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Ct. No. 04

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S.A.T. 7 of 2024

CAN 1 of 2024

Afjal Khan alias Afjal Rahaman Khan

Vs.

Abdul Alam Khan

Mr. Nilanjan Bhattacharjee,

Mr. Abhilash Chatterjee.

... for the appellant.

A suit for recovery of possession against the licensee was decreed by the Trial Court and such decree was affirmed by the first Appellate Court.

Admittedly the predecessor in interest of the defendant/appellant executed a deed of sale in favour of the predecessor in interest of the plaintiff way back in the year 1944. The veracity and genuinity of the said deed of sale executed in the year 1944 was never disputed by the vendors nor by the successors. However, the possession remained with the predecessor of the defendant/appellant and subsequently with the defendants.

It is a specific case of the plaintiff/respondent that their predecessor initially permitted the appellant to occupy the suit premise as a licensee and after his death the defendant/appellant was permitted to remain as a licensee for a period of five years, but upon expiration of the said period, the defendant/appellant refused to vacate and hand over the possession of the suit property and, therefore, the plaintiff/respondent is entitled to a decree for recovery of possession.

Multiple defence was taken by the defendants in the written statement as well as the additional written statement filed before the Trial Court. According to the defendant/appellant, even after the execution of a deed of sale in the year 1944 the possession remained with the defendants or their predecessor uninterruptedly;

which indicates that the deed of sale was a mere paper transaction and never acted upon. It is further submitted that they are occupying the premises for several decades and, therefore, have perfected their title by way of adverse possession.

Another defence was taken on the basis of a deed of partition executed in the year 1990 and it is sought to be contended that by virtue thereof a right in respect of the property was recognised by the plaintiff/respondent and, therefore, they are the co-sharer and not the licensee in respect of the property.

Both the Courts disbelieved the aforesaid stand of the defendant/appellant. The Trial Court categorically observed that the defendant/appellant filed a suit for partition being Title Suit No. 72 of 2000 in respect of the self-same property against the plaintiff/respondent claiming to be a co-sharer in respect thereof. It is further observed that in the said suit the defendant/appellant had taken a plea that the purported deed of partition executed and registered in the year 1992 is not a valid and authentic and/or never acted upon.

The moment the defendant/appellant had taken a plea that the purported deed of partition is not authentic and/or valid, it cannot fall back to the stand that by virtue of the deed of partition they have acquired the right, title and interest in respect of the property. A person cannot be permitted to approbate and reprobate at the same time. Furthermore the partition and separation of shares by executing a partition deed connotes the pre-existing rights of the parties thereto and not creation of a right for the first time in favour of a person.

Both the Courts held that the predecessor of the present defendant/appellant divested their right, title and interest in respect of the subject property by

executing a sale deed in the year 1944 and, therefore, the defendants and/or their predecessor cannot claim a pre-existing right post 1944.

So far as the plea of adverse possession is concerned, the Court found that the plea of co-sharership in the property and the other adverse possession are mutually destructive and cannot be permitted to be taken by the defendant/appellant.

There is no dispute to the proposition in this regard that a person cannot blow hot and cold at the same time. Even if the plea of co-sharership is found untenable, let us proceed whether the defendant/appellant has been able to make out a case of adverse possession.

It is no doubt true that the possession is a ninth principle of title. Limitation Act recognises the possession having culminated into a title after the expiration of the specified period. In order to succeed on the plea of adverse possession, three basic principles are required to be proved as indicated in the Legal Maxim, namely *Nec Vi, Nec Clam and Nec Precario*; meaning thereby the possession must be continuous, hostile and adverse to the original owner. Mere long possession cannot ipso facto convert into an adverse possession. A person claiming an adverse possession must prove with cogent evidence that such possession is hostile, continuous and uninterrupted to the knowledge of the original owner.

It would be preposterous to suggest that the long possession tantamount to an adverse possession in absence of those principles having proved by the person taking plea therein. It is a specific case of the plaintiff/respondent that the defendant/appellant was a permissive occupant and both the Courts have found that the defendant/appellant has failed to make out either the case of co-sharership or adverse possession;

which we do not find that it needs interference.

There is no involvement of any substantial question of law in the instant appeal. The same is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)