

AD- 34
Ct No.16
09.06.2025
(SSS)

SA 27 of 2025
With
CAN 1 of 2021

Santiram Bandopadhyay, since deceased,
his legal heirs Sri Manik Lal Banerjee and Ors.
Vs.
Saileswar Bandopadhyay @ Banerjee and Ors.

Mr. Supravat Bhattacharya
....For the Appellants.

1. The present second appeal has been preferred against a judgment of affirmance. The plaintiffs/appellants' suit for declaration of title and consequential reliefs have been dismissed by both the courts below. The premise of the claim of the plaintiffs/appellants to the suit property is based on alleged adverse possession in respect of the same against the defendants/true owners.

2. Upon hearing learned Counsel for the appellants, we find that a previous suit was instituted by the predecessor-in-interest of the present plaintiffs, into whose shoes the present plaintiffs/appellants have stepped in, claiming declaration of title to the property on the basis of his independent rights. The said suit was dismissed as withdrawn on November 28, 1978, apparently since the predecessor-in-interest of the plaintiffs/appellants found out from the pleadings in

the written statement of the defendants therein that the title in respect of the property had been transferred by his predecessor to the defendants.

3. In the very next year, that is, in 1979, the present suit, from which this appeal arises, was instituted by the plaintiffs/appellants on the ground that they had been in adverse possession in respect of the self-same suit property.

4. Learned Counsel for the appellants seeks to impress upon us that the possession of the appellants was never denied by the defendants and the present suit has been filed on a different premise than the previous suit, since the cause of action for the present suit is adverse possession whereas the premise of the previous suit was declaration of title by inheritance.

5. As such, it is sought to be argued that the bar under Order XXIII of the Code of Civil Procedure is not applicable, even if no leave was granted to institute a suit on the self-same cause of action when the previous suit was dismissed as withdrawn.

6. However, we find no legal or factual error in the judgments of both the courts below, who have arrived at concurrent findings disbelieving the plaint case.

7. The very basis of the arguments of the appellants is fallacious, since it is presupposed in a suit for declaration of title by adverse possession that the plaintiff admits that the defendants in the suit

are the true owners of the property. The cardinal premise of a claim of adverse possession is open, hostile and continuous possession as against the true owner for a period of over twelve years.

8. In the present case, however, till November 28, 1978, when the previous suit of the plaintiffs/appellants was dismissed as withdrawn, the basis of the claim of the predecessor-in-interest of the plaintiffs was that he had independent title in respect of the suit property by inheritance and was the owner of the same.

9. Thus, it could not be that in 1979, that is, the very next year, when the current (second) suit was filed, the previous possession of the plaintiffs/appellants for a period of over twelve years preceding the filing of the second suit automatically turned hostile, which claim would be in stark contradistinction with the previous claim of the plaintiffs' predecessor of title by inheritance.

10. The subject-matter of the previous suit as well as the current suit are the same, being declaration of title to the same property, albeit on different but mutually exclusive grounds of title, by inheritance on the one hand and adverse possession on the other.

11. Thus, the bar under Order XXIII of the Code of Civil Procedure is squarely applicable, as the plaintiffs now seek to reopen the self-same subject

matter by way of the current suit, which was rightly turned down by both the courts below.

12. Accordingly, we do not find any substantial question of law involved in the appeal and accordingly, SA 27 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

13. CAN 1 of 2021 is accordingly dismissed as well.

14. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)