

Item-58. 05-01-2023

SAT 2561 of 2007

sg Ct. 8

Sabuj Sangha, represented by Nikhil Koley & Anr.  
Versus  
Rabindra Nath Shee

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

In spite of adequate notice, the appellants are not represented. The appeal is defective. Revised report of the Stamp Reporter dated 24<sup>th</sup> April, 2009 shows that all the defects have not been removed.

The appellate judgment and decree dated 5<sup>th</sup> April, 2007 passed by the learned Civil Judge (Senior Division), Additional Court, Hooghly affirming the decree dated 29<sup>th</sup> June, 1998 passed by the learned Civil Judge (Junior Division), Additional Court in Title Suit No. 104 of 1996 is the subject matter of challenge in this proceeding.

The suit was filed for declaration, injunction as well as alternative relief for recovery of possession. The suit was decreed on contest against the defendants. It appears that the defendants claimed right to have acquired title by adverse possession.

We have carefully read the judgments of the Trial Court as well as the First Appellate Court. It appears that the defendant has failed to establish its right, title and interest by adverse possession. The evidence on record shows that the defendants were

permissive possessors under one Bholanath Pal. The permissive possessor cannot acquire title by adverse possession. The defendant claimed that the club was established in the year 1969/70. But at the relevant time, Bholanath Pal was not the owner of the land. The stand of the appellant all throughout was that they were in permissive possession under Bholanath Pal. If Bholanath Pal has not acquired any interest over the suit property, the question of giving permission by Bholanath Pal to the club could and does not arise. Even if it is assumed for the time being that the possession was permissive, heavy burden lies on the appellant to establish that it became adverse subsequently. It has to be established by cogent and convincing evidence to show animus and possession adverse to the knowledge of the real owner. Mere possession for however length of time would not result in converting the permissive possession into adverse possession.

It is trite law that 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 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) and *Narasamma vs. A. Krishnappa*, reported in (2020) 15 SCC 218 para 31]. The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. In other words, the possession has to be in public and to the knowledge of the true owners as adverse. These two

ingredients are required to be fulfilled and established at the trial and this is necessary that a plea of adverse possession seeks to defeat the rights of the true owner. There has to be a clear and cogent basis for accepting the plea of acquisition of title by adverse possession.

In the instant case, the appellants have failed to establish that the appellant has perfected its title over the suit property by way of adverse possession. The appellants at no stage prior to the suit had set up a claim based on adverse possession. It is equally important to note that the appellants have failed to establish the starting point of such adverse possession.

The concurrent findings of fact of both the courts below that the appellant has failed to establish his right over and in respect of the said property by adverse possession does not call for any interference in the second appeal. No substantial question of law is involved in the second appeal.

The second appeal stands dismissed at the admission stage.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**