

21.05.2025
Court No.1
Item No.12
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**FAT 3 of 2022
With
CAN 1 of 2022
With
CAN 3 of 2024**

**Asit Baran Maitra and Ors.
Vs.
Swapan Banerjee and Anr.**

Mr. Amales Ray, Senior Advocate
Mr. Nigam Mittal
Ms. Prerna Mitra
Ms. Debashree Biswas

... For the Appellants.

Mr. Bikramaditya Ghosh
Mr. Soumyojyoti Dutta
Ms. Supriya Singh
Mr. V. Rai
Mr. Vivek Saha

... For the Respondents.

1. The instant appeal is directed against a judgment and order dated 28th January, 2022 passed by the learned Civil Judge (Senior Division) at Siliguri in Title Suit No.66 of 2008.

2. The brief facts of the case are that the plaintiffs claim to have purchased the property in the year 2003. The defendants claim to be in possession of the property since the year 1961 when the same was purchased by his grandmother Ms. Phanibala Dasi.

3. PW 1 being the plaintiff No.1 admitted that the predecessor of the defendant No.1 was in possession of the land before 1986. His possession was recognized by the predecessor-in-interest of the plaintiff No.1, namely Dipayan Roy. Dipayan Roy claims to have purchased the property vide a title deed in the year 1986. Although it is stated that Dipayan Roy got back possession of the portion of the land, the evidence produced by the defendants/ respondents of tax paid receipts and other documents demonstrated their continuance possession thereat.

4. Dipayan Roy and his mother as well as Dukhomoni Dasi successors admitted the possession of the predecessors of the defendants and found that it was no longer permissive but adverse to their title. Despite the fact that the Dipayan Roy knew that the land was housing a school and a hostel since the year 1961, he cunningly sold the land to the predecessors of the plaintiffs/appellants. Neither the predecessors of the plaintiffs nor the plaintiffs themselves ever bothered to verify the possession of the defendants in the suit property and their claim towards the same not only by the title deeds but also by way of adverse possession.

5. The suit filed by the plaintiffs, is hit both by Article 64 and 65 of the Limitation Act. Article 64

refers to a situation where possession of immovable property is sought based on previous possession and not title, when the plaintiffs while in possession of the property was dispossessed. The said article would have no manner of application as the plaintiff admittedly was never in possession of the property in question. The defendants were in possession since the year 1961 through their predecessors-in-interest.

6. In so far as Article 65 is concerned, the period of 12 years thereunder starts running from the date of claim of adverse possession by the defendants and such possession is challenged and claimed by the plaintiffs.

7. When the evidence in the suit clearly indicates that the possession of the defendants became adverse to the plaintiffs' predecessor namely Dipayan Roy and his predecessors since 1961, the suit filed in the year 2008 is hopelessly barred by limitation.

8. The plaintiffs, as rightly held by the Court below have chosen to purchase the property already occupied and in the possession of the defendants either by documents of title or by adverse possession since 1961, purchased property without verification of documents and possession. The transaction by the plaintiffs in the year 2003 and his vendor in the year

2001 was at best a paper transaction and could not have conveyed any right, title or interest on the property in question.

9. The Court, therefore, rightly held that the suit was barred by limitation even if one applies Articles 64 and 65 of the Limitation Act.

10. For the reasons stated hereinabove, FAT 3 of 2022 fails and is hereby dismissed.

11. In view of the above, all connected pending applications, if any, are also dismissed.

12. There shall be no order as to costs.

13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)