

**Smt. Sita Rani Saha
Vs.
Sri Ganesh Chandra Majhi & Ors.**

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The appellant is not represented nor any accommodation is prayed on her behalf.

The appeal was presented in the year 1999. Thereafter, no attempt was made to move the appeal for admission. Subsequently, it was registered as SA 41 2022.

Thereafter, this matter appeared on 9th September, 2022 and since then it is appearing in the list. It seems that the appellant has due notice of the matter. 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 July 29, 1999 passed by the learned Additional District Judge, Second Court, Hooghly, in Title Appeal No. 259 of 1989 arising out of judgment and decree dated August 31, 1989 passed by the Munsif, Additional Court, Serampore, in Title Suit No. 111 of 1988 and Title Suit No. 103 of 1988 (analogous) is the subject matter of challenge in this appeal.

The appellant is the plaintiff in Title Suit No. 111 of 1988. The plaintiff filed the suit for declaration and permanent injunction whereas the defendants filed a suit for eviction.

The claim of the plaintiff is that she had acquired title by adverse possession since she was occupying the property continuously and uninterruptedly for the last 32 years. She has also pleaded about the oral agreement effected by her

with defendant nos. 2 and 3 and has also paid a sum of Rs.1,000/- as part performance of the contract but without executing any deed the property was transferred in the name of defendant no. 4.

The claim of the plaintiff was that she entered the property, which was virtually abandoned. Two structures are lying abandoned in the vacant plot and she took possession of the property 24 years back and she used to reside there along with her husband and daughter.

The first appellate court was rightly observed that when a plea was raised about acquisition of title by adverse possession, the plaintiff is required to establish cogent and reliable evidence that her possession must be adequate in continuity, in publicity and extent and a plea was required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There must be specific pleading as to when or at what point of time the hostility of title against the real owner was asserted for the first time. She stated in general term that she had possessed the suit property for the last 33 years. The suit was filed on 23rd July 1981 in which there was assertion that she was in continuous possession for last 24 years. She made a categorical statement during evidence that four of them forcibly occupied the suit property in the year 1962. She has practically changed her version with regard to the date of entry in the suit property and possession. From Exhibit-G is the Municipal Assessment for the year 1961-62 recorded the name of the respondent and the name of various tenants under the said respondent. It is further recorded in Exhibit-G that Jiban Krishna Saha is a

tenant with a monthly rent of Rs.5/-. The Munnicipal Assessment Register was proved by D.W 4. Incidentally, Exhibit-G is for the year 1961-62 was in existence much prior to the filing of the suit, as such it has greater evidential value.

On consideration of the oral and documentary evidence the plaintiff has failed to prove her possession the first appellate court dismissed the suit affirming the judgment and decree passed by the trial court.

In view thereof, we do not find any merit in the second appeal. In fact, 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.)

