

D/L.33.
March 10, 2025.
MNS.

SAT No. 206 of 2024
+
CAN 1 of 2024
+
CAN 2 of 2025

Sanjoy Jha and another
Vs.
Dipali Das Dutta and others

Mr. Dyutiman Banerjee

... for the appellants.

Mr. Angshuman Chakraborty,
Mr. Shivajit Mitra,
Mr. Debdipto Banerjee

...for the respondents.

1. Learned counsel for the appellants submits that the present respondents have been impleaded in the capacity of heirs of the original plaintiff, who has expired after the passing of the impugned decree of the First Appellate Court.
2. Learned counsel for the respondents, in his usual fairness, submits that since such leave is a mere formality, the same can be granted even on oral prayer and that the respondents do not seriously object to the same.
3. Hence, leave is granted to the appellants on the oral prayer of the appellants, to prefer the appeal against the present respondents, who are admittedly the heirs and legal representatives of the deceased original plaintiff.

4. Accordingly, the defects in that regard are treated to be cured.

5. The appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

6. The present Second Appeal has been preferred against a judgment of affirmance whereby both the Trial Court and the First Appellate Court below granted eviction on the premise that the defendants/appellants are trespassers in respect of the suit premises.

7. Learned counsel for the appellants argues that due to minor discrepancies in the date of commencement of adverse possession, which was the primary defence taken by the appellants, the Appellate Court disbelieved the case of adverse possession, without adverting to the fact that no prior chain deed of the alleged vendor of the plaintiffs/respondents was produced by the plaintiffs to rebut the case of the appellants on the strength of the CS and RORs that one Parbati, the original owner, was in possession of the property initially.

8. The appellants claim adverse possession against the said Parbati by taking her to be the true owner and as such it is argued that the courts below erred in law in holding that the plaintiffs/respondents have proved their title and possession in respect of the premises.

9. We find from the judgment of the courts below that the Appellate Court, while considering an application of the appellants under Order XLI Rule 27 of the Code of Civil Procedure, allowed the same, thereby permitting the

CS and RS RORs to be produced. However, the said extracts of the records of rights do not make any difference, since at best those depict that one Parbati was in possession of the suit property at the relevant juncture. There is nothing on record even to show the date of commencement of the possession of the defendants/appellants and/or that they were in continuous, uninterrupted, open and hostile possession of the property for the entire period of more than twelve years or to establish the date from which the possession of the defendants/appellants turned adverse.

10. Moreover, the discrepancy between the original plaint case that the appellants/defendants had entered into possession on April 11, 1970 with the amended case that the predecessor-in-interest of the appellants, one Jogeshwar, entered into the suit property on November 1, 1970, are mutually destructive and cast a shadow of doubt over the actual date of commencement of adverse possession.

11. In a case of adverse possession, the exact date and time of commencement of such possession and the method and mode by which such commencement took place is of crucial importance. The said fact having not been proved by the defendants/appellants, as opposed to the plaintiffs/respondents having proved their title sufficiently by producing not only a registered purchase deed but also collateral evidence in the form of tax receipts etc. to show that they acted on such title deed,

we do not find any illegality in the judgments of either the first appellate court or the court of first instance.

12. Moreover, it is well-settled that merely because a difference view is possible, the second appellate court cannot interfere with the concurrent findings of fact of of the Trial Court and the First Appellate Court.

13. Hence, we do not find any substantial question of law involved in the present Second Appeal.

14. Accordingly, SAT No. 206 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

15. Consequentially, CAN 1 of 2024 and CAN 2 of 2025 also stand dismissed.

16. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)