

West Bengal Form No.3701
High Court Form No. (J) 2



HEADING OF JUDGEMENT IN ORIGINAL SUIT / CASE

DISTRICT	:	PURBA BARDHAMAN
IN THE COURT OF	:	Civil Judge (Senior Division), Kalna, Purba Bardhaman.
PRESENT	:	Smt Sharmistha Ghosh Civil Judge (Senior Division), Kalna, Purba Bardhaman.

The 9 th day of July, 2026,	
TITLE SUIT / CASE NO. 46 OF 2023 CNR No. WBCB13-0001462023	
Joy Gopal Sarkar	
	Plaintiff
- V E R S U S -	
Manik Chand Sarkar & 2 Ors.	Defendants

Give date of date	This suit/case coming on for final hearing on 08.06.2026 and 22.06.2026 in the presence of
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Ajemmel Haque Mallick	Advocate	for	Plaintiff
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Pinaki Roy	Advocate	for	Defendants
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and having stood for consideration to this day, the court delivered the following judgement.

J U D G E M E N T

This is a suit for cancellation of deed and injunction.

Subject matter:

The land measuring 3.16 decimals in plot no 69 in Mouza Satapati is the subject matter of the suit (hereinafter to be referred as Suit property of the suit).

The Plaintiff case :

Sieving the unnecessary details, the plaintiff's case in a nutshell is that the suit property originally belonged to Sri Ramkrishna Mallick who transferred 33 decimals of land to plaintiff and 2 others by a registered sale deed being no. 176/1961 which was registered at ADSR, Kalna. That the plaintiff after acquiring 11 decimals of land in the suit plot, he constructed his dwelling house over the same keeping some of the portions of his share vacant for the purpose of ingress and egress. That the plaintiff entered into the possession of his property and recorded his name in the settlement record and has been enjoying the property without any interference from any corner. That the defendant nos. 1 and 2 are husband wife and they reside in Hooghly in their dwelling house and defendant no.1 is an employee of the Railway in the RPF Department. That the defendant no.1 does not look after the plaintiffs who are his aged parents and on 12.08.2022 the defendant nos.1 and 2 took the plaintiff and his wife to a doctor namely A. Halder for treatment. That again on 26.08.2022 they took the plaintiff and his wife to one Pradip Kumar Ghosh who is a deed writer of Kalna ADSR Office. That the said Pradip Kumar Ghosh told the plaintiff that defendant no.1 would be opening a bank account in which the plaintiff's wife would be a nominee and asked the plaintiff to sign some papers and believing such words to be true, the plaintiff signed those papers. That in the middle of the month of Magh, the defendant no.2 came to the suit property with mason and their helper and the labour started digging some portion of the suit property which is being used by the plaintiff for ingress and egress. That when the plaintiff raised protest, defendant no.2 informed that such portion of the suit property was purchased by defendant no.2 from her husband

that is defendant no.1 who acquired the same by a registered deed of gift bearing no. 5614/2022 allegedly executed by the plaintiff morefully described in B schedule of the plaint. That the plaintiff became shocked as he never executed any gift deed in favour of defendant and soon he informed the matter to police but no step was taken from their end. Thus the plaintiff was constrained to bring this suit seeking relief.

The plaintiff has prayed for the following reliefs:-

- 1) A decree of permanent injunction.
- 2) A decree declaring B schedule deed to be void and created by misrepresentation and fraud.
- 3) Cost of the suit and other anciliary reliefs.

Hence, the suit.

The Adversary :

The defendant no.1 and 2 and 3 have resisted the suit of the plaintiff by filing two sets of written statement and all of them have unanimously claimed the suit to be defective and not maintainable.

It is the specific contention of defendant no.1 and 2 that the plaintiff voluntarily executed the B schedule deed in favour of defendant no.1 and there was no foul play on the part of these defendants. The defendants have further asserted that at the time of registration of the deed, the plaintiff and his wife went to the Registration Office i.e. ADSR, Kalna for execution and registration of the deed and completed all the procedure for the said purpose. That the defendants averred that the plaintiff has executed the deed in presence of his wife and daughter in law and has filed this suit just to harass the defendant and therefore, it should be dismissed at once.

Defendant no.3 has specifically averred that the plaintiff along with his wife and defendant no.1 and two witnesses came to his seresta and after reading and understanding the contents of the deed, he put his signatures on each page of the deed

and also gave thumb impression on the prescribed page. Thatthe plaintiff presented the said deed to the ADSR for registration and after complying all the formalities, the said deed was registered. This defendant has averred that the plaintiff has suppressed the material particulars and has filed this suit to harass the defendants which should be dismissed at once.

Issues :

Upon rival contentions of the parties, the following issues were framed:

- 1. Whether the suit maintainable in its present form and prayer?
- 2. Whether this instant suit is barred by Estoppel, waiver and acquiescence?
- 3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?
- 4. Whether the plaintiff has any cause of action to file this instant suit?
- 5. Whether the deed of gift being no. 5614 of 2022 was executed by misrepresentation?
- 6. Whether the plaintiff entitled to get the relief as prayed for?
- 7. To what other relief/reliefs is the plaintiff` entitled?

Evidences:

Plaintiffs’ evidence

To reserve the right over the Judgement, the Plaintiff adduced the evidence of following witnesses:-

- 1) Joygopal Sarkar as P.W.1.
- 2) Panu Sarkar as P.W.2.
- 3) Arup Basu as P.W.3.

The Plaintiff has relied upon following documents in support of his case:

Sl. No.	Documents	Exhibit
1	Certified copy of deed being no. 176/1961	Exhibit 1
2	Certified copy of deed of sale being no.	Exhibit 2

	7940/2022	
3	Gram Panchayet Tax Receipts	Exhibit 3 (collectively)
4	Certified copy of deed being no. 5614/2022	Exhibit 4
5	Commission report	Exhibit 5

EVIDENCE OF THE ADVERSARY:

To controvert the case of the plaintiff, the defendants have adduced the evidence of the following witnesses:-

Manik Chandra Sarkar as DW1.

Biswajit Bhuia as DW2.

Subrata Sarkar as DW3.

The following documents were relied upon by the defendants:-

Sl. No.	Documents	Exhibit
1	Oridinal Deed bearing no.5614/2022	Exhibit A
2	Original deed of gift being no. 7940/2022	Exhibit B
3	LRROR of Khatian no. 2405	Exhibit C
4	Certified copy of deed of gift being no. 7608/2022	Exhibit D
5	Certified copy of deed of gift being no. 7446/2022	Exhibit E

Rival Contentions

The Ld. Advocate for the plaintiff initiated his argument stating that plaintiff is an aged person and he can hardly sign his name. The Ld. Advocate categorically stated that the defendant nos. 1 and 2 are husband and wife and defendant no.1 is the son of the plaintiff who never looks after his parents. The Ld. Advocate argued that the impugned deed purported to be executed by the plaintiff in favour of the defendant

no.1 is invalid, illegal and not binding upon the plaintiff and the defendants have not proved the impugned deed by examining one of the attesting witnesses of the deed as per the provision of section 68 of the Evidence Act. The Ld. Counsel boastfully argued that the impugned deed is totally suspicious and the attesting witnesses are none other than the wife and the daughter-in-law of the plaintiff. According to the Ld. Counsel the deed was obtained by practicing fraud upon the plaintiff and the same should be declared null and void and has prayed for passing a decree in favour of the plaintiff.

Per contra, the Ld. Advocate for the defendant nos. 1 and 2 submitted that the impugned deed is a gift deed which was duly executed by the plaintiff in favour of defendant no.1. The Ld. Advocate also argued that the suit is defective for non-joinder of necessary parties. To this, the Ld. Counsel further added that there is no dispute regarding signature on the deed and there is no allegation of impersonation. According to the Ld. Counsel the impugned deed was validly executed and it was only on the provocation of Jayanta Sarkar, the plaintiff has instituted this suit for harassing the defendants and therefore, it should be rejected at once.

Findings and reasons :

Now the issues are taken up point wise to adjudicate the actual matter in dispute:

Issue Nos. 1 and 2: Maintainability and estoppel waiver:

Both the issues are taken up together for discussion being interlinked and for brevity and convenience.

These issues were not pressed by either side whether at the time of argument or at the stage of evidence.

The Plaintiff has instituted this suit seeking cancellation of the deed of gift being no. 5614/2022 allegedly executed by plaintiff in favour of the defendant no.1. The plaintiff has further prayed for a relief of injunction restraining the defendants from disturbing the peaceful possession of the plaintiff in the suit property. The

plaintiff, allegedly being the executor has prayed for cancellation of the deed and has a prayed for permanent injunction as a consequential relief. The suit is civil in nature and the way it has been framed is well maintainable in its present form and prayer.

Further there is nothing in the suit that indicates that the same is barred by estoppel, waiver or acquiescence.

Accordingly, both the issues are disposed of in favour of the Plaintiff.

Issue No. 3: Defect parties:

This issue is taken up for discussion.

This issue was raised by the Ld. Advocate for defendant nos. 1 and 2 at the time of argument. According to Ld. Counsel, the plaintiff has instituted this suit in respect of 3.16 decimals of land out of 1.20 acres land in Plot no. 69 in Mouza Satapati. According to the Ld. Advocate, as per the plaint case, the plaintiff and 2 others acquired right, title and interest over 33 decimals of land in the suit plot by virtue of a registered deed, each having right, title and interest over 11 decimals of land in the suit plot. Ld. Advocate submits that the other 2 purchasers of the remaining land as well as the other co-sharers of the entire suit plot have not been impleaded in this suit which makes it defective for want of necessary parties.

The plaintiff has instituted this suit for cancellation of a registered deed specifically described in schedule B of the plaint being no. 5614 of 2022 purported to be executed by the plaintiff. The plaintiff has instituted this suit against defendant no.1 in whose favour the impugned deed was executed, against defendant no.2 i.e. the subsequent transferee and defendant no.3 i.e. the deed writer. The main relief of the plaintiff is directed against defendant no.1 and the plaintiff and defendant no.1 are the parties to the impugned deed. The other co-sharers of the suit land were not parties to such instrument and accordingly are not necessary party for adjudicating this suit

since this is not a suit for partition. The plaintiff has impleaded all the necessary parties in the suit and the same is not defective for want of necessary parties.

This issue is decided in favour of the plaintiff.

Issue No. 4 : Cause of action:

This issue is taken up for discussion.

The plaintiff has instituted this suit for cancellation of a registered gift deed and injunction. According to the plaintiff the cause of action of the suit arose on 16th Magh, 1429 BS when the plaintiff came to know that defendant no.1 by practicing fraud upon the plaintiff has manufactured a deed purported to be executed by the plaintiff. The defendants, on the other hand, averred that such deed was validly executed by the plaintiff in favour of defendant no.1. The rival contention of the respective parties are sufficient enough to hold that plaintiff has cause of action to institute this suit.

This issue is decided in favour of the plaintiff.

Issue No. 5 : The impugned deed:

This issue is taken up for discussion and it constitutes the core controversy involved in this suit.

The plaintiff has presented this suit seeking cancellation of registered deed being no. 5614/2022 more fully described in schedule B of the plaint along with a consequential relief of injunction.

According to the plaintiff, he acquired right, title and interest in respect of 11 decimals of land in plot no.69 by dint of a registered deed of sale. The defendants have not disputed the plaintiff's title in the suit property. The dispute in this suit revolves around a gift deed allegedly executed by the plaintiff in favour of his son that is defendant no.1.

The plaintiff has consistently pleaded that defendant no.1, being his son, on the pretext of opening a bank account, took him and his wife to a deed writer at Kalna ADSR where he obtained his signature on some documents and got the B schedule deed executed in his favour in respect of 3.16 decimals of land in the suit plot i.e. the A schedule property or the suit property. The plaintiff expressed that he never intended to execute any deed in favour of defendant no.1 in respect of the suit property.

The plaintiff himself deposed as P.W.1 and his evidence in chief is the replica of his plaint and the same has substantially corroborated the facts averred in the plaint. The plaintiff has relied upon certain documents which were marked as Exhibit 1 to 4. During cross examination it has come on record that he had been to the Kalna Registry Office that is Kalna ADSR along with his wife about 2 to 3 years back. But he specifically denied presentation of the impugned deed before the Registrar for registration. However, he failed to recollect as to whether the contents of the documents were read over and explained to him.

The next witness is Panu Sarkar who is the wife of the plaintiff. Her evidence in chief has corroborated the version of the plaintiff. Though she could not furnish detailed particulars of the suit yet nothing substantial could be elicited from her cross examination to demolish the plaintiff's case.

P.W.3 is the Ld. Advocate Commissioner who duly proved his commission report.

From the side of defendants, defendant no.1 deposed as D.W.1 and he relied upon certain documents during his evidence which were marked as Exhibit A to E. In this cross-examination, he stated about the execution of two deeds in the names of his brothers Jagadish Sarkar and Jayanta Sarkar. This witness denied that he took his parents to the house of deed writer on the pretext of opening bank account.

The next witness is Biswajit Bhuia who deserved no consideration as he did not face cross examination.

The 3rd and the last witness examined from the side of defendant is Subrata Sarkar who supported the defence case in his examination in chief.

The principle document for scrutiny in this suit is the B schedule deed that is the gift deed being no. 5614 of 2022 that is Exhibit 4 or Exhibit A. The plaintiff has claimed that the B schedule deed is invalid, illegal, manufactured by practicing fraud and it was never acted upon. The plaintiff while deposing as P.W.1 has placed before this Court the certified copy of the impugned deed being no. 5614/2022 which is under challenged in this suit. The plaintiff has specifically stated that, the defendant no.1 on the pretext of signing documents for opening an account, obtained the signature of the plaintiff on the impugned deed i.e. Exhibit 4 and thereafter, he further gifted the same to his wife i.e. defendant no.2. Now, the defendant nos. 1 and 2 by strength of such deeds are trying to encroach the property of the plaintiff. The plaintiff has claimed his title in the suit property by virtue of a registered deed i.e. Exhibit 1 which shows that 11 decimals of land was purchased by plaintiff under the said deed in the plot no.69 in suit Mouza along with two others. The right, title and interest of the plaintiff in the suit property was not disputed by the defendants. Further Exhibit 3 shows that plaintiff was paying panchayet tax in respect of the suit property.

Now the dispute is with regard to the deed being no. 5614 /2022 purported to be executed by plaintiff in favour of defendant no.1.

The said deed under challenge is a gift deed and as per section 122 of the Transfer of Property Act, a gift of a movable or immovable property must be made voluntarily and without consideration and it must be accepted by the donee.

Section 123 of the said Act further mandates the gift to be executed by a registered instrument and to be attested by at least two witnesses.

Further section 68 of the Indian Evidence Act provides that if a document is required by law to be attested, it shall not be used as evidence unless, one attesting witness has been called for for the purpose of proving its execution. The proviso to section 68 provides that for documents other than a will that are registered under the Indian Registration Act, 1908, it is not necessary to call an attesting witness to prove execution except when its execution is specifically denied by the person by whom it purports to have been executed.

In his suit Exhibit 4 or A is the impugned deed being no. 5614/2022 allegedly executed by plaintiff in favour of defendant no.1. The perusal of the same shows that the gift was made voluntarily and it was accepted by the donor i.e. the defendant no.1. It further shows that it was signed by two attesting witnesses i.e. Panu Sarkar wife of the plaintiff and Dalia Sarkar i.e. the defendant no.2. This deed is disputed by the plaintiff and he has specifically denied the execution of the same. According to the plaintiff, the defendant no.1 told him to put some signatures on some documents for opening a bank account and on such pretext he obtained his signature on the impugned deed. In this cross-examination, though P.W.1 stated that he had been to Kalna Registry Office but he could not state whether his photograph was taken or he signed any deed in such registry office. P.W.1 denied that he presented any deed for execution in the registry office. The plaintiff has consistently pleaded that he never intended to execute any deed in favour of defendant no.1 and it appears from the plaint as well as from his evidence, that the plaintiff has specifically denied the execution of impugned deed which was purported to be executed by him. In such situation, section 68 of the Evidence Act comes into play which provides that when a execution of a registered instrument, required to be attested by law, is specifically denied by the executor, then the execution must be proved by examining at least one attesting witness.

In the impugned deed, the two attesting witnesses were Panu Sarkar that is the wife of plaintiff and Dalia Sarkar that is Defendant no.2. Panu Sarkar was examined from the side of plaintiff as PW2 and she specifically denied the execution of the impugned deed. She stated that she had never been to ADSR Kalna. She was cross examined from the side of the defendants but in spite of getting enough scope, no question regarding valid execution of the impugned deed was put to her. Nothing substantial could be elicited from the cross examination of PW2 that is one of the attesting witnesses that makes the plaintiff's case weak or supports the defendants' case.

The original deed was in the custody of the defendant no.1 and he was also under due obligation to prove the valid execution of the impugned deed, when the execution has been specifically denied, by examining at least one attesting witnesses to such deed, one of whom is none other but his wife that is defendant no.2. Defendant no. 2 never stepped into the witness box for reasons better known to the defendants and took no pain to establish the valid execution of the impugned deed. The plaintiff has challenged the execution of the impugned deed and he has duly discharged his burden by deposing as PW1 as well by examining one of the attesting witnesses of the impugned deed who denied such execution.

On the contrary, the defendants in spite of getting enough scope, did not put a single question regarding the execution or contents of the impugned deed while cross examining PW2 and did not adduce evidence of the other attesting witness that is defendant no.2. Accordingly, the defendants did not discharge his burden to establish the valid execution of the impugned deed.

PW1 deposed in his cross examination admitted that he had been to Kalna Registry Office about 2 3 years back. The defendants while deposing as DW1 have relied upon two deeds in the name of Jagadish Sarkar bearing no. 7608 of 2022 that is

Exhibit D and another deed bearing no. 7446 of 2022 that is Exhibit E in the name of Jayanta Sarkar. Both the deeds were admittedly executed by the plaintiff in favour of his two others son and thus it is quite obvious that plaintiff might have went to the Registry Office at the time of execution of these two deeds. A mere statement that the plaintiff had been to Kalna registry Office does not necessarily imply that he went for execution of the impugned deed. Both PW1 and PW2 are aged persons and minor omissions or mistakes in their deposition cannot be a ground to wholly discard their evidence. They remained unanimous on one point that the impugned deed was never executed by the plaintiff and they have remained unshaken on this point which is the crux of this suit.

The plaintiff has claimed the B schedule deed to be invalid and he specifically denied its execution. His written examination in chief has reiterated the facts stated in the plaint and nothing could be elicited from the cross examination of PW1 and PW2 that completely demolish the plaintiff's case. He denied that the deed was submitted for registration. Further, he adduced the evidence of one of the attesting witnesses that is PW2 who also denied the execution of such deed.

The Defendants, on the other hand, have claimed the deed to be valid but have not taken the pain of proving its execution by examining one of the attesting witnesses who is none other but his wife as per section 68 of the Evidence Act. Rather the plaintiff has proved that such deed is null and void and it has never been acted upon. Accordingly, in view of this no valid title in respect of the suit property passed on to defendant no.1.

This issue is also decided in favour of the plaintiff.

Issue Nos. 7 and 8 : Plaintiff's relief:

The meticulous analysis of the evidences on record and having regard to all the materials on record I am of the opinion that the plaintiff has been able to establish that

the impugned deed was obtained by practicing fraud by adducing cogent evidence to the satisfaction of this Court and accordingly he is entitled to get the relief as prayed for.

As a result, the suit succeeds.

Court fees paid is found correct.

Hence, it is,

ORDERED

that the instant suit be and the same is decreed on contest against defendant nos. 1 , 2 and 3 without any order as to costs.

The B schedule deed bearing no. 5614 of 2022 is declared as void and inoperative.

That the defendants no.1 and 2 are hereby permanently restrained from disturbing the possession of the plaintiff in the suit property .

Let a copy of this order be sent to Kalna ADSR for information and necessary action.

The suit is disposed of.

Note in the register as well upload the Judgement in the CIS at once.

D/C by me.

Civil Judge(Sr. Division),
Kalna, Purba Bardhaman

Civil Judge (Sr. Division),
Kalna, Purba Bardhaman
JO Code :WB01143