

West Bengal Form No. 3702

HIGH COURT FORM NO. (J) 3

HEADING OF JUDGEMENT IN APPEAL

District : Hooghly

In the Court of Additional District Judge, 1st Court, Chinsurah.

**Present : Sri Rintu Sur (J.O Code WB 00877)
Additonal District Judge, 1st Court, Chinsurah.**

Chinsurah, Dated 12 th day of August, 2026

**Title Appeal No. 06 of 2024
(CNR No. - WBHG01-000504-2024)**

Arising out of judgment dated 22.12.2023 passed by the Ld. Civil Judge, (Sr Division) 1st Court, Chinsurah, Hooghly in Title suit no. 18 of 2013

Md. Nausad Alam

.....Appellant / plaintiff

Versus

Mst. Saheeda Khaton & Anr

.....Respondents / defendants

Mehabub Rahaman Ld. Advocatefor the appellants/plaintiff.

Sri Sanjay Bandapadhyay Ld. Advocate ...for the Respondents/defendants.

JUDGEMENT

1. Instant appeal has been preferred by the appellant / plaintiff against the judgment dated 22.12.2023 passed by the Ld. Civil Judge, (Sr Division) 1st Court, Hooghly in Title suit No. 18 of 2013 wherein Ld. Trial Court dismissed the suit on contest. Being aggrieved and dissatisfied with the judgment and

decree passed by the Ld. Trial Court, the plaintiff being appellant has preferred the instant appeal on the following grounds:-

- a) That the judgement and decree passed by the Ld. Court below is illegal and bad in law.
- b) That the Ld. Trial Court while passing the judgement failed to understand the spirit of law related with the dispute.
- c) That the learned trial court miserably failed to understand the relevant provisions of law and failed to apply its judicial mind while passing the impugned judgement.
- d) That the Ld. Trial Court failed to consider the citations referred by the plaintiff / appellant in its proper perspective while adjudicating the suit and failed to consider spirit of the judgements referred and relied on by the plaintiff.
- e) That the Ld. Trial Court failed to apply his judicial mind while considering the fact of the case and documentary evidence produced by the parties.
- f) That the Ld. Trial Court failed to appreciate the evidence adduced and produced by the parties and came to an erroneous finding.
- g) That the Ld. Trial court did not consider written argument and pleading of the plaintiff and erroneously observed the ownership of the defendant in respect of 'C' schedule property.
- h) That the Ld. Trial court failed to consider the actual possession of the plaintiff in the suit property by virtue of a registered deed of settlement
- I) That the Ld. Trial court miserably failed to ascertain the actual intention of the executor of the deed of settlement and also failed to consider the intention of such un-codified Mohammedan personal Law.

j) That the impugned judgment and decree passed by the trial court was illegal, arbitrary, improper and therefore liable to be set aside.

Argument from the side of the appellant/ plaintiff.

2. While arguing the case, Ld counsel appearing on behalf of the appellant/ plaintiff strongly challenged the observation and findings of the Id. Trial court on the following grounds:-

a) that suit 'A' schedule property originally belong to Sahebuddin Mia , Rahumuddin Mia and Mst Mohammadam Bibi by dint of a registered deed of sale bearing number 7729 / 1961. Subsequently, they amicably demarcated their respective share in suit 'A' schedule property and started possessing the same without intervention of others.

b) while possessing his specific demarcated portion in 'A' schedule property Sahebuddin Mia, grandfather of plaintiff executed two separate registered deed of settlement being no. 828 / 1992 and 829 / 1992 in respect of his entire share described in schedule 'B' in favour of the plaintiff who was minor at that time and on his behalf mother of the plaintiff received the said property as guardian.

c) In course of time, plaintiff after attaining majority, sold some portion of B schedule property to different purchaser and remaining portion left with him described in schedule 'C'.

d) that the defendants being close family members of the plaintiff knowing fully well about the existence of settlement deed, are trying to grab "C" schedule property illegally and forcibly and started erecting bamboo fencing therein.

e) that the defendant after entering appearance filed written statement but subsequently by filing amended written statement incorporated some new facts in their pleading illegally without any prayer for amendment of their written statement and the Id. Trial court accepted the same without giving any opportunity to the plaintiff to submit written objection.

f) that Id. Trial court while deciding the merit of the case erroneously observed that Sahebuddin Mia executed deed of gift in favour of the plaintiff but actually it was a deed of settlement.

g) In the written statement no prayer was made by the defendants for cancellation of the deed of settlement executed in favour of the plaintiff.

h) that the defendants submitted their written statement-cum - counter claim but neither any specific prayer was made in the written statement as counter claim nor any court fee was paid. So the pleading of the defendant cannot be treated as counter claim.

i) that the Id. Trial court though not framed any issue whether the attesting witness of the settlement deed was unable to prove the document but in the judgement two new issues whether a muslim mother can act as guardian of her minor child in respect of immovable property and whether PW2 was unable to prove the document(Ext.2) were illegally and improperly framed and discussed without giving opportunity to the plaintiff to lead evidence or submit argument on that point.

j) that in the deed of settlement executed by Sahebuddin Mia, the mother of the plaintiff was also the beneficiary. Therefore, the findings of the Id. Trial court regarding legality and validity of the deed of settlement on the issue that mother of the plaintiff had no capacity to act as guardian of the minor in that deed was improper , illegal and bad in law.

k) that previously there was a partition suit between the co sharers of 'A' schedule property wherein the plaintiff was not included as party to that suit and therefore outcome of the said suit has no binding effect upon the plaintiff.

Argument from the side of the Defendants/ Respondents.

3. Ld. Advocate appearing on behalf of the defendants/ respondents argued that the findings of the Id. Trial court was absolutely legal and proper and he rightly

passed the judgement , dismissing the suit preferred by the plaintiff. He further argued that under Mohammadan Law , the father is considered as the natural guardian of the minor and after his death, the grand father is considered as the guardian. Under the said law a Muslim mother has not been recognized as guardian of the minor to deal with the property of the minor . So the deed of settlement executed by Sahebuddin Mia in respect of **B** schedule property which was received by the mother of the plaintiff on behalf of the minor, representing herself as guardian was illegal and void ab-initio and by dint of that deed the plaintiff did not acquire any valid right, title and interest in the suit property.

: POINTS FOR DETERMINATION :

4. Having regard to the respective cases of the parties and the submissions made before the court during argument, this court finds it proper to frame the following issue for determination in the instant appeal:-

(a) Whether the impugned judgment and decree passed by the Ld. Trial Court was just and proper or needs any interference of this court.

:DISCUSSION, DECISION AND REASONS THEREOF :

5. I have gone through the pleading of the respective parties. It is the admitted fact that the 'A' schedule property originally belonged to Sahebuddin Mia , Rahamuddin Mia and Mst. Mohammedan Bibi by dint of registered deed of sale vide no. 7729/1961. According to the plaintiff / appellant, the above mentioned co- owners of the **A** schedule property used to possess their respective share with specific demarcation mutually and amicably and Sahebuddin Mia ,who used to possess his specific demarcated portion described in **B** schedule, transferred the same in favour of the plaintiff by executing registered deed of settlement and the mother of the plaintiff accepted the property on behalf of her minor son representing herself as guardian. On the other hand , the defendant strongly challenged the legality and validity of the deed of settlement. It was their specific contention that after demise of Sahebuddin Mia , Rahamuddin Mia and Mst. Mohammedan Bibi their legal heirs inherited their respective share in suit **A** schedule property which was the joint property of the parties and as such one of

the co sharer Hazra Khaton filed a partition suit being Title Suit no. 207/2005 before the Ld. Civil Judge (Sr Divn) 1st Court, Chinsurah , Hooghly against the surviving legal heirs of the deceased Sahebuddin Mia and Rahabuddin Mia and a preliminary decree was passed declaring the respective share of the parties. It is the settled law that the partition can be affected either by a register instrument or by a decree of a competent court of law. In his pleading , though it was asserted by the plaintiff / appellant that Sahebuddin Mia , Rahamuddin Mia and Mst. Mohammedan Bibi used to possess their respective share amicably with specific demarcation but I do not find any convincing evidence from the record either oral or documentary in support of such claim. So it is crystal that Sahebuddin Mia used to possess his undivided 1/3rd share in suit **A** schedule property and he transferred his undivided 1/3rd share in favour of the plaintiff through registered deed of settlement being no. 828/1992 (**Exbt-2**). On perusal of said deed , I find that the plaintiff Nausad Alam was represented through his mother Najma Khaton as the guardian in the said deed to receive the property transferred through that deed. In the said deed, it was specifically stated by Sahebuddin Mia that he transferred the property described in the schedule of the deed only in favour of the minor and he relinquished all his right, title, interest in favour of the minor by virtue of that deed. In the said deed, it was clearly stated that the right, title , interest of the said property would devolve upon Nazma Khatun, only in case of death of the minor. So in no way it could be said that Nazma Khatun ,mother of the minor was the beneficiary of the said deed simultaneously with her child and therefore, she did not acquire any right , title and interest in the suit property by virtue of that deed. On perusal of the impugned judgment I find that the Ld. Trial court surprisingly described **Ext.2** as ‘**Gift Settlement Deed**’ which is absolutely foreign to Transfer of Property Act. I failed to understand how the Ld. Trial Court considered the document as Gift Settlement Deed which has no existence in law. Perhaps, Ld. Trial court did not go through the contents of the deed and the intention of the executor of the deed . From the face of the deed(**Ext.2**) it is crystal clear that it was a **Deed of Settlement** executed by Sahebuddin Mia in favour of the plaintiff who was a minor at that time and represented through his mother Nazma Khatun to accept the property as guardian.

6. From the respective cases of the parties, as it appears from their pleading, I find that the bone of contention in the suit rests on the sole question of validity and legality of the deed of settlement executed by Sahebuddin Mia since deceased. According to the plaintiff, Nazma Khaton was not only represented the minor as guardian but also the beneficiary of the said deed and therefore, she acquired legal right to accept the said deed as guardian. On the other hand Id. counsel for the respondents specifically contended that under Mohammedan Law mother has not been recognized as guardian to deal with the property of the minor. So the deed of settlement (Ext.2) was illegal and void. She cannot independently sell, transfer or deal with a minor's immovable property unless specific legal condition are met. Under the said law, a father is the natural guardian and in his absence other legal heirs would be entitled to act. In their absence property guardian appointed by the court would be competent to alienate property of the minor with the permission of the court.

7. There can not be any doubt that a Muslim mother has not been recognized as guardian of a minor under Mohammedan Law. A Muslim mother, who assumes the position of a defacto guardian of a minor, has no power to deal with minor's property and any transfer made by the Muslim mother is not only voidable but void ab-initio. However, there can be no doubt that certain powers have been conferred upon a Muslim mother u/s 27 of Guardian and Wards Act when she is duly appointed a certificated guardian. Under section 27 of the Guardian and Wards Act, a guardian is entitled to deal with the property of minor as a person of a ordinary prudence would deal with it if it was his own and may do all acts which are reasonable and proper for the protection or benefit of the minor's property. Under the Mohammedan law neither the mother nor brother and uncle can without the authority of the court deal with the property of a minor. Unless mother is appointed by the father of the minor as the guardian, she has no power to intermeddle with the immovable property. All her dealing with the minor's property are ipso-facto void. In Mulla's Principle of the Mohammedan Law deals with the legal property guardian of a Muslim minor in section 359. In the order, only the father, executor appointed by the father's will, father's father and the executor appointed by the will of the father's father are considered legal guardian of the minor's property. No other relation is entitled to be the guardian of the

property of a minor as of right , not even the mother , brother or uncle but the father or the paternal grand father of the minor may appoint the mother, brother or uncle or any other person as his executor and in that case they become legal guardian and have all the powers of the legal guardians to deal with minor's property. In the case in hand, the father of the plaintiff was alive at the time of execution of the deed of settlement but surprisingly, the mother Nazma Khaton accepted the deed on behalf of the minor representing herself as a natural guardian of the minor which appears to be not only void but it was void ab-initio and the plaintiff did not acquire any right, title , interest over the **B** schedule property by virtue of a deed which itself is void ab-initio and had no legal force. When a document is found void ab-initio from the face of it and the law does not give any sanction to a particular document to exist, formal prayer for cancellation of that document is immaterial because of the fact that the document itself is not legally enforceable . Moreover, from the evidence available in the trial court record, I find that the suit **A** schedule property was the joint property of the legal heirs of Sahebuddin, Rahomuddin and Mst Mohammedan Bibi and there is also no evidence to substantiate that they used to possess their respective share with specific demarcation amicably as claimed by the plaintiff. Though, from **Exbt-2** I find that Sahebuddin Mia transferred his undivided 1/3rd share with specific demarcation and boundary but he had no right to transfer specific demarcated portion in favour of the plaintiff without partition of **A** schedule property either by registered instrument or by a decree of the court. In the suit the plaintiff prayed for declaration of his absolute right, title and interest over **C** schedule property by virtue of **Exbt-2**, but from the evidence, both oral and documentary , it has been established beyond doubt that the suit property was the joint property at the time of execution of **Exbt-2**. If we assume for the sake of argument that the deed of settlement was valid, even then, the plaintiff acquired undivided 1/3rd share in suit '**A**' schedule property and therefore, he has no legal right to pray for declaration of his absolute right , title , interest in respect of any specific demarcated portion of the joint property without partition by metes and bounds. So the prayer of the plaintiff/ appellant made out in the plaint also found not maintainable. Moreover, the deed of settlement executed in favour of the plaintiff/ appellant was void ab-initio and by virtue of that deed,the plaintiff/ appellant did not acquired any right, title & interest in suit '**B**' schedule property.

8. In view of my aforesaid discussion, I have no hesitation to conclude that the findings of the Ld. Trial court in the impugned judgment was valid, legal and proper and rightly passed the judgment dismissing the suit initiated by the plaintiff/appellant and I do not find any reason to interfere with the said findings of the Ld. Trial Court.

Therefore, Instant appeal appears to me devoid of any merit and liable to be dismissed .

Memo of appeal is correctly stamped.

Hence, it is,

ORDERED

that the instant appeal being Title appeal no. 06 / 2024 filed at the instance of the appellant / plaintiff is dismissed on contest without cost.

The judgement dated 22.12.2023 passed by the learned Civil Judge (Sr. Divn.), 1st Court, Chinsurah, Hooghly in Title suit no.18 of 2013 is hereby affirmed.

Instant appeal is thus disposed of.

Note in the register.

Let a copy of the judgment along with trial court record be sent down at once for information .

D/C by me

Sd/- R. Sur
Additional District Judge
1st Court, Hooghly

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