

18th February,
2026
(AK)
08

SAT 179 of 2025
IA No: CAN 1 of 2025

Abhoy Maji
Vs.
Nirbhoy Maji

Mr. Debajyoti Basu
Mr. Aditya Chakraborty
Mr. Dibyendu Ghosh

....For the appellant.

1. The present appeal arises out of a concurrent judgment of both the courts below whereby the counter claim of the respondent, seeking eviction of the appellant, was allowed.
2. Learned counsel for the appellant contends that the First Appellate Court itself came to a finding that the counter claim is barred by limitation but, yet, proceeded to affirm the decree of the trial court whereby the counter claim was allowed against the appellant.
3. Learned counsel seeks to take us through the evidence.
4. However, at this stage, in the second appeal, we are not inclined to reappraise evidence.
5. Insofar as the argument of the appellant is concerned, we find in paragraph no.33 of the First Appellate Court's judgment that the learned First

Appellate Judge observed that at the outset it is to be mentioned that the counter claim “may be” barred by limitation in view of Article 65 and the right of the defendant “may be” extinguished in view of Section 27 of the Limitation Act, “if the plaintiff able to prove himself as adverse possessor”.

6. Thus, while making the said observation, different alternatives were only being considered tentatively by the First Appellate Court and no conclusive finding as to the counter claim being time-barred was arrived at. Thereafter, upon consideration of the evidence led by the parties, the learned First Appellate Judge came to the conclusion that there was no proof of adverse possession.
7. Learned counsel for the appellant further argues that the learned Appellate Judge fail to consider in proper perspective the evidence of DW2, the full-blooded sister of the respondent.
8. However, we find from the excerpt of such deposition, as quoted in paragraph no.34 of the First Appellate Court’s judgment, that the issue of adverse possession did not hinge on the said statements of the witness.
9. That apart, it may be noted that although the main suit filed by the present appellant for declaration of

the plaintiff/appellant's tenancy was dismissed, no appeal was preferred against the same.

10. As such, the said decree has attained finality, thereby establishing that the appellant is not a tenant in respect of the suit property.
11. Moreover, in view of having categorically pleaded tenancy throughout the proceedings, the appellant cannot take the mutually exclusive stand of having been in adverse possession of the suit property.
12. It is well-settled that mutually destructive stances cannot be adopted, although otherwise alternative defences may be taken in the pleadings.
13. In any event, the case of adverse possession was never established by the appellant by cogent evidence, nor pleaded. Furthermore, insofar as the argument on adverse possession is concerned, it is well-settled that no proof can be looked into by a court of law beyond the pleadings.
14. The case of adverse possession having never been pleaded by the plaintiff/appellant, the courts were justified in not relying on the part of the evidence which related to such purported adverse possession of the plaintiff.
15. As such, there is no substantial question of law involved in the appeal.

16. Accordingly, SAT 179 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
17. Consequentially, CAN 1 of 2025 also stands dismissed.
18. There will be no order as to costs.
19. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)