

JPD-12
Ct No.07
12.06.2026
(SSS)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

SAT 13 of 2025
With
CAN 2 of 2026

Abu Hora @ Abu Hora Miah and Ors.
Vs.
Achhraf Ali and Ors.

Mr. Bikramaditya Ghosh,
Mr. Mayank Bhandari,
Mr. Ved Rai

.... for the appellants.

Mr. Hirak Barman,
Mr. Chandan Ray,
Mr. Abdul Habib

.....For the respondents.

1. The present appeal has been preferred by the defendants in a suit for partition against a preliminary decree of partition.
2. Learned counsel appearing for the appellants argues that despite the plea of adverse possession having specifically been taken in the written statements filed by the defendants, neither of the Courts below framed any issue on the same nor decided such issue. It is argued that the said omission vitiates the impugned judgments and gives rise to a substantial question of law.
3. However, on our request, the learned Advocate appearing for the respondents hands over a copy

of the written statement filed by one set of defendants.

4. From the same, it is evident that the defendants simultaneously claimed title to the property through their predecessor-in-interest by way of title deeds as well as took a contradictory plea of adverse possession.
5. It is well-settled that a claim of title by inheritance is mutually exclusive with a plea of adverse possession since in case of the latter, the defendants have to admit the title of the true owners and claim to be in open, hostile, continuous and uninterrupted possession of the property in defiance of such title of the true owners.
6. Apart from the above lacuna in the case of the defendants/appellants, we also find from a perusal of the written statement that the specific date and time of commencement and manner and mode in which the adverse possession allegedly began has not been enumerated in the pleadings. As such, no amount of evidence could cure such defect.
7. Moreover, from the tenor of the pleadings of the defendants, it is evident that adverse possession was claimed in respect of a part of the joint property, which is absurd.
8. In order to claim adverse possession, the party claiming such possession has to claim actual

physical and hostile possession over the entire property. Unless the property is demarcated, there cannot be any physical possession of a portion of an undivided and undemarcated joint property by way of adverse possession.

9. In such view of the matter, we find that although no specific issue was framed on adverse possession, the same does not vitiate the impugned judgments in any manner and it would be ultimately a futile exercise even if an issue was framed thereon.
10. Accordingly, we do not find any substantial question of law involved.
11. Hence, SAT 13 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
12. CAN 2 of 2026 is also disposed of consequentially.
13. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)