

12.06.2023

SAT 23 of 2022

Court : 04
Item : 21
Matter : SAT
Status : DISMISSED
Bench ID : 266048
Transcriber : NANDY

Baidyanath Mondal
Vs.
Droupadi Mondal & Ors.

Mr. Manas Kumar Das, Advocate
Mr. Aritra Kumar Thokdar, Advocate

.....for the Appellant

The preliminary decree passed in a partition suit by the Court of first instance is affirmed by the Court of appeal below. The Court found that the plaintiff/appellant had a share to the extent of 17.587 decimal of land in respect of the suit properties and, therefore, entitled to get the same separated from rest of the co-sharers. In a suit for partition of the property the title of the parties thereto is admitted by the plaintiff in respect of the subject property and what is intended is to separate such share. The appellant claimed to have derived title by way of adverse possession.

According to him, one of the co-sharers in lieu of a sum of Rs.9,000/-, put him in possession of the undivided property and since then he is in uninterrupted possession. Both the Courts disbelieved the story of adverse possession and did not find that the ingredients required therefore has been fulfilled and/or satisfied by the appellant.

The claim to perfect the title by way of an adverse possession through a weak right though recognized under the Limitation Act. The adverse possession can be claimed by a person if such possession is hostile, uninterrupted, continuous and the initial entry in the property is wrongful. The moment a person has been put in possession by a person authorized in this regard, such initial entry cannot be said to be wrongful. It admits no ambiguity in law that mere long possession does not tantamount to adverse possession. The adverse possession is based on the principle *nec vi nec*

clam nec precario. In order to establish the title derived from adverse possession, strong piece of evidence is required to be proved that the person in possession has declared hostile title in respect of the property and even the owners having aware of such wrongful possession did not take steps within the period of limitation i.e. 12 years.

The moment the Court found that the initial entry is by way of permissive occupation, it will not tantamount to adverse possession unless the exclusion is claimed by such person and evidence is required to be adduced when such possession becomes adverse.

We thus find no substantial question of law is involved in the instant appeal.

The appeal being **SAT 23 of 2022** thus stands **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

