

Item-13. 09-09-2022

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Ct. 8

SA 20 of 2022

Ashutosh Sadukhan
Versus
Parul Bala Sadukhan & Ors.

The appeal was listed on 7th September, 2022 for admission. The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The appeal is directed against a judgment and decree dated 12th June, 2006 passed by the learned Additional District and Sessions Judge, Fast Track, Court-III at Barrackpore thereby affirming the judgment and decree dated 31st May, 2001 passed by the learned Civil Judge (Junior Division), 4th Court at Sealdah in a suit for declaration and permanent injunction.

The declaration of title is based on a plea of adverse possession. The plaintiff is the present appellant. The plaintiff claimed that he had been residing in the suit property for the last 40 years without interruption and at the relevant point of time, the same has been recorded in the Municipal record. It is alleged that the defendant has failed to prove that the plaintiff has been occupying the suit property as a licensee. In support thereof, the plaintiff relied upon Municipal sanction plan i.e. Exhibit-1, certified copy of the assessment register showing name of the plaintiff and the second plan sanctioned by the Municipality in 1974 (Exhibit 4). These documents were produced to show that he was in possession of the suit property. The plaintiff alleged that there has been no transfer of 26-11-34 and the plaintiff is able to prove his possession uninterruptedly since 1955. It is alleged that

he has been possessing the suit property adversely and true owner could not resist the plaintiff. It is alleged that although the defendant no.2, Tapan Sadukhan sold some property to Sukdeb Sharma and Nathuram Sharma but actually no possession was delivered and that the suit filed by Sukdeb and Nathuram against the present plaintiff/appellant were dismissed for default. The appellant further stated that no document was produced by the defendant to prove that he has a licensee. It was stated that after he acquire his title by adverse possession, he had inducted different tenants and it would clearly establish that he is exercising his right as owner thereof. Accordingly, the animus to enjoy the property is established. The respondents contested the proceeding denying all the allegations. It is contended that the plaintiff initially filed the suit praying for declaration that the transfer made through the deed dated 26-11-34 in favour of Monmatha Nath by Khetra Mohan is nothing but Benmi transaction. It was contended that plaintiff has failed to prove as to at which point of time he began possession the property by exerting hostile title. He asserts also that plaintiff was given small portion of land in the suit plot to run a khatal. He submits also that the present plaintiff filed a suit being No. T.S. 172/87 in respect of plot no. 1153, 1154, against Nathuram Sharma as it appears from exhibit B and B1 which show that plaintiff was not in possession of the suit property. He submits that as the plaintiff is not in possession of the at least portion of the suit property, he should pray for recovery of possession also, and mere prayer for declaration will not be maintainable.

The learned Trial Judge on the basis of the evidence on

record has arrived at a finding that the transfer of land by Khatromohan Sadhukhan to Manmatho Nath Sadhukan in suit no. 1153, 1154 by deed dated 26-11-34 is virtually admitted, though plaintiff/appellant initially prayed for a declaration of right title by filing this suit on the plea that the deed quoted on 26.11.34 is nothing but a Benami transaction. Subsequently, by amending the plaint plaintiff/appellant has prayed for declaration of title on the plea that he has acquired title on the ground of adverse possession. it is to be mentioned here that original plaint has undergone several amendments and the suit as it now appears is a suit for declaration of title ground of adverse possession.

It is needles to mentioned that that in the order to take plea of acquiring title by adverse possession, it is to be proved that by asserting the hostile title against true owner, the plaintiff has been possessing the property uninterruptedly for period more than statutory period. Thus as soon as the plaintiff/appellant takes the plea of adverse possession the plea that no transfer was actually made to Manmathonath Sandhukhan on the basis of deed dt. 26.11.34 or that no possession was delivered to Manmathonath Sandhukhan on the basis of the said deed can not have any leg to stand. But it is surprising that plaintiff/appellant has taken both the pleas at the same breath. It is not to case of the plaintiff/appelalt that he or his predecessor has been possessing adversely the suit property since the date of said transfer in spite of deed dt. 26.11.34.

Again plaintiff has not stated in his plaint or in his evidence as to since which particular date he has been possessing the suit property by asserting hostile tile against true owner. He has stated

by that since 1955 he has been running Khatal on a portion of the suit property. But that does not mean that he came into possession by dispossessing the real owner or asserting any hostile title against the true owner. His such plea destroys his own case that no possession was delivered on the basis of deed dt.26.11.34, rather as it has been admitted by the plaintiff/appellant that he has not been claiming any possession since 26.11.34 till 19454. Again it is the plea of the defendant/respondent that plaintiff/appellant was permitted to run a Khatal on the suit property by the predecessor of the present respondent and the plaintiff commenced his possession in respect of portion of the suit property, as a permissive possessor. It is also the case of the defendant/respondent that the plaintiff/appellant was allowed to come into possession of a portion of suit property by running a Khatal, there was a caretaker named Bharat Singh who used to look after the suit property on behalf the defendant by residing on the suit property and here was a room of caretaker on the suit property. this fact has been submitted by the plaintiff/appellant in his evidence. He has stated that his father Khetromohan Sadhukhan sold the entire land in Dag nos. 1153, 1154 appertaining the Khas no. 202 to Manmathonath Sadhukhan in 1934 and after selling said his father wend bank to plots holding no.22. He has admitted even in his examination in chief that in 1955 one man of the defendant used to reside in a Kancha Ghar on the suit property and at the time of taking possession that person was present and plaintiff took possession on evicting him. That goes to show that plaintiff's plea that no possession was delivered on the basis of the deed dt. 26.11.34 or that defendant or their

predecessor was never possessing the suit property is a blatant lie. Against Exhibit A series show that predecessor of the plaintiff/appellant and the predecessor of the respondent were co-sharer in the suit plots. Against the said C.S. and R.S. ROR show that total area of plot no. 1153 and 1154 is 61 decimals although plaintiff has filed this suit praying for declaration in respect of only 20.33 decimals and the deed of gift dt. 22.10.73 (although has not been marked exhibit) shows that more than 20.33 decimals in those two plots was gifted along with property in other plots in favour of present respondent no.2. In the instant case only plaintiff/appellant Ashutosh Sadhu has deposed as P.W.1 and one Dhanesh Ram has deposed as P.W.2. Plaintiff/appellant has stated in his evidence that he will file counterfeits of rent receipt to show that he used to collect rent from the tenant namely Dilip Bose, Hari Charan Dubay, Brojonath Panday in 1960. But none of them has come to support P.W.1. Even P.W. 2 Dhanesh Ram claiming to be tenant under the plaintiff has stated only that he knows that Ashu Babu resides and that Ashu Babu has a business of Khatal which is situated near his house. He has stated also that since 1955 he knows Ashu Babu and he was a councillor of a particular ward but even he has not stated that plaintiff/appellant has been running his Khatal on the land forcibly evicting true owner or has been possessing the said property exerting hostile against true owner.

We have carefully read both the orders. It is quite clear from the evidence that the plaintiff/appellant has failed to establish by strong and cogent evidence that plaintiff acquired the title by adverse possession. The concurrent findings of fact are based on oral and documentary evidence and in the facts and circumstances

of the case, both the courts have correctly applying the law had returned findings against the appellant.

On such consideration, we do not find any reason to interfere with the concurrent findings of fact arrived at by the learned trial court as well as the Appellate Court.

In view of the aforesaid, the second appeal stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)