

20.01.2025
Item No.
A 1615
Saswata

C.O. 4005 of 2024

**Subal Chandra Das
versus
Reba Banerjee**

Mr. Soujanya Bandopadhyay

...For the petitioner

1. Challenging the order no. 3 dated 7th October 2024 passed by the Learned District Judge, Alipore, South 24 Parganas, in Miscellaneous Appeal No. 369 of 2024 arising out of an order dated 1st October, 2024 passed by the Civil Judge (Junior Division), Alipore in T.S. 1711 of 2024, refusing to pass any ad interim injunction in favour of the plaintiff, the instant revisional application has been filed.
2. Learned advocate appearing for the petitioner by drawing attention of this Court to the plaint filed in the above suit being TS no. 1711 of 2024 would submit that the plaintiff has been in continuous uninterrupted, actual and exclusive possession of 12 kathas of landed property. According to the petitioner the property has been continuously used by the petitioner and his family members as residence without any objection from any corner whatsoever till 10th June 1993. The possession was visible and known to others.
3. The petitioner has also pleaded that the plaintiff had been in adverse possession for more than 12 years but the defendant's elder sister Gouri Mukherjee wanted to throw the petitioner out from the suit

property and had filed an application under Section 144 (2) of the Cr.P.C before the Learned Executive Magistrate being M.P.Case no. 160 of 1993. In the facts as noted in the plaint, the petitioner has sought for a declaration for a decree of adverse possession as also for grant of permanent injunction. Simultaneously, with the filing of the suit, the petitioner had moved the Learned Court by filing an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure read with Section 151 thereof. Since, the prayer for ex parte ad interim order of injunction was refused by order dated 10th October, 2024 by the learned Civil Judge (Junior Division), 5th Court, Alipore, the above Miscellaneous Appeal was filed and an injunction application moved.

4. It appears that the petitioner had filed a previous suit being TS 1518 of 2024 before the Court of Learned 5th Civil Judge (Junior Division) (in-charge) at Alipore, South 24 Parganas. Due to death of the sole defendant on 16th May 2024, the notice served on the defendant remained unserved and the petitioner filed an application for withdrawal of the suit with liberty to file a fresh suit. Accordingly, the order to that effect was passed and later T.S. 1711 of 2024 was filed.
5. The petitioner's case, however, proceeds on the premise that the suit property originally belonged to Jibandhan Mukherjee who had inducted the petitioner to look after his 8 bighas of landed

property since 7th January 1981. Out of 8 bighas of land, the petitioner constructed a *kaccha* house and has been residing and possessing 12 kathas of land. The aforesaid property forms part of the above 8 bighas of land. The petitioner claims to be in continuous uninterrupted and exclusive possession of 12 kathas of landed property along with his family members and is using the same for residential purpose as well as for kitchen garden and vehicle service center under trade license from KMC and has also obtained electric supply.

6. The petitioner would submit that the Hon'ble Supreme Court has already recognized the right of a person in adverse possession to be entitled to a decree to such effect and in support thereof, has place reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***M. Radheshyamlal v. V Sandhya and Anr. Etc. (2024 INSC 214)***.
7. It is submitted that the Learned Judge refused to pass any ad interim order of injunction on the ground that he did not find any extreme urgency or requirement to pass any ad interim order. Being aggrieved, the instant revisional application has been filed.
8. Having heard the learned advocate appearing for the petitioner, I find that the original induction of the petitioner in the suit property is not by way of adverse possession but by way of permissive occupation. Though, in paragraph 7 of the plaint, the

petitioner has claimed to be in continuous, uninterrupted, actual and exclusive possession of 12 kathas of landed property and had been residing there continuously with his family members without any objection till 10th June 1995, the petitioner could not explain as to how and when for the first time he had held himself out to be in adverse possession to the notice of the original owner, Jibandhan Mukherjee. There is no averment in the plaint that the petitioner had been holding out to be in adverse possession of the suit property to the knowledge of Jibandhan Mukherjee who himself had inducted the petitioner in the suit property in the year 1981.

9. From a perusal of the judgment delivered by the Hon'ble Supreme Court in the case of ***M. Radheshyamlal*** (*supra*), it would appear that the Hon'ble Supreme Court has specified that in order to prove the plea of adverse possession, the petitioner must prove and plead the following:-

“(a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;

(b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c) The plaintiff must also plead and establish when he came into possession; and

(d) The plaintiff must establish that his possession was open and undisturbed.”

10. Since, prima facie, it does not appear that the petitioner did not hold out to be in adverse possession of the suit property to the notice of

Jibandhan Mukherjee, the original owner who had inducted the petitioner, and there being no particular date mentioned as to when the plaintiff for the first time held out to be in adverse possession to the notice of the original owner, I am of the view that the petitioner at this stage is not entitled to any protection.

11. Be that as it may, since the injunction application is yet to be heard, I am of the view that the matter is best left to be decided by the Learned Appellate Court.
12. In view thereof, with the above observations, C.O. 4005 of 2024 is accordingly dismissed without any order as to costs.
13. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)