

TITLE SUIT/CASE NO. 21/2016

West Bengal Form No. 3701

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT : PASCHIM MEDINIPUR.

IN THE COURT OF CIVIL JUDGE (JR. DIV.) ADDITIONAL COURT,

GARHBETA, PASCHIM MEDINIPUR.

PRESENT: LIPIKA DAS

**Civil Judge, (Jr. Divn.) Additional Court,
Garhbeta, Paschim Medinipur**

TITLE SUIT/CASE NO. 21/2016

CIS REG NO. 40/2017

Old Case No. 04/2002

(CNR NO- WBWM11- 000050- 2017)

Date of Delivery of Judgment on 16.06.2026

SMT DIPALI PAL & OTHERS

.....Plaintiff.

-V E R S U

SRI ASHOK KUMAR SARKAR AND 02 OTHERS

..... Defendants.

This suit case coming on for final hearing

26.02.2002, 28.02.2002, 02.03.2002, 03.04.2002, 03.05.2002, 31.05.2002, 26.06.2002, 20.07.2002, 16.08.2002, 09.09.2002, 26.09.2002, 15.11.2002, 28.11.2002, 13.12.2002, 07.01.2003, 28.01.2003, 15.02.2003, 10.03.2003, 15.03.2003, 24.03.2003, 01.04.2003, 10.04.2003, 25.04.2003, 22.05.2003, 20.06.2003, 04.07.2003, 14.07.2003, 21.07.2003, 24.07.2003, 06.08.2003, 25.08.2003, 19.09.2003, 04.11.2003, 20.11.2003, 09.12.2003, 06.01.2004, 22.01.2004, 17.02.2004, 27.02.2004, 17.03.2004, 01.04.2004, 20.04.2004, 11.05.2004, 21.05.2004, 28.05.2004, 15.07.2004, 28.07.2004, 17.08.2004, 19.08.2004, 17.09.2004, 11.10.2004, 07.12.2004, 10.01.2005, 31.01.2005, 19.02.2005, 18.03.2005, 21.04.2005, 18.05.2004, 28.06.2005, 26.07.2005, 19.08.2005, 26.08.2005, 05.09.2005, 28.09.2005, 09.11.2005, 13.12.2005, 12.01.2006, 21.02.2006, 28.03.2006, 12.05.2005, 08.06.2006, 03.07.2006, 25.07.2006, 09.08.2006, 31.08.2006, 26.08.2005, 02.11.2006, 02.12.2006, 06.01.2007, 07.02.2007, 14.03.2007, 13.04.2007, 17.05.2007, 19.06.2007, 24.07.2007, 30.08.2007, 08.10.2007, 17.12.2007, 06.02.2008, 11.03.2008, 29.03.2008, 23.04.2008, 27.05.2008, 11.07.2008, 26.08.2008, 06.11.2008, 22.12.2008, 10.02.2009, 05.03.2009, 07.04.2009, 08.06.2009, 06.08.2009, 18.08.2009, 28.08.2009, 04.11.2009, 09.12.2009, 19.12.2009, 19.01.2010, 03.03.2010, 05.05.2010, 21.06.2010, 16.08.2010, 16.09.2010, 11.11.2010, 06.01.2011, 27.01.2011, 15.02.2011, 08.03.2011, 23.03.2011, 11.04.2011, 18.04.2011, 05.05.2011, 19.05.2011, 13.06.2011, 14.06.2011, 04.07.2011, 19.07.2011, 03.08.2011, 23.08.2011, 05.12.2011, 22.12.2011, 03.02.2012, 06.03.2012, 24.05.2012, 26.06.2012, 30.07.2012, 29.08.2012, 27.11.2012, 21.12.2012, 08.01.2013, 29.01.2013, 20.02.2013, 08.05.2013, 23.05.2013, 09.07.2013, 17.09.2013, 24.01.2014, 10.02.2014, 14.05.2014, 19.05.2014, 04.07.2014, 22.08.2014, 10.11.2014, 09.02.2015, 26.02.2015, 17.04.2015, 04.06.2015, 24.09.2015, 16.12.2015, 18.08.2016, 19.08.2016, 19.09.2016, 07.11.2016, 24.11.2016, 15.12.2016, 11.01.2017, 18.02.2017, 25.04.2017, 18.05.2017, 05.06.2017, 16.06.2017, 11.07.2017, 08.08.2017, 28.08.2017, 07.09.2017, 24.10.2017, 07.12.2017, 10.01.2018, 26.03.2018, 23.04.2018, 10.05.2018, 05.06.2018, 30.07.2018, 06.10.2018, 07.05.2019, 17.07.2019, 05.09.2019, 24.09.2019, 15.11.2019, 11.12.2019, 17.02.2020, 08.09.2020, 08.12.2020, 30.01.2021, 04.06.2021, 12.08.2021, 19.01.2022, 19.04.2022, 26.07.2022, 29.09.2022, 14.12.2022, 22.12.2022, 07.02.2023, 17.05.2023, 15.07.2023, 09.10.2023, 11.01.2024, 13.03.2024, 03.04.2024, 03.06.2024, 15.07.2024, 06.09.2024, 06.12.2024, 11.02.2025, 07.05.2025, 11.06.2025, 05.07.2025, 01.08.2025, 04.11.2025, 15.12.2025, 22.12.2025, 03.01.2026, 05.01.2026, 08.01.2026, 16.01.2026, 19.01.2026, 20.01.2026, 27.01.2026, 02.02.2026, 02.03.2026, 10.02.2026, 11.02.2026, 18.02.2026, 21.02.2026, 24.02.2026, 26.02.2026, 10.03.2026, 10.04.2026, 16.04.2026, 17.04.2026, 21.04.2026, 24.04.2026, 16.05.2026, 16.06.2026.

In the presence of.....

SRI AMIT KARAK

.....Ld. Advocate for plaintiff.

and

SRI SHYAMAL KUMAR MAHAPATRA,

.....Ld. Advocate for defendants.

and having stood for consideration to this day, the Court delivered the following judgment:-

This suit/ case coming on for final hearing on and having stood for consideration to this day, the Court delivered the following Judgment:-

This is a suit for declaration , and cancellation of deed along with ancillary reliefs.

:JUDGMENT:

:PLAINTIFFS' CASE:-

Plaintiff's case in nutshell is that plaintiff filed this suit against the defendants for declaration of 16 annas right, title , interest of Ka schedule property and cancellation of deed of Exchange being no. 2154 dated 19.05.1993. Plaintiffs' case in nutshell in that in District - Paschim Medinipur ,P.S – Garhbeta, Bagdi- Pargona, J.L no 486, Mouz-Radhanagar, of **28 decimal** of property in dag no. 399 ,400, 401, 398/867, 401/869,378 of L.R khatian no.492 and in District - Paschim Medinipur ,P.S – Garhbeta, Bagdi- Pargona, J.L no 486, Mouz-Radhanagar, of total **39 decimal** of property in dag no. 362 ,363,360/760,364,360/759,360/692 of L.R khatian no.24 and District - Paschim Medinipur ,P.S – Garhbeta, Bagdi- Pargona, J.L no 482, Mouz- Amlagora, of total **01 decimal** of property in dag no. 472/1331 of L.R khatian no.94/2, and District - Paschim Medinipur ,P.S – Garhbeta, Bagdi- Pargona, J.L no 482, Mouz- Amlagora, of total **21 decimal** of property in dag no. 13,13/1477 of L.R khatian no.86/2 and these of total **89 decimal** is the **Ka schedule** property and similarly in District - Paschim Medinipur ,P.S – Garhbeta, Bagdi- Pargona, J.L no 895, Mouz-Katrabali, of **12 decimal** of property in dag no. 273,15 decimal in dag no 352,05 decimal in dag no 556/753, 20 decimal in dag no 559, 39 decimal in dag no 626/676/,03 decimal in dag no 306, 02 decimal in dag no 337, 05 decimal in dag no 457, 02 decimal in dag no 304, 33 decimal in dag no 629, 28 decimal in dag no. 626/777,15 decimal in dag no.483 all of R.S. khatian no.117 and total 1.80 acre is the **Kha schedule** property. According to the plaint case , the Ka schedule property in Radhanagar and Amlagora mouza in various plots were totally self owned property of defendant no.2 Bandiram Sarkar and the Pro-forma defendant no.3 Arobindo Sarkar in their half half share and the half of those properties were recorded in R.S. ROR in the name

of Bandiram Sarkar in various khatians and the said Bandiram Sarkar was the step brother of Arobindo Sarkar and the said Bandiram Sarkar was too younger than Arobindo Sarkar and the said Arobindo Sarkar earned huge amount of money through various business and by that earned money Arobindo Sarkar constructed residential home in Ka schedule property of various plot of Radhanagar mouza and he had also other raised building so far and he had given premises in rent to the State Bank of India , Garhbeta branch and also constructed shop rooms and given them in rent to various persons. The said Arobindo Sarkar had beard all the expanses of Bandiram Sarkar to get higher education and the defendant no.2 was a teacher of Garhbeta High School. As per the plaint case, the defendant no.2 i.e Bandiram Sarkar and the Pro-forma defendant Arobindo Sarkar always lived in a joint property and both of them are still also living in a joint mess. The plaint case also define, that the pro- forma defendant no.3 Arabindo Sarkar got married in the Pal family in Changual village within Kharakpur P.S. but the said Arobindo Sarkar had no issue and Arobindo Sarkar and his wife never had their any biological child , therefore Arabindo Sarkar brought the plaintiff Madhusudan Pal when he was 3 years of age from village Changulia from the Pal family and the plaintiff was the son of Saroj Ranjan Pal and Arobindo Sarkar had brought up the plaintiff as his own child and also gave him in marriage . According to the plaint case, the plaintiff had not studied to fur but the plaintiff is able to read and write Bengali language but the plaintiff can only write his name in english language and the plaintiff also could not write in english . As per the plaint case , the plaintiff was near and dear of Arobindo Sarkar and his wife and the plaintiff used to give respect to them as his real father and mother. According to the plaint case, Arobindo Sarkar has properties in Radhanagore and Amlagora mouza and except these properties he has ancestral properties and residential house at Katrabali which is situated 18 k.m. away from Radhanagore and Amlagora and Arabindo Sarkar also has properties in Shidpur, Dhanyachhara, Bhagabantopur , Sandhipur, Bachhua, Jharia and Sitanagore. The plaintiff again contended that , as the plaintiff was not so highly educated and he had not opted for further higher education and he started his business of chemical fertilizer and pesticides in a shop namely "**Sarada Nursary**" in suit property within the suit mouza Radhanagore and the plaintiffs was run his business within the joint bastu property of the defendant no.2 and pro-forma defendant no.3 and the plaintiff also resided in the said residential house of defendant no.2 and pro-forma defendant no.3 in Radhanaore mouza and while the plaintiff was living in the Radhanagore house of the defendant no.2 and pro-forma defendant no.3 the plaintiff was got married with the daughter of Shashanka Chowdhary of Mangrul and prior to their marriage the said Shashanka Chowdhary brought his daughter in the house of Tarak Guin and make arrangement of her daughter's marriage with the plaintiff from his house and after their marriage the plaintiff with his wife used to reside with the defendant no.2 and pro-forma defendant no.3 in their ejmal property. The plaintiff also contended that, till he was physically fit and abled Arabindo Sarkar used to go to his residential house at Katrabali mouza and supervised the agriculture work in the agricultural field at Katrabali

along with other properties situated at Shidpur, Dhanyachhara, Bhagabantopur , Sandhipur, Bachhua, Jharia and Sitanagore and the pro-forma defendant no.3 used to reside with the defendant no.2 in his house at Radhanagore when it was impossible for him to move and rare the pro forma defendant no.3 visited the Katrabali and later on the plaintiff has shut down his '**Sarada Nursing**' shop and shifted to Katrabali residential house with his full family as there was no person available to look after the properties and cultivation work in Katrabali and the other properties adjacent to Katrabali and since then the plaintiff used to take care of all the properties and the cultivation work at Katrabali and the properties in other mouzas. The plaintiff stated that , the plaintiff was very nearest and dearest one of the pro- forma defendant no. 3 and who had transferred the **Ka** schedule properties of Radhanagore and Amlagora mouza including the the building standing, rented properties , ponds, vacant land, shop room and other properties and also transferred his shares of property in Shidpur, Dhanyachhara, Bhagabantopur , Sandhipur, Bachhua, Jharia and Sitanagore mouza in favour of the plaintiff by a "**Nirupam Deed**" which was executed on 13.01.1981 and registered on 17.01.1981 before the Garhbeta Sub- Registrar Office and by the aforesaid "**Nirupam Deed**" the pro- forma defendant no.3 had transferred 6.37 acre of landed properties in favour of the plaintiff and also delivered his right, title, interest and possession in favour of the plaintiff and the pro- forma defendant no.3 had only retained the rights of the properties with him till his life are the residential houses situated at Katrabali and Radhanagore mouza and he had also retained the right to collect the rents from the rented house situated at Raghanagore mouza and since then as per the "**Nirupam Deed**" the plaintiff used to reside in the properties which was transferred to him and the pro-forma defendant no.3 also used to reside in the residential house at Radhanagore mouza from where he used to collect rents. According to plaint case, defendant no.1 Ashoke Sarkar is the only son of the defendant no.2 Bandiram Sarkar and the said Bandiram Sarkar got married in the year 1360 B.S. and in the year 1362 B.S. or on 27.11.1955 the defendant no.1 was born and after birth of the defendant no.1 two daughters of Bandiram Sarkar were born namely Alpona Sarkar and Ranjana Sarkar and so on in their family there were Bandiram Sarkar, his wife Juthika Sarkar, defendant no.1 Ashoke Sarkar, his two daughters namely Alpona Sarkar and Ranjana Sarkar and so Bandiram's family was entitled to retained only 12.36 acre landed property as per the family ceiling law when a family consist of five members. The plaintiff further stated that, at the time of enforcement of the family ceiling law on 15.02.1971, Bandiram Sarkar and his wife were adult persons and defendant no.1 was also minor at that time and likewise on 15.02.1971 if there was any property hold in the name of defendant no.1 or in the names of the minor daughters of Bandiram Sarkar , that property would have been considered the property of Bandiram Sarkar as per the said concerned law and the defendant no.2 Bandiram Darkar had filed and return his list of landed property under section 7(A) of Family Ceiling Law on 20.03.1976 before the Garhbeta Settlement Office and after that on the basis of his return filed list of his retained properties and vested properties were published after adjudication under section 14(T)(3) of

W.B.L.R. Act and it could be seen that the Kha schedule property of the present plaintiff is out of the list of the retained property of Bandira Sarkar . The plaintiff stated that, the defendant no.1 was the student of Garhbeta High School and admission register of that school the date of birth of defendant no.1 has written as 27.11.1955 and it was also reflected that defendant no.1 has studied up to class XI in that school and in the year 1972 he passes Higher Secondary examination and after that the defendant no.1 has passed B.Sc. and became graduate. The plaintiff again contended that, the Ka schedule property is a valuable property and the plaintiff has acquired right, title, interest and possession of the Ka schedule property by "**Nirupam Deed**" and the plaintiff is still in rightful possession of the Ka schedule property and the Kha schedule property was not the rightful property of the defendant no.1 and for the sake of argument it can be said that the Kha schedule property was belonged to the defendant no.1 on 15.02.1971 when the defendant no.1 was a boy of 15 years , 2 months and 20 days and according to law on that time his natural guardian father i.e. the defendant no.2 had filed the Form 7 (A) and did not retained the Kha schedule property and on and from 15.02.1971 the Kha schedule property is a vested land of the Government . The plaintiff further stated that, the plaintiff never had any conversation with the defendant no.1 in respect of the exchange between the Ka schedule and Kha schedule and Ka schedule property is valuable like urban property it includes buildings and the valuation of Ka schedule could not be equivalent with the Kha schedule property which is mostly agricultural land and situated in remote village area and even more as the Kha schedule property has already vested to the government so the defendant no.1 has no right to do any exchange the Kha schedule property with Ka schedule property and this plaintiff have no knowledge about the alleged deed of exchange and the plaintiff on 09.11.2001 got a notice in connection with Mutation case No.07 of 2001 from Revenue Inspector Office , Garhbeta Gram Panchayat and from that notice the plaintiff got to know that the defendant no.1 had applied for mutation of 67 decimal property in Radhanagore mouza from the Ka schedule property which property the plaintiff has acquired from Arabindo Sarkar by a "**Nirupam Deed**" and as per the aforesaid notice the plaintiff on 13.11.2001 sent his son Ujjawal Pal before the Revenue Inspector Office from that the plaintiff came to know that the defendant no.2 appeared before the Revenue Inspector Office on behalf of defendant no.1 and showed a registered deed of Exchange being no 2154 dated 19.05.1993, which was about exchange of Ka schedule property with Kha schedule property and the plaintiff became astonished after knowing about such deed of exchange and there after the plaintiff filed application before the Garhbeta Sub Register Office and collected the certified copy of such deed of exchange on 19.12.2001 and the certified copy of the deed of exchange was read out by the plaintiff's son Ujjawal Pal and many others and then plaintiff came to know that defendant no.1 & 2 had executed and registered the deed of exchange in completely secret manner from the plaintiff and they have written the deed in english and and after analyzing the contents of the alleged deed of exchange the plaintiff came to about the deed conspiracy of defendant no 1 & 2 . The plaintiff further stated that, the pro -forma defendant

no.3 had cherished the plaintiff from his childhood like his parents and later the pro-forma defendant no.3 had gifted properties to the plaintiff by a "**Nirupam Deed**" and the defendant no.2, pro-forma defendant no.3 both of them used to reside with the plaintiff in a joint family property and so the plaintiff has also showed his respect towards the defendant no.2 as his father figure and also gave respect the defendant no.2 like his own uncle and the plaintiff has always showed his gratefulness towards the defendant no 1& 2 and the pro-forma defendant no.3 and the plaintiff had a deep faith and believe upon them and the plaintiff never have any sense of felling that defendant no.1 & 2 could do any harm to the plaintiff and by creating of undue advantage upon the plaintiff these defendant no 1& 2 took advantage of that and the plaintiff had no option to refused any commend of defendant no.1 & 2 . After getting the certified copy of the deed of exchange and also after analyzed the same the plaintiff came to know that with the intention to grab the valuable Ka schedule property the defendant no 1 & 2 had prepared the said deed in english and exchanged the the Ka schedule property with the Kha schedule property by such alleged deed of exchange and the defendant no 1 had purchased the stamp paper and typed the same after that completed the deed by signing the deed by the witnesses and two witness who are the law clerks of Garhbeta Court namely Chunilal Pan and Pradeep Kumar Patra have signed the deed of exchange prior to the signature done by the parties of the deed and the deed was kept in the house of Advocate Kabindra Nandi who lived nearest to the Garhbeta Register Office. As per the plaint case , the defendant no.2 dishonestly personally brought the plaintiff by riding a scooter from Katrabali to Garhbeta in the house of Kabindra Nandi's house with an excuse of an urgency and at about 11 a.m. defendant no.1 brought the plaintiff in the house of Ld. Advocate Kabindra Nandi and the defendant no.1 & 2 expressed that defendant no.1 & 2 are applying for a loan from Bank by mortgaging their properties so the deed has to be prepared and registered in English and they are taking this loan for starting their nnew business and the defendant no.1 & 2 also said that there is nothing to worry by the plaintiff as the loan amount and the interest amount of the loan will be paid by the the defendant no.1 & 2 and the plaintiff had not even tried to read out the contents of the said deed as it was written in English and neither the the defendant no.1 & 2 nor any of the witness of the deed or the Ld. Advocate helped the plaintiff to understand the contents of the alleged deed and the plaintiff had no idea that the alleged deed is a deed of exchange and the plaintiff believed that the deed was executed for obtaining loan and from this believe the plaintiff had signed on the alleged deed and after completion of the signature of the plaintiff the defendant no.1 has presented the deed before the Garhbeta Register Office and the after that the registration process was completed and the plaintiff has only asked that the Sub Registrar Officer had signed or not on the deed. Now the plaintiff has stated that , the witness of the said alleged deed namely Chunilal Pan has a friendship relation with the defendant no.2 and Chunilal Pan is the husband of sister in law of the defendant no.2 and the other witness namely Pradeep Kumar Patra , Ld Advocate Kabindra Nandi and the typist of the deed namely Dilip Kumar Dey all are equally obedient student of defendant

no.2 and another witness Kaushik Nandi is the son of Ld. Advocate of Kabindra Nandi and he was also student of defendant no. 2 and the plaintiff contended that at the time of execution of the alleged exchange deed Kaushik Nandi was a student and being a student it was impossible for Kaushik Nandi to come to the Court or at the sherestha of Kabindra Nandi and signed the alleged deed and the signature of Kaushik Nandi as witness in the alleged deed easily proved the fact that the execution of the alleged exchange deed was completed in the house of Ld. Advocate Kabindra Nandi and the defendant no 1 & 2 have completed the execution of the alleged deed in the house of Ld. Advocate Kabindra Nandi very secretly so that no one could know about such execution and the plaintiff was completely unaware about the contents of the said alleged exchange deed and the plaintiff was also not got any independent advice in respect of the said alleged deed. According to the plaintiff, one Pradeep Kumar Patra had identified the signature of the plaintiff but said Pradeep Kumar Patra was completely unknown to the plaintiff. The plaintiff also contended that, the defendant no.1&2 in collusion with the typist, Advocate, and the witnesses dishonestly and by practicing undue influence and misrepresentation prepared the said illegal, forged, beyond right, concocted, null and void and which was not acted upon and the said deed is not at all enforceable upon the plaintiff and by such alleged deed of exchange the defendant no.1 never acquired any right, title, interest and possession upon the Ka schedule property. and the Kha schedule property is a vested land so many land less persons are possessing the Kha schedule property. According to the plaintiff case, the alleged deed of exchange is an illegal, forged, beyond right, concocted, null and void deed and the plaintiff is in possession of Ka schedule property from earlier time. The plaintiff has also contended that, on 22.02.2001 one survey inquiry was done on the basis of the false mutation case filed by the defendant no.1 and it was proved by such inquiry that plaintiff has right, title, interest and possession in the Ka schedule property but the defendant no.1 & 2 tried to influence the inquiry officer to submit false report in their favour and the mutation case was fixed for adjudication before the R.I. Office but the said R.I. has no right to give any order on that mutation case on the basis of that illegal deed of exchange. According to the plaintiff case, the plaintiff was present on 22.02.2002 in the Ka schedule property but the inquiry officer did not take any evidence from both the sides and on that day the defendant no.1 & 2 are knowing the fact that the alleged deed of exchange is an illegal deed so they gave threat of dispossession to the plaintiff from the Ka schedule property and in this circumstances the plaintiff has compelled to institute the present suit. According to the plaintiff case, the cause of action of the present suit arose on 19.12.2001 when the plaintiff got the notice of mutation case filed by the defendant no.1 and when on 19.12.2001 the plaintiff has collected the certified copy of the deed of exchange and again on 12.02.2001 when the defendant no. 1& 2 gave threat of dispossession of the plaintiff from the Ka schedule property. The plaintiff further stated that, the state of West Bengal is a necessary part of this suit and its presence in the suit is very crucial for this suit before institution of the present suit the Ld. Advocate of the plaintiff have served notice U/Section

80 of C.P.C. by registry post and also filed the acknowledgment due before this Court . The plaintiff prayed a decree of declaration before this Court, that the deed of exchange being no 2154 dated 19.05.1993 is illegal, forged, beyond right , concocted , null and void and which was not acted upon and such deed was tainted with fraud, undue influence and misrepresentation and it is not enforceable or binding upon the plaintiff and the plaintiff has also prayed a decree of declaration of 16 annas right, title, interest and possession over the Ka schedule property and also prayed a decree of permanent injunction against the defendant no.1&2 as they will could not create any disturbance in the peaceful possession of the plaintiff in the Ka schedule property . The plaintiff has prayed an alternative relief as a decree of declaration of cancellation of alleged deed of exchange and return the Ka schedule property to the plaintiff if the Court will find any obstacles or difficulties to declare a decree of declaration of 16 annas right, title, interest and possession of Ka schedule property in favour of the plaintiff . Simultaneously the plaintiff has also prayed a decree of recovery of possession of the Ka schedule property in favour of the plaintiff by the order of this Court if after completion of trial of the suit it will prove that the plaintiff has no possession over the Ka schedule property . The plaintiff prayed a decree of cost of the suit against the defendants and any other relief or the reliefs as the plaintiff may be entitled to as per law and equity.

: DEFENCE CASE :

These defendants no.1 & 2 of this suit appeared before this Court after receiving the summons from this Court and filed their written statement separately as per law and contest the same by denying all the material allegations raised by the plaintiff in his plaint . Both the written statements of the defendant no.1& 2 are more or less stated the same contentions. Both the defendants no. 1& 2 submitted before this Court that the plaintiff has no cause of action to institute this suit against these defendants and presently the suit is not at all maintainable in its form and prayer and the suit is barred by the principle of waiver , estoppel and acquiescence and it is also barred under section 34 of Specific Relief Act and the suit is barred by section 7(IV)(b) of Court fees Act and the present suit is also barred by the law of Limitation Act and . These two defendants no.1&2 specifically contended that the present educated plaintiff has no right to challenge the registered deed of Exchange being no 2154 dated 17.05.1993 as per the provision of Transfer of Property Act and Indian Contract Act and the prayer of a decree of declaration of 16 annas right, title, interest and possession of Ka schedule property by the plaintiff is completely illegal, false, beyond right, and liable to be rejected and the present suit is barred by principle of misjoinder of cause of action and adverse possession . According to these defendants the plaintiff is an enough educated and intelligent person and the deed of exchange was executed between the plaintiff and adult and educated defendant no.1 as per both of their free will and consent and in this matter the defendant no.2 had no involvement or participation but instead of that

by fabricating false story the plaintiff made the defendant no.2 as party in this suit and tried to hide the truth by made a set up with the defendant no.3 and so the present suit is not at all maintainable. These defendants stated that the valuation statement provided by the plaintiff is completely whimsical and arbitrary one and these defendants admitted the fact that the Ka schedule property was owned by the defendant no.2 and pro-forma defendant no.3. These defendants denied all the contents of the allegations of the plaintiff stated in the plaint.

The main defense of these contesting defendants is that, the father of defendant no.2 namely Basanto Kumar Sarkar had huge landed property in Radhanagore, Amlagora, Katrabali and all along with other mouzas and the said Basanto Kumar Sarkar had one son and three daughters from his first wife and the pro-forma defendant no.3 of this suit is his son from his first wife and after death of his first wife the said Basanto Kumar Sarkar married twice but he had no child from his second wife and again after death of his second wife the said Basanto Kumar Sarkar got married with Gunomoe Sarkar and out of their wedlock they had one son and one daughter and the defendant no.2 is the son of Basanto Kumar Sarkar from his third wife Gunomoe Sarkar and the defendant no.1 is the son of the defendant no.2 and the pro-forma defendant no.3 is the elder brother of defendant no.2 and the elder uncle or Jethamosai of defendant no.1. The father of the defendant no.2 in his life time gave a house in rent to the State Bank of India Garhbeta Branch, in Radhanagore mouza and later he built another building for the said Bank and the said Bank had shifted their branch office to that new building in the year 1961 and initially the said bank was worked as pay bank but since 1979 the said Bank turned into Branch Office and the defendant no.2 in his own effort and money had raised the new extended building for the bank and later the said extended rented building was turned into three storied building in the year 2001 and the defendant no.1 & 2 took loan from the bank and turned the said extended rented house into three storied building with lots of rooms as per the requirement of the said tenant Bank in Radhanagore mouza in dag no.360/760. As per the defense case, the defendant no.2 had worked as teacher of mechanics in University College of Science Calcutta in the year 1954 and later in the year 1955 the defendant no.2 had joined as special cadre teacher in Netajinagore Sripati Sadan situated at Sandhipur and since 1959 he was working as a regular teacher in that school and he worked there as teacher for about 5-6 years but on 18.05.1961 the defendant no.2 had joined as teacher in Garhbeta High School and he had worked there as teacher and took retirement from that school. Prior to 1954, he joined as a teacher the defendant no.2 was involved with various business and specially he was very successful in the business of Forest contractor and after joining in service the defendant no.2 gave power of attorney of his business to the pro-forma defendant no.3 to take care of his business and being the power of attorney of the business the pro-forma defendant no.3 used to take care of the whole business of defendant no.2 and the father of the defendant no. 2 died in the year 1965 and after that the defendant no.2 and the pro-forma defendant no.3 used to live in a joint family mess and the defendant no.2 used to spend his

earned money from his business and service to his joint family expenses and the pro-forma defendant no.3 was the Karta of their joint family and the defendant no.2 is very obedient to him and the defendant no.2 used to take care of all the ancestral properties matters, business matters and other serious family matters but all he used to do with the instruction and under the guidance of the pro-forma defendant no.3. According to these defendants, the statement which is stated by the plaintiff in his plaint that the pro-forma defendant no.3 by his earned money he had build residential house and shop rooms in the Ka schedule property and gave in rent to the State Bank of India, Garhbeta branch, is totally false, baseless ,completely different from the reality and imaginary one .These defendants have also denied the fact that, the pro-forma defendant no.3 had bear all the expanses of the defendant no.2 to opt higher education and it is also false according to these defendants that the defendant no.2 had earned very little money from his teaching service. According to theses defendants , the financial condition of the father of pro-forma defendant no.3 and the defendant no.2 was very sound and father of defendant no.2 had bear all the expanses of higher education of the defendant no.2 and instead of having huge amount of properties of his father the defendant no.2 had lots of sufferance and sacrifices to earn his own properties and after death of their father the pro-forma defendant no.3 had no personal income except the earning from his ancestral property.As per the these defendants, the defendant no.2 used to show his respect, obedience always towards the pro-forma defendant no.3 and both of them had a very strong relation that prior to institution of this suit by this rapacious plaintiff, the local inhabitants of Radhanagore are did not know that pro-forma defendant no.3 and defendant no.2 are step brothers. These defendants also contended that, the financial condition of the plaintiff's family was not sound and so on this ground of sympathy the pro-forma defendant no.3 helped the plaintiff and the defendant no.2 had never raised any objection against this when the pro-forma defendant no.3 helped the plaintiff . Theses defendants again contended that, the plaintiff was residing in the Radhanagore house of the defendants but since 1955 the plaintiff used to reside in joint property house of the defendants at Katrabali mouza and as per the will of the pro-forma defendant no.3 and his wife the defendant no.2 had made arrangements of education and livelihood of the plaintiff and the plaintiff was a student of Netajinagore Sripati Siksha Sadan at Sandhipur and may be the plaintiff appeared in higher secondary examination in the year 1963 or 1864 but he failed. These defendants again stated that, the original plaintiff was very obedient of the pro-forma defendant no.3 , his wife and the defendant no.2 and this defendant no.2 being a very simple person also have love and affection towards to the plaintiff and when the plaintiff failed in his higher secondary examination and expressed his view that he is not interested to continue with his study, as per the order of the pro-forma defendant no.3 gave responsibility of their valuable properties of Katrabil mouza and also other properties of 9-10 mouzas to the plaintiff to take care of those properties and after getting the responsibility to take care the huge amount of properties the plaintiff had started planning how to become more wealthy and the plaintiff had started to take control and dominance over the pro-forma defendant no.3 and as a result

the plaintiff was successful to execute a '**Nirupam Deed**' in his favour by the pro-forma defendant no.3 by influenced him and therefore , plaintiff became more wealthy. These defendants also contended that, the 1.80 acre property which is the Kha schedule property along with 8.98 acre property in Katrabali was khas property of one Kumed Kumari Dasi and while she was in khas possession of those properties she transferred the 1.80 acre Kha schedule property along with 8.98 acre property of Katrabali in favour of the defendant no.1 by a registered deed of gift being no.3417 dated 24.05.1965 and handed over the khas possession in favour of the defendant no.1 and since then the defendant no.1 was in possession of the Kha schedule property including the other properties. According to these defendants the plaintiff has acquired the right,title and interest of Ka schedule property from the pro-forma defendant no.3 by a "**Nirupam Deed**" and the plaintiff used to take care of the properties of defendant no.2 and the pro-forma defendant no.3 in Katrabali mouza and its adjacent properties and along with this the plaintiff also took care of the raiyat properties of the defendant no.1 in Katrabali mouza. As the plaintiff got the opportunity to take care of huge amount of properties and also got the the agricultural property of Katrabali mouza from the pro-forma defendant no.3 and he also lived in the Katrabali mouza ,so the plaintiff considered it to be profitable to live in Katrabali and took decision to live in Katrabali permanently. According to these defendants, the plaintiff very cunningly requested the defendant no.1 for an exchange between the Ka schedule property with the Kha schedule property of 1.80 acre as the plaintiff thought that if he could acquire the Kha schedule property of 1.80 acre of land which is the adjacent land of his Katrabali property , then he will be the owner of huge amount of properties in same place . Theses defendant also contended that the plaintiff himself approached and also approached through the pro-forma defendant no.3 to the defendant no.1 for the execution of the deed of exchange between the Ka and Kha schedule property and the pro-forma defendant no.3 had ordered the defendant no.1 for the execution of the deed of exchange and the pro-forma defendant no.3 gave assurance to the plaintiff and the defendant no.1 that he himself would took all the responsibility by taking advice from his known Advocate for execution of the deed of exchange and the defendant no.1 was agreed and gave his consent on the said proposal of the plaintiff as the defendant no.1 was reside and running his business in Radhanagore mouza and he also thought that it will not create any inconvenience to him and both of them will be conveniently possessed their respective properties .As per these defendants ,the pro-forma defendant no.3 always took advice of renounced Ld. Advocate Amalananda Kundu in respect of critical matter of his property or regarding any legal matters and when the defendant no.1 was agreed to execute and register the deed of exchange between the Ka and Kha schedule property , the pro- forma defendant no.3 took the responsibility and initiated the matter for preparation of the draft copy of the deed of exchange by his known Ld. Advocate on the request of the plaintiff and the decision of execution of the deed of exchange was finalized between the plaintiff and the defendant no.1 on 15 days ago of the registration of the alleged deed of exchange and it was finalize at Radhanagore in the

residential house of the defendant no.1 and it was finalized in presence of the plaintiff, the defendant no.1, the pro-forma defendant no.3 and with some local persons and the pro-forma defendant no.3 along with the plaintiff and the defendant no.1 went to Garhbeta in the house of Ld. Advocate Amalanando Kundu and took his advice. After seeing the all the deeds and the papers of the concerned properties of the plaintiff and the defendant no. 1 as per the advice, suggestion and commend of Ld. Advocated Amalanando Kundu , the draft copy of the deed of exchange was prepared by the practicing Ld. Advocate of Garhbeta Munsif Court Kabindra Nandi and after that the plaintiff and the defendant no.1 have read out the contents of the draft copy of the deed of exchange and gave their consent and again the pro-forma defendant no.3 cross checked the draft copy by Amalanando Kundu and then the pro-forma defendant no.3 has made arrangements for its registration and as per the consent of the plaintiff the deed of exchange was prepared and after finalization of the deed of exchange the defendant no.1 himself purchased the stamp paper on 10.05.1993 from the Medinipur Treasury and after seeing the draft copy the Ld. Advocate has completed the typed work of the deed by Dilip Kumar Dey and after that it was finalized . According to the defendants, the plaintiff himself after read out the contents of the deed of exchange knowing it to be correct in presence of all the witness voluntarily on 17.05.1993 at the serestha of Ld. Kabindra Nandi in Garhbeta Court complex executed the said deed of exchange by signing on it and at the same time the defendant no.1 also on 17.05.1993 had executed the deed of exchange in presence of all the witness by signing on it and apart from that the pro-forma defendant no.3 who is the well-wisher of the plaintiff, was also physically present there and have done all the necessary arrangements for the peaceful completion of the registration procedure and moreover the plaintiff took himself independent advice from the most senior and reputed Ld. Advocate Amalanando Kundu and Ld. Advocate Kabindra Nandi and as the the deed of exchange was executed by the 1st party and the 2nd party on 17.05.1993 but due to absence of the Sub-Registrar the said deed was not get registered on 17.03.1993 and with full consent after execution of the deed voluntarily the plaintiff kept the deed of exchange in the custody of the pro-forma defendant no.3 and returned to his Katrabali house and after that on 19.05.1993 the plaintiff had voluntarily reached to Garhbeta from Katrabali for the registration of the said deed and the pro-forma defendant no.3 along with the deed presented before the Shrestha of Ld. Advocate Kabindra Nandi at right time and the defendant no.2 did not bring the plaintiff to Garhbeta by his scooter and as it was earlier decided and as per that decision the plaintiff came to Garhbeta Court on 19.05.1993 and met with Kabindra Nandi, Chunilal and Pradeep Patra and Pradeep Patra was known to the plaintiff earlier to the execution of this deed and on 17.05.1993 the plaintiff voluntarily executed the said deed of exchange and returned to his Katrabali house and again on 19.05.1993 the plaintiff came to the Garhbeta Court for the registration of the said deed and took the initiatives for the processing of the registration of the said deed of exchange after met with Kabindra Nandi and the Sub Registrar had asked to the plaintiff and inspected that whether the exchanged properties are of same and equal

value and plaintiff had voluntarily executed the said deed of exchange or not and on the basis of answer received from the parties and with the consent given of both the parties the Sub-Registrar has done the registration procedure. According to these defendants, the deed of exchange which was executed on 17.05.1993 and registered on 19.05.1993 being no. 2154 before the Garhbeta Sub-Registrar is legal, valid, bonafied deed and the said deed was property acted upon and at the time of execution of the said deed of exchange the plaintiff and the defendant no.1 have their valid right, title, interest and possession on their respective properties and prior to the execution of the said deed of exchange the plaintiff himself inspected all the title documents of the defendant no.1 and after satisfied with all the deeds he offered the defendant no.1 for the said exchange of properties and the plaintiff got the right, title, interest and possession of total Kha schedule property in dint of the said deed of exchange and since then the plaintiff was and is in possession of the Kha schedule property and the Kha schedule property or any portion of the Kha schedule property was never vested by the Government or the Government never got the right and possession of the Kha schedule property and the statement what the plaintiff had contended in his plaint, that the said deed of exchange was executed at the house of Kabindra Nandi and the defendant no. 1& 2 had executed the deed of exchange by practicing forgery, is completely false, baseless, totally opposite to the actual fact and stated only for the initiation of the present false suit. These defendants contended that, as per the said deed of exchange the defendant no.1 got the 16 annas right, title, interest and possession of total Ka schedule property in dint of the said deed of exchange and after 6 years of execution of the said deed of exchange the plaintiff and his son Ujjawal Pal both have requested the defendant no.1 & 2 that they need some bustu land in Radhanagore mouza and the defendant no.1 & 2 out of their love and affection have decided to gift 1 Kotha of land in favour of the plaintiff and his son. These defendants again contended the, the defendant no.1 had executed one deed of gift being no 2617 which was executed on 15.06.1999 and registered on 24.06.1999 transferred 01 decimal of landed property out of 13 decimal of property of Radhanagore mouza, J.L. no. 486 R.S. ROR khatian no.43/1 and L.R. ROR khatian no. 24 of dag no 362 and this property is the part of the Ka schedule property which the defendant no.1 had acquired from the said deed of exchange being no 2154 dated 19.05.1993 registered before the Garhbeta Sub Registrar and the son of the plaintiff had received the said deed of gift and the son of the plaintiff namely Ujjawal Pal was and is in khas possession of the said 01 decimal of landed property which is mention in the trace map in the said gift deed being no 2617 dated 24.06.1999 and at the same time the defendant no .1 had also transferred 01 decimal of landed property in favour of the plaintiff by a registered deed of gift being no 32618 executed on 15.06.1999 and registered on 24.06.1999 from the property of Radhanagore mouza of dag no 362 and handed over his possession of the property in favour of the plaintiff. These defendants further stated that, the son of the plaintiff is living with the plaintiff in his family and the son of the plaintiff after knowing the fact of deed of exchange between the plaintiff and the defendant no.1 is to be valid and correct one, he had

accepted the deed of gift of property in dag no 362 from the defendant no.1 . According to these defendants , the aforesaid two gift deeds were executed and registered at the same time and in presence of plaintiff, his son, pro-forma defendant no.3 and the witnesses and both the gift deeds were presented before the Garhbeta, A.D.S.R. but the A.D.S.R. Garhbeta in presence of the plaintiff, his son, pro-forma defendant no.3 and defendant no.1&2 done an inquiry to know the actual valuation of the transferred property and then confirmed the actual market value of the said property. and as both the gift deed were registered on the same date so the plaintiff was we acquainted about the gift deed which was executed in favour of his son and it has mentioned about the deed of exchange in the gift deed of the plaintiff's son and the defendant no.1 was and is in khas possession of the Ka schedule property except the 01 decimal of landed property in dag no 362 and according to these defendants the plaintiff has no right to challenge the deed of exchange which he had voluntarily executed and registered and at the same time the plaintiff is estopped from challenge the deed of exchange being no 2154 dated 19.05.1993 . The defendant no.1 , after acquired the 16 annas right, title, interest and possession of Ka schedule property by dint of the said deed of exchange , he sent atonement letter dated 29.05.1993 to the State Bank of India , Garhbeta Branch and claimed the rental amount of the Bank premises and the pro-forma defendant no.3 has consented on the said letter in written and he also made endorsement that in the property of dag no.360/760 the defendant no.1 has his lawful right and he had no objection if the defendant no.1 collects rent from the said Bank and the plaintiff was fully acquainted with this fact and the State Bank of India , Garhbeta Branch after duly made a search and after satisfied with the fact that the defendant no.1 has 16 annas right, title, interest and possession of Ka schedule property and he is the exclusive owner of the Ka schedule property , it is paying the rent of the bank rented premises in favour of the defendant no.1 through banker's cheque and mutation certificate has already been given by the prescriptive authority in favour of the defendant no.1 in respect of suit dag no. 360/760 and the L.R. ROR of dag no. 360/760 of 11 decimal property out of 22 decimal, has already been prepared in the name of the defendant no.1 and the defendant no.1 is depositing the khazna of dag no 360/760 before the concerned authority and has collected the receipts and the defendant no.1 was and is in possession of the total Ka schedule property in dag no 362 which was previously 89 decimal and after reducing 01 decimal the defendant no.1 is in possession of 88 decimal property since long openly. As per the defence case, defendant no.2 gave monetary help to the plaintiff in marriages of his two daughters and the defendant no.2 used to give yearly Rs. 20,000 -25,000/- to the plaintiff for cultivation purpose in the agricultural lands of Katrabali and other agricultural lands in different mouzas and by taking advantage of the reliability of defendant.1 & 2 , the plaintiff never gave any accounts of the said cultivation expenditure to the defendant.1 & 2 and the plaintiff used to reside in the valuable residential house of the defendant no.1 in Katrabali mouza and took all the profits from the cultivation land of the defendant no.1 in disguise that they are taking care of their agricultural lands and always tried to avoid to give

the accounts to the defendant no.1 and the pro-forma defendant no.3 always gave indulgence to the plaintiff so the plaintiff became more fearless and garbed huge amount of properties of the defendant no 1 & 2 and ultimately in the year 2011 the defendant no. 1&2 lost their patience and both of them had asked and created pressure upon the plaintiff to leave the three storied residential house and other kotha house situated in Katrabali mouza and also asked him to return immediately the huge amount of money of the defendant no.1 & 2 and when the plaintiff has seen that the situation is getting out of control then he implicated false stories against the defendant no 1 & 2 to the pro-forma defendant no.3 and ultimately the pro-forma defendant no.3 turned puppet of the plaintiff and his son Ujjawal Pal and the plaintiff and his son have direct over the pro-forma defendant no.3 and the pro-forma defendant no.3 who got influenced by the plaintiff and his son and to teach lesson to the defendant no.1 & 2, helped the plaintiff and his son to institute this false suit and the plaintiff driven by unjust greed and with conspiracy had t garbed huge amount of money and to safe himself filed this false suit on false grounds. These defendants also contended that, on 20.03.1976 this defendant did not submit any list of retained landed property before the settlement office and the defendants had not leave the Kha schedule property to the government and the property which was derived from Kumed Kumari Dasi by a deed of gift never be come under the family ceiling of the of the defendants and the said property of Kumed Kumari Dasi was erroneously recorded in R.S. ROR in the name of the defendant no.2 and the plaintiff had accepted the deed of exchange after verified the right, title, interest and possession of the defendant no.1 in Kha schedule property and the defendant no.1 was in 16 annas right, title, interest and possession of 89 decimal of the Ka schedule property later he transferred 01 decimal to the son of the plaintiff then the plaintiff is in 16 annas in 16 annas right, title, interest and possession of the Ka schedule property and the plaintiff was replaced from the right and possession of the Ka schedule property from the execution of the deed of exchange and the plaintiff has no right, title, interest and possession of the Ka schedule property and he could not claim any right over that Ka schedule property and without any right and possession in the Ka schedule the plaintiff could not pray any relief od declaration and injunction in the Ka schedule property and the plaintiff and the defendant no.1 both have legally and voluntarily at their free will had exchanged their lawful properties and so the plaintiff has no right to claim to get back the Ka schedule property and both the Ka and Kha schedule property were of equal valuation at the time of execution of the deed of exchange and the present suit is nothing but a chance in litigation so the plaintiff is liable to pay compensatory cost to the defendant no.1. These defendants also contended that, after institution of the present suit the plaintiff and his son became more furious and to grab more profits or properties with ill motive the plaintiff and his son frequently tried to influenced the pro-forma defendant no.3 and they have collected signature of the pro-forma defendant no.3 in blank papers and the pro-forma defendant no.3 now a days lost his free will due to his old age and the pro-forma defendant no.3 had already been influenced by the plaintiff and his son and he is acting as per their instruction

and the plaintiff was never be the family member of the joint family of defendant no.2 and pro-forma defendant no.3 and all the prayers of the plaintiffs are illegal and beyond his right. These defendants again contended that , all the witnesses of the said deed of exchanged have signed on the said deed at the sherestha of the Ld. Advocate Kabindra Nadi which is within the Advocates' Bar Library and the said the Chunilal Pan is not the relatives of defendant no.2 and both of them have no such relation in between themselves and all the witnesses of the deed of exchange had signed in front of the plaintiff and the defendant no.1 and none of the witness of the said deed of exchange had signed in the said deed got influenced by the defendant no.2. According to these defendants on 24.05.1965 the gift deed being no 3417,which was registered before the Garhbeta Sub Registry Office was acted upon and the deed of exchange being no.2154 which was executed on 17.05.1993 and registered on 19.05.1993 before the Garhbeta Sub Registry Office by the plaintiff and the defendant no.1 was duly acted upon and and at the time of execution of the said deed of exchange the defendant no.1 had valid right,title, interest and possession upon the Kha schedule property and the plaintiff got the valid 16 annas right,title, interest and possession upon the Kha schedule property by the said deed of exchange so the plaintiff has no right to challenge or to pray for the cancellation of the said valid deed of exchange . As per the defense case , after accepting the said deed of exchange to be valid the son of the plaintiff had accepted the gift deed in respect of 01 decimal of landed property in dag no.342 from the Ka schedule property and which was executed by the defendant no.2 . According to the defendants ,the plaintiff and his son Ujjawal Pal have appointed one surveyor to take measurement of the said 1 decimal of land in dag no.362 which was gifted by the defendant no.1 to the plaintiff's son and the plaintiff and his son has prepared 2 sets of map of the said 01 decimal of property and then in presence of plaintiff and his son the 2 sets of deed of gift were executed a registered. It is false that the plaintiff came to know that the Kha schedule property is vested land and the plaintiff being fully satisfied with the fact after total enquiry that the Kha schedule property is completely free from all encumbrances then he accepted the Kha schedule property from the defendant no.1 and so the plaintiff did not fill to frame any condition in the said deed of exchange. According to the defendants, the pro-forma defendant no.3 who is the guardian of the plaintiff, had passed matriculation examination from English medium school Debghan Ramkrishna Bidyapith School and graduated from Bankura Christian College and the pro-forma defendant no.3 is very expert in English language and pro-forma defendant no.3 was always presented personally to provide advice and himself read out the contents of the said deed and made all the arrangements for the execution of the said deed of exchange and the plaintiff himself got acquainted with the contents of the said deed of exchange as he himself read out the same and the plaintiff had also got the advice from the pro-forma defendant no.3 and the Ld. Lawyer and out of his free will the plaintiff had executed the deed of exchange. According to these defendants, the statement which the plaintiff had made in his plaint that the plaintiff had signed on the said deed of exchange on the impression that the defendants were taking

loan by mortgaging their property, is totally absurd, false, illegal, baseless, without foundation, imaginary and after thought,. According to these defendants , it is false that the plaintiff prior to institution of the present suit came to know about the matter that the Kha schedule property is a vested property of the Government and if the plaintiff got to know earlier that the Kha schedule property is a vested property then the plaintiff would definitely filed application before the concerned B.L.& L.R.O on the point that he is a bonafide purchased of the Kha schedule property in dint of a deed of exchange and he would took proper steps but the plaintiff with driven by undue greed by raising false and illogical information and only to hamper the prestigious image of these defendants , filed this false suit and the present suit is completely test case, harassing, envious, and baseless kind of suit and the plaintiff has intentionally hide the actual facts and filed this false suit with is imaginary story and the plaintiff has voluntarily executed one will on 17.09.1999 and registered on 20.09.1999 in respect of his all movable and immovable properties and according to the said registered will being no 19 dated 20.09.1999 executed by the plaintiff in favour of his only son Ujjawal Pal and by this Will the plaintiff had gave the total 1.80 acre of Kha schedule property along with another 5.91 acre property and in the recital of the aforesaid Will the plaintiff admitted the fact that he acquired the Kha schedule property of 1.80 acre landed property from the defendant no.1 by the deed of exchange being no. 2154 dated 19.05.1993 and he had also stated in the said Will that he is in rightful possession of the Kha schedule property. and he had also mentioned in the said Will that another properties the plaintiff had acquired by '**Nirupam Deed**' being no. 38 dated 17.01.1981 from the pro-forma defendant no.3 and also mentioned that he acquired some property from defendant no. 2 by registered deed of gift being no.2618 dated 24.06.1999 and in all of these properties the plaintiff is in rightful possession. These defendants also contended that the plaintiff has consulted with the pro-forma defendant no.3 and wife of pro-forma defendant no.3 and the plaintiff came to Garhbeta with pro-forma defendant no.3 and had a discussion with profound Advocate Amalananada Kundu and took his advice and prepared the draft copy of the Will and after that the final Will had been registered by Ld. Advocate Chinmoy Chakraborty who is the junior of Advocate Amalananda Kundu at the free will of the plaintiff. These defendants denied the fact that, the property of dag no 360/760 in Radhanagore mouza was not included Mutation case no.7 for the year 2001 and the mutation order has been already passed by the prescribed authority in favour of the defendant no.1 the property of dag no 360/760 on 20.07.2001 and accordingly mutation certificate has already been issued in the name of the defendant no.1 and accordingly the name of the defendant no 1 has been recorded in L.R. ROR Khatian no.489 of suit dag no. 360/760 and the plaintiff is very well acquainted with this fact. These defendants also contended that , prior to institution of this suit , the name of defendant no.1 has already been legally mutated prior to the sending of notice to the R.I. by the Ld. Advocate of the plaintiff and L.R. ROR was already prepared prior to 27.02.2002. The defendant no. 2 has filed his written statement on 15.03.2003 and in his written statement he has mention about the

mutation case in respect of dag no 360/760 and he has clearly mentioned about the finally published L.R. ROR and the mutation certificate of the property of dag no 360/760 has already been filed before this Court and all these facts are very known to the plaintiff and these defendants prayed for the dismissal of the suit with cost for instituting of this false suit against them.

: SCHEDULE OF THE PROPERTY:

Ka schedule property -

(1) District – Paschim Medinipur, P.S. Garhbeta, in Baghdi Pargana, J.L.no.486 , Mouza- Radhanagore , R.S. khatian 34/1 and presently L.R. Khatian no. 492,

399 Dag no(Pukur)- 08 decimals

400 Dag no(Pukur Par)-02 decimals

401 Dag no(Pukur)- 05 decimals

398/867 01 Dag no(Pukur)- 02 decimals

401/869 Dag no(Pukur Par)-09 decimals

378 Dag no(Shop Room)- 02 decimals

Total - 28 decimals

(2) District – Paschim Medinipur, P.S. Garhbeta, in Baghdi Pargana, J.L.no.486 , Mouza- Radhanagore,R.S. Khatian no. 43/1,332,236 and 35/1 and L.R. khatian no, 24

362 Dag no(Bastu)- 13 decimals

363 Dag no(Bastu)- 05 decimals

360/760 Dag no(Dalan)- 11 decimals

364 Dag no(Bastu)- 07 decimals

360/759 Dag no(Dalan)- 03 decimals

360/692 Dag no(Bastu)- 02 decimals

Total - 39 decimal

(3) District – Paschim Medinipur, P.S. Garhbeta, in Baghdi Pargana, J.L.no.482 , Mouza- Amlagora, Khatian no. 94/2

472/1332 Dag no(Old barren land)- 01 decimal

(4) District – Paschim Medinipur, P.S. Garhbeta, in Baghdi Pargana, J.L.no.482 , Mouza- Amlagora, R.S. Khatian no. 86/2

13 Dag no(pukur)- 14 decimals

13/1477 Dag no(Shop Room)- 07 decimals

Total- 21 decimals

The Ka schedule property is consist of total **89 decimals** of landed property.

Kha schedule property -

District – Paschim Medinipur, P.S. Garhbeta, in Baghdi Pargana, J.L.no.896 , Mouza-Katrabali , R.S. khatian 117

273 Dag no(Kala)- 12 decimals

352 Dag no(Kala)- 15 decimals

556/753 Dag no(Kala)- 05 decimals

559 Dag no(Dhani)- 20 decimals

626/676 Dag no(Dhani)- 39 decimals

306 Dag no(Pukur)- 03 decimals

337 Dag no(Pukur Par)-02 decimals

457 Dag no(Doba)- 05 decimals

304 Dag no(Temple)- 02 decimals

629 Dag no(Temple)- 33 decimals

626/777 Dag no(Dhani)- 28 decimals

483 Dag no(Dhani)- 15 decimals

Total - 1.80 acre

:ISSUES :

Considering the pleadings of the parties' concern, the following issues have been framed by this Court for proper adjudication of this suit:-

1. Is the suit is maintainable in its present form and prayer?
2. Has the plaintiff any cause of action to file this suit?
3. Is the suit barred by limitation?
4. Is the suit barred by section 34 of Specific Relief Act?
5. Is the suit barred by principles of estoppel waiver and acquiescence ?
6. Is the suit properly valued?
7. Has the plaintiff any right to challenge the register deed of exchange dated 17.05.1993 bearing no.2154 ?
8. Whether registered of exchange accepted by plaintiff and defendant no.1 on 17.05.1993 and registered on 19.05.1993 bearing no 2154 of Garhbeta S.R. Office , legal, valid and bonafied document?
9. Has the plaintiff any right, title and interest in respect of the Ka schedule property ?
10. Is the plaintiff entitled to get any relief in the suit?

:EVIDENCE:

In course of evidence, plaintiff namely **Madhusudhan Pal** deposed as **P.W. 1**, another person namely **Gopal Ch. Roy** deposed as **P.W. 2**, another person namely **Amal Chandra Karak** deposed as **P.W.3**, another person namely **Ranjit Kr. Mondal** deposed as **P.W. 4**, another person namely **Durgapada Chakraborty** deposed as **P.W. 5**, another person namely **Mahitosh Mondal** deposed as **P.W. 6**, another person namely **Amal Sarkar** deposed as **P.W. 7** and the following documents were exhibited from the side of the plaintiff :-

- 1) **Exhibit 1**(without objection)-Certified Copy of order of Case No.39(7AA) Garhbeta 1/1994.
- 2) **Exhibit 2 (Collectively)**- Deed of exchange being no.2154 in between Ashoke Kr. Sarkar and Madhusudhan Pal dated 19.05.1993
- 3) **Exhibit 3**- Notice under section **80 of CPC** written by the Ld. Advocate J.N Mondal including the copy of plaint .
- 4) **Exhibit 4**- The postal receipt dated 26.03.2003.
- 5) **Exhibit 5**- A/D card after receive to the addressee dated 27.03.2003.
- 6) **Exhibit 6**- Certified copy of Deed of Settlement for the year 1981 executed by Arabindo Sarkar in favour of Madhusudan Pal, verified and compared with Volume Book no. 9 for the year 1981 produced by the ADSR, Garhbeta.
- 7) **Exhibit 7** - L.R.R.O.R Khatian No.94 standing in the name of Bandiram Sarkar (six sheets) of Katrabali mouza.
- 8) **Exhibit 7/a**- L.R.R.O.R Khatian No. no. 18 standing in the name of Arabinda Sarkar (five sheets) of Katrabali mouza.
- 9) **Exhibit 8**- The information slip of R.S plot no. 324/676 of Katrabali Mouza.
- 10) **Exhibit 9 to 9 (a to e) series**- One R.S. R.O.R of khatian no 293/2 mouza Katrabali, J.L no. 895 stands in the name of Basanto Sarkar (E.-9) and five R.S. R.O.R of khatian no.117, mouza Katrabali, J.L no. 895 stands in the name of Bandiram Sarkar (E.-9 series)
- 11) **Exhibit 10**- First notice dated 08.11.2001 in connection with Mutation Case no. 7/2001.
- 12) **Exhibit 10 (a)**- Another notice dated 15.02.2002 in connection with Mutation Case no. 7/2001.
- 13) **Exhibit 11**- The attested copy of the Admission Register of Garhbeta High School.

In course of evidence of defendant, defendant namely **Sri Ashoke Kumar Sarkar** deposed as **D.W.1**, another person namely **Sri Chunilal Pan** deposed as **DW 2**, another person namely **Sri Nemai Mukherjee** deposed as **DW 3**, another person namely **Sri Sudarshan Sarkar** deposed as **DW 4**, another person namely **Sri Syed Rezaul Hossain** deposed as **DW 5**, another person namely **Sri Goutam Roy** deposed as **DW 6**, another person namely **Sri Shyamal Giri** deposed as **DW 7**, another person namely **Sri Ujjawal Pal** deposed as **DW 8**, and the following documents are exhibited from the side of the defendants: -

- 1) **Exhibit A series collectively (objected to)**- Rent receipts (10 pages).
- 2) **Exhibit B (with objection)** -The Will dated 20.09.1999 was executed by Madhusudan Pal.
- 3) **Exhibit C (with objection)** -Deed of gift being no. 2617 for the year 1999 executed by Ashok Kumar Sarkar in favour of Ujjawal Paul.
- 4) **Exhibit D (with objection)** -Deed of gift being no. 2618 for the year 1999 executed by Bandiram Sarkar in favour of Madhusudan Pal.
- 5) **Exhibit E** - L.R.R.O.R of khatian no. 489 mouza Radhanagar.

*** During the pendency of the suit the sole **plaintiff** Madhusudan Pal died and he was substituted by vide order no 257 dated 22.12.2022 and his legal heirs are Smt. Dipali Pal, Smt. Jhuma Panja and Smt. Ruma Patra and they have substituted as plaintiff no 1/Ka, 1/Kha and 1/Ga.

***During the pendency of the suit the **defendant no.2**, i.e. Bandiram Sarkar, died and his legal heirs namely Smt. Juthika Sarkar and Alpana Pal was substituted as substituted defendant no. 2/Ka and 2Kha vide order no, 271 dated 20.03.2024 and after that the substituted defendant no 2/Ka Juthika Sarkar also died and her legal heirs as the defendant no.1 and substituted defendant no.2/ Kha are already on record. The **pro- forma defendant no. 3** namely Arabindo Sarkar was died during the pendency of the suit and he had no legal heirs .

*** During the pendency of the suit the defendant no 2/1 namely Sri Ujjawal Pal added as defendant.

:DECISION WITH REASONS:

1. In reference to the issue no 1,2,3,4 and 6:-

All these issues of the instant suit are taken up together for the brevity of the discussion. This is a suit for declaration and the plaintiff prayed before this Court a decree

that the deed of exchange being no.2154 dated 19.05.1993 executed between the plaintiff and the defendant no.1 is illegal, forged, concocted, fabricated, beyond right, null and void one also tainted with fraud, undue influence, misrepresentation and not acted upon the plaintiff and the plaintiff has also prayed a decree of declaration of 16 annas right, title, interest and possession along with permanent injunction over the **Ka** schedule property and the plaintiff prayed a decree of cancellation of the deed of exchange being no.2154 dated 19.05.1993 and also prayed a decree of recovery of possession of the **Ka** schedule property.

Firstly, this Court has to discuss, whether the plaintiffs have any cause of action to institute the present suit against the defendants and the suit is at all maintainable in its present form and prayer. According to the plaintiff, he has got the **Ka** schedule property from Arabindo Sarkar the pro forma defendant no.3 of this suit by dint of a registered **Nirupam Deed** for the year 1981 and the plaintiff has alleged that the deed of exchange of **Ka** and **Kha** schedule property between the plaintiff no 1 and defendant no.1. was executed by practicing fraud, undue influence, misrepresentation and the said deed of exchange is not at all binding or enforceable upon the plaintiff and the plaintiff had an impression that he had signed on a deed which was prepared by the defendant no .1 for obtaining loan from Bank and the present plaintiff has no knowledge about the said deed of exchange and when the plaintiff has got the mutation notice from the B.L.&L.R.O. for hearing of mutation case in respect of **Ka** schedule property and acted upon that clue the plaintiff had applied and collected the certified copy of the said deed of exchange being no 2154 dated 19.05.1993 and on 19.12.2001 the plaintiff has collected the certified copy of the deed of exchange and again on 12.02.2001 when the defendant no. 1& 2 gave threat of dispossession of the plaintiff from the **Ka** schedule property and since then according to the plaintiff the cause of action of the present suit arose. In this context, the plaintiff's contention is that the **Ka** schedule property is belonged to him and he never participated in any exchange deed for exchange of the **Ka** schedule property with the **Kha** schedule property and as the plaintiff claimed that the **Ka** schedule property is his rightful property, this Court has hold the opinion that the plaintiff has a valid cause of action to institute the present suit.

Now it is to be decided whether the present suit is barred under section 34 of Specific Relief Act or not. In this present suit plaintiff prayed before this Court that he has a lawful right, title, interest and possession over the **Ka** schedule by dint of an registered **Nirupam deed** and tried to established before this Court that after the execution of the said **Nirupam deed**, plaintiff became the absolute owner of **Ka** schedule property and the defendants who have claimed that the **Ka** schedule property is belong to the defendant no.1 by dint of a deed of exchange between the plaintiff and the defendant and after execution of such deed of exchange the plaintiff is no longer the owner of the **Ka** schedule property but this angle will be decided by this Court in up coming issues but apparently it is very clear to this Court that with this prayer the plaintiff is praying a decree of declaration of his lawful

right, title and interest over the Ka schedule property and that is completely civil in nature and also the plaintiffs is suppose to prove his legal status in respect of the Ka schedule property and the present matter is concerned with the legal right of the plaintiff in respect of the Ka schedule property . Therefore, this suit is also not barred under section 34 of the Specific Relief Act.

Now this Court has to decide the issue whether the suit is barred by the provision of law of Limitation Act or not. The plaintiff filed this suit for declaration of his right, title, interest over the Ka schedule property and also prayed a decree of cancellation of the deed of exchange being no.2154 dated 19.05.1993 executed between the plaintiff and the defendant no.1 is illegal, forged, concocted, fabricated , beyond right, null and void one also tainted with fraud , undue influence, misrepresentation and not acted upon the plaintiff . According to **Art.58 of Limitation Act** the limitation period for a declaratory suit is three years when the right to sue first accrues and as per **Art.59 of Limitation Act** the limitation period to file a suit for cancellation of a deed is three years and the limitation period begins from the date the plaintiff discover or gain knowledge of the said fraudulent deed rather than the date of registration and in this case as per the plaintiffs version the plaintiff firstly came to know about the alleged exchanged deed on 19.12.2001 when the plaintiff got the notice of mutation case filed by the defendant no.1 and when on 19.12.2001 the plaintiff has collected the certified copy of the deed of exchange and in support of this the plaintiff filed the **Exhibit 10** and **Exhibit 10(a)** which are the mutation notices of case no 7/2001 and according to the plaintiff from this this mutation notice he searched the alleged deed of exchange and got to know about the said exchange deed and the limitation period starts from the date when the plaintiff had collected the certified copy of the said alleged deed and came to know about its contents on 12.02.2001 and the present suit was filed on 28.02.2002 .It is very clear that the suit has been filed within the statutory time limit and well within time.

This Court has to see whether the present suit is properly valued or not. In this present suit the plaintiff has prayed a decree of declaration of 16 annas right, title , interest of the Ka schedule property and for which the plaintiff has filed the fixed Court- fees as per law which is sufficient and the plaintiff has also paid an ad-valorem Court fees for his prayer of cancellation of the registered deed of exchange and that amount of Court fees is also sufficient , it implies that the suit is properly valued.

Hence, all the aforesaid issues are decided in favour of the plaintiff.

2. In reference to the issue no 7,8 and 9 :-

These three issues are discussed together for the brevity of the adjudication as all these three issues are interconnected.

Now , this Court is discusses on the issues of this suit such as the plaintiff has any right to challenge the register deed of exchange dated 17.05.1993 bearing no.2154 and

the registered of exchange accepted by plaintiff and defendant no.1 on 17.05.1993 and registered on 19.05.1993 bearing no 2154 of Garhbeta S.R. Office , legal, valid and bonafied document. The plaintiff's contention is that , he never execute any deed of exchange along with the defendant no.1 and exchange the Ka schedule property with the Kha schedule property and the plaintiff has challenged the said exchange dated 17.05.1993 bearing no.2154.From the very beginning , the plaintiff ascertain that he has no knowledge about the alleged deed of exchange and according to him the defendant no 1& 2 by practicing fraud, misrepresentation, coercion, undue influence executed the deed of exchange as the plaintiff was informed by the defendant no.1 & 2 that for getting one mortgage loan from bank the alleged deed was prepared and the plaintiff had no depth knowledge in English language so he could not able to read the contents of the alleged deed, moreover, the plaintiff has huge believe and faith upon the defendant no.1 & 2 and he did not have any idea that the defendant no.1 & 2 could do anything like this with him. On the other hand the the defendant no 1 & 2 in their written statement denied all the plaintiff's contention and they have stated that the plaintiff has full knowledge about the said exchanged deed and prior to the preparation of the deed of exchange the consent of the plaintiff was obtained after execution of the deed of exchange the defendant no.1 has executed one gift deed in favour of the plaintiff's son Ujjawal Pal who is the defendant no 2/1 of this suit and the defendant no.2 Bandiram Sarkar had executed one registered deed of Gift in favour of the plaintiff Madhusudan Pal in the year 1999 being no 2618 and by this gift deed the defendant no.2 Bandiram Sarkar gifted 400 sqft landed property in favour of the plaintiff. The further contention of the defendants that by accepting the deed of exchange the plaintiff had executed one registered Will in favour of his son Ujjawal Pal in the year 1999 and by such will the plaintiff Madhusudan Pal had bequest the Kha schedule property along with other properties in favour of his son Ujjawal Pal i.e. the defendant no.2/1 of this suit.

To prove his lawful right of the Ka schedule property plaintiff filed the "**Nirupam Deed**" which has marked as **Exhibit.6**. To prove the fact that the R.S. khatian no.117 which is the Kha schedule property belonged to the original defendant no.2 Bandiram Sarkar, the plaintiff filed the **Exhibit 9(b)**. To prove the fact that the Kha schedule property is a vested property and already has vested to the government the plaintiff filed the **Exhibit .1** i.e. certified Copy of order of Case No.39(7AA) Garhbeta 1/1994 and by this order the Kha schedule property was vested to the State.

The **P.W.1** in his cross examination dated 31.01.2005 stated that, "***I did not accept. I did not see the deed of exchange but it is genuine. I have no will I did not execute deed of will Bandiram Sarkar wrote the will . I did not write any will. Bandiram Sarkar prepare the will . I have no title in Kha tapsil. Ka tapsil is my property Ashok Sarkar has no title over the Ka tapsil***". Again in his cross examination dated 18.03.2005 he stated that , "***I obtained dag no.406 from Arabindo Sarkar.***" He again stated in his cross examination dated 19.01.2010 that, "***the Kha schedule property as mentioned in the plaint***

schedule was never the property of Kumed Kumari Dasi.” He further stated that, “it is fact that I have challenged the legality and validity of the impugned deed of exchange in the plaint including the notice.” He again stated in his cross examination that, “I have gone through the deed of exchange in dispute .The active participation of Bandirambabu can not be seen anywhere in the deed of exchange.I have not seen the signature of the witness to the deed of exchange.”In his cross examination dated 11.11.2010 he stated that, “I did not disclose to the defendant no.3 Arabindo babu about the fact that transaction in essence of a loan transaction for which the deed in question was being executed and registered and the property in respect of which the said deed was being made.”He further stated , “I do not know Chunilal Pal or Pardaip Patra.I did not say to the sub-register about the contents of the said deed.”He further stated on the same day that, “I did not get the receipt after the registration.” He further stated that , “I have no original registered will dated 20.09.99. I did not file any suit for cancellation of 2 deed of gift dated 24.06.99.”

On the contra , the defendants filed the certified copy of registered Will dated 20.09.1999 i.e. **Exhibit B**, certified copy of registered gift deed being no 2617 dated 24.06.99 i.e. **Exhibit C**, executed by the Ashok Sarkar the defendant no.1 in favour of Ujjawal Pal i.e. defendant no.2/1, and certified copy of registered gift deed being no 2618 dated 24.06.99 i.e. **Exhibit D**, executed by the Bandiram Sarkar the defendant no.2 in favour of the plaintiff Madhusudan Pal. To proof their right, title, interest and possession in the Ka schedule property the defendants file the L.R.ROR of the Ka schedule property and that has been marked as **Exhibit.A**.

The **D.W.1** in his cross examination dated 06.03.2012 stated that, “*I have heard that defendant no.3 has transferred some Ka schedule land of the suit property along with other properties to plaintiff.*” He continued in his cross examination that, “*Before the exchange of the Ka schedule property , plaintiff had the right,title,interest over the Ka schedule property.*”He further stated that, “*I can not say how Kumed Kumari Dasi acquired her property.I can not say at present whether my name or the name of Kumed Kumari Dasi recorded in L.R. khatianin respect of Ka schedule property. I never seen the original deed of gift executed by Kumed Kumari Dasi in my favour, I have its certified copy in my home.*”He further stated in his cross examination that, “*the deed was drafted by the junior of Amalananda Kundu , namely Kabindra Nandi, I can not say the relation ship between Amlananda Kundu and Kabindra Nandi. The exchange deed was prepared on the instruction of defendant no.3 with the consultation of plaintiff. The deed of exchange was typed by Dilip Kumar Dey.I will call Kabindra Nandi, Dilip Kumar Dey, Pradip and Kausik to depose in this case, if required ,but I can not say whether they will depose or not. There is no signature of the Arabindo in the deed. The deed of exchange ddoes not bear any signature of Arabibdo Sarkar. The deed of Exchange was drafted in English as per the direction /instruction of my uncle (Jathamosai) and I can not say how the same has been drafted in English.*” The **D.W. 1** in his cross examination dated

30.07.12 stated that , *"the plaintiff obtained the Ka schedule land from Arabindo Sarkar, he obtained the Ka schedule land along with other properties measuring 6.37 acres of land by one 'Nirupanpatra' deed.I cannot say as to whether Bandiram Sarkar had filed 7(A) return exercising his option of retainment. I cannot say as to whether he tried and retained his suit Kha schedule land."*

The **D.W. 2** namely Chunilal Pan who had signed in the deed of exchange as one of the witness and in his cross examination dated 29.01.2013 stated that, *"Kausik Nandy, myself, Arabindo Sarkar and Oradip Patra and others were the attesting witness to the above deed of exchange. . The deed of exchange was drafted and typed in one and the same day but I can not recollect that date. I never read out the deed of exchange to the parties. Kausik Nandi never came to Garhbeta Bar Association in connecton with the execution of the deed of exchange. The original deed of exchange was typed by one tpeyst namely Dilip Kr. Dey. I was not present on the date of registration of the deed of exchange."*

The **D.W. 3** namely Nimai Mukherjee who had witness the conversation relating to the deed of exchange and in his cross examination dated 20.02.2013 stated that,*"I have no knowledge as to whether Arabindo Sarkar had gifted his property to Madhusudan Pal.I do not have any expertise in purchase and selling properties. I can not tell the date when the impugned deed of exchange was registered in the Sub -registry office. None of the witness of the locality except me is still alive who was present at the time of talk in connection with the impugned deed of exchange. No paper were taken out or shown to me at the time of talk of the deed of exchange.I was not present at the time of execution of the deed of exchange.I have good relationship with the Sarkar family and also treat them."*

The **D.W. 8** who is the defendant no.2/1 of this suit and the son of the plaintiff Madhisudan Pal and he in his cross examination dated 28.08.2017 stated that, *"I have not received any gift as mentioned by the defendant .No negotiation was taken place between myself and the defendant regarding gift deed. I have not possessed any land by virtue of gift deed as mentioned by the defendant.I was not present at the time of executing of gift deed. It is fact that the suit is filed by my father and challenge the deed of exchange of Ka schedule land of the plaint. The gift deed was made for the purpose of legalizing the deed of exchange. There is no talking between me and my father regarding any will. The will is invalid and illegal."*

From the above deposition of all the witnesses and the discussions , it is clear to this Court that the plaintiff opposing or challenged the Deed of exchange being no.2154 in between Ashoke Kr. Sarkar and Madhusudan Pal dated 19.05.1993 i.e. **Exhibit 2** and as per plaintiff contention the said deed of exchange was executed by practicing fraud, misrepresentation, coercion, undue influence etc by the defendant no.1. and the P.W. 1 in his

deposition corroborated the plaint case and repeatedly in his cross examination stated that Ka schedule property is belonged to him and the **Exhibit.6** which is the gift deed executed by Arabindo Sarkar in favour of the plaintiff Madhusudan Pal has corroborated to the some extent the fact that plaintiff had acquired the right, title of the Ka schedule property from Arabindo Sarkar. At the same time plaintiff filed the **Exhibit.1** which is Certified Copy of order of Case No.39(7AA) Garhbeta 1/1994 and from this document it can be seen that the Kha schedule property is belonged to Bandiram Sarkar and the **Exhibit 9(b)** which is the R.S ROR of khatian no 117 stands in the name of Bandiram and this R.S. khatian comprises the Kha schedule property which was exchanged by the defendant no.1 Ashoke Sarkar with Ka schedule property with the plaintiff. The **Exhibit 9(b)** which is the R.S ROR of khatian no 117 has corroborated the fact that Kha schedule property is all along belong to Bandiram Sarkar the defendant no.2 and not with the defendant no.1 Ashok Sarkar .When the documents of the plaintiff which are admitted before this Court as paramount piece of evidence and stating another aspect of the fact of the suit , the Court has to analysis those documents to came to conclusion of this suit.

In this course of discussion, this Court needs to find out the, both the Ka and Kha schedule belonged to whom , subsequently who acquired Ka and Kha schedule property and at the time of execution of the Exchange deed which **Exhibit 2**, are the parties of the Exchange deed actually hold the ownership or the 16 annas right, title, interest of their respective properties which were exchanged between plaintiff and the defendant no.1. On this note , first of all we need to enlighten the principles of exchange. **Section 118** of Transfer of Property Act, 1882 defines "**exchange**" as where two persons mutually transfer the ownership of one thing for the ownership of another , neither thing or both things being money only , the transaction called an "exchange". It implies, that exchange is transfer of ownership in a property for consideration of ownership of another property. In this present suit , the defendants contended that the defendant no.1 acquired the Ka schedule property in exchange of Kha schedule property from the plaintiff Madhusudan Pal and this transaction of Ka and Kha schedule property was executed by an exchange deed which is being challenged by the plaintiff Madhusudan Pal as plaintiff's contention is that such alleged exchanged deed was executed by the defendant no 1 & 2 by practicing fraud, coercion, misrepresentation and illegal means of way. As per the proposition of law exchange is an mode of transfer of property and we need to discuss first the transfer of Ka and Kha schedule property in exchange is a valid transfer or not.

Section -5 of Transfer of Property Act , defines transfer of property, ***“Transfer of property means an act by which, a living person conveys property, in present or in future , to one or more other living persons , or to himself ,or to himself and one or more other living persons, and to transfer of property is to perform such act.”***

More clearly, transfer by ‘act of parties’ means a transfer between two living persons. If a transfer is made by act of parties , the person who transfers it and the person to whom it is transferred , both should be living persons at the date of transfer or transfer inter vivos.

Along with this, in a transfer of property the living persons that is the transferor conveys the property, and his conveying is doing of the 'act' which is called transfer. There must be conveyance in every transfer of property. Conveyance means any act of the transferor by which certain new titles or interest are created in favour of the transferee and in any transfer of property there is actually transfer of title to or interest in that property and before that transfer of property, the transferee does not have that particular interest and after the transfer of property the transferee gets that particular interest which is given by the transferor. If no new interest is created in favour of the transferee, there cannot be transfer of property. In a conveyance necessarily implies that the transferor has the title or interest which he is transferring and the transferor cannot convey an interest which he himself does not have at the time of conveyance.

With the light of the above principle, this Court must find out first, at the time of execution of the Exchange deed being no.2154 dated 19.05.1993 i.e. the **Exhibit.2**, both the plaintiff and the defendant no.1 have their lawful right over their respective properties which were given in exchange as the plaintiff of this suit has challenged the Exchanged deed i.e. the **Exhibit.2** and he alleged that the said exchanged deed was executed with letting the plaintiff to know that one exchange deed was executed in between the plaintiff and the defendant no.1 and the plaintiff's version was that he was been informed that one mortgage deed was executed for obtaining loan by the defendant no.1 and plaintiff was one of the witness of that mortgage deed but eventually the plaintiff came to know that it was not an mortgage deed rather it was an exchanged deed and between the plaintiff and the defendant and by such exchanged deed Ka and Kha schedule properties were exchanged. But whatever the situation was, this Court first scrutinized the title of the exchanged properties of both the parties of the exchange deed. By the said Exchanged deed, i.e, Exhibit .2 the Ka schedule and Kha schedule properties were exchanged between the plaintiff and the defendant no.1 and after such execution of the said alleged deed plaintiff got the Kha schedule property and the defendant no.1 got the Ka schedule property. According to the plaintiff the Ka schedule property is belonged to him and he acquired the right, title, interest and possession of the Ka schedule property by dint of a '**Nirupam Deed**' being no. 38 dated 17.01.1981, i.e. **Exhibit.6**, executed by the pro-forma defendant no.3 Arabindo Sarkar in the year 1981 and since then the plaintiff have continued with the right, title, interest and possession of the Ka schedule property and the plaintiff had never executed any deed of exchange with the defendant no.1 in between the Ka and Kha schedule property. To substantiate this contention the plaintiff filed the **Exhibit 6** which is the certified copy of Deed of Settlement (Nirupam Deed) for the year 1981 executed by Arabindo Sarkar(pro-forma defendant no.3) in favour of Madhusudan Pal i.e the plaintiff, which was verified and compared by this Court with the original Volume Book no. 9 for the year 1981 produced by the ADSR, Garhbeta and after scrutinizing the **Exhibit 6**, we could find that the pro-forma defendant no.3 had executed the deed of settlement or the **Nirupom Deed** in favour of the plaintiff and by this deed of settlement the pro-forma defendant no.3 had transferred

the Ka schedule property and along with other properties within mouzas Katrabali, Dhnyochara ,Radhanagore and it has cleared that at the time of execution of the deed of exchange the plaintiff has valid title over the Ka schedule property.

Now this Court must see the title of the defendant no.1 over the Kha schedule property. The defendant filed L.R.ROR of the Ka schedule property stands in his name, but no such title deed of Kha schedule property has filed from the side of the defendant no.1 to substantiate their contention that at the time of execution of the deed of Exchange,i.e. Exhibit. 2 , the Kha schedule property was belonged to him.Ld Advocate of the defendant at the time of argument submitted that the Kha schedule property was belonged to one Kumed Kumari Dasi and she had gifted the Kha schedule property to the defendant no.1 Ashok Sarkar by a gift deed dated 23.05.1965 and this statement has already mentioned in the said alleged Exchanged deed, i.e. the **Exhibit.2**, but no such gift deed executed by any Kumed Kumari Dasi has placed before this Court to substantiate the defendants' contention that the defendant no.1 had the lawful right,title, interest over the Kha schedule property at the time of execution of the said alleged Exchanged Deed ,i.e. the Exhibit.2. So, it can be said in the light of the principle of Section 5 of Transfer of Property Act, 1882, the defendant no.1 could not convey the Kha schedule property as he did not have any lawful right over the Kha schedule property. Moreover , from Exhibit.9(b) , it is crystal clear that most of the Kha schedule properties are recorded in the name of the original defendant no.2, Bandiram Sarkar who is the father of the defendant no.1 and during the pendency of the suit the defendant no.2 dies and no document came to this Court that prior to his death or prior to the execution of the alleged deed of Exchange the said Bandiram Sarhar had executed any title deed in respect of the Kha schedule property in favour of the defendant no.1. The plaintiff repeatedly raised one point at the time of argument , that the Kha schedule properties already vested to the government and in support of this contention the plaintiff filed the **Exhibit.1** which is the Certified Copy of order sheet of Case No.39(7AA) Garhbeta 1/1994 and case the defendant no.2 Bandiram Sarkar had appeared as the petitioner of the case and his property which was beyond ceiling limit was vested to the government and it is very surprising to this Court that by this vesting order properties of Kha schedule were vested to the government. This **Exhibit.1** is the paramount document to hold the opinion that till the date of passing of order in this Case No.39(7AA) Garhbeta 1/1994 , the defendant no.2 Bandiram Sarkar was hold the title of the Kha schedule property including other properties and so by the order dated 20.04.2001 the Kha schedule property was vested to the Government.

As per the principle in **section 6** of Transfer of Property Act, 1882, "***What may be transferred- Property of any kind may be transferred , except as otherwise provided by this Act or any other law for the time being in force :***

(a)the chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature , cannot be transferred."

The above said provision of law signify that a heir apparent is apparently an heir but not legal heir and heir apparent is a person who would be heir in future if he survives the propositus (the deceased whose property he inherits) and if the propositus dies intestate and father and son are entitled to inherit the property of each other and if the father dies first, the son becomes the father's heir and inherits the property of the father but if the son dies first i.e. while the father is still alive, the son cannot inherit the father's property. Accordingly, during the life time of father, the son can not be called as his heir, he is simply heir-apparent of his father and an heir-apparent has only a chance of inheriting the property subject to two possibilities (1) he survives the propositus and, (2) the propositus dies intestate. Thus, before the intestate death of the propositus the "chance" of an heir-apparent of getting the property is merely a future possible interest. It is a bare or naked right which does not create any interest in favour of the heir-apparent. Law cannot treat it as a present fixed right in the property and so chance of heir apparent is a non-transferable property.

The wisdom of section 6(a) of Transfer of Property Act, 1882 strictly applicable to this present suit. The Exchanged deed being no.2154 dated 19.05.1993 i.e. the **Exhibit.2** was executed in the year 1993 and in the year 1993 the defendant no.1 Ashok Sarkar did not acquired the title of the Kha schedule property, moreover when the Kha schedule property was vested to the government in the year 2001 by the Case No.39(7AA) Garhbeta 1/1994 the Kha schedule property was stand in the name of the deceased defendant no.2 Bandiram Sarkar and during the pendency of this suit defendant no.2 Bandiram Sarkar was died. In this context, it can be said that at the time of execution of the Exchange deed in between the plaintiff and the defendant no.1 in the year 1993, the defendant no.1 was in a position of heir-apparent of the Kha schedule property and the ownership or the title of the Kha schedule property was not lies with him and at that time the defendant no.1 had a just chance of an heir-apparent and had no right to transfer the Kha schedule property in favour of the plaintiff Madhusudan Pal.

Now the consequence of this exchange deed articulates the fate of the status of plaintiff and the defendant no.1 in respect of the Ka and Kha schedule property. As per **section 118** of Transfer of Property Act, 1882, exchange is a transfer of ownership in some existing property and the ownership of one party must be exclusive of the ownership of the other or exchange is transfer of absolute interest. The **Exhibit.2** which is the Exchanged deed being no.2154 dated 19.05.1993 executed between the plaintiff and the defendant no.1 in respect of the Ka and Kha schedule property and as an effect of this exchange deed the plaintiff acquired the Kha schedule property and the defendant no.2 acquired the Ka schedule property but in our previous discussion it was apprehended that at the time of execution of the **Exhibit.2** in the year 1993 the defendant no.1 Ashok Sarkar did not have the absolute title or ownership of Kha schedule property, thus it is crystal clear that the defendant no.1 had no transferable right of the Kha schedule property at the time of execution of the Exchange deed in the year 1993 and such exchange deed being no.2154

dated 19.05.1993 did not impose or transfer any right upon the plaintiff and the defendant no.1 in respect of their exchanged properties. As a result the said alleged exchange deed never acted upon the plaintiff and the defendant no.1 as properties were not exchanged between themselves .

Section 119 of Transfer of Property Act, 1882 says, “*Right of the party deprived of thing received in exchange – If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing of any part of the thing received by him in exchange , then, unless a contrary intention appears from the terms of the exchange , such other party is liable to him or any person claiming through or under him for loss caused thereby , or at the option of the person so deprived , for the return of the thing transferred , if still in the possession of such other party or his legal representative or a transferee from him without consideration.*”

However, be it pertinent to mention that , as the Ka and Kha schedule properties was not exchanged between the plaintiff Madhusudan Pal and the defendant no.1 , so the ownership or title of the Ka schedule property remains with the plaintiff as the ownership or title of the defendant no.1 in respect of Kha schedule property was defective and never passed to the plaintiff Madhusudan Pal by this exchange deed. The **section-119 of T.P. Act**, affirms the rule that each party warrants his title to the things which he had transferred by way of exchange and it contains an implied covenants of title and the rights available to the aggrieved party are either return the property or , if such return is not possible to claim compensation. But in this present situation , there is no question of return of the property as the Ka schedule property had not transferred to the defendant no.1 and the Kha schedule property had not transferred to the plaintiff as it was a defective transfer. The rule that "no one can transfer a better title than they possess" is rooted in the legal "*Nemo dat quod non habet*". Under Indian law , this means a person cannot transfer ownership of property they do not own. In. **V. Chandrasekharan Vs. Administrative Officer (2012) S.C.**, the apex Court firmly reinforced the Nemo dat rule , stating that a vendor cannot transfer a title to a buyer that is better than what the vendor themselves. Similarly in **P. Kishor Kumar Vs. Vittal K. Patkar (2023) S.C.**, the Court retreated the strict application of "nemo dat quod non habet", ruling that a transfer of property by someone who lacks valid ownership or authorization conveys absolutely no legal title to the buyer.

As per **section 2(g) of Indian Contract Act ,1872 -An agreement not enforceable by law is said to be void.**

Section 17 of Indian Contract Act ,1872, defines “Fraud”-*Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance ,or by his agent ,with intent to deceive another party thereto of his agent,or to induce him to enter into the contract:-*

- (1) *The suggestion,as a fact, of what which is not true , by one who does not believe it to be true;***

- (2) The active concealment of a fact by one having knowledge or belief of the fact;***
- (3) A promise made without any intention of performing it;***
- (4) Any other act fitted to deceive;***
- (5) Any such act or omission as the law specially declares to be fraudulent.***

Similarly, as per the provision of **Section 18 of Indian Contract Act ,1872,-**
Misrepresentation means and includes –

(1)the positive assertion , in a manner not warranted by the information of the person making it,of that which is not true;

(2)any breach of duty which , without an intent to deceive , gains an advantage to the person committing it, or any one claiming under him;by misleading another to his prejudice ,or to the prejudice of any one claiming under him;

(3)causing , however innocently , a party to an agreement , to make a mistake as to the substance of the thing which is the subject of the agreement.

The above stated legal proposition are very clear on the point that, if any agreement is made and one of the party of the said agreement do fraud or misrepresentation relating to any fact to the agreement with the other party of the same agreement, in that circumstances , the whole agreement be treated as void agreement on ground of practicing fraud or misrepresentation. In this present case, from the very beginning of the execution of the deed of exchange the defendant no.1 was completely known about the status of the Kha schedule property and it was well known to him that the title of the Kha schedule is not belonged to him, in spite of that he fraudulently executed the deed of exchange being pretended himself as the actual owner of the Kha schedule property and it is totally a misrepresentation of fact to the plaintiff along with it is an intentional fraud practiced in respect of the concealment of the fact of ownership of the Kha schedule property from the plaintiff. Therefore , this fraud practice or misrepresentation by the defendant no.1 in execution of the alleged deed of exchange has resulted the Exchanged deed being no 2154 dated 19.05.1993 as a void deed and this void deed of exchange has no binding effect upon the plaintiff.

There is a presumption that a registered document is validly executed . A registered document , therefore , prima facie would be valid in law . The onus of proof, thus would be on a person who leads evidence to rebut the presumption and here the alleged deed of Exchange i.e. the Exhibit.2 is a registered deed in the year 1993 and throughout the trial the defendants tried to convince the Court that the alleged deed was executed after fulfilling all the legal formalities and procedure and all the witness of the alleged deed of exchange has boldly faced their cross examination to established the fact that the deed of exchange was legally executed and binding on the plaintiff and on the basis of this exchanged deed the defendant no.1 became the rightful owner of the Ka schedule property and so the defendant s tried to corroborated it by filing the L.R. ROR of the Ka schedule property which is stands in his name. But law is always taken its own course, basically , the plaintiff has to established his case by his documents or evidence, in this present case plaintiff has highlighted the loopholes of the defendants and turned those into his strength. And it

became crystal clear to this Court and to find out the crux of the suit. In this instant suit plaintiff has been able to rebut the said presumption that a registered document is always a genuine document. The defendants have tried to grab the attention of this Court by highlighting the fact that the after execution of the said deed of exchange the plaintiff has executed one will in favour of his son who is the defendant no 2/1 of this suit and in the said Will the fact of the deed of exchange has already mentioned. Moreover the defendant also tried to convince this Court with the fact that after execution of the said exchange deed another two gift deed were executed in favour of the plaintiff and his son by the defendant no.1 and defendant no.2 and along with this the defendant raised the contention that why the plaintiff has not filed any suit for cancellation of the said Will which was executed in favour of the plaintiff's son. When the Ka schedule property is still belong with the plaintiff then, how could the defendant no. 2 Bandiram Sarkar gifted a portion of Ka schedule property of dag no 362, L.R. khatian 24. This Court is not at all concerned with those three deeds as the main issue of this suit is to find out the validity and the legality of the deed of Exchange i.e **Exhibit.2.** and it has been decided by this Court that the said deed of exchange being no.2154 in between Ashoke Kr. Sarkar and Madhusudan Pal dated 19.05.1993, is void ab initio and by such deed of exchange no transfer of property was taken place of Ka and Kha schedule property between the Madhusudan Pal and Ashoke Sarkar and the title of the Ka schedule property is still remain with Madhusudan Pal and the L.R. ROR of the Ka schedule property published in the name of the defendant no.1 Ashok Sarkar does not create any lawful title to the defendant no.1 as the legal proposition always says that record of right does not signify any title to the holder. In conclusion, this Court, without any ambivalence stated that the plaintiff has successfully established the preponderance of evidence in his favour and compelled this Court to hold the opinion that no title or ownership of Ka schedule of suit was transferred or exchanged by the plaintiff with the defendant no.1 by the alleged deed of exchange being no.2154 dated 19.05.1993 as the said deed of exchange being no.2154 dated 19.05.1993 is void ab initio from the date of execution as no transaction took place by that deed of exchange and the title of the Ka schedule property is remain with the plaintiff as a lawful owner. It has been decided that the plaintiff has successfully sustained his claim as he challenge legality and validity of the register deed of exchange dated 17.05.1993 bearing no.2154 and it has already been decided the plaintiff has 16 annas right, title and interest in respect of the Ka schedule property which he derived from Arabindo Sarkar by a Nurupom Deed.

Hence, all these issues are decided in favour of the plaintiff.

3. In reference to the issue no.10 :-

As per the prayer of the plaintiff, **the plaintiff is hereby entitled to such other relief.** As it has been decided that the plaintiff has the 16 annas right, title, interest over the Ka schedule property and also decided that the deed of Exchange being no.2154 dated

19.05.1993 is illegal, concocted, conspired, beyond right, null and void deed and not binding upon the plaintiff. Therefore, the plaintiff is also hereby entitled to get decree of permanent injunction against the defendants and the defendants are hereby restrained from creating any kind of disturbance in the peaceful possession of the plaintiff in the Ka schedule property permanently.

Similarly the plaintiff is hereby got a decree of recovery of khas possession of the **Ka schedule property** from the defendants as the plaintiff has already filed the ad valorem court fees for cancellation of the said deed of exchange at the time of institution of the suit.

As it has been established that **Deed of Exchange being no.2154 dated 19.05.1993 is an illegal and void deed** and not acted upon the plaintiff, therefore it has been declared that deed of Exchange being no.2154 dated 19.05.1993 be and the same is hereby cancelled as the plaintiff has already filed the ad-valorem court fees for cancellation of the said deed of exchange at the time of institution of the suit.

O R D E R E D

that the present suit being **Title Suit no.-21 of 2016** be and the same is hereby decreed on contest, without any amount of cost.

Court fees paid by the plaintiff is properly valued and paid.

The plaintiff shall have the liberty to initiate a separate proceedings to get the relief of recovery of khas possession of the Ka schedule property from the defendants **as per the provisions of CPC**, as prayed for.

The B.C. is hereby directed to sent a copy of this order /judgment to the ADSR, Sub – Registrar, Garhbeta, for the necessary information and action as the Exchange Deed being **no.2154 dated 19.05.1993 is hereby declared as an illegal and void deed** and having no legal or binding force at all, thus hereby cancelled.

Note in the relevant register and uploaded CIS accordingly.

D/C by me

(Lipika Das)

Civil Judge Jr. Div. Additional Court
Garhbeta, Paschim Medinipur

Civil Judge Jr. Div. Additional Court
Garhbeta, Paschim Medinipur