

13.04.2023
SL No.55
Court No.8
(gc)

SAT 168 of 2015

**Anit Kumar Singha @ Sinha
Vs.
Trinayanee Singha**

The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. The appeal is of the year 2015. The matter initially appeared in the Warning List on 6th March, 2023 and thereafter transferred to the Regular List on 21st March, 2023. Since then the matter is appearing in the list. The appellant has due notice about the listing of the matter.

The second appeal is arising out of the judgment and decree dated 14th January, 2015 passed by the First Appellate Court affirming the judgment and decree of the Trial Court dated 30th June, 2011 in a suit for eviction and mesne profits.

We have read the judgment of the Trial Court as well as the First Appellate Court and the grounds of appeal in order to find out whether the second appeal involves any substantial question of law.

It appears from evidence that the appellant was in permissive possession. His claim for title based on adverse possession was not accepted. The appellant/defendant tried to make out a case that he entered the suit property forcibly in the year 1984 and

when his elder brother, Ashoke Kumar Singha tried to dispossess him on receiving information, he ousted Ashoke from the suit property on 27.01.1985. The appellant had failed to establish that since 1984 or soon thereafter he exercised any right as owner thereof. He claimed possession in the suit property since 1954 on the basis of some construction made in the suit property but his name was neither recorded as a tenant in the record of right nor in the record of the municipal authority. The plaintiff was able to establish that he permitted the respondent, Anit Kumar Singha to reside in the suit premises considering his request and thereafter since there was problem with her accommodation as she needed a larger area for better enjoyment of the property, she requested the defendant to leave the suit premises. The defendant never contended that he was a tenant or he was the actual owner of the property in question. On the contrary, he pleaded acquisition of title by adverse possession. In the instant case, the plaintiff was able to establish that she is the rightful owner and she has established her right, title and interest in the suit property. The defendant has admitted the title of Ashoke. It was, thus, incumbent upon the appellant to establish by pleading and evidence the specific date from which he is claiming adverse possession, hostility against the true owner and his possession, vis-à-vis the property as owner thereof. Unless he satisfied the Court that is the possession was

nec vi, nec clam, nec precario, he is not entitled to the relief. D.W.1 during his cross-examination has admitted that he is not the owner of the property and his elder brother purchased the suit property in the year 1980.

On such consideration, we do not find any reason to interfere with the concurrent findings of facts.

The second appeal fails at the admission stage.

The second appeal being SAT 168 of 2015, accordingly, stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)