

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

FA 210 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2025

Aloke Haldar
Vs.
Rabi Sankar Shaw @ Ravi Shankar Shaw and others

For the appellant : Mr. Samiran Giri

For the respondents : Mr. Sounak Bhattacharya,
Mr. Anirban Saha Roy,
Mr. Sounak Mondal

Heard on : 23.06.2025

Judgment on : 23.06.2025

Sabyasachi Bhattacharyya, J.:-

1. We find from the office report dated December 13, 2024 that Talabana of Rs.4/- along with written-up notice form has not been deposited by the appellant. However, in view of the appearance of all the respondents through their learned Advocate in court today, the requirement of putting in such Talabana and written-up notice form is dispensed with.
2. The applications are now taken up for hearing.

3. Heard learned counsel for the parties at length.
4. While hearing the application for stay, we find that the scope of the appeal is extremely brief. As such, instead of unnecessarily relegating the appeal to the paraphernalia of preparation of paper books and bringing of the trial court records, we choose to decide the appeal itself on merits along with the connected applications.
5. Upon such notice of hearing the appeal being given during hearing, we hear learned counsel for the parties at length.
6. The short question involved in the present appeal is whether the appellant has even a *prima facie* case for hearing of the appeal, since a mutually destructive plea of tenancy on the one hand and adverse possession on the other was sought to be made out by the defendant/appellant in his written statement by way of amendment.
7. The initial plea of the defendant/appellant in his written statement was that the defendant is the “son of a tenant”. The defence case was premised on the alleged tenancy of the defendant’s grandfather under the predecessor-in-interest of the present plaintiffs/respondents. The defendant/appellant produced a purported rent receipt in the name of the said grandfather at the time of evidence. As per the original written statement, subsequent to the grandfather, the defendant’s father and uncle became tenants of the property.
8. An apparently contradictory plea has been set out in the original written statement to the effect that the defendant is a “son of a

tenant” on the one hand and that the defendant is a co-tenant with his father and uncle on the other.

9. Not stopping there, the written statement was subsequently amended.
10. It will be relevant for the present purpose to quote paragraph no.12A of the amended written statement:

“12A: That the defendant is in possession of the suit property through his predecessors who was not a tenant nor equipped with any Rent Receipt following any privity of contract between the parties as Landlord and Tenant and thereby generation after generation for last more than 60 years, the defendant is in possession of the suit premises without having any valid legal status as tenant but for avoiding the legal consequence as to the claim as rank trespasser the defendant describe himself as tenant despite the real fact that neither he nor his predecessors was ever a tenant in the suit property equipped with any Rent Receipt issued by any owner of the suit property at any point of time as such the deposit of rent in the office of Rent Controller is equally not sustainable since a mere imagination.”

11. A bare reading of the said paragraph shows that admittedly the defendant (as opposed to the defendant along with his uncle and father) is in possession of the suit property “through his predecessors”. Thereafter, fatally to the original defence case, it is pleaded that the defendant/appellant’s predecessor was not a tenant nor equipped with any rent receipt following any privity of contract between the parties as landlord and tenant. It is stated that generation after generation the defendant has been in possession of the suit premises without having any valid legal status as tenant. It

is further stated, boldly we may say, that for avoiding the legal consequence as to the claim of rank trespasser, the defendant described himself as tenant despite the real fact that neither he nor his predecessor was ever a tenant in the suit property equipped with any rent receipt issued by any owner of the suit property at any point of time and, as such, the deposit of rent in the office of Rent Controller is equally not sustainable since a mere imagination.

12. By the said paragraph, the entire original case of tenancy has been demolished by the defendant/appellant himself beyond recognition, by claiming to be in adverse possession of the property through generations and clearly denying the original defence case of tenancy.
13. Thus, even if any document was produced to show the purported tenancy of the grandfather of the defendant/appellant, the same stood demolished by such statement in the pleading in the amended written statement.
14. Being mutually destructive, the pleadings of tenancy and adverse possession cannot go hand in hand. Since the case of adverse possession was introduced later by amendment, thereby giving a complete go-by to the initial defence case of tenancy, the trial court was not at fault in any manner in proceeding on the basis of the case of adverse possession.
15. A perusal of the impugned judgment clearly shows that upon consideration of the entire evidence at length, the learned Trial Judge came to the obvious finding that the starting point of adverse

possession could not be proved by the appellant; nor could the appellant prove in any manner, by any corroborative evidence whatsoever, that the possession of the defendant/appellant was hostile, denying the title of the real owners and being for a continuous period without any disruption from the end of the ordinal and true owners.

16. In such view of the matter, and since the true ownership of the plaintiffs/respondents have been admitted clearly in the additional written statement, coupled with the fact that the plea of adverse possession could not be proved by any cogent evidence, the learned Trial Judge was absolutely justified in decreeing the suit for eviction of trespasser against the appellant.
17. Thus, we do not find any merit in the appeal whatsoever.
18. Accordingly, FA 210 of 2024 along with the connected applications bearing CAN 1 of 2024 and CAN 2 of 2025 are dismissed on contest without any order as to costs, thereby affirming the impugned judgment and decree dated October 01, 2024 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta, District: Calcutta in Title Suit No.1600 of 2017.
19. A formal decree be drawn up accordingly.
20. After the above judgment is passed, learned counsel for the defendant/appellant seeks an order of stay of operation of the above judgment as well as the execution case levied by the plaintiffs/respondents in connection with the decree impugned in the

appeal. In order to give ample opportunity to the appellant to prefer a challenge against the above judgment and decree, we grant stay of all further proceedings in Title Execution Case No. 116 of 2024 pending in the City Civil Court at Calcutta in connection with Title Suit No.1600 of 2017 for a period of ninety days from date. It is made clear that in the event no challenge is preferred against the above judgment and decree within the said period and/or any order of stay/injunction is passed by a superior court within the said period, it will be open to the plaintiffs/decreed holders/respondents to continue with the execution case. In such case, it is expected that the learned Executing Court shall proceed with and dispose of the execution case thereafter as expeditiously as the business of the said court permits.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)