

09.03.2022

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ss

S.A. 129 of 2021

With

CAN 1 of 2021

Sri Gopal Bhattacharya

Vs.

Sri Kajal Ghosh

Mr. Kartick Kr. Bhattacharyya

Ms. Soumashree Dutta

... for the appellant

Mr. Samar Nath Ghosh

Mr. Ayan Mitra

... for the respondent

We have heard learned Counsel for the appellant. This second appeal is directed against the judgement and decree dated 27th April, 2021 affirming the judgement and decree dated 29th August, 2019 passed by the learned Civil Judge, Junior Division, 4th Court, Howrah.

Learned Counsel for the appellant has submitted that the trial Court was directed by the previous order to decide the issue no.3 which the trial Court did not consider and the appellate court has affirmed the order of the learned Trial Judge without taking into consideration the issue no.3 which was not complied with by the trial Court.

The issue no.3 reads as follows :-

“(3) Is the defendant a tenant under the plaintiff in respect of the suit property?”

This issue was required to be decided because the appellant has made a counterclaim on the ground that the appellant has acquired a right and interest by way of adverse possession.

The evidence on record overwhelming shows that the father of the plaintiff has purchased the suit property from the erstwhile owner and the said fact was admitted by the defendant-appellant that the defendant was a tenant under the plaintiff. In order to prove adverse possession, a party is required to prove that his possession is nec vi, nec clam, nec precario, that is, peaceful, open and continuous. This 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 dispossession of the rightful owner and be actual, visible, hostile and continued over the statutory period. [See *Narasamma Vs. A. Krishnappa*, 2020(15) SCC 218 (para 17)]. The appellant has admitted that he was a tenant under the plaintiff/respondent and has failed to produce any document to show that he continued to occupy the suit property as owner and over a period of twelve years. It is also to be noted that the present appellant filed a title suit against the plaintiff for declaration of his tenancy right and restoration of possession in respect of the

suit room, which is clearly inconsistent with the plea of adverse possession.

In view thereof, all findings of the trial court as well as the appellate court that the possession of the plaintiff as a licensee in the suit property does not suffer from any perversity.

We, thus, find that no substantial question of law is involved in this second appeal and consequently, the same is dismissed under Order XLI Rule 11 of the Code.

In view of dismissal of the appeal itself, the connected application has become infructuous and the same is disposed of accordingly.

Urgent xerox certified copy of this order, if applied for, be handed over to the learned Advocates for the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)