

**Ram Krishna Granthagar and Others Vs. Ahi Bhusan Ghosh and Others**

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**Court :** Kolkata

**Decided On :** Oct-10-1991

**Reported in :** AIR1992Cal264,(1992)1CALLT396(HC),1992(1)CHN94

**Judge :** Monoranjan Mallick and ;Manabendra Nath Roy, JJ.

**Acts :** [Limitation Act, 1963](#) - Schedule - Articles 64 and 65;; West Bengal Public Libraries Act, 1979 - Section 11;; [Code of Civil Procedure \(CPC\), 1908](#) - Section 100;; Societies Registration Act;; Uttar Pradesh Zamindary Abolition and Land Reforms Act, 1950;; West Bengal Land Reforms Act, 1986 - Section 3A, 3A(1) and (2)

**Appeal No. :** S.A. No. 648 of 1989

**Appellant :** Ram Krishna Granthagar and Others

**Respondent :** Ahi Bhusan Ghosh and Others

**Advocate for Def. :** S.P. Roy Choudhury, ;Haradhan Banerjee, ;Amitava Pain and ;Mrs. Sucheta Mitra, Advs.

**Advocate for Pet/Ap. :** Sakti Nath Mukherjee, ;Bhaskar Ghosh and ;Prabhat Kr. Mukherjee, Advs.

**Judgement :**

ORDER

## **Monoranjan Mallick, J.**

1. This is an appeal against the judgment and decree passed by the Ld. .Addl. District Judge, 2nd Court, Howrah dt. 17-3-87 in T.A. No. 293,' 84 affirming the judgment and decree passed . by the 3rd Asstt. District Judge, Howrah in T.S. No. 63/81. The facts which may be necessary for disposing of the appeal may be briefly stated as follows :--

The plaintiff-respondent No. 1 has brought the above Title Suit for declaration of title, recovery of possession, permanent and mandatory injunction alleging that the plaintiff along with the respondents Nos. 6 and 7 are the exclusive owners of the suit property bearing Holding No 9, Naba Kumar Nandy Lane and were in possession of the suit property therein. He is an old man and used to live in Calcutta and for his service had to remain mostly at Beharampur while his nephews respondents Nos. 5 and 6 have been residing at Bangalore for their avocation. The plaintiff sometime, in 1980 on receipt of Summons in connection with the T. S. No. 154/80 pending in the local 3rd Munsifs Court, Howrah went to the suit property and found to his astonishment the existence of a club raising construction. As he raised protest, the Secretary and some members of the club proposed him to sell the suit property to them which he refused. On enquiry in the Howrah Municipality he came to know that the name of the said club has been recorded as occupier on and from 24-2-78 and the name of one Anjan Roy was recorded as Secretary of the respondent No. 1 Ram Krishna Grantha-gar. On approaching the Municipal Authority for correction of their . record the Authorities asked him to seek legal redress. The plaintiff having, thus found that the respondent No. 1 is in possession of the suit land illegally by raising the construction, the plaintiff has filed this suit for declaration of title, recovery of possession for mandatory injunction for removal of the structure and for permanent injunction restraining the defendants from interfering with the possession of the plaintiff and the pro forma defendants 7 and 8. The defendant No. 1 through its Secretary, Sankar Bhattacharjee has. filed written statement and Sri Sankar Mukherjee, the defendant No. 6 had also filed written statement. The contentions, raised by both the defendants being the same may be briefly stated as follows :-- The suit property was being possessed by the local people for more

than seventy years for performing Puja of Sri Rakhakali Mata and the local boys also used the suit property as their play ground. Later on the local people organised an Association in the name of Jaganmata Barwari and Mahajati Samity having their office at suit I and Thereafter, Mahajati Samity being defunct the land was being used by the aforesaid Jaganmata Barwari and later on in 1969 the members organised a library raising a hut in the suit land. Prior to that, however, the club members fenced the land with wall in between 1958 and 1960 and they used to observe national function like Netaji Jayanti and Naba Barsha inside the holding. Subsequently, the members of the said Barwari changed the name and style of the club to Ramkrishna Granthagar in 1969 after absorption of the existing structure and other amenities and the Ramkrishna Granthagar continued to occupy the said property catering to the needs of the local people. The club was registered in 1972 and it received financial assistance from the State Government and other assistance from various sources. They also opened a Child Development Project in an annexed room of the club. The owner of the Holding No. 8 filed a false suit being T.S. No. 154/80 in the local Munsifs Court to grab a strip of land belonging to Holding No. 1 and has now set up the present plaintiff to file this suit. But the defendant being in possession of the property for more than twelve years have acquired title by adverse ' possession and the present suit is liable to be dismissed.

2. The Ld. Trial Judge on considering the evidence on record has found that the plaintiff and the pro forma defendants 7 and 8 have the exclusive title in the suit property, that the defendants' story of acquisition of title of adverse possession has not been established by the defendants by giving cogent evidence that the possession by the local people or by Jaganmata Barwari or Mahajati Samity could not be tacked by the defendant No. 1 that their possession could not relate back to earlier than 1971 or 1972 when the club was registered and the plaintiff having brought this suit within a period of twelve years from the said date is entitled to recover possession of the suit property from the defendants.

3. Being aggrieved the defendants Nos. 1 and 6 have preferred the appeal before the District Judge, Howrah and the Addl. District Judge 2nd Court, Howrah affirmed the judgment and decree passed by the Ld. Trial Judge, being aggrieved

the defendant No. 1, Ramkrishna Granthagar and Sri Swapan Kumar Chandra Ex-Officio member of the said Granthagar have preferred this appeal.

4. The appellants have urged the following three points namely --

(1) That the Ld. Courts below have failed to appreciate the law relating to tacking of adverse possession and failed to appreciate the case of the appellants that Jaganmata Barwari subsequently changed its name and established a library which came to be known as Ramkrishna Granthagar.

(2) The Ld. Courts of Appeal have failed to consider that the Ramkrishna Granthagar have been declared to be a sponsored Public Library and consequently in terms of S. 11 of the West Bengal Public Libraries Act. 1979 all properties belonging to appellant No. 1 vested in the local library authority and as such, the State Government is a necessary party to the suit.

(3) The plaintiff not being in khas possession of the suit land on the date of vesting the right of retention is lost and. the suit for recovery of possession is not maintainable.

5. The respondents Nos. 1 and 8 contest the appeal.

6. In course of hearing the appellants have filed an application before this Court for admitting certain additional evidence alleging that such an application was filed before the Ld. Appellate Judge but the Ld. Appellate Judge even though directed that the said application would be considered along with the delivery of judgment did not dispose of the said application.

7. Even though in the ground of appeal no such ground has been taken yet we have on hearing both the parties directed the appellants to produce before this Court the documentary evidence which they sought to produce before the Ld. Appellate Judge for ends of justice as we have found that the Ld. Appellate Judge did not really dispose of such an application and they have been admitted as new evidence.

8. We have heard this appeal along with the said new evidence admitted before us at about the time of hearing.
9. Mr. Sakti Nath Mukherjee appearing on behalf of the appellant has urged that the documentary evidence clearly established that the possession of Jaganmata Barwari has still been continuing as the name of the association has only been changed from Jaganmata Barwari to Ram Krishna Granthagar. Sometimes in 1969 as it will be evident from the evidence already exhibited before the Ld. Trial Judge and the Addl. evidence that have been produced before this Court.
10. We find that both the Courts below on considering the evidence on record have come to the finding that the alleged possession of the local people or the unregistered society like Jaganmata Barwari and Mahajati Samity cannot be tacked by the defendant-appellant No. 1. As local members having stray possession in the said property could not acquire any title by virtue of adverse possession. We have now to consider as to whether that the new evidence that has been produced are sufficient to hold that the concurrent findings of the fact of both the Courts below are required to be upset in view of such additional evidence.
11. The evidence that was produced before the Ld. Trial Judge was duly considered by the Ld. Trial Judge and the Ld. Trial Judge has found from that evidence there was nothing to show they could tack the possession of Jaganmata Barwari or Mahajati Samity. Before us it is seriously contended that the new documents produced before us would show that sometimes in 1969 the local people decided to change the name of Jaganmata Barwari into Ramkrishna Granthagar.
12. We are of the view that such documents sought to be produced for the first time in Appeal Court are not documents which cannot be prepared at a subsequent stage for the purpose of the suit. The only reliable evidence is the registration of Ramkrishna Granthagar under the Societies Registration Act, The Memorandum of Association (Ext. X) of the Ramkrishna Granthagar does not make any whisper that the said Granthagar has been created by the organizers of the Jaganmata Barwari or that it is the Jaganmata Barwari which is registering as a registered Society after changing its name from Jaganmata Barwari to

Ramkrishna Granthagar. The Ld. Advocate for the appellants has referred to two Privy Council decisions reported in and . In (Secretary to State v. Debendralal Khan) it has been observed that the party claiming adverse possession need not prove 'acts of possession for every moment of the requisite period. In (Srish Chandra v. Baijnath) the Privy Council has held that the possession required to be adverse possession must be adequate in continuity, in publicity and in extent to show that its possession adverse to the competitor that it is not necessary that adverse possession should be brought to the knowledge of the person against whom it is claimed and it is sufficient that possession should be overt and without any attempt of concealment so that the person against whom time is running could if he exercises due vigilance to be aware of what is happening.

13. The above principles laid down in the Privy Council decision are very well-known principles. But these two decisions were duly considered by the Trial Judge and the Trial Judge on considering such decision could not come to the finding that such stray possession by the local people and some unregistered or unincorporated Society from time to time could be tacked by the present defendant No. 1 who came into legal existence by proper registration only in 1972 as a Society registered under the Societies Registration Act. Moreover, the Supreme Court in : [1965]3SCR63 have clearly held that the party claiming adverse possession must establish that he was in such adverse possession for twelve years before the date of the suit and for computation of such period he can avail of the adverse possession of such person or persons through whom he claims but not the adverse possession of the independent trespassers. On considering the evidence adduced before the Ld. Trial Judge and also considering the additional evidence produced before us we are not at all satisfied that the appellants have succeeded in proving that they could tack their possession with some stray possession of some local people or some unregistered or unincorporated Association of local people like Jaganmata Barwari and MahajatiSamity. The defendant appellant No. 1 had its legal entity only in 1972 and from that date onward they could exercise any legal possession in respect of any property in their occupation and could by such occupation acquire valid title therein by adverse possession by continuously possessing the same over twelve years. It has been found that in the R.S. Record of Right the suit property has been recorded in the

name of Amulyamoyee and Haripada Dhara. D.W. 2, Biswa Ranjan Mukherjee has stated in cross-examination that they came and remained in possession on the basis of the verbal permission from Amulyamoyee and Haripada in whose name the suit property was recorded in the R.S. Record of Right, when that is the position namely that the possession having originated from permission, such possession can never be adverse possession. The Division Bench of our High Court in Premendu Bhusan v. Sripati Ranjab : AIR1976 Cal55 has held when a person in unauthorised occupation admits title of the true owner his possession cannot be adverse to the true owner but would be deemed on his behalf. In this case if the defendant treating Amulyamoyee and Haripada as the true owners sought for permission from them to occupy the property, such possession cannot be adverse to those persons or to plaintiff and the pro forma defendants 7 and 8 who are now found to be the real owners of the property.

14. In view of the above, we are unable to hold that the appellants have succeeded in proving their case that they have acquired the title by adverse possession and the findings of both the Courts below in this respect is upheld.

15. The second point that is urged before us is that the State of West Bengal or the District Library Authority is a necessary party as in view of the Ramkrishna Granthagar having been declared as a sponsored Public Library, the property of the Granthagar has vested in the local library authority in terms of S. 11 of the W.B. Public Libraries Act, 1979.

16. Before the Ld. Trial Judge as well as before this Court evidence has been produced by the appellant that Ramkrishna Granthagar has now been sponsored as a Public Library under the said Act. So, it is a sponsored library under the W.B. Libraries Act, 1979. Under the Act every District local Library Authority has been constituted u/S. 9 of the Act which is a body corporate. S. 11 of the Act declares that all properties movable and immovable acquired or held for the purpose of any Public Library in any area shall vest in the local library authority of that area.

17. On behalf of the appellant it is, therefore, contended that the suit property u/ S. 11 has vested with the local library authority of Howrah and the plaintiff not having been impleaded the said local library authority, the present suit is not

maintainable.

18. Even though in the written statement it is only vaguely stated that the appellant No. 1 has been sponsored by the State Government yet no whisper has been made that the local library authority is to be made a party otherwise the suit would fall.

19. On behalf of the respondent it is contended that the suit property is being possessed by the Ramkrishan Granthagar as a trespasser and has got no legal right to occupy. Therefore, it has neither validly acquired or validly held the suit Property and the expression 'acquired or held' in S. 11 of the W.B. Public Libraries Act, 1979 must be interpreted as validly acquired or validly held and, therefore, the property which the appellant No. 1 occupying as a trespasser cannot vest with the local library authority. In support the Supreme Court decision reported in : [1970]2SCR10 (Budhan Singh v. Babibux) has been referred to. The Supreme Court in that decision interpreting the word 'Held' in U.P. Zamindari Abolition & Land Reforms Act, 1950 in S. 9 has held that the word 'Held' in that Section must be interpreted as lawfully held.

20. On carefully considering the evidence of the W.B. Libraries Act, 1979 we are of the view that any property which is legally acquired or lawfully held by a Public Library sponsored under the W.B. Libraries Act, 1979 shall vest with the local library authority of that area. If the library illegally occupies a plot of land to which he has not yet acquired valid title by adverse possession such property cannot vest with the local library authority only the property movable and immovable which is validly acquired or held by the sponsored library shall vest in the local library authority.

21. We have already held that the appellant No. 1 has not acquired any valid title in the suit property by adverse possession then we are unable to hold that the suit property which the appellants are occupying as trespassers have vested with the local library authority under the above Act. In that view the local library authority or the State of West Bengal cannot be held to be a necessary party. Therefore, this contention of the appellants also fails.

22. The third contention of the appellant is that the interest of the plaintiff and the respondents Nos. 7 and 8 being that of a non-agricultural tenant governed by W.B. Non-Agricultural Tenancy Act, 1949 have vested in the State u/S. 3A of the W.B. Land Reforms Act with effect from 9th September, , 1986 in accordance with S. 3A(1) of the Act, that under sub-sec. (2) of S. 3A of the Act such non-agricultural tenant who shall be deemed to rayit within the meaning of the Act can retain such land within the ceiling limit fixed by the Act if such land is in his khas possession. But admittedly the plaintiffs were out of possession of the said property when the interest of the plaintiff and the pro forma defendants 7 and 8 vested to the State with effect from 9th September, 1986 and consequently the plaintiffs and the pro forma defendants 7 and 8 have lost their right of retention and the present suit for recovery of possession in view of such subsequent event is not maintainable.

23. In support the Supreme Court decision reported in AIR 1977 SC 6 Guru Charan Singh v. Kamla Singh and the Division Bench judgment of our High Court reported in : AIR1984 Cal122 Benod Behari v. Shew Kamal have been referred to. In Guru Charan Singh's casereported in : [1976]1SCR739 Supreme Court has held that when the plaintiff has filed a suit for declaration of title and possession in respect of the property vested to the State under Bihar Land Reforms Act, 1940 and the plaintiff not being in khas possession is not entitled to the benefit of exemption from such vesting u/S. 6 of the Act, not being in khas possession of the property, the property being in the possession of the trespasser and the plaintiffs suit for recovery of possession and declaration of title should, therefore fail.

24. The Division Bench of our High Court in Benod Behari v. Shew Kamal has held that an intermediary who is not in khas possession cannot enforce his right to possession even against the trespasser after the vesting of his Estate, The Division Bench has also relied on the decision of Guru Charan Singh's case referred to in the above in taking the above view.

25. On behalf of the respondent it is contended that no such plea has been taken by the appellant either in the written statement nor has any such plea as is sought to be taken in this Second Appeal for the first time has been taken by filing any application before this Court drawing the attention of the Court to any subsequent

event, that the respondents do not admit that the interest of the plaintiffs is that of a non-agricultural tenant governed by the W.B. Non-Agricultural Tenancy Act, that S. 3A of the W.B. Land Reforms Act has no manner of application to this case, that the documents of title including the original Patta of the predecessors-in-interest of the plaintiff would show that the interest of the plaintiffs predecessors was that of Mokarari Maurasi that is permanent tenure, that the interest of the plaintiff being that of intermediary governed by the provision of W.B. Estates Acquisition Act. The interest vested in the State under the said Act and the suit property being non-agricultural land the petitioner was entitled to retain and had retained the said property and was continuing in such possession when the present appellants trespassed therein and the plaintiffs have, therefore, the right to recover the said property being the retained land of the plaintiff under the W.B. Estates Acquisition Act and even if the said land has come within the purview of the definition of land under the W.B. Land Reforms Act by Amending Act of 1981 with effect from 7th August 1969 the plaintiff had the right to retain the said property and the interest of the plaintiff not being that of a non-agricultural tenant governed by the W.B. Non-Agricultural Tenancy Act this new contention raised for the first time in this Second Appeal cannot be allowed to be taken at this stage.

26. We have carefully considered the submissions made by the Ld. Advocates for both the parties in this respect. The original Patta by which one Siddeswari Bewa got the suit property by virtue of the registered Patta clearly showed that the interest acquired by Siddeswari Bewa was Mokarari Maurasi. Siddeswari sold the property to Joggeswar Paul who sold the same to Pravasmi Ghosh and Rajabala Ghosh and Rajabala thereafter sold her interest to Pravasini and on the death of Pravasini the plaintiffs Ahi Bhusan and his two brothers Jyoti Bhusan and Indu Bhusan inherited the said properties. Indu Bhusan died bachelor in 1972 leaving the plaintiff as his only heir and the pro forma defendants Nos. 7 and 8 are the heirs of Jyoti Bhusan.

27. Therefore, the interest which devolved upon the plaintiff and his two brothers and who were possessing the property as owners when the Estates Acquisition Act came into force were that of intermediaries. The suit property was admittedly used as non-agricultural land when the W.B. Estate Acquisition Act came into

force. There is nothing to show that the said land vested in the State under the said Act. That is also not the case of the present appellant. The case of the appellant is that in the Record of Rights exhibited in this case the interest of Amulyamoyee and Haripada in the suit property were shown as Dakhalkar Basat Praja and therefore, the interest was that of a non-agricultural tenant governed by W.B. Non-Agricultural Tenancy Act.

28. The non-Agricultural tenant governed by the W.B. Non-Agriculture Tenancy Act has been defined in the said Act. There is no material before this Court at this stage to come to any finding that the interest of the plaintiff is that of non-agricultural tenant governed by the W.B. Non-Agricultural Tenancy Act. Therefore, when it is not admitted by the plaintiff-respondent that their interest is that of non-agricultural tenant governed by the W.B. Non-Agricultural Tenancy Act then in this Second Appeal we cannot hold that their interest vested in the State u/ S. 3A of the W.B. Land Reforms Act. The Supreme Court in Guru Charan Singh's case reported in : [1976]1SCR739 has held that a pure question of law going to the root of the case and based on undisputed or proven facts could be raised even before the Court of last resort, provided the opposite party was not taken by surprise or otherwise unfairely prejudiced. In this case the respondents strongly refute the contentions of the Ld. Advocate for the appellant taken for the first time in this Second Appeal without having any necessary foundation thereof that the interest of the plaintiff being that of non-agricultural tenant governed by the W.B. Non-Agricultural Tenancy Act their interest vested in the State with effect from 9th September, 1986 and the plaintiff cannot, therefore, recover possession thereof from the trespasser.

29. On perusing the grounds of appeal also we find that only in paragraph XI11 it has been vaguely stated that the plaintiff not being in the khas possession of the suit land on the date of vesting right of retention is lost and the suit for recovery of possession is not maintainable. It was not indicated that the interest of the plaintiff was that of non-agricultural tenant governed by the W.B. Non-Agricultural Tenancy Act and that their interest was vested with the State u/S. 3A of the W.B. Land Reforms Act. Therefore, on the basis of the said vague ground taken in the ground of appeal we cannot permit the appellant to take this new plea at this stage and

this new plea even if it is a question of law the respondent is very much disputing the contention of the appellant on this point and the question of law not being based on undisputed or proven facts cannot be allowed at this stage to be agitated. We are of the view that the appellant cannot be allowed to take this plea in this Second Appeal for the first time when the question of law raised not being based on undisputed or proved facts can be permitted to be raised for the first time in this Second Appeal.

30. In view of the above, all the contentions raised by the appellant fail and the appeal is dismissed with cost.

All interim orders are vacated.

**Manabendra Nath Roy, J.**

31. I agree.

32. Appeal dismissed.

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