

Item-10. 26-07-2022

SA 69 of 2022
CAN 1 of 2015 (old CAN 6448 of 2015)

^{sg} Ct. 8

Abhijit Das
Versus
Ira Mukherjee & Anr.

None appears on behalf of the appellant nor any accommodation is prayed for on his behalf. The matter initially appeared in the warning list on 22nd June, 2022 and thereafter transferred to the daily cause list on 28th June, 2022. On the last occasion i.e. 11th July, 2022, the appellant was also not represented. In view of our order dated 11th July, 2022, we decide the admission of the appeal on the basis of the available records.

The appeal is arising out of a judgment and decree dated 28th May, 2015 passed by the learned Additional District Judge, 3rd Court, Burdwan affirming the judgment and decree dated 28th March, 2012 passed by the learned Civil Judge (Senior Division), 1st Additional Court, Burdwan in Title Suit No. 22 of 2007.

The plaintiff filed a suit for recovery of khas possession. On the basis of the oral and documentary evidence, the plaintiff was able to prove the ownership and the defendant was found to be in unauthorised occupation. The plaintiff was able to establish the ownership of the suit property on the basis of the family settlement deed executed by Ananda Prosad Banerjee, son of Soumendra Mohan Bandhapadhyay. The existence of execution of the said deed is not under challenge. The title deed was marked as Exhibit-1. The said deed is registered deed. The defendant took a plea before the Trial Court that he has acquired title by adverse

possession. Once the plaintiff has established the title in the stage which is remained undisputed and unshakened on the basis of the quality of the evidence and the plaintiff had adduced both before the Trial Court as well as Appellate Court, the burden of proof lies on the defendants to prove ownership by way of adverse possession. It appears that there was no specific evidence or pleading to support the claim for possession, which may amount to adverse possession. It is well-settled that mere continuity in possession may not sufficient and definite proof of ouster is necessary (see *Suhashini Dasi vs. Bhusan De & Ors.* reported in *AIR 1963 Cal 520*).

In order to succeed in a plea of adverse possession, the defendant has to prove that the said possession was open, hostile and has been continuing for more than 20 years and above. The appellant has failed to establish such claim both before the Trial Court and the Appellate Court. The judgment is based both on oral and documentary evidence. The finding of fact that the plaintiff is the owner of the property and the possession of the defendant is that of a trespasser, we do not find any reason to admit the appeal.

The second appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

We direct the learned Registrar Administration (L&OM) to communicate this order to the learned Civil Judge (Senior Division), 1st Additional Court, Burdwan in Title Suit No. 22 of 2007 for information.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)