

**(2012) 09 CAL CK 0009**

**Calcutta High Court**

**Case No:** S.A. No. 154 of 1993

Md. Abed Ali Laskar

APPELLANT

Vs

Md. Aynal Laskar

RESPONDENT

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**Date of Decision:** Sept. 14, 2012

**Acts Referred:**

- Specific Relief Act, 1963 - Section 34
- West Bengal Estates Acquisition Act, 1953 - Section 5B

**Citation:** (2013) 2 CHN 203

**Hon'ble Judges:** Tapan Kumar Dutt, J

**Bench:** Single Bench

**Advocate:** Subhas Chandra Karar, Mukteswar Maity and Surajit Roy, for the Appellant;  
Murali Mohan Ray for the Respondent No. 1, for the Respondent

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### **Judgement**

Tapan Kumar Dutt, J.

This Court has heard the learned the learned Advocates for the respective parties. The facts of the case, briefly, are as follows:

The plaintiff's contention was that the erstwhile landlord Shibnarayan Chattopadhyaya granted tenancy in respect of the suit property to Kartick Chandra Patowari and others but the tenants defaulted in payment of rent and the said Shibnarayan Chattopadhyaya filed a rent suit against the said tenants and obtained a decree. The said decree-holder put the decree into execution giving rise to a certain rent execution case. The rent suit was of the year 1953 and the execution case was of the year 1956. It was alleged by the plaintiff that in the execution case the decree-holder purchased the suit property by way of auction purchase on 19.9.1956 and the sale was confirmed on 22.12.1956 and a sale certificate was accordingly issued. It was the plaintiff's case that thereafter the decree-holder took possession of the suit property through Court and his name was entered into the Revisional Settlement records in respect of the suit land. The plaintiff's further case

was that the said Shibnarayan Chattopadhyaya sold the suit property along with some other lands to one Ebad Ali Laskar, Basanta Kumar Sardar and Ombar Ali Sk. by registered sale deed dated 19th Baisakh, 1374 B.S. corresponding to 3rd May, 1967. The plaintiff's further case was that the said three purchasers effected amicable partition amongst themselves and subsequently the said Basanta Kumar Sardar sold his share being 25.1/3rd decimals of land to the plaintiff by a registered sale deed dated 6.1.1983 corresponding to 21st Pous, 1389 B.S. The plaintiff's case was that the plaintiff had been in continuous possession for a period of more than 12 years to the knowledge of the general public including the defendants and the plaintiff acquired title by adverse possession. The plaintiff further alleged that the defendants forcibly dispossessed the plaintiff from the suit property on 15.1.1983 corresponding to 1st Magh, 1389 B.S. and since then the defendants are in forcible occupation of the suit property. The plaintiff accordingly filed the suit for declaration of title, accounts and partition. The plaintiff further alleged that the suit land was erroneously recorded in the name of the Patowaris though their title was extinguished by the auction sale. The plaintiff took the stand that the defendant Nos. 1 and 2 did not purchase any part of the suit land from Ebad Ali and Ombar Ali and even if there was such purchase then the title in respect of 2/3rd share belonging to Ebad Ali and Ombar Ali together could only pass.

2. The defendants/appellants contested the said suit by filing a written statement alleging that the plaintiff has no possession over the suit land and, therefore, the suit is barred by the provisions of section 34 of the Specific Relief Act. The said defendants' case was that Kartick Chandra Patowari was a tenant under Shibnarayan Chattopadhyaya and he sold the suit land to Ombar Ali by a deed dated 8.6.1971 corresponding to 24th Pous, 1378 B.S. and the auction sale was nothing but a paper transaction and the landlord never took possession of the property. The said defendants further alleged that in 1967 one Ebad Ali claimed possession of the suit property and started a case against the Patowaris which was dismissed in favour of the Patowaris. The defendants' further case was that thereafter the said Ebad Ali, the father-in-law of the said Ombar Ali, raised his claim in respect of the suit property and Ombar Ali sold out the suit property to the defendant Nos. 1 and 2 by two registered sale deeds on 16th Falgoon, 1385 B.S. corresponding to 1st March, 1979 and that since their purchase the said defendants are in possession of the suit property. The defendants further alleged that the purchase made by the aforesaid three persons on 3.5.1967 and subsequently by the plaintiff on 6.1.1983 are all fictitious and inoperative. The said defendants denied the material allegations made in the plaint.

3. That the said suit ultimately came up for hearing when the learned Trial Court by the judgment and decree dated 24th June, 1988 dismissed the said suit. It appears from the Trial Court's judgment that the auction purchase allegedly made by the said Shibnarayan Chattopadhyaya was vehemently assailed on behalf of the said defendants and it was argued on behalf of the said defendants that the alleged

auction purchase, if any, was stated to have been held on 19.9.1956 and hence no raiyati interest of the Patowaris could pass to the auction purchaser by operation of law u/s 5B of the West Bengal Estates Acquisition (Second Amendment) Act, 1954 because according to the said section 5B such sale shall be deemed to have been void and of no effect. It was argued on behalf of the said defendants that by the said auction purchase no saleable interest was acquired by the said Shibnarayan Chattopadhyaya and hence the subsequent sale to the aforesaid three persons were of no value and subsequently the plaintiff has also not acquired any title by purchase from the said Basanta Sardar.

4. It further appears from the Trial Court's judgment that the learned Lawyer for the plaintiff argued before the said learned Court that section 5B of the said Act of 1953 did not bar the auction sale in execution of all decrees after 1st June, 1954 but only of the rent decrees. It appears that it was further argued on behalf of the plaintiff that if there is a sale in execution of a rent decree on or after 1st June, 1954 it shall be deemed to be in execution of money decree instead of rent decree and will have the effect of sale under the CPC and not of a sale under the statutes mentioned in section 5B of the said Act of 1953. It has been further recorded in the learned Trial Court's judgment that the argument made on behalf of the plaintiff was that as in the present case the sale was held on 19.9.1956, that is, after 1st June, 1954, the sale should be treated as in execution of a money decree under the CPC resulting in the sale of interest of the judgment-debtors and hence section 5B of the said Act of 1953 does not and cannot constitute a bar in acquisition of saleable interest in the suit property by the said Shibnarayan Chattopadhyaya.

5. The learned Trial Court found that admittedly the auction sale of the suit property was held on 19.9.1956 in execution of a rent decree and, therefore, the said auction sale, prima facie, appears to have been hit by the provisions of section 5B of the West Bengal Estates Acquisition Act.

6. The learned Trial Court, after considering some reported decisions, came to its conclusion that it is unable to approve the decision that all sales between 1st June, 1954 to the vesting of raiyati interest are to be deemed as being under the statutes mentioned in section 5B of the said Act of 1953 and should be declared void. The learned Trial Court, on the contrary, held that such sales though deemed as invalid and of no effect under the aforesaid acts should be treated and will have the effect of sales under the CPC in execution of money decree, if otherwise valid.

7. The learned Trial Court came to the conclusion that the auction sale of the suit property was held on 19.9.1956, that is, after the vesting of the raiyati interest of the Patowaris and hence it cannot be treated as a sale under the CPC in execution of any money decree and, therefore, by such sale the landlord Shibnarayan Chattopadhyaya did not acquire any saleable interest in the suit property and consequently the three purchasers from him and ultimately the plaintiff also did not acquire any good title in the suit property. The learned Trial Court dismissed the

said suit by holding that the plaintiff has failed to prove his title in the suit property.

8. The plaintiff, challenging the aforesaid judgment and decree passed by the learned Trial Court, filed title appeal No. 318 of 1988 and the learned Lower Appellate Court by the impugned judgment and decree dated 19th February, 1990 allowed the said title appeal and set aside the judgment and decree passed by the learned Trial Court. The learned Lower Appellate Court decreed the suit by declaring the right, title and interest of the plaintiff in 25.1/3rd decimals of land in plot No. 3148, Khatian No. 588, Mouza Uttar Radhanagar P.S. Mograhat, District South 24-Parganas. The learned Lower Appellate Court also ordered that the plaintiff gets a decree for recovery of khas possession of the aforesaid land from the defendants/appellants and the plaintiff also gets a decree for recovery of mesne profits from the defendants/appellants from 15.1.1983, that is, the date of dispossession, upto the date of recovery of khas possession but the rate of mesne profits should be determined in an appropriate proceeding.

9. The learned Lower Appellate Court proceeded to dispose of the appeal with the observation that at the time of hearing the learned Advocates for both the sides agreed that the appeal will have to be decided on the point whether the auction sale and purchase of the suit land for arrears of rent after the date of vesting was a legal one. The learned Lower Appellate Court, after considering the submissions of both the sides found that the entire suit and the appeal hinges on a point of law, that is, whether the said auction purchase of the suit land made by the landlord Shibnarayan Chattopadhyaya and subsequent delivery of possession on the basis of such auction sale was valid or not. The learned Lower Appellate Court found that the learned Munsif committed an error in interpreting section 5B of the West Bengal Estates Acquisition Act, 1953. The learned Lower Appellate Court held that the auction purchase dated 19.9.1956 by the decree holder Shibnarayan Chattopadhyaya was not hit by the provisions of section 5B of the said Act of 1953 as the sale took long after the period 1.6.1954 to 14.4.1956. The learned Lower Appellate Court observed that "By such sale the Legislative objects of section 5B of the West Bengal Estates Acquisition Act were not affected in any manner. The legislature did not want to deprive the Superior landlords of their dues as arrears of rent which were to be paid by the raiyats and under raiyats to them for their tenure or holding".

10. The learned Lower Appellate Court found that the learned Trial Court did not discuss the claim made by the plaintiff with regard to acquisition of any title by way of adverse possession. The learned Lower Appellate Court observed that it will be found from Ext. 3 that Shibnarayan Chattopadhyaya obtained possession of the suit land through Court on 18.12.1957 and thereafter he possessed the suit land in khas up to the date of his sale to Ebad Ali Laskar, Basanta Kumar Sardar and Ombar Ali Sk. on 3rd May, 1967 (19th Baisakh, 1374 B.S.). The learned Lower Appellate Court held that thereafter Basanta Kumar Sardar sold his share to the plaintiff vide Ext. 1

on 6.1.1983. The learned Lower Appellate Court found that the said Kartick Chandra Patowari and others never challenged the legality and validity of the auction sale at any point of time and after the enactment of section 5B of the said Act of 1953 the said Kartick Chandra Patowari and others did not make any endeavor to recover khas possession of the 77 decimals of land including the suit land from Shibnarayan Chattopadhyaya or the said Ebad Ali Laskar, Ombar Ali Sk. and Basanta Kumar Sardar. The learned Lower Appellate Court found that from 18.12.1957 up to 8.6.1971 when the Ext. G was executed possession of 77 decimals of land including suit land had been in the lawful possession of Shibnarayan Chattopadhyaya and thereafter under the aforesaid three vendees, of whom Basanta Kumar Sardar was one of them. Thus, according to the learned Lower Appellate Court, from 18.12.1957 to 8.6.1971 Kartick Chandra Patowari and others were out of possession from the suit land though by virtue of section 5B of the said Act of 1953 the auction sale has been challenged to be a void one. The learned Lower Appellate Court found that the possession of the said Shibnarayan Chattopadhyaya and Basanta Kumar Sardar was open, continuous possession and to the knowledge of the legal owners Kartick Chandra Patowari and others. The learned Lower Appellate Court found that originally Shibnaraya Chattopadhyaya and thereafter Basanta Kumar Sardar possessed the land measuring 25.1/3rd decimals without any title and denying the title of the lawful tenants Kartick Chandra Patowari and others and, therefore, their possession was adverse to the title of the original owners. It appears that the learned Lower Appellate Court proceeded on the basis that even if the said Shibnarayan Chattopadhyaya and Basanta Kumar Sardar were possessing the 25.1/3rd decimals of land without any title the plaintiff had acquired title by way of adverse possession and, therefore, according to the learned Lower Appellate Court, on the expiry of 18.12.1969 (i.e. complete 12 years from 18.12.1957) the legal title of Kartick Chandra Patowari and others in the land measuring 77 decimals were completely extinguished. The learned Lower Appellate Court found that the said Ombar Ali did not acquire any title by virtue of the deed marked Ext. G executed Kartick Chandra Patowari and others in favour of the said Ombar Ali.

11. The learned Lower Appellate Court came to the conclusion that even if the auction sale was hit by section 5B of the West Bengal Estates Acquisition Act, 1953 then also the plaintiff has acquired a good and lawful title over the suit land measuring 25.1/3rd decimals by virtue of adverse possession for more than 12 years since the time of his predecessors-in-interest and, therefore, on the date of dispossession by the defendant Nos. 1 and 2 the plaintiff had a good and subsisting title and lawful possession over the suit land measuring 25.1/3rd decimals. Accordingly, the learned Lower Appellate Court found that the plaintiff was entitled to a decree as prayed for by him before the learned Trial Court.

12. That challenging the impugned judgment and decree passed by the learned Lower Appellate Court the defendants have filed the present second appeal.

13. The learned Advocate appearing on behalf of the defendants/appellants submitted that the said Shibnarayan Chattopadhyaya did not retain any land - at least nothing appears from record to show that the said Shibnarayan Chattopadhyaya retained any land and, therefore, the said Shibnarayan's title in the lands in dispute had vested in the State. The said learned Advocate submitted that at least the 77 decimals of land in dispute was not retained by said Shibnarayan Chattopadhyaya and, therefore, it stood vested in the State. The said learned Advocate submitted that the learned Trial Court was right in holding that after the vesting the said Shibnarayan could not have purchased the said lands in the auction sale and also could not have sold the said lands to the said three persons, namely, Ebad Ali Laskar, Basanta Kumar Sardar and Ombar Ali Sk. It appears from the records that the auction sale took place on 19.9.1956 and the sale by Shibnarayan Chattopadhyaya to the aforesaid three persons took place on 3.5.1967.

14. The said learned Advocate for the defendants/appellants referred to Exts. G, G/1 and G/2 for the purpose of tracing out the title of the said defendants. According to the said learned Advocate, section 5B has hit the auction sale which took place on 19.9.1956. The said learned Advocate submitted that as per section 5B of the said Act of 1953, the suit property could not have been sold after 1.6.1954 and that the purported auction sale is a void one. The said learned Advocate submitted that the names of Kartick Chandra Patowari and others had been recorded in the record-of-right and they paid to rent to the State and they became direct tenants under the State. According to the said learned Advocate, the plaintiff and/or his predecessors were not in possession of the property in dispute and, therefore, the plaintiff had no case of adverse possession at all. According to the said learned Advocate, the State Government has received Khajna from the said Kartick Chandra Patowari and others and also from the defendants/appellants as would appear from the Ext. KA series and, therefore, the defendants/appellants have become the direct tenants under the State. The said learned Advocate referred to a decision reported at 1980 (2) CLJ 1 (Panchu Molla vs. State of West Bengal & Ors.) in this regard. The said learned Advocate referred to a decision reported at [Benode Behari Ghosal Vs. Shew Kamal Singh and Others](#), wherein it has been held that an intermediary who is not in khas possession cannot enforce his right to possess even against a trespasser after the vesting of his estate. The said learned Advocate also referred to a decision reported at [The State of West Bengal Vs. Sailendra Kumar Sen](#), and referred to paragraphs 18 and 20 of the said reports. In paragraph 18 of the said reports the Hon'ble Court was pleased to observe while considering the provisions of section 5B of the said Act of 1953 that under the Acts and regulation mentioned u/s 5B the defaulting estate, tenure or under-tenure only could be put to sale in execution of a decree for rent of such estate, tenure or under-tenure. The Hon'ble Court was further pleased to observe that as a result of vesting of the intermediary interest, the defaulting estate, tenure or under-tenure ceased to exist, so that after vesting it is no longer possible to put such interest to sale and it is thus obvious that normally

any rent sale under the said statutes taking place prior to vesting would be valid in law and would entitle the auction purchaser to the defaulting estate, tenure or under-tenure.

15. In Paragraph 20 of the said reports the Hon''ble Court was pleased to observe that in execution of rent decree for arrear of rent passed prior to vesting under the statutes mentioned in section 5B, after vesting of interests of raiyats or under-raiyats, it was no longer possible to put the defaulting holding to sale as such holding then ceased to exist. It appears that in the said reports that the effective date in section 5B of the said Act of 1953 as mentioned therein is the first day of June, 1954.

16. The said learned Advocate for the appellants submitted that in Exts. G/1 and G/2 there is no mention of any purchase by Ebad Ali and the name of Ebad Ali appears in the said deeds only to avoid future difficulties as the said Ebad Ali did not have any title or possession in respect of the said 77 decimals of land. The said learned Advocate further submitted that the said provisions of section 5B of the said Act of 1953 is attracted in the instant case. The said learned Advocate further submitted that the plaintiff was not in possession of the property in dispute and he is not entitled to obtain any relief on the alleged ground of adverse possession.

17. The learned Advocate appearing on behalf of the plaintiff/respondent submitted that 1/3rd share of the said Basanta Kumar Sardar remains unaffected, as the said Basanta is not a party either in Ext. G/1 or Ext. G/2.

18. The said learned Advocate submitted that the finding of the learned Trial Court that the defendants traced their title from Kartick Chandra Patowari is not correct as it appears from the materials-on-record that Ebad Ali and Ombar Ali were shown to be the alleged vendors of the defendants but the said Ebad Ali did not derive any title from Kartick Chandra Patowari. The said learned Advocate submitted that Ebad Ali obtained title in respect of the 25.1/3rd decimals of land from Shibnarayan Chattopadhyaya. According to the said learned Advocate, the materials-on-record indicated that the defendants are treating the sale by Shibnarayan Chattopadhyaya to the aforesaid three person including Ebad Ali as a valid one. The said learned Advocate further submitted that the learned Trial Court did not decide the question whether the decree obtained by the said Shibnarayan Chattopadhyaya was a rent decree to which provisions of the West Bengal Estates Acquisition Act was applicable or was it a money decree under the Civil Procedure Code. The said learned Advocate by referring to Ext. G submitted that the said exhibit shows that the said Shibnarayan was in possession of the property in dispute at least till 8.6.1971 and, therefore, it is not known as to how the name of the Patowari''s could be recorded in the record-of-right. The said learned Advocate also by referring to Ext. G/1 and G/2 submitted that the said Exhibits do not show how the said Ebad Ali acquired title but the deeds show that the said Ebad Ali has been described as a vendor.

19. The learned Advocate for the plaintiff/respondent submitted that the decree obtained by Shibnarayan in the rent suit should be treated as a money decree under the CPC and not a rent decree where the provisions of Bengal Tenancy Act could be made applicable. The said learned Advocate submitted that the said decree was executable and it was not affected by section 5B of the West Bengal Estates Acquisition Act, 1953. The said learned Advocate further submitted that nobody has challenged the decree obtained by the said Shibnarayan in 1953 and Shibnarayan auction-purchased in 1956 and took possession in December 1957 and it is only in the present suit that the defendants are challenging the said decree. The said learned Advocate submitted that apart from anything else, the plaintiff has also obtained right, title and interest by way of adverse possession in respect of the property which the plaintiff has claimed to have purchased. In this connection, he submitted that it has been admitted by Kartick Chandra Patowari and others in Ext. G that possession was with Shibnarayan since 1957 and thereafter with Basanta and two others and that Basanta was in possession till 1983 and thereafter the possession was with the plaintiff. The said learned Advocate submitted that by admitting the title of the said Basanta the defendants/appellants have also admitted the title of the plaintiff.

20. The learned Advocate for the plaintiff/respondent submitted that the instant appeal has no merits and that it should be dismissed.

21. Having heard the learned Advocates for the respective parties and having considered the materials on record it appears that the learned Trial Court came to the conclusion that the auction sale of the suit property was held on 19.9.1956, that is, after the vesting of the raiyati interest of the Patowaris and hence it cannot be treated as a sale under the CPC in execution of any money decree and, therefore, by such sale the landlord Shibnarayan Chattopadhyaya did not acquire any saleable interest in the suit property and consequently the three purchasers from him and ultimately the plaintiff also did not acquire any good title in the suit property. This Court is of the view that the learned Lower Appellate Court was right in holding that the learned Trial Court committed an error in interpreting the provisions of section 5B of the West Bengal Estates Acquisition Act, 1953. The learned Lower Appellate Court held that the intention of the legislature in introducing the amendment of the West Bengal Estates Acquisition Act, 1953 by introducing section 5B was not to annul the arrears of rent due to the superior landlords from the raiyats or under-raiyats. The learned Lower Appellate Court also found that section 168A of the Bengal Tenancy Act was impliedly repealed as a result of the enactment of section 5B of the West Bengal Estates Acquisition Act. This Court is of the view that the learned Lower Appellate Court rightly came to the conclusion that the auction sale dated 19.9.1956 was not hit by the provisions of section 5B of the West Bengal Estates Acquisition Act. It will appear from the Special Bench judgment reported at [The State of West Bengal Vs. Sailendra Kumar Sen](#), that the said section 5B declares void sale of tenure or holding held on or after 1.6.1954 under the statutes



mentioned therein and it contains no prohibition in respect of sales in execution of decree under the CPC as the said section 5B is concerned only with the sales under the specified statutes. The Hon"ble Court in the said reports was pleased to observe that if any sale had taken place during the material period till vesting and was or could be treated as a sale under the CPC if otherwise valid and not under the provisions of the Bengal Tenancy Act, such sale will not be void or deemed to be void u/s 5B and has to be sustained as a valid sale in law. The Hon"ble Court was further pleased to observe that in order to constitute a sale under the Bengal Tenancy Act, there must be a rent decree contemplated u/s 65 and the sale must also be in conformity with Chapter XIV, and in case such formalities are not complied with in the execution case when a sale is held, such sale will be one under the Code of Civil Procedure. Their Lordships in the said reports were further pleased to hold that Their Lordships were unable to approve the decision that all sales between the 1st June, 1954 to the vesting of raiyati interest are to be deemed as being under the statutes mentioned in the said section 5B of the West Bengal Estates Acquisition Act and hence to be declared void. On the contrary, Their Lordships were pleased to observe that such sales though deemed as invalid and of no effect under the Act concerned and yet they are to be treated as sales under and will have the effect of sales under the CPC in execution of the money decrees if otherwise valid. Their Lordships were pleased to hold in the said reports that the said section 5B does not operate as a bar to the execution of decree for arrears of rent as money decree against raiyati and under-raiyati interest and section 168A(1) of the Bengal Tenancy Act is impliedly repealed by the vesting of the interest of intermediaries (which include raiyats and under-raiyats) in the State.

22. The submission made by the learned Advocate for the appellants that the said Shibnarayan could not have purchased in the auction sale and also could not have sold the said land to the aforesaid three persons as the lands had vested earlier in the State is not an argument of substance in the instant case. The said learned Advocate referred to Ext. G, G/1 and G/2 as already indicated above. The submissions made by the learned Advocate for the appellants with regard to the provisions of the said section 5B as already discussed above is also not of any substance in view of the aforesaid Special Bench Judgment reported at [The State of West Bengal Vs. Sailendra Kumar Sen](#), as discussed above. It appears that the learned Lower Appellate Court came to the correct finding in this regard. This Court is of the view that the auction sale dated 19.9.1956 was not hit by the provisions of section 5B of the said Act of 1953.

23. The submission made by the learned Advocate for the appellants that the names of Kartick Chandra Patowari and others having been recorded in the record-of-right and that the said Kartick Chandra Patowari and others and thereafter the defendants having paid "khajna" to the State they have become the direct tenants under the State in so far as the property purchased by the plaintiff concerned is unacceptable. Simply by paying khajna to the State Government the

defendants/appellants cannot establish any right, title and/or interest in respect of the property purchased by the plaintiff/respondent. Such payment of "khajna" by the defendants/appellants and/or their predecessors does not bind the plaintiff in any way or manner. The question whether the said Shibnarayan Chattopadhyaya was in khas possession of the property or not, as raised by the learned Advocate for the defendants/appellants, is not a material question in the instant case. That apart, Ext. G (deed by which Ombar Ali Sk. claims to have purchased 77 decimals of land from Kartick Chandra Patowari and others and relied upon by the defendants/appellants) mentions that the said Shibnarayan Chattopadhyaya had purchased the said property by the aforesaid auction purchase in 1956 and had been in khas possession of the said property. Ext. G/2 (a deed relied upon by the defendants/appellants) also indicates that in the deed the said Ebad Ali Laskar and Ombar Ali Sk. admitted their purchase on 13.5.1967 from said Shibnarayan Chattopadhyaya. The submission made by the learned Advocates for the defendants/appellants that section 5B is attracted in the instant case is also unacceptable. The deed, as aforesaid, relied upon by the defendants/appellants indicated that the said Shibnarayan Chattopadhyaya had been in continuous possession of the property in dispute. The submission made by the learned Advocate for the plaintiff/respondent that the said Basanta Kumar Sardar remains unaffected as said Basanta is not a party either in Ext. G/1 or in G/2 is correct. This is interesting to note that even though Ebad Ali Laskar did not derive title from the Kartick Chandra Patowari and others the said Ebad Ali Laskar has been shown to be one of the vendors in Ext. G/1 and G/2. The submission made by the learned Advocate for the defendants/appellants that the said Ebad Ali Laskar appeared in the said two deeds only to void future difficulties does not in any way help the defendants/appellants in establishing their stand. It appears that the submission made by the learned Advocate for the plaintiff/respondent that the materials on record indicate that the defendants/appellants have treated the sale by Shibnarayan Chattopadhyaya to the aforesaid three persons as a valid one is of substance. The submission made by the learned Advocate for the plaintiff/respondent that the decree obtained by Shibnarayan Chattopadhyaya in the rent suit should be treated as money decree under the CPC and that it was not affected by the provisions of section 5B of the said Act of 1953 is of substance. There is a considerable force in the submission made by the learned Advocate for the plaintiff/respondent that nobody had challenged the decree obtained by the said Shibnarayan in 1953 and the auction purchase by Shibnarayan in 1956, and it is only the present suit that the defendants have become interested to challenge the said decree.

24. The learned Lower Appellate Court has considered another important aspect of the case which has not been discussed by the learned Trial Court. The said aspect is the point of adverse possession as claimed by the plaintiff/respondent. The learned Lower Appellate Court has found from materials on record that the said Shibnarayan Chattopadhyaya took possession of the suit land through Court on

18.8.1957 and thereafter he possessed the suit land in khas up to the date of his sale to the aforesaid three persons (Ebad Ali Laskar, Basanta Kumar Sardar and Ombar Ali Sk.) on 3rd May, 1967. The learned Lower Appellate Court has found that Basanta Kumar Sardar sold his share in the suit land to the plaintiff/respondent vide Ext. 1 on 6.1.1983. The learned Lower Appellate Court found that the said Shibnarayan was in continuous possession over the suit land from 18.12.1957 to 3.5.1967 and thereafter Basanta got possession of 25.1/3rd decimals of land by amicable partition with his co-sharers and the said Basanta Kumar Sardar had been in continuous possession of such demarcated portion of the land up to the date of his sale to the present plaintiff/respondent on 6.1.1983. The learned Lower Appellate Court found that it is not the case of the defendants/appellants that they dispossessed Basanta on an earlier date. The learned Lower Appellate Court found that the said Kartick Chandra Patowari and others had never challenged the legality and/or validity of the auction sale at any point of time before any competent Court, and after the enactment of Section 5B of the said Act of 1953 the said Kartick Chandra Patowari and others did not make any endeavor to recover khas possession of the 77 decimals of land from the said Shibnarayan Chattopadhyaya or the said Ebad Ali Laskar, Ombar Ali Sk. and Basanta Kumar Sardar. The learned Lower Appellate Court after considering the facts of the case came to the conclusion that from 18.12.1957 up to 8.6.1971 the suit land had been in lawful possession of, firstly, Shibnarayan Chattopadhyaya and thereafter the three vendees of Shibnarayan Chattopadhyaya, and the said Basanta Kumar Sardar was one of such vendees. The learned Lower Appellate Court found that from 18.12.1957 to 8.6.1971 Kartick Chandra Patowari and others were out of possession from the suit land.

25. The learned Lower Appellate Court came to the conclusion that on the expiry of 18.12.1969, that is, after completion of 12 years from 18.12.1957 the title of Kartick Chandra Patowari and others in the suit land were completely extinguished and, thus, the said Ombar Ali Sk. did not acquire any title by virtue of the sale deed marked Ext. G. The learned Lower Appellate Court came to the conclusion that even if the auction sale was hit by section 5B of the West Bengal Estates Acquisition Act, 1953 then also the plaintiff has acquired a good and lawful title over the suit land measuring 25.1/3rd decimals by virtue of adverse possession for more than 12 years since the time of his predecessor-in-interest. Thus, the learned Lower Appellate Court found that on the date of dispossession of the plaintiff/respondent by the defendants/appellants from the suit property the plaintiff had a good and subsisting title and lawful possession over the suit land measuring 25.1/3rd decimals. This Court finds that such findings of fact made by the learned Lower Appellate Court, in the facts and circumstances of the instant case, do not warrant any interference.

26. In view of the discussions made above, this Court does not find any merit in the instant second appeal. The impugned judgment and decree passed by the learned Lower Appellate Court is affirmed. The instant second appeal is dismissed.

27. Let the Lower Court records be sent back to the learned Court below concerned immediately.

28. There will, however, be no order as to costs. Urgent certified Xerox copy of this judgment, if applied for by the parties, be given to the parties as expeditiously as possible, on compliance of all necessary formalities.