 in T.S. 72 of 2011 was reversed.

Ms. Baisali Ghoshal, learned Counsel appearing on behalf of the appellants submits that the Appellate Court has failed to appreciate that the appellants became owner of the property by way of adverse possession. Ms. Ghoshal has taken us through the judgment of the Trial Court as well as the Appellate Court and argued that the Exhibits-A to D would establish that the appellants were in continuous and uninterrupted possession for almost 30 years. The said

documents would suggest that the title adverse to the plaintiffs was set up by the appellants against the rightful owners, namely, the plaintiffs/respondents.

The appellants did not dispute the ownership of the plaintiffs which would be crystal clear from Exhibit-1 series to 5 series, which, inter alia, include the record of right. The Trial Court also in the judgment has decided the ownership of the plaintiffs in relation to the property in question relying upon the same set of documents and evidence. This has remained unshaken. Obviously, the question would arise of the basis on which the appellants claimed ownership in respect of the property in question. The appellants have relied upon municipal records and a proceeding initiated by the appellants under Section 144 read with Section 145 of the Code of Civil Procedure and certain orders passed in the said proceeding to show their uninterrupted possession and assertion of title. The valuation of holding of suit property for 4th quarter of 1995-1996 shows that husband of the defendant No.1 was in possession of the land in question for the years 1995 and 1996. However, there is no evidence to show that the defendant No.1 remained in possession after the aforesaid period. The municipal records would show that they paid taxes for few years and not for the entirety of the period for which uninterrupted possession is claimed. In any event, the payment of municipal rates and taxes does not create

any title in the property in question. The very fact that a proceeding was initiated by the appellants under Sections 144 and 145 of the Code of Criminal Procedure would go to show that their possession was not uninterrupted. Moreover, the plaintiffs also filed a suit being T.S. No.126/2003 and the pleadings of the said proceeding would show that the plaintiffs had alleged the defendants/appellants to be in wrongful possession of the suit property. The documentary evidence namely the ROR and LRROR would establish a better title in the suit property as opposed to the quality and nature of the evidence adduced by the defendants/appellants in support of their claim of adverse possession. The Entry in the Record of Rights certainly would stand in a better footing vis-a-vis, one or two tax receipts of 1995-96 to claim ownership. The defendants/appellants in order to defeat the right of the plaintiffs/respondents have set up a claim of acquisition of title by way of adverse possession. The appellants in order to succeed has to show that the appellants were in possession uninterruptedly for a continuous period of 12 years and during such possession they have set up a title against the real owner. The law requires a party claiming adverse possession to prove three things, namely, *nec vi*, i.e., adequate in continuity, *nec clam*, i.e., in publicity and *nec precario*, i.e. adverse to a competitor in denial of title and his knowledge. The possession has

to be in public and to the knowledge of the true owner as adverse. The law would not readily infer and accept such plea unless a clear and cogent basis has been made out [See: **Narasamma and Ors. v. A. Krishnappa**, reported in **2020(15) SCC 218**]. The Principle has been lucidly stated in **Karnataka Board of Wakf v. Government of India and Ors.**, reported in **2004 (10) SCC 779**, in the following terms:

“11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”

Mere continuous possession for a long time does not automatically matured to a right of acquisition of title by adverse possession.

The learned First Appellate Court, in our view, has rightly relied upon the decision of the Hon'ble Supreme Court in **Krishnamurthy S. Setlur (dead) by LRS. V. O.V. Narasimha Setty and Ors.** reported at **2007 (2) WBLR SC 742** and in **Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Ors.** reported

at **AIR 2009 SC 103** in order to come to a conclusion that the defendants had failed to establish their claim of acquisition of title by adverse possession. On the basis of the evidence, it can be safely concluded that the plaintiffs had established a better title in respect of the suit property and the moment the title of the plaintiffs get established and defendants failed to establish their superior title by adverse possession, eviction of the defendants from the suit property would be automatic as stated in ***Tarumoni Mondal & Ors. v Prafulla Kumar Mondal & Ors.***, reported in **2006(3) CHN (Cal)**

1. In view of such settled principles of law, we do not find any reason to interfere with the order passed by the First Appellate Court. We also do not find any substantial questions of law which would be admitted.

Accordingly, the second appeal being SAT 178 of 2019 and the application being CAN 1 of 2019 (Old No: CAN 5687 of 2019) stand dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)