

WBNP040004422011



West Bengal Form No 3701

HIGH COURT FORM NO. (J) 2
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District : North 24 Parganas

In the Court of the **Civil Judge (Jr. Divn.) 1st Court, at Barasat,**
North 24 Parganas.

Present :Smt. Paulami Pandit,
(JO Code WB01498)

Judgment delivered on the 10th day of August, 2026

Title Suit No. 660 of 2011

CIS No. 1558 of 2014

(CNR NO. WBNP04-000442-2011)

Din Ali Molla

.....Plaintiff.

Vs.

1. Dipa Ray

2. Sagun Vinyog Pvt. Ltd.,

represented by its Director namely Udit Ranjan Gupta

..... Defendants.

This suit coming on for final hearing on 12.05.2026, 31.07.2026 in presence of :

Shri Arjun Kumar Mondal **Advocate for the plaintiff.**

Shri Kartik Chandra Mondal

Smt. Tanushri Pal

..... Advocates for the defendants.

and having stood for consideration to this day this Court delivered
the following judgment.

This suit for declaration of title and permanent injunction..

The summary of the plaintiffs' case

The factual position of the plaintiff's case in a nutshell is that piece or parcel of land measuring about 32 decimals more or less of Dag no. 1440 situated at Mouza – Thakdari, PS – Rajarhat, District North 24 Parganas specifically described in the schedule of the plaint. The plaintiff contended that he is the owner in respect of 6 decimals of land of the suit dag and his name has been recorded in LRROR. The mother of the plaintiff looked after the property of the plaintiff while he was minor and the mother of the plaintiff was not being appointed as the guardian of the plaintiff by a competent court of law and since attaining majority the plaintiff has been possessing his share of property jointly with other co-sharers.

The plaintiff alleged that defendants are trying to interfere with the joint possession of the plaintiff on the ground that plaintiff's mother namely Laxmi Bibi sold out the plaintiff's property by virtue of a deed. The plaintiff contended that his mother had no legal right to transfer the property on behalf of the minor child (plaintiff) except valid permission from the court of law. The plaintiff further stated that his mother did not take any permission from competent court of law and as such the alleged deed of sale in respect of plaintiff's property is void and the defendant does not acquire any interest in the suit property. The plaintiff further stated that he was not benefited by such sale and there was no necessity for such transfer by his mother on behalf of the minor and the plaintiff has been possessing his land by recording his name in LRROR being no. 326.

The plaintiff alleged that the defendants are disturbing the possession of the plaintiff for which he is compelled to file this suit.

The cause of action for this suit arose on November, 2011 when the defendants made an attempt to dispossess the plaintiff from the suit property.

The plaintiff has prayed for a decree of declaration declaring the plaintiff's right, title, interest and possession over the suit property, a declaration that the deed of the defendant is inoperative and not binding upon the plaintiff, a decree of permanent injunction restraining the defendants from disturbing the peaceful possession of the plaintiff over the suit property and all other consequential relief.

The summary of the defendant no. 1 case

The defendant no. 1 stated in written statement that the instant suit is not maintainable in the present form and law and the same is barred by the law of limitation as the plaintiff challenged the registered deed of sale which was executed and registered in the year 1985 but challenged the said deed in the year 2012 after a lapse of 19 years from attaining his majority. The defendant no. 1 stated that she has already transferred her purchased land in favour of defendant no. 2 and contended that the deed was executed by the mother of the plaintiff as his natural guardian but in spite of raising allegations against his mother, the plaintiff has not made his mother a party to the instant suit.

The defendant no. 1 denied all material allegations that one Bistu Patra, being in exclusive possession of the said property, transferred the same in favour of Gaohor Ali Molla, Sahor Ali Molla, Din Ali Molla and Laxmi Bibi vide deed no. 5715 of 1973 and thereafter due to financial stringency, the said Gaohor Ali Molla and Ors. including the present plaintiff jointly transferred the said property in favour of defendant no. 1 by executing a registered deed of sale being no. 08287 for the year 1985 and since then he had been possessing the same by recording her name in the LRROR and paid government rent and taxes.

The defendant no. 1 contended that the present plaintiff was a minor at the time of execution of the registered deed in favour of defendant no. 1 for which his mother namely Laxmi Bibi acting as natural guardian on behalf of the minor executed the said deed after completing all the legal formalities. Thereafter, the defendant no. 1 transferred the said land in favour of defendant no. 2 vide a registered deed of conveyance being no. 04078 of 2005 and since then the defendant no. 2 is possessing the suit property and the plaintiff is not in possession of any part of the suit property and hence prayed for dismissal of the suit.

The summary of the defendant no. 2 case

The defendant no. 2 by filing written statement has contended facts which is almost similar to what stated by defendant no. 1 in her written statement. In brief, the defendant no. 2 contended that after purchasing the property from defendant no. 1, it has been possessing the same and recorded its name in LRROR and also alleged that the plaintiff in collusion with someone managed to get his name recorded in the LRROR and hence prayed for dismissal of the suit.

Thus on the basis of these rival contentions as gathered from the respective pleadings submitted by the parties to the suit the following issues were framed for the proper adjudication of the suit.

Issues

Upon considering the rival contentions of both the parties, the following issues have been framed:

1. Is the suit maintainable in its present form and prayer?
2. Do the plaintiff has any cause of action to file this suit?
3. Does the suit suffer from defect of parties?

4. Do the plaintiff has any right, title, interest and possession over the suit property?
5. Is the deed no. 8287 for the year 1985 in the name of the defendant is an operative, is not binding upon the plaintiffs?
6. Is the plaintiff entitled to get the decree as prayed for?
7. To what other reliefs, is the plaintiff entitled?

Let it be mentioned that while passing judgment, it came to the notice of this court that the execution of deed of sale for the year 1985 has been challenged by the plaintiff by filing the instant suit however, at the time of framing issues there was a mistake in issue no. 5 as the deed no. is mentioned as 5715/1973 instead of deed no. 8287 of 1985. So, the issue has been rectified above.

Oral and documentary evidences

In order to corroborate the prayer of the plaint, the plaintiff, namely Din Ali Molla adduced evidence himself as P.W.1 and Anar Ali Dhali deposed as PW2.

For the purpose of contradicting the claims of the plaintiff, Pawan Kumar Sharma deposed as D.W. 1.

To reinforce the respective claims of the plaintiff, the following documents were marked as exhibits on behalf of the plaintiff:-

Documents on behalf of the plaintiff

- The certified copy of Deed no. 5715 of 1973 marked as **Exhibit – 1.**
- LR Porcha for Khatian no. 326 marked as **Exhibit -2.**
- Two rent receipts dt. 09.12.2011 (objected to) and 05.03.2014

marked as **Exhibit -3.**

- The certified copy of alleged deed no. 8287 of 1985 marked as **Exhibit - 4.**

To reinforce the respective claims of the defendants, the following documents were marked as exhibits on behalf of the defendants:-

Documents on behalf of the defendants

- The Original deed of conveyance marked as **Exhibit – A (with objection).**
- LRROR of Khatian no. 1619 marked as **Exhibit – B.**

DECISIONS WITH REASONS

Issue no. 1, 2 & 3

These two issues are taken up together for adjudication for the purpose of convenience and for avoiding unnecessary wastage of judicial time.

In the instant suit the plaintiff has claimed his absolute right, title and interest over the suit property, which his mother has transferred in favour of defendant no. 1 at the time when the plaintiff was a minor. The plaintiff has contended that as he is governed by Mohammedan Law, any transfer by his mother is not legal and therefore, he filed this suit for declaration of his right, title and interest over the suit property as the same was transferred against his interest. Since the defendants have been claiming interest and right over the property of the plaintiff, as averted in the plaint, there is existence of a valid cause of action for the plaintiff to file the instant suit. The instant suit is situated within the jurisdiction of this court and the same is not barred by the law of limitation.

The plaintiff has made the defendant no. 1 a party in the instant suit, who has purchased the plaintiff's share (at the time of his minority) from his unauthorized guardian i.e. his mother. Subsequently, when the defendant no. 1 sold the property to defendant no. 2, the defendant no. 2 was also added in the instant suit being a necessary party. So, this court is of the opinion that there is no defect of parties in the instant suit.

Therefore, these issues are answered in favour of the plaintiff.

Issue no. 4 & 5

These two issues are together for adjudication for wasting of judicial time as both issues are interconnected.

In the instant suit the plaintiff has filed the deed of conveyance being no. 5715/1973, LRROR being khatian no. 326 and rent receipts i.e. Exhibit – 1 to 3 to establish his title and possession over the suit property. The plaintiff has also filed the deed of conveyance being no. 8287/1985 i.e. Exhibit – 4, which is the impugned deed against which the plaintiff has alleged that the same was being executed by his mother at the time of his minority.

To contradict the allegations and the case of the plaintiff, the defendant no. 2 filed their deed of conveyance being no. 4078/2005 and LR khatian being no. 1619 to establish their right over the suit property. In the instant suit the defendant no. 1 after filing the written statement did not contest the suit further. However, in her written statement she admitted that the plaintiff's mother transferred the plaintiff's share when the plaintiff was minor. She contended in her written statement, *"It is to be mentioned here that the plaintiff was minor at the time of execution of the registered deed in favour of the present defendant for which his*

mother Lakshmi Bibi as natural guardian executed the said deed on behalf of the minor after completing all the legal formalities.”

The defendant no. 2 in its written statement contended, *“Thereafter said Gahor Ali Molla and Ors. including the present plaintiff jointly transferred the said property measuring about 16 ½ decimals in favour of the defendant no. 1 by executing a registered deed of sale vide deed no. 8287 for the year 1985 and handed over the vacant possession..... It is to be mentioned here that as the present plaintiff was minor at the time of execution of the registered deed in favour of the defendant no. 1 for which his mother Lakshmi Bibi as natural guardian executed the deed on behalf of the minor after completing all the legal formalities.”*

The plaintiff deposed himself as PW1 and during his cross-examination on 27.01.2017 he deposed, *“It is not a fact that the suit property was rightfully being transferred by my mother to the defendant no. 1.”* Further during his cross-examination on 18.07.2017 he deposed before this court, *“It is not a fact that my mother sold the property in favour of Dipa Roy validly.... It is not a fact that Dipa Roy became the owner of the suit property as my mother sold the same validly in her favour.”*

In support of the plaintiff’s case, another witness was brought before this court by the plaintiff as PW2 and during his cross-examination on 07.02.2018 he deposed, *“It is not a fact that Din Ali Molla does not have possession in the suit property.”*

The defendant no. 2 / company through its authorized representative deposed as DW1 and during his cross-examination on

12.12.2022 nothing contradictory came from him and thereafter DW1 did not turn up before this court for being cross-examined by the plaintiff.

Paragraph no. 359 of *Mulla's Principles of Mohammedan Law* only the father, the executor appointed by the father's WILL, father's father and the executor appointed by the WILL of the father's father. So, any transfer by unauthorized person on behalf of the minor shall be a void transfer.

Paragraph no 364 of *Mulla's Principles of Mohammedan Law*, a de-facto guardian has no power to transfer any right or interest in the immovable property of the minor. Such a transfer is not merely voidable but void.

According to Mohammedan Law a mother is not the legal guardian of the property of her minor child. She is merely a defacto guardian. A de-facto guardian – someone acting as a guardian in practice without formal appointment – lacks the power to sell immovable property like land belonging to her minor son. A convenience of immovable property by a de-facto guardian of a Muslim minor is void and is not binding on the minor **[1964 0 Supreme(Mad) 57]**.

It has been held by the Apex Court that the Muslim Personal Law does not automatically authorized the mother to sell or transfer minor child's property unless she is legally appointed guardian or has specific authority **[2025 0 Supreme (Jhk) 1412]**. Further it has also being held by the Apex Court that a defacto guardian can sale a minor property, but such sale is subject to challenge upon the minor reaching majority, if the sale was made without proper authority or description of guardian status, it may be considered invalid **[2023 0 Supreme (All) 335]**.

The law of limitation is not applicable if any transfer is made by a de facto or unauthorized guardian.

From the materials on record, the plaintiff has proved that the transfer made by his mother at the time of his minority is not valid. Therefore, such alleged deed being no.8287/1985 is inoperative and not binding upon the plaintiff. The plaintiff has proved his right, title and possession over the suit property and unavailability of the defendant for being cross-examined is drawing an adverse inference against it. As it is very much clear in the Muslim personal Law that any transfer by an unauthorized guardian is void and as in the instant suit, the transfer of plaintiff's share by his mother at the time of his minority is without any authority, the deed being no. 8287 of 1985 cannot be binding upon the plaintiff.

Therefore, these issues are decided in favour of the plaintiff.

Issue no. 6 & 7

In view of this Court's deduction in respect of the above made issues, this issues needs no further discourse. After contemplating the respective submissions, the evidence on record, both oral and documentary, and the materials available on record, this Court is of considered view that the plaintiff has succeeded to prove his case. Therefore, he is entitled to get reliefs as prayed for.

These issues are decided in favour of the plaintiff.

The court fees is reported to be correct.

Hence, it is,

ORDERED

that the suit be and the same is decreed on contest against the defendants without any order as to cost.

It is declared that the plaintiff has right, title, interest and possession over the suit property.

It is further declared that the deed being no. 8287 for the year 1985 is not binding upon the plaintiff.

The defendant no. 2 and its men and agents are restrained from disturbing the peaceful possession of the plaintiff over the suit property and / or from causing any wastage and damage over the same and/or from transferring the suit property.

The suit is thus disposed of.

DA is directed to take a note in the relevant register.

D.C. by me.

Civil Judge (Jr. Divn.), 1 st Court,
Barasat, North 24 Parganas.
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