

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Biswaroop Chowdhury

FA No. 448 of 2025

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CAN 1 of 2025

Smt. Bhanumati Halder

-vs-

Sri Subhas Mondal

For the appellant : Mr. Partha Chakraborty,
Mr. Rishabh Dutta Gupta, Advs.

Heard on : May 11, 2026.

Judgment on : May 11, 2026.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred against a judgment whereby the suit of the plaintiff/appellant, for the principal relief of declaration of title by adverse possession and other consequential reliefs of permanent injunction, has been dismissed.

2. Learned counsel for the appellant argues, by placing reliance on the judgment of *Ravinder Kaur Grewal and others Vs. Manjit Kaur and others*, reported at (2019) 8 Supreme Court Cases 729, that adverse possession can be used as a sword for filing a suit claiming title and not merely as a shield in the capacity of the defendant.
3. Learned counsel places reliance on the cited judgment to argue that the claim of adverse possession by way of a suit is maintainable not only against the true owners but also against third parties.
4. Learned counsel submits that the appellant proved her case of adverse possession by categorically stating in the plaint that she had been in possession of the suit property for twenty-four years.
5. Moreover, several documents proving such possession were also exhibited in the suit.
6. As such, it is argued that the learned trial Judge erred in law and in fact in dismissing the suit on the ground of non-joinder of the true owners as well as on the ground that the plaintiff has failed to establish her case by adducing cogent evidence, oral and documentary.

7. From a perusal of the impugned judgment, we find that the two grounds of which the suit was dismissed were that the true owner was not made party to the suit to enable the court to decide the adverse possession and that the plaintiff failed to prove her case by cogent evidence, oral and/or documentary.
8. The reliance placed by the plaintiff/appellant on *Ravinder Kaur Grewal (supra)* is misplaced. In the very first paragraph of the said judgment, the question which was formulated for adjudication was stated. The said question is as follows:

“The question of law involved in the present matters is quite significant. Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of the Limitation Act, 1963 (for short “the Act”) for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person? In the other words, whether Article 65 of

the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to recover it in case of dispossession. Whether he is remediless in such a case? In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession?"

9. Thus, it is evident that the cardinal issue which fell for consideration before the Hon'ble Supreme Court in the said report was whether adverse possession can merely be used as a shield by a defendant, as defence in an eviction suit, or as a sword by instituting a suit on the basis of title acquired by dint of adverse possession.
10. It is only in the context of adjudicating such question that the Hon'ble Supreme Court observed that in case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his

title, the person has a remedy to avoid the sale and interference with his possession.

11. In paragraph no. 51 of the said report, which is relied on by learned counsel for the appellant, the Hon'ble Supreme Court observed that the statute does not define adverse possession, it is a common law concept, the period of which has been prescribed statutorily under the law of limitation in Article 65 as twelve years. It was further observed that law of limitation does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. It only deals with limitation to sue and extinguishment of rights. There may be a case where a person who has perfected his title by virtue of adverse possession is sought to be ousted or has been dispossessed by a forceful entry by the owner or by some other person, his right to obtain possession can be resisted only when the person who is seeking to protect his possession is able to show that he has also perfected his title by adverse possession for requisite period against such a plaintiff.

12. The Hon'ble Supreme Court went on to observe that the law of adverse possession does not qualify only a defendant for

the acquisition of title by way of adverse possession, but it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires. Once the right is extinguished, it was held, another person acquires prescriptive right which cannot be defeated by re-entry by the owner or subsequent acknowledgment of his rights. In such a case suit can be filed by a person whose right is sought to be defeated.

13. However, there is a marked distinction between a suit where on the strength of title already acquired by adverse possession, the plaintiff seeks to protect such title and consequential possession by virtue of permanent injunction.
14. In such a suit, once title is perfected by adverse possession, a person claiming such title may very well file a suit to protect his title from third parties apart from the true owners.
15. However, in a suit where the principal relief claimed is declaration of title on the strength of adverse possession, the true owners are absolutely necessary parties, since implicit in such a declaration is the other declaration that the title of the

true owners in the subject property is extinguished due to expiry of the period of twelve years.

16. In the present suit, the very first and principal relief of the plaintiff was such a declaration. The consequential relief of permanent injunction was merely ancillary to such principal relief.

17. Thus, in order to obtain a decree of title ripened by way of adverse possession, the true owners, against whom such title is claimed, are necessary parties.

18. Thus, the learned trial Judge was justified in holding that the suit is bad for non-joinder of the true owners, who are necessary parties.

19. On the other aspect of the matter, there are certain cardinal ingredients for a claim of adverse possession :

- i) The title of the true owner has to be admitted;
- ii) It has to be claimed that the adverse possessor is in open, continuous and hostile possession of the subject property in negation of the rights of the true owner for a period of over twelve years.

20. The “hostility” which has to be pleaded is vis-à-vis the true owner and none else.

21. Conspicuously, in the plaint of the present suit, the plaintiff has not only omitted to implead the true owners, but has not even disclosed the names or identities of the true owners.
22. In paragraph no. 2 of the plaint, it has been stated that the plaintiff has been residing at the suit premises “adversely” since more than twenty-four years without any interference and/or any disturbance “from any corner in any manner whatsoever”.
23. Again, in paragraph no. 3 of the plaint, it has been stated that the plaintiff constructed a brick built asbestos shed house and started living there with her son and daughter for more than twenty-four years “adversely”. Similar line of pleadings have been repeated throughout the plaint, without any single instance mentioning as to who are the true owners against whom hostile as well as continuous and open possession is claimed.
24. Thus, the learned trial Judge was justified in holding that the suit is bad for non-joinder of true owners.
25. The suit was not maintainable in its present form.
26. Secondly, from the four corners of the pleadings, we do not find a single sentence attributed to the exact date and mode in

which such possession was entered into by the plaintiff/appellant for the first time.

27. In a claim of adverse possession, it is well-settled, the exact starting point and the particulars of the mode of such commencement are extremely crucial for establishing a pleading of adverse possession, which is completely absent even in the pleadings of the plaintiff, let alone there being any evidence on such count.

28. Mere proof of possession cannot be equated with adverse possession.

29. In the absence of any of the essential ingredients of adverse possession being proved, the mere possession of a person in respect of a property cannot be elevated to the plane of ripening of title by way of adverse possession.

30. Thus, the learned trial Judge was justified in dismissing the suit on such count as well.

31. Accordingly, we do not find any merit in the appeal.

32. Hence, FA No. 448 of 2025 is dismissed on contest, thereby affirming the impugned judgment and decree dated July 10, 2025 passed by the learned Civil Judge (Senior

Division), Fifth Court at Alipore, District- South 24 Parganas in
Title Suit No. 498 of 2023.

33. Consequentially, CAN 1 of 2025 is also disposed of.
34. There will be no order as to costs.
35. A formal decree be drawn up accordingly.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)