

WBNP18-000047-2022

W. B. F. No. - 3701

HEADING OF JUDGMENT IN ORIGINAL SUIT

DISTRICT : NORTH 24 PARGANAS
IN THE COURT OF : CIVIL JUDGE (JR.DIVN.),
BIDHANNAGAR
PRESENT : **SRI DEBABRATA BISWAS**
JO Code -WB 01155

Ref. : Title Suit No. 38 of 2022
Registration No. 38 of 2022
Delivered on This Day of 27th August of 2026.

Sri Susanta Ghosh
Plaintiff(s)
Petitioner(s)

-VS-

Sri Prasanta Ghosh
Defendant(s)
Opposite party(s)

This suit coming on for final hearing on
12/09/2022, 24/11/2023, 07/03/2024, 18/04/2024,
25/06/2024, 05/09/2024, 06/02/2026, 16/04/2026 and
11/08/2026, 14/08/2026.

Sri Pulak Banerjee
For Plaintiff(s)

Smt Senjnti Mukherjee
For Defendant(s)

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

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1. This is a suit for eviction of licensee, recovery of khas possession and mesne profit total valued of Rs.150/- only.

Plaint case in brief :

2. The case of the plaintiff in nutshell is that plaintiff is the absolute owner of the property mentioned in schedule A and B as mentioned in the plaint by dint of registered deed of gift being no. 3037 of 2008.

3. The defendant is the full blooded brother of the plaintiff. He requested the plaintiff for temporary use of the kitchen, bath and privy and also water facility situated under beneath the staircase which is described in the schedule B, herein after referred as suit property. In response of defendant's request the plaintiff allowed him to use B schedule

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property purely on temporary basis as licensee without license fees. The defendant also undertaken that he would be constructed privy, bath and kitchen in his portion and then he would vacate the B schedule property. But till date the defendant neither construct his bath, privy and kitchen nor vacate the B schedule property in favour of the plaintiff.

4. The plaintiff requested his brother verbally to quit and vacate the B schedule property which is required for the plaintiff himself but the defendant did not pay any heed to that. Moreover, the defendant illegally and forcefully fitted a grill gate in front of the entrance of B schedule property to restrain the access of the plaintiff.

5. Thereafter the plaintiff issued a legal notice

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through his Learned Advocate addressed to the defendant for vacating the B schedule property and it was duly served upon the defendant through post. In spite of due service of the said notice, the defendant is still in possession of the B schedule property illegally. **Hence this suit.**

Conscious form of Written Statement :-

6. In order to contest the instant suit, the defendant appeared and filed his written statement wherein he has disputed and denied all material allegations and statements made in the plaint and praying for dismissal of the suit on the ground that the instant suit is filed falsely for harassing the defendant and with an ulterior motive.

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7. The gist of the defense case is that in the deed of gift being no. 7037 of 2008 no where it is mentioned that the portion that is beneath the stair case on the ground floor to first floor was gifted in favour of the plaintiff. Moreover, the portion being 5 ft. wide common passage measuring about 1 cottah, 11 chittacks with pucca residential two storied structure of the schedule A is totally false and misleading.

8. The father of the defendant since deceased had gifted the entire ground floor measuring about 437 sq. ft. super built up area containing one bed room, kitchen, verandah including common portion and common right and also including proportionate share of the land of the suit building by virtue of a registered deed of gift being no. 7038 of 2008,

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in favour of the defendant. Therefore, there is no question of request or leave or license. Kitchen, bath & privy and water facility situated beneath the stair case, are exclusively within the portion of the gifted property of the defendant. Therefore, he is legally entitled to use that portion. Hence the instant suit has no merit and liable to be dismissed.

Issues framed :

9. Considering the pleadings and rival contention of the parties, issues are framed and recast as follows:-

1. Is the suit maintainable in it's present form and prayer as well as in law?
2. Does the plaintiff has any cause of action of their suit ?

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3. Does the plaintiff has any right, title and interest in or over the suit property as mentioned in schedule B of the plaint ?
4. Is the plaintiff entitled to get the decree as prayed for ?
5. To what other relief/reliefs the plaintiff is entitled to ?

Evidence adduced by parties :

Plaintiff's side :

10. In order to substantiate his case, the plaintiff namely Sri Susanta Ghosh has adduced evidence as sole P.W. and the documents which were filed during his examination, are marked as **Exhibit-1 to 4.**

List of documents of Plaintiff's side :

Sl. No.	Exhibit Nos.	Documents
1.	Exbt.- 1	Deed of gift being no. 7037

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	(series)	of 2008 along with site plan.
2.	Exbt.- 2	Tax payment receipt dated 25/05/2022.
3.	Exbt. - 3 (series)	Certified copy of order sheet of M.P. Case No. 2891 of 2021 along with police report.
4.	Exbt. - 4 (series)	Copy of notice dated 08/11/2021 and 10/11/2021 along with postal receipt and track report.

Defendant's side :

11. In order to dispute the plaint case as well as to corroborate the defense case, the defendant namely Prasanta Ghosh himself has adduced evidence as sole D.W.. Documents which were produced during examination of DW are marked as **Exhibit-A to C**.

List of documents of Defendant's side :

Sl.No	Exhibit Nos.	Documents
1.	Exbt. - A (w.o.)	Deed of gift being no. 7038 of 2008.
2.	Exbt. B	GDE being no. 345 of

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		2022.
3.	Exbt. C	Certified copy of order sheet in connection with application u/s 144 of Cr.P.C.

12. Evidentiary value of all exhibited documents will be decided at the time of determination of issues.

Decision with reasons

Issue nos. 1 and 2 :-

13. For sake of conveyance and in order to avoid unnecessary repetition, these two issues are taken up together. This is a suit for eviction of licensee and recovery of *khas* possession of the suit property claiming the plaintiff himself as exclusive owner of the suit property by virtue of the deed of gift executed by his father. On request of his brother, the plaintiff allowed him to use the suit property on temporary basis. But in spite of several

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requests and even after issuing notice for eviction, his brother/defendant is refusing to vacate the suit property/portion.

14. In view of the contention of the plaintiff, this Court holds that so far as plaintiff case is concerned, the instant suit is found well maintainable in the eye of law and the plaintiff has cause of action against the defendant.

Accordingly both issues are decided in favour of the plaintiff.

Issue no. 3 :-

15. Admittedly, parties are full blooded brother by relation and their father executed two separate deeds of gift, one is in favour of the plaintiff and another one in favour of the defendant in respect of respective portion of the suit building which are described in detail in the said two deeds of gift. Therefore, from

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the said two very deeds of gift it will be clear the suit portion i.e. B schedule property was allotted to whom. The deed of gift being no. 7037 of 2008 along with site plan which were executed in favour of the plaintiff is marked **Exhibit-1** (series). The deed of gift being no. 7038 of 2008 which was executed in favour of the defendant is marked **Exhibit-A**. Let see the said two deeds of gift side by side to ascertain the ownership of disputed portion of the suit building.

16. As per **Exhibit-1**, first floor of the suit building is gifted to the plaintiff and on the contrary as per **Exhibit-A**, the ground floor of the suit building was gifted to the defendant. Both parties are entitled to use some common areas/items as mentioned in schedule 'Ga' in both deeds of gift. In those common

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areas/items do not include the disputed space i.e. the space under stair case. Both deeds are silent about the ownership of said disputed space. Usually the space under stair case is included in the stair case. But surprisingly the stair case is also not included as common user in the both deeds. Therefore, the plaintiff has miserably failed to prove his right, title and interest in respect of the disputed space as mentioned in schedule B of the plaint.

Accordingly the instant issue is decided against the plaintiff.

Issue nos. 4 and 5 :-

17. In the earlier discussion, this Court holds that the answer of the issue nos.1 and 2 are decided in favour of the plaintiff. But issue no. 3 is decided against the plaintiff. Thus, the plaintiff is not entitled to get decree.

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18. Court fees paid is found to be correct.

19. Hence,

O R D E R E D

20. That the suit be and the same is
DISMISSED on CONTEST against the
defendant without any order as to cost.

21. The suit is disposed of accordingly.

22. Decree shall be drawn in terms of the
judgment.

23. Note in Trial Register.

24. Let the Judgement be uploaded in the CIS.

Dictated & Corrected by me,

Civil Judge, Junior Division,
Bidhannagar, North 24 Parganas.

(DEBABRATA BISWAS)
Civil Judge, Junior Division,
Bidhannagar, North 24 Parganas.