

Gaya Parshad Dikshit

Vs

Dr. Nirmal Chander and Another

Civil Appeal No. 1811 of 1978

(CJI P. N. Bhagwati, D. P. Madon JJ)

03.01.1984

JUDGMENT

BHAGWATI, ACTING C.J. -

1. We have heard the learned counsel on behalf of the appellant and after hearing him and perusing the judgment of the High Court, we find ourselves wholly in agreement with the view taken by the High Court that mere termination of the licence of a licensee does not enable the licensee to claim adverse possession, unless and until he sets up a little hostile to that of the licensor after termination of his licence. It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence by that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough. Here in the present case there is nothing to show that at any time after termination of his licence by Dr. Rama Shanker or by the first respondent the appellant asserted hostile title in himself. The High Court was, therefore, right in taking the view that the appellant had not established any title by adverse possession and in that view of the matter, the suit of the first respondent for recovery of possession of the premises from the appellant was not barred under Article 65 which is the only article of the Limitation Act, 1963 applicable in the present case. We accordingly confirm the judgment of the High Court and dismiss the appeal.

2. Mr. Markandeya, learned counsel appearing on behalf of the appellant, has urged that the appellant has been in possession of the premises which consist of rooms. Nos. 1, 4 and 5 shown in the Amin's map marked 16/5C since his birth and it would cause considerable hardship to him if he were to be evicted from these rooms immediately and he has, therefore, requested that sufficient time may be granted to them appellant to vacate these rooms. He has also stated that in the mean while the appellant is prepared to give up possession of room No. 1 but he may be allowed to continue in possession of room Nos. 4 and 5 for some reasonable period. This is a reasonable request on behalf of the appellant. In view of the fact that the appellant has been in possession of rooms Nos. 1, 4 and 5 for a very long period and he has a son who is studying in school, we are inclined to period and he has a son who is studying in school, we are inclined to grant time to the appellant to hand over possession of room Nos. 4 and 5, provided he gives up possession from No. 1 on or before February 28, 1984. If the appellant hands over vacant and peaceful possession of room No. 1 and any other portion of the house which may be in his own occupation apart from rooms Nos. 4 and 5 on or before February 28, 1984 and he and his son file an affidavit in this Court on or

before the same date stating that they are in possession and occupation of rooms. Nos. 4 and 5 and under taking that they will not induct anyone else in possession or occupation of these two rooms and will hand over vacant and peaceful possession of these two rooms to respondent 1 on or before June 30, 1987, the decree for possession against the appellant in respect of rooms Nos. 4 and 5 will not be executed until June 30, 1987. If vacant and peaceful possession of room No. 1 is not handed over by the appellant to respondent 1 on or before February 28, 1984 or if the appellant and his son fail to file an affidavit in the aforesaid terms on or before that date, the decree for possession will become executable forthwith.

3. There will be no order as to costs throughout.

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