

Item-56. 02-03-2023

SAT 590 of 2012
CAN 1 of 2013 (old CAN 4346 of 2013)

sg Ct. 8

Arati Gharui, since deceased,
represented by her legal heirs namely,
Samir Bera and Ors.

Versus

Tarulata Bera, since deceased,
represented by her legal heirs namely,
Pradesh Bera & Ors.

Mr. Chittapriya Ghosh, Adv.

Mr. Samir Kumar Adhikari, Adv.

...for the appellants

The appellate judgment and decree dated 5th August, 2011 passed by the learned Additional District Judge, 2nd Court, Bankura affirming the judgment and decree dated 26th April, 2007 passed by the learned Civil Judge (Senior Division), Additional Court at Bankura in a suit for eviction being Title Suit No. 39 of 2001 is the subject matter of challenge in this second appeal.

The learned Counsel for the appellants has submitted that the learned Trial Court did not frame any issue with regard adverse possession and without giving any opportunity to the appellants, decided the said issue. There was no evidence on record to arrive at such a finding. The learned Counsel has placed relevant paragraphs from the judgments of the Trial Court as well as the First Appellate Court and submits that the judgment is perverse and the appeal is to be admitted as it involves substantial question of law.

We have carefully read the judgments of the Trial Court as well as First Appellate Court. It appears that the present appellant was a tenant under one Braja Krishore Chowdhury. Braja Krishore filed a Rent Suit against the three tenants. The suit was ultimately

decreed in an auction purchase. The present plaintiff appears to have purchased the property. In the RS record of right, the possession of the plaintiff was shown as 'Jor Dang'. It appears that the plaintiff filed a suit against the defendant, being Suit No. 124 of 1977 for declaration of title as the present appellant denied the title of the plaintiff in respect of the suit property. The plaintiff alleged that the rent suit for recovery of rent being Rent Suit No. 1736 of 1956 was decreed and subsequently, one execution case was filed being Execution Case No. 740 of 1957 and the present plaintiff as the auction purchaser, purchased the property and thereafter, she got possession of the suit property through Court. The plaintiff relied upon the sale certificate dated 18th February, 1958. The plaintiff alleged that in spite of such document of title since the defendant was questioning the title of the plaintiffs, the said suit for declaration of right, title and interest of the plaintiff was filed in which the suit was decreed ex parte against the defendant no.1 on 12-02-1979. It is not in dispute that the appellant received the summons and appeared before the trial court but did not contest the said suit. The plaintiff alleged that he was dispossessed from the suit property on 5th July, 1998 and thereafter, he filed a suit for recovery of possession.

The Trial Court as well as the first appellate court, in our view, has rightly held that the title to the suit property was established by reason of the decree passed in favour of the plaintiff on 12th February, 1979. The defendants were unable to prove its continuous occupation in the suit property since the date of auction purchase or that they claimed adverse title to the rightful owner of the suit property.

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. These three ingredients of adverse possession have not been established at the trial. The doctrine that the possession followed title is an exception relating to law of adverse possession where unless the aforesaid three ingredients are established, the right of the rightful owner does not get extinguished. The learned trial court has observed that the defendants neither in the pleading nor in the evidence stated that she took the possession forcefully by evicting the true owner of the suit property and she is in possession of the suit property more than 12 years. This fundamental pleading is absent.

Under such circumstances, we do not find any reason to admit the second appeal. The second appeal stands dismissed. However, there shall be no order as to costs.

In view of the dismissal of the appeal, the connected application is also dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)