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Title Appeal No. 46 of 2018
J. O. Code WB 00896

DISTRICT : SOUTH 24 PARGANAS.
IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
2ND COURT, SEALDAH

Present : Sri Subhajit Basu, LL.M
Additional District Judge,
2nd Court, Sealdah, South 24 Parganas
J. O. Code WB 0896

Title Appeal No. 46 of 2018
Arising out of Title Suit No. 181 of 2010
(CIS No. 46 of 2018)
(CNR No. WBSP07 002897 2018)

This Title Appeal is from the Judgement dated 17.04.2018 and Decree dated 25.04.2018 passed by the Ld. Civil Judge (Junior Division), Additional Court, Sealdah, South 24 Parganas in Title Suit No. 181 of 2010.

Smt. Radha Rani Das, W/o Lt. Kalipada Das
Swami Vivekananda Road, PO & PS- Barasat,
District – North 24 Parganas.

... **APPELLANT/PLAINTIFF**

-VS-

1. **The Kolkata Municipal Corporation,**
5, S.N. Banerjee Road, Kolkata – 700013
2. **The Commissioner**
The Kolkata Municipal Corporation,
5, S.N. Banerjee Road, Kolkata – 700013

... **PROFORMA RESPONDENTS**

3. **Sri Bhim Singh Chawla, S/o Shri Brij Lal Chawla**
B/40A/E/2/1, Kankurgachi Road,
PS-Beleghata, Kolkata – 700054.
4. **Sri Tara Chand Chawla, S/o Lt. Sevaram Chawla**
B/40A/E/2/1, Kankurgachi Road,
PS-Beleghata, Kolkata – 700054.

... **RESPONDENTS / DEFENDANTS**

The Appeal having been finally heard on 08.06.2026 in presence of :-
Ld. Advocate for the Appellant: Shri Tapan Kr. Chakraborty & Sri Sanjay Mukherjee
Ld. Advocate for the Proforma Respondent No.1 & 2: Shri Dhiman Biswas.
Ld. Advocate for the Respondent Nos. 3 & 4 : Shri Suman Kr. Misra

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Date of delivery of Judgment :16.06.2026

J U D G E M E N T

The instant appeal is preferred by the instant appellants/plaintiffs Judgement dated 17.04.2018 and Decree dated 25.04.2018 passed in Title Suit No. 181/2010 passed by the Ld Civil Judge (Jr. Div.), Additional Court, Sealdah.

In the instant appeal, an application under Section 5 of the Limitation Act was filed by the appellants praying for condonation of the delay of 30 days in filing of the appeal.

There has been a delay of 30 days in filing the instant appeal as per the averment o the appellant on the ground that after obtaining the certified copy of the Judgement & Decree on 07.06.2018, the appellant being an aged lady had fallen ill and could not contact her Ld Advocate for filing of the appeal which resulted in such delay.

The respondent Nos.3 & 4 filed their written objection to the said application under Section 5 of Limitation Act denying and disputing the averments made therein stating that there has been a delay of 108 days and such delay has not been adequately explained and prayed for rejection of the said application under Section 5 of the Limitation Act.

Ld. Lawyer of the appellants submitted that there has been a delay of 30 days in filing of the appeal and he had elaborated the grounds of such delay and prayed for condoning the same and thereafter proceed with hearing of the appeal.

Ld. Lawyer of the respondent Nos.3 & 4 submitted that there has been an unexplained delay of 108 days and prayed for rejection of the application under Section 5 of the Limitation Act.

Traversing the record goes on to show that the date of judgement passed by the Ld Civil Judge (Jr. Div.), Additional Court, Sealdah in Title Suit No.181/2010 was 17.04.2018, the date of the Decree was 25.04.2018. Application for certified copy was made on 20.04.2018, copy obtained 07.06.2018 and the instant appeal was filed on 02.08.2018. So, this Court comes to the inference that there has been a delay of twenty six (26) days in filing of the appeal.

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It is a Settled Position of Law that there is no blanket rule that such a delay of twenty six (26) days would automatically be condoned.

Section 5 of the Limitation Act, allows a court to admit an appeal or application after the prescribed period if the appellant shows ‘sufficient cause’ for not preferring it within the limitation period.

The ‘sufficient cause’ concept is not rigidly defined; Courts have wide discretion and what counts depends heavily on facts.

*The general principle remains - ‘law of limitation binds all litigants alike’. In the instant case under adjudication, the appellant demonstrated a genuine, plausible, substantiated “sufficient cause” explaining the delay. The merits of the appeal are substantial and there is a strong interest in deciding the case on merits. The court is convinced that substantial justice outweighs strict adherence to limitation. Relying on the decision of the Hon’ble Supreme Court in **Inder Singh Vs State of Madhya Pradesh (2025)**, this court holds that the long delay in filing of the appeal is not automatically fatal and this court must adopt a liberal approach when substantial justice is at stake.*

The delay is accordingly condoned in view of the grounds made out and hearing of the appeal is now taken up on merits considering that an Appeal is a continuation of the suit and also to prevent multiplicity of proceedings.

Now, the appeal is taken up for adjudication.

An appeal is a request to the higher Court to review and change a decision made by a lower Court in a civil case. In such an appeal, the losing party challenges the judgement of the Trial Court.

It is the contention of the appellants that the Ld Trial Judge while passing the impugned judgement failed to take into consideration the status of the executor of the Lease Deed who was in his death bed and as such could not put his signature on the alleged Lease Deed ; the materials during cross-examination of DW-1 who categorically stated that the executor was admitted at NRS Medical College & Hospital on the date of the execution and it was not possible for him to say as to whether money was tendered to the executor or not ; the property in question is a thika tenant which cannot be transferred except by way of lease where premium of the lease is mandatory which facts were not taken into consideration by the Ld Trial Court.

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The Ld Lawyer for respondent Nos.3 & 4 orally opposed the appeal challenging its maintainability contending that they are in possession of the suit property by virtue of the lease deed dt.19.11.1992 executed by the said Kalipada Das in favour of the defendants and registered on 20.11.1992 and at the time of execution of the Deed of Lease, the executant Kalipada Das was hale and hearty and was present in the office of the Sub Registrar, Sealdah and a sum of Rs.50,000/- was paid for occupation of the lease hold property and prayed for dismissal of the Appeal claiming that the same is not legally tenable in law as well as in facts.

POINTS FOR DETERMINATION

The points for determination is whether the impugned judgement dated 17.04.2018 and decree dated 25.04.2018 as passed by the learned Civil Judge (Jr. Div.), Additional Court, Sealdah dismissing the Title Suit No.181 of 2010 on contest against defendant Nos.3 & 4 and ex-parte against defendant Nos.1 & 2 is legally tenable or not or calls for interference by this Court ?

DECISION WITH REASONS :-

Brief Facts of the Appellant/plaintiff :-

It is the contention of the appellant that the husband of the plaintiff Kalipada Das was the owner of the suit property and his name is still recorded in the KMC records, who left the world of living, leaving behind the plaintiff and her two children. In the year 1992, the said Kalipada Das got admitted at NRS Medical College & Hospital due to heart ailment and taking advantage of the situation, the defendant Nos.3&4 took the signature of Kalipada Das on a blank piece of paper, when he was lying in an unconscious condition in anticipation of death on condition that if he puts his signature, they will provide an amount of Rs.50,000/- for implantation of a pacemaker. Kalipada Das had to accede to such demand considering his health condition and the defendant Nos.3 & 4 by utilizing the said blank papers, made a Deed of Lease for a period of 99 years which according to the plaintiff is not valid, as the same was a result of inducement and fraud and the signature was taken when the signatory was unsound and not healthy, being admitted at NRS Medical College & Hospital. The contesting defendants in collusion with the proforma defendants/respondents are trying to record their names in KMC records and she has been thrown out on

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the streets. The defendant Nos.3 & 4 have got no right, title and interest over the suit property which is still lying in the name of Kalipada Das and being legal owners of the said property, the plaintiff is entitled to get the same back from the defendant Nos.3 & 4 and as such she has filed the suit praying for declaration, permanent injunction and for other consequential reliefs.

The proforma defendants/respondents No.1 & 2 did not contest the suit whereas, the respondent/defendant Nos.3 & 4 entered their appearance, filed their WS and contested the suit.

Brief Facts of the contesting respondent/defendants No.3 & 4 :-

The contesting respondent/defendants Nos, 3 & 4 in their written statement denied the allegations as levied against them including the allegation that the Lease Deed was executed by Kalipada Das while he was in unconscious mind and was admitted in NRS Medical College & Hospital, Kolkata in the year 2002, or that the Lease Deed was executed by fraud as the said Kalipada Das was not of sound mind or health and was confined to bed in the hospital where pacemaker was implanted. They further contended that they are in possession of the suit property by virtue of a registered Lease Deed executed by Lt. Kalipada Das, by remaining present during the execution of the said deed in the office of the Sub-Registrar, Sealdah. It is further submitted that they had paid a sum of Rs.50,000/- for the use and occupation of the lease hold property. The said Kalipada, since deceased, was physically fit and mentally alert at the time of execution of the Deed of Lease and he put his signature thereon out of his own free will and volition.

The Ld Trial Judge framed four issues viz :-

- *Is the suit maintainable in its present form and content?*
- *Does the plaintiff has any cause of action to institute this suit?*
- *Is the plaintiff entitled to get for?*
- *To what other relief/reliefs is the plaintiff entitled to?*

Both sides adduced evidence and referred to and relied upon certain documents which were marked as exhibits.

The plaintiff Radha Rani Das deposed as PW-1 and during her evidence, the original Death Certificate of Kalipada Das, certified copy of the Lease Deed were marked as Exhibit Nos.1 & 2 respectively, whereas, the Original Implanted

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Device Identification Card along with receipt was marked as 'X' series for identification.

The defendant Tarachand Chawla deposed as DW-1 and six electric bills were marked as Exhibit A series.

Now the moot question for adjudication is as to whether the plaintiff Radha Rani Das is the owner of the suit property and as to whether the Lease Deed executed in favour of defendant Nos.3 & 4 has any legal sanctity or not.

During trial, the plaintiff Radha Rani Das had stated that her husband was the owner of the schedule property, whose name was recorded as owner in the KMC record but no document was placed in support of such contention. Merely because the contesting defendant Nos.3 & 4 before the lower Court did not raise any dispute regarding the ownership of Kalipada Das, since deceased, over the suit property that does not ipso facto absolve the plaintiff of her burden to prove the same and as such she is not entitled to get any declaration regarding her exclusive ownership over the suit property. Furthermore, the plaintiff herself during her evidence as PW-1 stated that she has two children which fact she also admitted during her cross-examination, wherein she deposed that after the death of her husband, her two sons Lokenath Das, Gopal Das and herself are the legal heirs. She also produced the Death Certificate of Kalipada Das which was marked as Exhibit No.1. Neither in the plaint nor in her evidence did she make any averment that her husband made any disposition of the suit property in her favour, in the absence of which, the provisions of Hindu Succession Act comes into play and after the demise of said Kalipada Das, this widow Radha Rani Das and her two sons namely Lokenath and Gopal are his absolute legal heirs. The sons had not been made parties in the suit thereby, also making the suit bad for non-joinder of necessary parties.

Now, the question for adjudication is as to whether the defendant Nos.3 & 4 (before the Trial Court) took the signature of Kalipada Das, since deceased, on blank paper and subsequently converted them into a Lease Deed taking advantage of the illness of said Kalipada Das who was lying unconscious being admitted at NRS Medical College & Hospital, Kolkata in the year 1992.

The plaintiff Radha Rani Das during her evidence apart from her oral statement that the defendant Nos.3 & 4 (before the Trial Court) took the signature of Kalipada Das, since deceased, on blank paper and subsequently

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converted them into a Lease Deed taking advantage of the illness of said Kalipada Das who was lying unconscious being admitted at NRS Medical College & Hospital, Kolkata in the year 1992, failed to produce any corroborative evidence to show that when the Lease Deed was executed by her husband, since deceased, he was lying unconscious at NRS Medical College & Hospital, Kolkata and the defendant Nos.3 &4 took his signatures on some blank paper. On the other hand, the certified copy of the Lease Deed in question, referred to and relied upon and marked as Exhibit No.2 is a registered Lease Deed.

The allegation that the executant's signatures were obtained on blank papers while he was lying unconscious at NRS Hospital is rendered inherently improbable in view of the existence of a duly registered Lease Deed executed before the competent Registering Authority, the office of the Sub-Registrar, Sealdah.

Registration of a document like Lease Deed, as the case herein, involves personal appearance, identification and acknowledgment of execution before the Registering Officer. In such circumstances, the plea that the document was subsequently fabricated from signatures obtained on blank papers lacks credibility. Consequently the allegations of fraud is untenable in the absence of cogent and convincing evidence establishing deception, impersonation or irregularity in the registration process. The fact of registration is a strong circumstance against such claim and places a heavier burden on the Plaintiff/appellant Radha Rani Das herein to produce convincing evidence against her allegation of fraud, which she has failed to do.

Summing up, this Appellate Court does not find any cogent reason to differentiate with the findings of the Ld Trial Judge with regard to the genuineness of the registered Lease Deed in question.

The defendant No.4 Tarachand Chawla during his evidence as DW-1 has referred to and relied upon some electric bills which were marked as Exhibit A series from which, it could be deciphered that they are in possession of the suit premises as no prudent person would have a running electricity meter in a premises which he is not using.

In conjugation with the electricity bills (Exhibit A series), if the registered Lease Deed is taken, it becomes quite apparent that the respondents/defendant

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Nos.3 & 4 have taken lease of the suit premise and are in possession of the same. Such being the scenario, the Ld Trial Judge rightly rejected the prayer for a decree of permanent injunction restraining the defendant Nos.3 & 4 from interfering with the suit property because they have every right to possess the suit premises till the lease period expires (lease period is for 99 years).

DECISION

Therefore, after giving a serious cogitation over the grounds of this appeal, entire materials on record, having heard the Ld. Lawyer of the appellant and the respondents and carefully scrutinizing the impugned final order and decree in question, this court can firmly opine that the same does not yell for any interference of this Court, in appeal, so far as it relates to fate of the suit.

EPILOGUE

In result, the instant appeal sinks.

Memo of Appeal is sufficiently stamped.

Hence, it is

ORDERED

that the instant appeal be and the same is dismissed on contest without any order as to costs.

That the final Judgement dated 17.04.2018 and Decree dated 25.04.2018 passed by the Ld. Civil Judge (Junior Division), Additional Court, Sealdah in Title Suit No.181 of 2010 is hereby affirmed.

Parties shall bear the costs of this Appeal on their own.

Let a copy of this Judgement along with the LCR be transmitted back to the Ld. Civil Judge (Junior Division), Additional Court, Sealdah for information.

Signed, sealed and delivered in the open Court on this, the 16th day of June, 2026.

Dictated & Corrected by me.

*Additional District Judge,
2nd Court, Sealdah
Sealdah*

*Additional District Judge,
2nd Court, Sealdah Sealdah,
(S) 24 Parganas*