



Items- 03-11-2022
34&35.
sg Ct. 8

FAT 487 of 2014
Banamali Jana
Versus
Kanai Lal Manna & Ors.

With

FA 9 of 2015
Manas Kumar Das
Versus
Banamali Jana & Ors.

Mr. Rabindra Nath Datta, Adv.
Mr. Prabir Kumar Misra
...for the appellant in FAT 487/2014
for the respondent in FA 9/2015

Mr. Amit Baran Dash, Adv.
Ms. Ankana Sarkar, Adv.
...for the appellant in FA 9/2015
Mr. Kapil Ch. Shao, Adv.
...for the respondent no.2 in FA 9/2015
for the respondent nos. 1, 9-11 in FAT487/2014

The appeal and the cross-appeal are taken up for hearing and disposed of by this common judgment.

We feel that the appeal could have been disposed of much earlier as the appellant in FAT 487 of 2014 upon ascertaining that the heirs of Basanti Panda were substituted and their possession have been declared but on the operative part of the judgment it was dismissed on the ground that all the co-sharers were not made party in the partition suit which is an error apparent on the face of record. The said error was subsequently rectified and a rectified preliminary decree has now been produced before us. The rectified preliminary decree was brought on record in CAN 10870 of 2015.

The respondent no.13 has preferred the appeal first.



Admittedly, he is a co-sharer by virtue of a deed of purchase from one of the co-sharers. However, the said appellant claimed adverse possession in respect of plot no. 105. The learned Trial Judge has, in our view, on correct appreciation of law, fact and evidence, has declined the said relief as it is clear from the evidence of the defendant no.13 that he himself during his cross-examination has admitted that western side of plot no. 105, measuring 53 decimals of land is in ejmali possession. No exclusivity of any kind could be demonstrated which may have a hostility attached to it.

In a claim for adverse possession, the parties require to establish that such possession is continuous, uninterrupted and hostile, which has not been proved either by the respondent no.13 or by the DW-8. In fact, the best evidence that should have been laid by the defendant no.13 as the defendant no.8 appears to be an interested wings and has no personal knowledge about the matter.

The law is well-settled but mere continuity without proof of ouster will not ripen to absolute ownership. The ordinary classical requirement of adverse possession is that it should be *nec vi, nec clam, nec precario* [see. *Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan* reported in (2009) 16 SCC 517 (para 14 and 23)]. The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. A person who bases his title on adverse possession must show by clear and unequivocal evidence that his title was hostile to the real owner and amounted to denial of his title to the property claimed. In the instant case, the admission in the cross-examination clearly demolishes the



claim of the defendant no.13 as to his title of adverse possession.

On such consideration we do not find any reason to interfere with the judgment and decree passed by the learned Trial Judge rejecting the prayer for adverse possession. However, both the appeals succeeds to the extent that the appellant in both the appeals are co-sharers and in the suit all the co-sharers have been made party.

In view thereof, the Trial Court is directed to pass a preliminary decree on the basis of the shares declared within three weeks from the date of communication of this order along with the LCR.

The department is directed to send down the LCR forthwith with the copy of this order.

The learned Registrar Administration (L&OM) is directed to ensure that this order is complied with by the department concerned.

The appeals are thus disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)