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S.A.T. 73 of 2023

Ct. No. 04

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**Sri Vriguram Dolai
Vs.
Smt. Rina Dutta & Anr.**

**Mr. Amitabha Mukherjee,
Mr. Uday Narayan Betal,
Mr. Bhaskar Hutait.
... for the appellant.**

Though the Trial Court proceeded to dismiss the suit solely on the ground that the plaintiff/respondent failed to claim other/consequential reliefs apart from the decree for declaration and permanent injunction, the suit is hit by Section 34 of the Specific Relief Act, but the Appellate Court reversed the judgement and decree of the Trial Court holding that the suit is not hit by Section 34 of the said Act and, therefore, the plaintiff/respondent is entitled to a declaration and decree for permanent injunction in respect of the suit property.

Admittedly the property originally belonged to Anukul Chandra Ray, who left behind him surviving three sons, namely Gangadhar Ray, Prafulla Ray and Ajit Ray. The aforesaid three sons separated their shares upon execution and registration of a deed of partition dated 21st October, 1951 and by virtue thereof the said Gangadhar Ray was allotted 'kha' schedule property and it is not in dispute that his name is also recorded in the RS Record of Rights. Subsequently the said Gangadhar Ray sold, transferred and conveyed three decimal of land to the plaintiff/respondent on the basis of a deed of sale dated 12th February, 1988 and according to the plaintiff, after the execution and registration of the said deed the possession was also given in respect of the suit property to her and she

covered the said property by making bamboo fencing. The instant suit came to be filed alleging that the defendants are trying to encroach upon the said suit property and also threatened to take forcible possession thereof.

The defendant/appellant admitted that the suit property originally belonged to Anukul Chandra Ray and upon his death it devolves upon the heir and legal representatives of the said original owner. However, the defendant/appellant contends that the defendants are in possession of the suit premises since decades and, therefore, perfected the title by way of adverse possession.

The moment such defence was taken, obviously the question of possession becomes significant. The possession being an ninth principle of title has to be proved with cogent convincing materials and cannot be decided in an adjunct or abstract manner. The party claiming title by adverse possession is required to discharge such initial onus by proving possession with the convincing evidence. Mere pleading that the defendant/appellant is in possession does not absolve her from proving the same as the pleading is not substitute of proof. In order to succeed on the ground of adverse possession, which is based on the legal maxim *Nec Vi Nec Clam Nec Precario*, the party asserting so has to prove uninterrupted continuous possession over the suit property and such possession being declared hostile to the knowledge of the owner. Mere long possession in respect of the property cannot be construed to have transformed into an adverse possession, as the ingredients of law in this regard is well defined.

The plaintiff/respondent never pleaded nor asserted that they have lost possession in respect of the

suit premises but the cause of action for institution of the suit appears to us is based upon creating a cloud on the title and threatening to take forcible possession. In order to protect the possession based on the title, the decree for permanent injunction was sought against the defendant/appellant so that such possession may not be interfered with.

According to the learned Advocate for the appellant, the plaintiff/defendant has miserably failed to prove his possession in respect of the suit property and, therefore, the instant suit is hit by the proviso attached to Section 34 of the Specific Relief Act. The reliance appears to have been made upon the cross-examination of the P.W. 1, where she herself claimed that she will bring independent local witness and also file an application for local investigation to show that there is no construction made by the defendant standing on the suit property.

From a meticulous reading of the cross-examination and the stand of the first witness of the plaintiff what can be culled out therefrom that she stood firm on her stand that the possession remained with her in respect of the suit property and even proceeded to say that how the suit properties are butted and bounded from all four sides. The evidence has to be read as a whole in the light of the issue involved therein and a portion should not be culled out or segregated for the purpose of destroying the other part of the evidence. Even if the plaintiff/respondent has said that she will bring independent witness and make an application for local investigation and having not done so does not eradicate the credibility of the other part of the evidence touching upon the issue involved therein.

As indicated above in both the points, i.e. a point

relatable to Section 34 of the said Act and the claim of adverse possession, common thread of possession is an important factor, which, in fact, has been decided by both the Courts below in different manners. Our endeavour has failed to find out any evidence adduced by the defendant/appellant with regard to the possession over the suit property. Though it is all along asserted that she is in possession of the suit property upon construction of two rooms, yet we do not find any materials produced before this Court which may have thrown light on the alleged possession. However, a shelter is sought to be taken from the cross-examination of the second witness of the plaintiff where it is said that there is a structure standing since last 25 to 30 years. If the entire cross-examination is to be read even an earlier sentence, it is indicated that there is any structure surrounded by fencing, that itself does not prove the possession of the defendant in respect of the aforesaid structure.

On the other hand, the plaintiff/respondent has filed the deed of sale admittedly executed and registered by an admitted owner and also produced the Record of Rights and payment of rent receipt to the Government in lieu of the settlement of land.

We are conscious of the proposition of law that the entry in the Record of Rights neither creates title nor takes away the same, but the correctness of the entry has a presumptive value on possession. Once the presumption is raised it discharges the initial onus of the plaintiff to prove by any other modes and shifts upon the defendants to rebut the said presumption by adducing evidence. In the instant case onus becomes heavier on the defendant/appellant both on the aforesaid counts, i.e. the possession for the purpose of defeating the suit under Section 34 of the Specific Relief

Act and the possession which becomes adverse to the true owner.

We do not find that such presumption has been rebutted as no document in support thereof could be filed by the defendant/appellant. Mere a stray statement in the evidence does not whittle down the totality thereof and, therefore, we do not find that the Court of Appeal below committed any error in reversing the judgement and decree of the Trial Court.

The instant appeal does not involve any substantial question of law. The same is hereby dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)