

**SA 198 of 2014**  
**With**  
**IA CAN no.1 of 2012**  
**Smt. Radharani Ghiri & Ors.**  
**Vs.**  
**Sri Lalit Krishna Pramanik & Anr.**

Order dated: 10.03.2023

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The department has reported that the defects pointed out by the Additional Stamp Reporter in its report dated 16<sup>th</sup> March, 2012 have not been removed as yet.

We could have dismissed the second appeal at the admission stage for non removal of the defects.

However, instead of dismissing the second appeal, at the admission stage for non removal of the defects dated 16<sup>th</sup> March, 2012 we have decided to consider whether this second appeal involves any substantial question of law. This second appeal is arising out of a judgment of affirmation passed by the Learned Additional District Judge on 7<sup>th</sup> February, 2012 arising out of a judgment and decree passed by the learned Civil Judge (Jr. Div.) on 24<sup>th</sup> March, 2010 in a suit for eviction and recovery of khas possession.

We have read the judgment of the trial court, the 1<sup>st</sup> appellate court and the grounds of appeal. The suit was decreed as the plaintiff was able to establish their right, title and interest in respect of the suit premises. From the judgments of both the courts it appears that the plaintiff has alleged that the suit property previously belonged to the father of the plaintiffs Bipin Biheri Pramanik. Bipin Behari died on 25<sup>th</sup> February, 1939. During his life time, the suit land was settled in the name of Bipin Biheri at a rent of Rs.3.25 Paisa per year from the original owner Abani Bandhab Panja. Abani during his life time issued a Hukumnama in respect of the suit property in favour of Bipin. After settlement Bipin constructed house on the said plot of land and was residing there. Subsequently Abani filed a case for recovery of arrear rent from Bipin Bihari in the year 1957 being Petty Case no.18 of 1997 in which a decree was passed on 7<sup>th</sup> June, 1957.

Bipin in discharge of his obligation has paid the entire decretal amount to Abani and the decree stood satisfied. Thereafter one Khudiram and Narayan filed objection case under Section 44 (2A) of the West Bengal Estate Acquisition Act against Bipin being objection case no.36/57. The said objection case was rejected by the Revenue Officer on 2<sup>nd</sup> November, 1960 and the name of Bipin in R.S.R.O.R was confirmed. After demise of Bipin, his wife, present plaintiff being sons and one sister namely Snehalata inherited the said property. Subsequently, Snehalata by a registered deed of gift dated 18<sup>th</sup> January, 1988 transferred her share in the suit property along with other properties in favour of plaintiffs. By reasons of such transfer the plaintiffs

received half share each in the suit property and have been possessing the said property in ejmail. Thereafter, plaintiff on 7<sup>th</sup> March, 2000 transferred .0060 acre of land out of 10 decimal of land of plot no.482 by a sale deed dated 7<sup>th</sup> March, 2000 in favour of Arati Kali and Asit Kali. The said Arati Kali and Asit Kali subsequently filed a suit against these plaintiffs/respondents claiming a portion of the property forming part of the suit land. The suit was dismissed. Subsequently plaintiffs transferred 0.0525 acre and 0.0090 acre of land in favour of Susanta Maity and others by two registered deed of sale dated 16.05.2000 and 27.04.2001. After such transfer, the present plaintiffs/respondents were in possession of remaining portion of suit plot including the suit premises, being area of 0.0325 acre in equal shares.

The plaintiffs further claimed that mother of the plaintiffs inducted the original defendant as tenant in the suit premises at a monthly rent of Rs.25/- payable according to English Calendar month within 15<sup>th</sup> day of succeeding month and the original defendant used to reside in the premises as tenant after paying rent month by month to the mother of the plaintiffs without any rent receipt till the death of the plaintiffs' mother. After the execution of the deed of gift by the sister of the plaintiffs, they got the suit premises. The defendant became their tenant and was residing as such tenant. The original defendant, since November 1987, did not pay a farthing towards rent and became a habitual defaulter. The defendant made a new construction adjacent to the suit premises on the suit land without permission of the plaintiffs and also made certain alterations in the suit premises.

It is alleged that in doing so the appellant caused damage to the suit premises. The plaintiffs further alleged that in any event they recently required the suit premises for their own use and occupation and they have no other reasonable accommodation within Midnapur Town. The suit premises is situated near the bus route at Sujaganj Mahalla, Midnapore and it is most suitable for business. The original defendant was asked to vacate the suit premises what the defendant refused, consequently, plaintiffs issued an Eviction Notice u/s. 13 of WBPT Act dated 5<sup>th</sup> April, 2000 against the defendants, which was received by the defendants on 7<sup>th</sup> April, 2000. By such notice, the tenancy of the defendants was terminated and original defendant was asked to deliver the vacant possession on 1<sup>st</sup> June, 2000, but after expiry of that period, defendant did not deliver vacant possession of the suit premises. On the contrary the original defendant sent a reply letter dated 18<sup>th</sup> April, 2000 denying the plaintiffs' title over the suit property and also denying the landlord tenant relationship. Hence this suit.

The original defendant contested this suit by filing written statement and denied all the material facts stated by the plaintiffs. Defendant positively pleaded before that plaintiffs have no right, title and interest in any portion of the suit property and there is no landlord and tenant relationship in between the plaintiffs and original defendant in respect of the suit premises. Defendants have been possessing the suit property measuring 4 decimals in all from 3<sup>rd</sup> March, 1970 publicly, peacefully, continuously, as of right asserting hostile title therein adverse to the interest and the right of true owners for a

period over 12 years and by making constructing his own house thereon. The said dwelling house has been assessed by the Midnapore Municipality. The property is in his name under the holding no. 195 and the name of the defendant has been recorded in the present L.R.R.O.R as “forceful possessor” in respect of total 4 decimals of land. The defendant further pleaded that he has his separate electric connection in the suit premises and has been paying the electric charges to the Authority concerned. He has exclusive right, title, interest and possession over the suit property and he challenged the plaintiffs title over the suit premises and also challenged the transferable right of plaintiffs over any portion of the suit property and prayed for dismissal of the suit.

On the basis of the pleadings learned Court below framed as well as nine issues to determine the suit.

Plaintiffs/respondent no.1 and other two witnesses were examined on behalf of the plaintiffs and sixteen documents were exhibited on behalf of the plaintiffs, as, Exbt. 1 to Exbt. 16 during trial.

The original defendant died and in his place, the present appellants were substituted. Amongst them, defendant no.5 and other two witnesses have been examined on behalf of the defendants and during trial, few documents were exhibited on behalf of the defendant and marked as Exbt. A to Exbt. J.

On the basis of the aforesaid pleadings and evidence both oral and documentary the learned trial court decreed the suit in favour of the plaintiffs.

The main defence of the defendant before the trial court was that the defendants have acquired right in the suit plot by way of adverse possession. The person who claims adverse possession must establish the date when he claimed to have come into possession, the nature of his possession, whether factum of possession was known to the other party, how long his possession has continued and his possession has to be open hostile and undisturbed. The defendant claimed that since 1987 he is in possession of the property in question and to the extent of 4 decimal of land including the portion of the property mentioned in the schedule of the plaint from 3<sup>rd</sup> March, 1970 publicly, peacefully and continuously. The defendant however, failed to prove the aforesaid claim. However, it reveals that he was in possession since the time of the predecessor of the plaintiffs at least from November 1987 or at least from the death of the mother of the plaintiffs. The plea of title and adverse possession are mutually inconsistent. The defendant in the written statement has alleged that the suit plot no.482 previously belonged to the Panjas and thereafter Abani got it. Bipin did not purchase the property and acquired any title therein.

Animus possidendi is one of the ingredients of adverse possession. The person possessing the land should demonstrate the requisite animus to occupy the property openly. The defendant is required to plea against the person from whom he is claiming adverse possession. From the pleadings it appears that the defendants believe that Panjas' are the owners of the suit land and subsequently Abani became the owner, however, from the oral and

documentary evidence the plaintiff was able to prove successfully and establish that they have acquired titled in respect of the suit land on the basis of the various deeds. It is elementary that adverse possession has to be claimed against the true owner. The defendants by their own showing have failed to establish who is the true owner. The defendants although denied the title of the plaintiffs they did not plea definite title of any other person. They stated that Abani became the owner of the property but the evidence of record shows that the plaintiffs acquired title in respect of the suit plot. Defendants could not establish that their possession is hostile in relation to the plaintiffs.

The law is well-settled but mere continuity without proof of ouster will not ripen to absolute ownership. The ordinary classical requirement of adverse possession is that it should be nec vi, nec calm, nec precario [see. ***Hemji Waghai Jat v. Bhikhabhai Khengarbhai Harijan*** reported in **2009 (16) SCC 517 (para 14 and 23)**]. The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed.

Consequently a person claiming title by adverse possession should specifically state the area of land and period of possession. The person taking the plea of adverse possession must at least show when possession becomes adverse so that the starting point of limitation against the party affected can be

found. A mere allegation that there was an uninterrupted possession for more than 12 years or that the defendant had acquired absolute title, is not enough to raise such plea. Long possession is not necessarily adverse possession. These are no presumption of adverse possession in law. The adverse possession must be proved as a fact.

The defendants tried to plea and prove that payment of municipal tax and electric connection in their favour are proved of title. The said documents are not evidence of title. They are evidence of possession. Insofar as the record of right is concerned in the RSROR the name of the defendants has not been recorded as forcible owner and the certified copy of the LRROR in respect of the suit land filed by the plaintiffs that Exbt.6 and 6A, there is nothing on record in the remark column showing that the possession of the defendant is in forcible possession. The defendants/appellants having failed to establish animus possidendi of hostile possession is not entitled to any relief.

Both the courts have taken into consideration that in the RSROR the name of the defendant has not been recorded as forcible owner and the certified copy of the L.R.R.O.R of the suit property filed by the plaintiffs does not show of any forcible possession of the defendant in respect of the suit land.

On the contrary the plaintiff was able to establish to right title and interest in the suit property by producing the registered deeds dated 18<sup>th</sup> January, 1988, 7<sup>th</sup> March, 2000 and 17<sup>th</sup> May, 2000. These deeds were marked as exhibition.

Learned Trial court has relied upon Exbt.4, deed of sale, Exbt. 5 RSROR the deed of gift to information slip dated 26<sup>th</sup> June, 1996, Exbt. 7 and earlier proceeding between Bipin and Kali as reflected from Exbt.9 and Exbt.10, in order to arrive at a finding that the plaintiffs have been able to establish the title in respect of the suit land. The concurrent findings of facts are based on proper appreciation of evidence and correct appreciation of the law.

Under such circumstances, we do not find any reason to admit the second appeal.

The second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

In view of the aforesaid CAN 1 of 12 (Old CAN No.2567 of 2012 stand dismissed.

**(Soumen Sen, J.)**

**(Uday Kumar, J.)**