
(1995) 09 CAL CK 0022
In the Calcutta High Court
Case No : S.A. 228 of 1992

Rashbehari United Club and others

APPELLANT

Vs

Hazarimal Sharma

RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Limitation Act, 1963 — Article 64, 65
Specific Relief Act, 1963 — Section 6

Citation : AIR 1996 Cal 84 : (1996) 1 CALLT 194

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mukul Prakash Banerjee and Sudhir Kr. Bhattacharjee, for the Appellant; S.P. Roy Choudhary and Kr. Rakshit, for the Respondent

Judgement

Basudeva Panigrahi, J.—This appeal is directed against the reversing judgment and decree passed by learned Additional District Judge, Alipore in T.A. No.338/88 whereby and whereunder he decreed the respondent/plaintiff suit in T.S. No. 194/82.

2. The facts leading to this appeal are summarily stated thus:-- The respondent/plaintiff has stated in the pleading that the schedule "A" marked properties originally belonged to one Satyanarayan Sarogi and his wife Lakshmi Devi comprising an extent of 7 cottahs 17 sq. ft. with a brick building and C.I. roof structure standing thereon in municipal premises No. 47B of Sadananda Road within Bhownipore P.S. The plaintiff had occupied the northern portion of the suit premises at a monthly rental under the owner where he was running a Ration Shop bearing No. ER 3009 and the southern portion of it was under the occupation of another tenant Sovelal and Jangiram who carried on their business of a Restaurant by selling tea etc. In course of time those tenants vacated C.I. roof structure in favour of the original owners and accordingly they took possession of the same. The appellant No. 1 approached the original owners along with some of the influential persons of the locality requesting them to

permit the former to start an association known as "Rashbehari United Club" towards the southern portion of the said C.I. roof structure. The original owners however, were inclined to permit the said club for temporary accommodation on the southern portion with the vacant land abutting to it in or about March, 1970 as a licensee. Thereafter, the club started possessing the same by various acts and performances over the said structure which has been described more fully in Schedule "B" of the plaint. The plaintiff has purchased subsequently from the original owners under a deed of registered conveyance dated 9-1-1971 of "A" schedule property of the plaint, inclusive of "B" schedule. The plaintiff was however, assured by the persons in management of the club to vacate the "B" schedule property immediately after they found an alternative accommodation elsewhere. The plaintiff issued a letter of attornment to the tenants and also informed to the members of the club about the purchase of the suit premises 47B. Thus, even after the purchase, the defendant club was also allowed to continue as licensee of the suit premises as before. The plaintiff filed another suit against one of the tenants Bacchan Singh in T.S. No. 70/ 74 in the Court of learned Munsif, 4th Court Alipore for recovery of possession and obtained part decree of ejectment on 26-2-1982. The erstwhile tenant preferred an appeal in T.A. No. 310/82 but the appellate court was also pleased to dismiss the appeal. Accordingly, the plaintiff obtained the possession from Bacchan Singh pursuant to the decrees. The defendant-club was issued with a registered notice for vacating the suit schedule "B" properties which was under its occupation ever since the time of his vendors. But the defendant-club having refused to vacate the suit properties, the licence which was granted to them was revoked in or about Month of Nov. 1982. Since the club having paid no heed to such revocation, the plaintiff was obliged to bring the suit against the club and its office bearers for recovery of possession.

3. The suit was filed in representative capacity under the provisions of Order 1, Rule 8, C.P.C. after obtaining necessary, leave from the Trial Court. The licence granted earlier to the defendant-club having been determined ever since Nov. 1982 and the defendants having forcibly occupied the same, the plaintiff filed the suit for damages for their illegal use and occupation of "B" schedule properties from Dec. 1982.

4. Two set of written statements filed by the defendants. But in substance they took the same defence. It is stated by the defendant-club that they took the forcible possession of the suit properties on the south western corner of the premises 47B, Sadananda Road in or about 1958 when Satyanarayan Sarogi and his wife Lakshmi Devi were the original owners of the same. The members of the club raised boundary wall all round and fixed a gate. In course of time they also constructed C.I. shed with the tacit knowledge of the original owners. The club having been in uninterrupted possession adversely for more than 12 years against the owners has acquired the full right over the same. The defendants have disclaimed that the club was a licensee under the original owners. They denied the title of the plaintiff over the "B" schedule property. The club members

raised permanent structure like the boundary wall, C.I. shed and fixed other gymnastics unto the ground for physical exercises. The plaintiff and his predecessors-in-interest have had adequate knowledge regarding the forcible occupation of the defendant-club. Thus, the defendant has acquired indefeasible right over the suit land. The trial Court after having discussed the oral and documentary evidence filed by the parties dismissed the suit. But on appeal the judgment and decree passed by the trial Court was however, reversed and plaintiffs suit was decreed.

5. The learned counsel for the appellant, Mr. Mukul Prakash Banerjee, has raised the following contentions:

(1) that the appellate court has erroneously held the appellant as a licensee under the plaintiff and his predecessor's-in-interest.

(2) The court cannot be oblivious to the situation that since the appellant has been in forcible occupation for last several decades under the plaintiff and his predecessors-in-interest.

(3) The club had made substantial improvement over the properties by raising permanent structure and also compound wall all round.

(4) The appellate court was under misconception that taking electric line to the suit premises from the plaintiffs house destroys their right of adverse possession.

(5) The appellate court had also committed palpable illegality in not considering the important evidence produced by both parties.

6. The learned counsel was critical that the appellate court had not considered the evidence of the plaintiff regarding admission about the construction of the club and erecting permanent structure and putting grills over suit property. It was further urged that the evidence of P.W. 4 who claims to be a respectable witness of the locality goes a long way to prove the adverse possession of appellant club. He also unequivocally admitted that the members of the club have been using the premises for the purpose of gymnastic performances, Non consideration of this important evidence of P.W. 4 renders the finding of the appellate court vulnerable.

7. The fundamental question which arises in this appeal is to find out whether the appellant has acquired title by adverse possession. It is established that possession in law is prima facie evidence of title. Burden of proof lies on the party claiming adverse possession. He must plead and prove that his possession must be *nee vi, nee clam, nee precario* i.e. peaceful, open and continuous. The possession must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner. Keeping the aforesaid principle in mind let me now advert to the case of the appellant to determine how far it has been able to succeed to prove the plea of adverse possession. In this case admittedly the predecessor's-in-interest i.e. Satyanarayan Sarogi and his wife were the original owners of the suit properties from whom the plaintiff said to

have purchased the suit properties by a registered sale deed dated 9-1-1971. The plaintiff was also a tenant of some portion of the suit properties prior to his purchase. The appellant club was in occupation in Schedule "B" property for more than 12 years before filling of the suit. In the above back-drop it is to be determined whether the appellant club possessed the property as a licensee under the predecessor's-in-interest of the plaintiff and subsequently under him or whether the appellant club had/has had in occupation of the said structure forcibly declaring hostile title against the plaintiff or his predecessor's-in-interest by openly doing overt act over the suit properties.

8. The plaintiff in the pleading has asserted that the appellant club came into existence only in or about Feb. 1970. The defendant No. 1 along with some youth of the locality approached the erstwhile owner with a request to permit them for running an association in the name and style as Rashbehari United Club on the sour the portion of the C.I. Roof structure. Since the original owners having previous acquaintance with the defendant No. 1 permitted the youth of the locality to run the suit club on the premises on or about March, 1970 as a licensee. When the original owners intended to sell the suit properties, premises 47B, Sadananda Road, Calcutta the plaintiff expressed his willingness to purchase subject to evicting the defendant No. 4 club from the suit premises. Accordingly, the original plaintiff asked the defendant No. 1 and the club to vacate from the "B" schedule property so that they would be able to sell the same to the plaintiff. It seems, that the club paid a deaf ear to such request of the plaintiff's vendor therefore the plaintiff after the purchase had sent registered notice asking the defendant No. 4 club to vacate from the suit premises.

9. The defendant No. 4 on the other hand, took an inexorable plea that it has been in existence ever since 1958 adversely to the knowledge of the plaintiffs vendor and also the plaintiff. In a suit for possession based on title the onus is no longer on the plaintiff to prove that his dispossession took place within the period of limitation as required under the old limitation act. It is the defendant No. 4 who has to establish that it has been possessing the properties adversely for more than the statutory period as a consequence of which the plaintiff title has been lost. In this connection a decision reported in (1985) 60 Cut LT 274 can be referred to. While proving the title of the plaintiff he has relied upon the sale deed executed by his predecessor's-in-interest, municipal receipts showing the payment of tax to the authorities and also other documents which would unequivocally establish that the plaintiff has an indefeasible right over the suit properties. Adverse possession by nature implies the ownership of another. Adverse possession is a statutory method of acquiring title to land by limitation. It depends on "animus" or interest of occupant to , claim and hold real property in opposition to all the world and also embodies the idea that the true owner of the property has knowledge of the assertion of ownership by the occupant.

10. In the written statement, the defendant No. 4 has taken the stand that the

club has been in possession of the suit land forcibly but mysteriously since when such actual possession had started has not been set out. D.W. 1 who claims to be one of the office bearers of the club has not cared to know as to who was the owner of the suit property. He also claimed to be the founder of the defendant No. 4 club. It is difficult to appreciate such version as to how a person could, occupy the property without knowing who was the owner.

11. On conjoint reading of the testimony of D.W. 1 and D.W. 3 who also claim to be Secretary of the defendant No. 4 club since 1975-76 till the date of trial would lead to an inference that they were ignorant about the name of the owner. In such view of the matter the learned appellate court came to a finding that the appellant club could not successfully prove their burden of establishing that the club has been in adverse possession for more than statutory period to the knowledge of the plaintiff or his predecessor's-in-interest. On closer examination of the evidence, the 1st appellate court, came to the findings that the appellant had signally failed to discharge their burden of acquiring title by adverse possession.

12. Mr. Banerjee, the learned counsel appearing for the appellant, has however, drawn my attention that the plaintiff's predecessor-in-interest had full knowledge regarding the adverse possession of the appellant's club. He had highlighted the cross-examination of D.W. 1 from whose testimony it was elicited that the plaintiffs predecessor-in-interest Satyanarayan Sarogi had once adorned the chair of Chief guest. Therefore, the plaintiffs vendor had full knowledge about the adverse possession of the suit property. I am not in a position to accept such argument inasmuch as when the club possessed properties in open hostility against the plaintiffs predecessor-in-interest it is quite unlikely to invite the owner as the guest of honour and similarly it appears as absurd that he would accept such offer ever such courtesy was shown. Assuming the appellant had invited him for acting as the chief guest, it militates against the plea of adverse possession, rather supports the claim of the plaintiff that the club has been in., permissive possession. The evidence of P.W. 5 who is a staff from electricity department would unmistakably suggest that the electric line was supplied from the plaintiffs premises. If the defendant No. 4 club occupied the house as an adverse possession it is highly improbable that the plaintiff would supply the electricity connection from his ration shop to the club.

13. Mr. Banerjee has, however, strongly urged that the plaintiff since the time of his predecessor-in-interest was aware about the construction made by the defendant club. The appellate court in its judgment discussed such aspects and came to the positive findings that the defendant No. 4 had failed to establish as to from what date and in which year such illegal construction was made. Neither in the municipal register nor in any public document they have been shown as the occupier of the suit premises so that it could have led to a definite conclusion that they have been in forcible possession of the suit properties. Though, no document was filed by the plaintiff that the defendant No. 4 was admitted into

possession as a licensee but by failure of the defendant No. 4 to establish adverse possession would raise a presumption that its possession is permissive in nature, when the plaintiff claimed possession on the basis of the title such prayer has to be granted, "particularly when the defendant failed to establish adverse possession.

14. Mr. Banerjee relied on a decision reported in AIR 1981 707 (SC) But on reading of the decision the facts of that case are contradistinguished from the present case. In the instant case the defendant No. 4 who claims title by adverse possession could not lay proper proof in establishing that it has been in possession by expressing hostile animus for more than 12 years. The evidence whatever adduced by it had been carefully examined by the 1st appellate court and also by this court from which it could not manifestly be proved that the club has acquired any right by adverse possession. Mere possession by a person for any length of time would not raise an inference that such possession was in fact adverse against the real owner unless there is a manifest hostile animus to the knowledge of the true owner.

15. Mr. Banerjee has again filed a decision reported in Parsinnee (Dead) by Lrs. and Others Vs. Sukhi and Others, In this decision cited above the apex court has laid down broad principle that invariably adverse possessor must prove that possession was peaceful, open and continuous and his possession was adverse to the true owner. In the above decision the name of the adverse possessor was recorded in the revenue record which raised an irreversible conclusion that the appellant established his title by adverse possession. So far the principle enunciated in the above decision there could be no quarrel about it. But in the instant case, the defendant No. 4 club made an unsuccessful attempt to prove acquisition of right by adverse possession. After giving my anxious consideration to the facts and circumstances of this case, I am inclined to hold that the judgment and decree of the 1st appellate court did not suffer either from factual or legal infirmity so as to arrive at any other conclusion. Accordingly, the appeal is devoid of merit and the same is dismissed but in the circumstances the parties are directed to bear their own costs. Appeal dismissed.