

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

SAT No. 156 of 2023

Sri Lakshmi Kanta Das
Vs.
Sri Satyendra Nath Mahato and others

With

SAT No. 157 of 2023

Sri Brihaspati Mahato
Vs.
Smt. Bimala Mahato @ Bimalabala Mahato and others

For the appellants : Mr. Amitava Mukherjee,
Ms. Arpita Saha,
Ms. Antara Das

For the respondents : Mr. Rahul Karmakar,
Mr. Dyutimoy Pal,
Ms. Mayuri Ghosh,
Mr. Tirthankar Nandi,
Mr. Pratik Acharjee

Heard on : 11.03.2025

Judgment on : 11.03.2025

Sabyasachi Bhattacharyya, J.:-

1. The present second appeal has been preferred against a judgment of reversal.

2. The learned Trial Judge dismissed the suit for declaration of title and permanent injunction filed by the plaintiff/respondent no.1, which decision was reversed by the first appellate court.
3. Learned senior counsel appearing for the appellant argues that in the teeth of the specific findings of the learned Trial Judge that the plots mentioned in the title deed produced by the plaintiff did not tally with the suit property, the learned Appellate Judge arrived at a perverse finding in holding that the suit plot was identifiable and demarcated.
4. It is argued that it was an admitted position by the plaintiff that the specific suit plot was not mentioned in the sale deed of the plaintiff, for which on the said count alone, the suit deserves to be dismissed irrespective of the defence taken by the defendant/appellant.
5. It is argued that the learned Appellate Judge did not advert to such facets of the case at all.
6. Secondly, it is contended that the appellant sufficiently proved his case of adverse possession from the year 1965 by oral evidence which was un-rebutted by any proof of title on the part of the plaintiff/respondent no.1. As such, the decision of the learned First Appellate Judge is tainted by patent error of law.
7. Learned senior counsel appearing for the appellant cites a judgment of *Ravinder Kaur Grewal and others vs. Manjit Kaur and others*, reported at (2019) 8 SCC 729 as well as an unreported judgment of the Supreme Court

in the matter of *Krishnamurthy S. Setlur (D) By LRS. Vs. O.V. Narasimha Setty (D) by LRS.*, in support of his arguments.

8. Upon hearing learned senior counsel for the appellant, we find from the records that no substantial question of law is involved in the matter.
9. Although the learned Trial Judge had observed that there was a mistake in mention on the plot numbers in the title deed of the plaintiff, in the same breath, it was observed that the mistake in the title deed (Exhibit-6) is not so palpable that a prudent man cannot possibly have any doubt as to what the parties to the suit wanted to mean.
10. Coupled with the said findings, it is seen that the learned First Appellate Judge categorically adverted to the said document and observed that the suit plot was very much identifiable. In the pleadings, the defendant had admitted that the suit plot belonged to one Jhargram Raja Narsingha Malla, who on January 4, 1947 granted patta in favour of the Jhargram Paper Mills Private Limited, whose name was recorded in the RS Khatian No.282/1, which is the suit plot. The said Jhargram Paper Mill Private Limited sold and transferred 1.44 acres of land by way of registered sale deed on April 4, 1966 in favour of Sudhangshu Kumar Roy, the predecessor-in-interest of the plaintiff.
11. In the said perspective, the learned First Appellate Judge held that the area of 66 decimals claimed by the plaintiff is demarcated, as apparent from the sale deed dated March 24, 2000 and, as such, there was no question of the suit plot not being identifiable in the teeth of Exhibit-3.

12. On the other hand, the concurrent finding of both the courts below is that the defendant failed to prove adverse possession, which is the sole basis of the defence case. It is also found from the judgments of the trial court as well as the first appellate court that not a single document of possession, let alone adverse possession, was furnished by the defendant/appellant. The defendant/appellant relies solely on his own oral evidence to substantiate his case of adverse possession.
13. Another aspect of the matter cannot be overlooked.
14. The very premise of a claim of adverse possession is that the title of the true owner, against whom adverse possession is claimed, is admitted by the person claiming adverse possession. Even as per the defence case, the defendant came into possession of the property in the year 1965 and Jhargram Paper Mills transferred the property in favour of the predecessor-in-interest of the plaintiff in the year 1966. Thus, within the said one-year interregnum, the possession could not have been converted to adverse possession of 12 years. Hence, from 1966 onwards, the possession of the defendant, even as per the written statement, must have been under the predecessor-in-interest of the plaintiff. Thus, by claiming adverse possession since 1965, which incorporates 11 years thereafter when the property was owned by the predecessor-in-interest of the plaintiff, the defendant admits the predecessor-in-interest of the plaintiff to be the true owner and, as such, cannot resile from such position by disputing the title of the plaintiff.

15. That apart, the declaration of title in a suit *inter se* between private parties does not acquire the character of a judgment in *rem* and is only binding between the parties, being a judgment in *personam*. Seen from such perspective, the plaintiff has been able to establish better title than the defendant, in view of the production of documents showing that revenue has been paid by the plaintiff to the government and that the property-in-question has been recorded in the LR RoR in the name of the plaintiff, which otherwise tallies with the description of the suit property in general, as described in the sale deed of the plaintiff, although there was a minor discrepancy in the description of the plot/khatian number.
16. Hence, *inter se* the plaintiff and the defendant, the better title of the plaintiff was definitely established.
17. Thus, particularly since the defendant/appellant failed to prove adverse possession, there is no perversity in the appellate court's judgment which can prompt the second appellate court to interfere with the same. It is well-settled that the second appellate court shall not disturb the findings of either of the courts below merely because another view is possible.
18. That apart, insofar as the claim of adverse possession of the defendant not being proved is concerned, there is a concurrent finding against the defendant in that regard by both the courts below.
19. Insofar as the judgment of *Ravinder Kaur Grewal* (supra) is concerned, the same does not enure to the benefit of the defence case in any manner.

20. Paragraph no. 51 of the same, relied on by learned senior counsel for the appellant, merely lays down the law that in terms of Article 65 of the Limitation Act, adverse possession for a period of 12 years tantamounts to adverse possession in law. In fact, the moot question which was decided in the said judgment was that adverse possession can also be used as a sword apart from being used as a shield and a suit can also be filed on the ground of adverse possession once such adverse possession is ripened through open, continuous and hostile possession against the true owner over a period of 12 years. However, the ingredients of adverse possession as indicated above have not been established by the defendant at all in the present case. In fact, in paragraph 60 of *Ravinder Kaur Grewal* (supra), the Supreme Court stresses the classic requirements of adverse possession which must co-exist at the same time, namely *nec vi* that is, adequate in continuity, *nec clam*, that is, adequate in publicity and *nec precario*, that is, adverse to a competitor in denial of title and his knowledge.
21. Such ingredients are missing in the present case.
22. In the judgment of *Krishnamurthy* (supra), also cited by the appellant, the adverse possession of the party concerned had already been proved for a period of more than 12 years. In the facts of the said case, the Supreme Court observed that such possession was adverse to the true owner and it was openly hostile to the claim of true owner and his legal representatives. Such ingredients, however, are completely absent in the present case, which is substantiated by the concurrent findings of the courts below.

23. Thus, we are unable to convince ourselves that any substantial question of law is involved in the present appeal.
24. Accordingly, SAT No. 156 of 2023 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
25. In view of the facts and circumstances of both the appeals being identical, the above judgment passed in SAT No. 156 of 2023 also governs SAT No. 157 of 2023.
26. Accordingly, SAT No. 157 of 2023 is also dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
27. There will be no order as to costs.
28. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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