

Item-106.	05-01-2023	SAT 205 of 2014
sg	Ct. 8	Sarif Mallick Versus Prabhat Dutta & Ors.

The matter appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The matter appeared initially on 17th November, 2021 when none had appeared on behalf of the appellant. Noticing the defects, we directed the appellant to remove the defects by 6th December, 2021, in default, the appeal would be dismissed. Since then, no attempt has been made to remove the defects.

We could have dismissed the appeal for non-removal of the defects and not showing any interest to proceed with the matter. However, we have considered the memorandum of appeal along with the impugned judgment in order to find out whether the second appeal involves any substantial question of law.

The decree dated 22-08-2013 passed by the learned Civil Judge (Senior Division) affirming the judgment and decree dated 10-08-2010 in a Title Suit No. 40 of 2006 is the subject matter of challenge in this second appeal.

The plaintiffs filed a suit for eviction and khas possession. Briefly stated, the plaintiffs are the owners of the schedule premises and the defendant is the monthly tenant at will in respect of the suit premises. The defendant committed default in payment

of monthly rent since May, 2003 and has caused damage to the suit premises. The defendant was duly terminated by a notice dated 27th January, 2006. In spite of service of notice, the defendant did not vacate the suit premises with the expiry of February, 2006 and was occupying the suit property as trespasser on and from 1st March, 2006. The defendant in the written statement has stated that the suit property is non-specific and vague. Moreover, there is no landlord-tenant relationship between the plaintiffs and defendant. On the contrary, the defendant has been continuously residing at the suit property for almost 20 years and has claimed acquisition of title by adverse possession. The defendant also denied service of notice.

On the basis of the aforesaid pleadings and the evidence, both oral and documentary, the Trial Court decreed the suit in favour of the plaintiffs. In decreeing the suit, the learned Trial Judge has relied upon the record of rights that were marked as exhibit-1 series. The said document recorded the names of the plaintiffs. The defendant however, could not prove any document in support of its possession. The defendant also could not establish his right to the property on the basis of the adverse possession. 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 clam, nec precario* [see. ***Hemaji Waghaji Jat vs. 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.

The defendant has failed to establish his claim. Moreover, the plaintiffs were able to establish their better title in contrast to the quality of evidence produced in defence and in our view, the Trial Court as well as First Appellate Court were justified in decreeing the suit.

Insofar the service of notice is concerned, in our view, the findings arrived at by the Trial Court as well as First Appellate Court on appreciation of proper interpretation of Section 27 of General Clauses Act, read with Section 114 of the Evidence Act and the decision reported in **23 CWN 77 (Harihar Banerji & Ors. v. Ramsashi Roy & Ors.)**. In the said decision it has been clearly stated:

“If a letter properly directed containing a notice to quit is proved to have been put into the Post Office, it is presumed that the letter reached its destination at the proper time, according to the regular course of business of the Post Office and was received by the person to whom it was addressed. That presumption would apply with greater force to registered letters.”

The service of notice is adequately proved. The notice was sent to the correct address of the defendant, the defendant pre-paid.

In view thereof, we do not find any reason to admit the second appeal. The second appeal does not involve any substantial question of law.

The second appeal stands dismissed at the admission stage.

(Uday Kumar, J.)

(Soumen Sen, J.)