

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Supratim Bhattacharya

SA 22 OF 2023

With

IA No. CAN 1 of 2023

Kishore Sangha an Association or Club
Represented by Gourishankar Das & Ors.
Vs.
Sri Soumen Mukherjee & Ors.

For the Appellants : Mr. Ayan Banerjee

Ms. Debasree Dhamali

Ms. Riya Ghosh

For the Respondents : Mr. Sambhunath De

Mr. Ranjit Kumar Ghosh

Delivered On : 27.02.2026

Supratim Bhattacharya, J.:

1. The present appeal has been preferred by the appellant club being aggrieved by and dissatisfied with the judgment dated 12.07.2022 passed in Title Appeal No.105 of 2010 by the Ld. Additional District Judge, Fast Track Court, Chandannagar, District Hooghly. Through the impugned judgment the First Appellate Court dismissed the title appeal without any order as to cost and thereby affirming the judgment delivered on 19.03.2010 by the Ld. Civil Judge (Junior Division) 1st Court Chandannagar, passed in the Title Suit No. 62 of 1971.

2. Factual Matrix

Before the Trial Court

The original plaintiff namely Tarapada Mukherjee since deceased had filed a suit for declaration of title and for injunction before the 1st Court of Munsif, Chandannagar which was numbered as TS 62 of 1971.

Against the said plaint, two written statements were filed. One written statement was filed on behalf of the defendants No. 1(a), 1(b) and 1(d) namely Parbati Chandra Das, Kamal Kanti Banerjee and Bejoy Kumar Da and the other written statement was filed by Jyotindranath Tosh and Sudhanshu Rakshit.

On the basis of the pleadings, the following issues were framed:

- i) Is the suit maintainable in its present form and in law ?*
- ii) Is the suit barred by limitation ?*
- iii) Is the suit is barred by principle of waiver, estoppel and acquiescence ?*
- iv) Is the suit barred by adverse possession for more than 12 years ?*
- v) Is the suit bad for defect of parties ?*
- vi) Is the suit barred under Section 34 of the Specific Relief Act ?*
- vii) Is the suit barred by the provision of Order I Rule 8 of the Code of Civil Procedure ?*
- viii) Is the plaintiff entitled to get a decree as prayed for ?*
- ix) To what relief, if any, is the plaintiff entitled to ?*

x) Has the plaintiff any right, title and interest in the suit property?

xi) Has the defendant acquired any right, title and interest in the suit property by way of adverse possession ?

On behalf of the plaintiffs two witnesses deposed namely :-

PW1- Subhas Mukherjee

PW2- Sukumar Chattopadhyay

On behalf of the defendants five witnesses deposed : -

DW1- Parbati Chandra Das

DW2- Pashupati Dey

DW3 – Sudhangsu Rakshit

DW4 – Md. Chand (employee of CMC)

DW5 – Quazi Md. Munir (Investigation Commissioner)

On behalf of the plaintiffs following documents have been exhibited:

Exhibit-1 : Certified copy of the auction bid dated 15th March, 1911

Exhibit-2 : Deed of Settlement being No. 2172 of 1989.

Exhibit-3 : LRROR in the name of the plaintiffs.

Exhibit- 4, 4(a) and 4(b) : Mutation certificates in the name of the plaintiffs.

Exhibit-5, 5(a) : Municipal tax receipts.

Exhibit-6, 6(a), 6(b), 6(c) and 6(d) : Government tax receipts issued in the name of the plaintiffs.

Exhibit-7, 7(a) : Letter issued by Mayor of CMC dated 16.07.91 and 24/26.7.99

Exhibit-8 : Certified copy of Amount Register of CMC

Exhibit-9 : RS Porcha of the suit property.

Exhibit-10 : Municipal tax receipt of the suit property.

Exhibit-11 : Government rent receipt of the suit property.

Exhibit-12 : Notice dated 17.8.68 issued by CMC.

Exhibit-13 : Sheet Map of 3 No. Chandannagar Mouza.

On behalf of the defendants following documents have been exhibited :

Exhibit-A : Souvenir of the defendant Club of the year 1989.

Exhibit-B, B/1 : Copy of the letter dated 05.05.1969 with its receipt.

Exhibit-C, C/1 : Copy of the letter dated 10.05.1969 with its receipt.

Exhibit-D, D/1 : Copy of the letter dated 03.05.1969 with its receipt.

Exhibit-E, E/1, E/2 : Copy of the application dated 24.08.1968

Exhibit-F, F/1, F/2 : Copy of the application dated 07.01.1969

Exhibit-G : Report submitted by Mayor CMC.

Exhibit-H : Certified copy of the suit register of TS 103/1958.

After considering the oral and documentary evidence the Ld. Trial Judge had come to the following finding:

“Hence it is

Ordered

That the suit be and the same is allowed on contest but with cost. Plaintiff do get a decree of declaration that the defendant club or its members have got no title in the suit property or to use the same as playground or to claim any sort of easement and a decree of permanent injunction restraining the defendant club or its members from making a pucca boundary wall or fencing around the land or to use the land as playground or to make any sort of construction in the suit land. Plaintiff also do get a decree of mandatory injunction directing the defendants to remove the goal post and sign board if any.”

Before the Ld. First Appellate Court

Being aggrieved by and dissatisfied with the judgment passed by the Ld. Trial Judge the defendants preferred a title appeal being T.A. No. 105 of 2010. Ultimately the said title appeal has been heard and disposed of on 12.07.2022 by Ld. Additional District Judge (FTC) Chandannagar, Hooghly.

The Ld. First Appellate Court dismissed the first appeal, thereby affirming the order passed by the Ld. Trial Court, which is the impugned order.

3. Mr. Ayan Banerje being assisted by Ms. Debasree Dhamali and Ms. Riya Ghosh, the learned Counsels representing the appellants during his exhaustive argument has submitted the following:

- i)** The suit is barred under Section 34 of the Specific Relief Act, 1963 and the impugned judgment and decree ought not to have been passed .
- ii)** He has further submitted that the suit was filed for declaration of the plaintiff's title to the land in question and for further declaration that the defendant has no title to the land or the right of user over the land and a prayer for permanent injunction has also been made restraining the defendant from using the land as a playground and also restraining the defendant from making any boundary wall or club house or pucca structure in the suit property.
- iii)** He has submitted that the plaint is a product of clever drafting where the plaintiff has given an impression that the club is not in possession of the property but while describing the facts and making the prayers it has become apparent that the club was actually in possession of the said property.
- iv)** He has further submitted that the prayer for removal of sign board of the club from any other structure clearly indicates the existence of the club over the suit property.
- v)** He has further submitted that the defendants through their written statement have made it clear that they are in occupation

of the suit property and there is a club room existing over the suit property for a very long time.

- vi)** He has further submitted that through the additional written statement the defendants have specifically raised the point that the plaintiff has no possession over the suit property and in the **absence of presence of recovery of possession** the suit is not maintainable.
- vii)** It has also been stated that the suit is not maintainable for non-payment of *ad valorem* court fee.
- viii)** The Ld. Counsel has further stressed upon the point that through a separate written statement Jatindranath Tosh and Sudhanshu Rakshit filed a separate written statement and specified that the club was in possession of the suit property for more than 12 years even prior to the institution of the suit and the club has acquired title by way of adverse possession.
- ix)** The Ld. Counsel has further submitted that the Ld. Trial Court had framed an issue as to whether the suit is barred under Section 34 of the Specific Relief Act, 1963 and while considering the issue the LD. Trial Court has observed that in a suit for declaration, a prayer for recovery of possession, trespasser is a relief ancillary to the substantial prayer as such the Court treated that the prayer was for recovery of possession from trespasser but did not apply Section 34 without providing any reason for the same.

- x)** He has further submitted that the Ld. Trial Court has recorded that it is the plaintiff's case that the defendant club is a trespasser whereas it is the case of the defendant that they are in possession adverse to the right, title and interest of the plaintiff.
- xi)** He has further submitted that in the Trial Court's judgment it is mentioned that the plaintiff has proved the right, title and interest in the suit property and the defendant has not acquired any right, title and interest by way of adverse possession.
- xii)** He has further submitted that during the trial of the suit the plaintiff has tried to make out a case that the club is trying to make construction and enter into the property but during hearing it is established and admitted by the plaintiff that the club was in possession although in the capacity of a trespasser and once possession of the club over the suit property is proved a prayer for recovery of possession becomes mandatory requirement of law to maintain the suit under the specific relief Act.
- xiii)** He has also submitted that the First Appellate Court had opted the findings of the Trial Court while discussing requirement of adverse possession.
- xiv)** He has further submitted that the Appellate Court has come to the finding that the appellant has failed to prove that his possession was open and hostile to prove its adverse nature.

- xv)** He has further submitted that the Appellate Court did not take into consideration the two Commissioner's Report which were filed before the Ld. Court which clearly establishes pucca construction made by the club and such construction was further developed during the pendency of the suit which remained pending for a period covering more than 12 years.
- xvi)** He has further submitted that the judgment of the trial court and the First Appellate Court are perverse as there has been non-consideration of essential materials on record.
- xvii)** He has further submitted that in the first commissioner's report filed on 18.04.1980 the Commissioner observed that there were existence of old pucca building shown in the RS Map in different plots and the report mentions existence of a brick wall tile shed club room of Kishore Sangha over the suit plot and the said room is adjacent to the building of Hari Lila Sabha which according to the plaintiff is on the adjoining plo and the survey map also shows that over the suit plot there is existence of club room of Kishore Sangha.
- xviii)** The Ld. Counsel has also relied upon revised commissioner's report wherein it has been mentioned that the earlier French plot nos. 2248 and 2249 have subsequently being converted into RS Plot Nos. 643 and 644.
- xix)** He has further submitted that the revised commissioner's report mentions that the nature of construction changed to a great

extent and huge quantity of building materials were stacked in the suit property for the purpose of the further construction.

xx) He has further submitted that in the commissioner's report it has been mentioned that the club room of Kishore Sangha which was existent for a period of more than 15 years have been cemented and walls have been plastered and huge pandals have been constructed over the suit property in front of the Thakur Dalan.

xxi) The Ld. Counsel has relied upon the evidence of PW1 whereby it has been stated that Hari Lila Samilani had incited the local people to use the said land as a playground and from 1968 the sign board of the club was being displayed at the said property and the club members started installing goal posts and constructing club rooms.

xxii) He has further submitted that it is established that the existence of the club room over the suit property since at least 1968.

xxiii) He has also relied upon the evidence of PW2 wherein the said witness had admitted that there is a building of Sri Sri Hari Lila Sambodhani Sabha which is in the suit property and on the northern side of the suit property the club room of Kishore Sangha is situated.

xxiv) The Ld. Counsel has relied upon Exhibit- 7, 7A that is letter by the Chandannagar Municipality and 8 that is the assessment register where there is existence of club room.

- xxv)** The Ld. Counsel has stressed upon the fact that the appellant club is entitled to the benefit of adverse possession against the owners in view of its continuous possession over the suit property prior to filing of the suit and also during the pendency of the suit and appeal.
- xxvi)** He has further submitted that the appellants defendants are in adverse possession of the suit property for a period of more than 12 years from the date of institution of the suit.
- xxvii)** He has further submitted that although it is contended by the respondents plaintiffs that temporary user as a playground does not constitute adverse possession, the existence of pucca club room, display of the board containing name of the club is a clear, open and hostile act displaying possession of the property, such act constitutes open and adverse possession of the suit property.
- xxviii)** The Ld. Counsel has submitted that from the revised report of the commissioner it is apparent during the two visits of the commissioner in 1980 and 2004 there has all alone been existence of club room in the suit property. Initially the club room was having brick wall but in 2004 the club room has developed with tile flooring and further structure.
- xxix)** The Ld. Counsel has also submitted that from the commissioner's report it is conclusive that the possession of the defendant is at least from 1980 till the filing of the revised report in 2004.

xxx) He has further submitted that it is settled law that the plaintiff cannot bring an action of recovery of possession after a period of 12 years from the date of such dispossession. Therefore even if it is established that the plaintiff has right, title interest over the suit property they don't have a remedy for recovery of possession since they have slept tight over their right to recover the said property.

xxxi) He has further submitted that it is also established principle of law that if during pendency of the suit the period of 12 years of possession over another person's property is covered then also the defendant can claim that he cannot be evicted from the suit property since there was not amendment of the plaint during this period asking for recovery of possession.

Banking upon this the Ld. Counsel has submitted that the respondents plaintiffs have failed to assert their right by asking for recovery of possession although the defendants were admittedly in possession of the suit property and it is well-settled that adverse possession can not only be used as a defence or shield but also as a sword and an independent suit claiming for title by way of adverse possession is also maintainable and the appellants defendants have specifically claimed the defence of adverse possession.

He has relied upon the following authorities

a) (1973) 2 SCC 705

b) (2012) 8 SCC 148

c) (2019) 8 SCC 729

d) 2024 SCC Online SC 132

4. Mr. Sambhunath De being assisted by Mr. Ranjit Kumar Ghosh, Ld.

Counsels representing the respondents has submitted the following:

- i.** The Ld. Counsel has stated that in the year 1968 the plaintiff first time observed that the club has fixed a sign board and goal post upon the suit property as such the plaintiff has filed a suit in the year 1971.
- ii.** He has further submitted that all the documents filed by the defendants are of the year 1968 or of subsequent years.
- iii.** He has further submitted that the suit for declaration is permissible when one is denying one's right, title interest over the property and in the present case the defendants are claiming adverse possession over the suit plot denying the right, title, interest and possession of the plaintiff's. As such the suit is maintainable and is not barred under Section 34 of the Specific Relief Act.
- iv.** He has further submitted that the defendant must prove constructive possession as the onus is upon him who claims adverse possession but the defendant has failed to prove it.
- v.** He has also submitted that DW2 stated in his evidence that the defendant club was registered in the year 1961 but the so called registration certificate has not been filed.

vi. The ld. Counsel has relied upon the following citations

AIR 1961 MP 212

AIR 1996 CAL 84

1995 2 CLJ 433

2004 10 SCC 779

2017 13 SCC 705

2009 16 SCC 517

2019 4 ICC 244

5. At the time of admission only one substantial question of law was framed and during the hearing of the present appeal another substantial question of law has been framed those are as follows:

i) Whether on the facts and in the circumstances aforesaid, the suit was barred under Section 34 of the Specific Relief Act, 1963 and that the impugned judgment and decree ought not to have been passed ?

ii) Whether on the facts and in the circumstances the appellants association or club is entitled to a decree of adverse possession against the owners that is the respondents.

Thus, from the substantial questions of law framed it is apparent that this present appeal revolves around two issues firstly whether the suit filed by the respondent/ landlord was at all tenable as per the Specific Relief Act or not and secondly as to whether the appellant club is entitled to a decree of adverse possession or not.

6. As regards to the first substantial question of law Section 34 of the Specific Relief Act is laid down, which is as follows:

“34. Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

From the aforementioned Section it transpires that if the plaintiff in spite of having to seek further relief than a mere declaration of title and does not do so then Court shall not make any such declaration. From the plaint it transpires that the plaintiff has mentioned in the plaint “ *that the defendants tried to go upon the land to play football and fixed two bamboo goal posts, hung up a sign board in the name of ‘Kishore Sangha’.....*” and the plaintiff apart from seeking declaration of the plaintiff’s title to the suit property that is 0.076 acres of danga land recorded in R.S. Plot 643 of R.S. Khatian 366 of mouza Chandannagar, sheet No. 3 P.S. Chandannagar, District-Hooghly formerly recorded and comprised in French plot No. 2248 has also prayed the following:

“b) for permanent injunction restraining the defendant ‘Kishore Sangha’ or its members from using the land as their playground or from making a pucca boundary wall around the land or from making barbed wire fencing with bricks or otherwise around the land or from making any pucca or any sort of club house or any structure of any description on the land in suit.

c) for mandatory injunction ordering the defendant to remove the two bamboo goal posts fixed on the land or /and to remove the sign board bearing the name ‘Kishore Sangha’ hung up or fixed on the land or any other structure that may be made. ”

Thus, from the plaint it is apparent that the plaintiff has apart from seeking declaration has also sought for ancillary reliefs, so the plaint is not barred as per the provisions laid under Section 34 of the Specific Relief Act, 1963.

- 7.** As regards to the second substantial question of law that is adverse possession in respect of the suit property claimed by the defendants. The plaintiffs have produced certified copy of an auction bid dated 15.03.1911, a deed of settlement, L.R.R.O.R. in the name of the plaintiff, mutation certificates in the name of the plaintiff, Municipal tax receipt, Government tax receipt issued in the name of the plaintiff, RS Porcha of the suit property in support of their contention in respect of the suit property.

On the contrary, the defendants through their written statement have tried to prove that the said Kishore Sangha is a very old institution

and the people of the locality particularly the children and the young boys have been playing games of all sorts including football and performing open air exercises as of right, peacefully, continuously and uninterruptedly upon the suit land since time immemorial, in spite of knowledge of the plaintiff/owner and municipal grant is being received by the said club for about 12 years or more. The defendant club could only produce copy of some applications and letters of which the first one is dated 24.08.1968 and the remaining ones are of later dates.

The lis has been initiated by the plaintiff by filing the plaint on 06.04.1971.

Adverse possession is a concept that emerges, when a person, not vested with the title, is in possession of the property, in derogation of the title of the rightful owner. If the possession is traceable to any permission or an act, emanating from the actual owner, it cannot be treated as adverse.

There is no statutory definition of adverse possession. In the case between Annasaheb Bapusaheb Patil Vs. Balwant reported in (1995) 2 SCC 543 the Hon'ble Apex Court has stated the following:

“14. Article 65 of the Schedule to the Limitation Act, 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of

title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.”

Adverse possession is the exception in the recognition of law by acquisition of title only through lawful means. Adverse possession implies that possession commenced in wrong and maintained against right : *corpur juris secundem*. In order to constitute possession two conditions must be satisfied ; the person concerned must be in a position to exercise some control or power over the thing or object he must intend or will to exercise this control or power – there must be both physical (corpus) and mental (animus) aspects or elements present to constitute possession.

Article 65 of the Limitation Act deals with the provision as regards to the time period which is to be proved by the person who is claiming

adverse possession in respect of the property. The said Article lays down as follows:

<i>“65. For possession Twelve years</i> <i>of immovable</i> <i>property or any</i> <i>interest therein</i> <i>based on title.</i>	<i>When the</i> <i>possession of the</i> <i>defendant</i> <i>becomes adverse</i> <i>to the plaintiff.</i>
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Explanation.—For

the purposes of this

article—

(a) where the suit is

by a remainderman,

a reversioner (other

than a landlord) or a

devisee, the

possession of the

defendant shall be

deemed to become

adverse only when

the estate of the

remainderman,

reversioner or

devisee, as the case

may be, falls into

possession;

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a

*representative of the
judgment-debtor
who was out of
possession.*

- 8.** The plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show a) on what date he came into possession, b) what was the nature of possession , c) whether the factum of possession was known to the other party, d) how long his possession continued and e) his possession was open and undisturbed.
- 9.** From the aforementioned discussion it transpires that a person should be peacefully, continuously and uninterruptedly in possession of a property against the rightful owner in spite of the owner having the knowledge of the same, for a continuous period of at least 12 years. In the present case, the defendant club could only produce copy of applications and letters, the earliest of which bore the date 24.08.1968 while the present lis has been instituted on 06.04.1971.
- 10.** Thus, the original plaintiff has instituted the suit within 3 years from the date of alleged misdeed of the defendant club, that is within the statutory period of limitation.
- 11.** The defendant club has failed to prove that they have been in peaceful continuous possession of the suit property in spite of the knowledge of the owner for a period of 12 years or more, while the

plaintiffs through the documents have been able to prove as regards to their ownership.

12. This being the position both the substantial questions of law are decided in favour of the landlord/respondent.

13. Thus, the appellant club has not been able to prove adverse possession by them in respect of the suit property.

14. The judgment of the Hon'ble Apex Court passed in the case between Rajender Singh and Ors. Vs. Santa Singh and Ors. reported in (1973) 2 SCC 705 is not at all applicable in the present lis as because in the present lis the owner of the land that is the plaintiff had instituted the suit within 3 years from the date of alleged taking over of possession by the defendant club.

Another judgment of the Hon'ble Apex Court passed in the case between Union of India Vs. Ibrahim Uddin and another reported in (2012) 8 SCC 148 is also not applicable in the facts and circumstances of this present case as because the plaintiff through the plaint has prayed for consequential reliefs apart from the declaration. As such there is no relief being not sought for by the plaintiffs.

Another judgment of the Hon'ble Apex Court passed in the case between Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors. reported in (2019) 8 SCC 729 is also not applicable in the facts and circumstances of this present case as because in the present lis the

plaintiff has instituted the suit within 3 years on the alleged misdeeds of the club. As such the law of limitation does not provide any hindrance in deciding the present lis in favour of the respondents/plaintiffs.

Lastly the appellants have cited a judgment reported in (2024) SCC OnLine SC 132 which has been passed in the case between Vasantha (Dead) through L.R. Vs. Rajalakshmi alias Rajam (Dead) through L.Rs. The aforementioned authority cited on behalf of the appellant is of no help to the appellant club as because through the said judgment it has been mentioned that the purpose behind Section 34 of the Specific Relief Act is to prevent multiplicity of proceedings. In the present lis such occasion has not arisen as because the plaintiff has sought for consequential reliefs apart from declaration, so there is no relief remaining to be sought for by the respondents/ plaintiffs.

So all the aforementioned judgments cited on behalf of the appellant club does not assist the club in any way whatsoever.

15. From the aforementioned discussion this Court finds no anomaly in the decision of the Ld. Trial Court and the Ld. First Appellate Court as such the judgment of the Ld. Trial Court and the Ld. First Appellate Court does not require any interference.

16. The appeal being **SA 22 of 2023** stands thus **dismissed** accordingly **CAN 1 of 2023** stands **disposed of**.

17. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.
18. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)