

Item-11. 12-04-2023
sg Ct. 8

SAT 159 of 2015
Maya Roy & Ors.
Versus
Kamal Sharma & Ors.

The matter initially appeared in the warning list on 6th March, 2023 and thereafter transferred to the regular list on 21st March, 2023. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 21st March, 2023 and since then, the appeal is appearing in the list. In spite of having due notice and knowledge that the matter is pending, the appellants are not represented. The appellants have also not taken any step to remove the defects as notified by the Additional Stamp Reporter on 16th April, 2015. It is clear that the appellants are not interested to proceed with the matter.

We could have dismissed the appeal for non-removal of the defects. However, we propose to have a look at the judgments of both the courts in order to find out whether the second appeal involves any substantial question of law.

The appeal is arising out of a judgment and decree dated 9th December, 2014 passed by the learned Additional District Judge, 3rd Court Malda affirming the judgement and decree dated 26th February, 2013 passed by the learned Civil Judge (Junior Division), First Court Malda in a suit for declaration of title, eviction by revocation of license and khas possession. The suit was decreed on contest.

The plaintiffs stated that the defendants' father had a very good relationship with the original plaintiff namely, Madan

Chandra Sharma and after the death of the father of the defendants, they became helpless and had no dwelling house. On such compassionate ground and considering the fact that the defendants became helpless, they were permitted to reside in their suit premises for two years from 1st January, 2004 to 31st December, 2006 as licensee on condition that they would vacate the same after the licence period is over.

On the expiry of the licence period, Madan Chandra Sharma withdrew the permission but the defendants did not vacate the suit premises and ultimately the suit has been filed for eviction. The grant of licence was proved by the plaintiffs and two senior persons of the concerned locality who deposed as PWs 2 and 3. They corroborated the testimony of the plaintiffs. DW-1 in his examination has tried to make out a case of adverse possession. He has admitted in his evidence that, he along with her mother were living in the suit premises on the basis of the permission granted by Madan Sharma.

On the basis of such evidence, it is clear that they were permitted to occupy the suit premises as a licensee. The learned Judge has rightly pointed out that the party claiming adverse possession must say its sufficient clarity as to when adverse possession commenced and nature of his possession. The defendants are required to establish that when the possession became adverse so that the starting point of limitation against the party affected can be ascertained on the mere allegation that there was uninterrupted possession for more than 12 years or that the defendants had clear absolute title. It is not too enough to raise such a claim. The learned Trial Court has rightly observed that

when one's possession began with permission, it could never become adverse unless, hostile animus was exercised at a particular point of time to the knowledge of the true owner.

On such consideration, we do not find any reason to interfere with the order passed by the learned First Appellate Court affirming the judgment of the learned Trial Court.

The second appeal fails. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)