

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

S.A. 495 of 1999

**Nemai Chandra Mondal
Vs
Basanti Pore & Ors.**

For the Appellant : Mr Jayanta Bhattacharyya
Mr. Fazlul Haque

For the Respondents : Mr. Mukteswar Maity
Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder
Ms. Nupur Chaudhuri
Mr. Anirban Saha Roy

Heard on : 30.04.2024

Judgment on : 28.06.2024

Ajoy Kumar Mukherjee, J.

1. This second appeal has been preferred by the defendant/ appellant challenging the judgment and decree dated 31st March 1997 passed by the learned Additional District Judge, 8th Court, Alipore, in T.A. No. 379 of 1994. By the impugned judgment the court below set aside the judgment and decree passed by the Trial court on 31st August, 1994 in T.S No. 584 of 1984.

2. The main issue involved in this Second Appeal is whether the deed dated 25th June, 1974 is an out and out sale or it was a mortgage by conditional sale.

3. Plaintiff's case in brief is that the plaintiff is an illiterate and rustic woman. After sudden demise of her husband, she faced acute poverty and was in need of money. Accordingly she proposed to take a loan of Rs. 500/- at the rate of 7.5% interest from the defendant no.1. The defendant no.1 also proposed to execute an ekrarnama. At first the defendant no.1 handed over half of the loan amount and the defendant no.1 assured her that the remaining portion of the loan shall be handed over to her after registration of document. The defendant no.1 instructed the plaintiff to come to registry office for the purpose of registration of document and accordingly plaintiff complied the same. In the registry office, the defendant no.1 obtained her L.T.I. (Left Thump Impression) on the document, contents of which was never read over or explained to her. The defendant assured her that said document contains a clause of re conveyance and accordingly asked her to come to his house in the month of Falgun 1391 BS (corresponding to February, 1975), with a sum of Rs. 500/- along with interest. In the next Bengali month of Chaitra, the plaintiff went to the defendants house to repay the loan with interest but the defendant started avoiding the plaintiff on one pretext or the other. The plaintiff became suspicious and she applied for the certified copy of the said document dated 25.08.1974 and after obtaining the certified copy she came to know that defendant had practised fraud on her and had not referred to or written about the agreement for re conveyance of the mortgaged property in case of full payment of loan.

Plaintiff further claimed that contemporary market price of the suit property was Rs.6,000/- to Rs, 7000/- and the impugned deed is not an out and out sale deed but it is a deed of mortgage by conditional sale.

4. The defendant contested the suit by filing written statement and contended that on 25.06.1974, the plaintiff executed a deed of sale in favour of defendant and the possession of the suit land was also delivered to him. Further defence contention is that the plaintiff/appellant subsequently applied before the special officer Bishnupur under the West Bengal Restoration of Alienated Land Act, 1973 though said prayer of plaintiff was dismissed on 16.10.1984. Plaintiff did not prefer any appeal against the said order of dismissal. His further case is that the document in question is an out and out sale deed, since there is no re conveyance clause. Defendant further denied that plaintiff took any loan from him and he asserted that the suit property was sold at the prevailing market price. Defendant further contended that before the special officer, Bishunupur-1, in the aforesaid proceeding, plaintiff had acknowledged the impugned document as a sale deed. Defendant accordingly prayed for dismissal of the suit.

5. Learned Trial Court found that defendant is in possession in the suit property and that defendant had been paying revenue and ultimately came to a finding that impugned transaction was an out and out sale and accordingly Trial Court by a judgment and decree dated 31st August, 1994 was pleased to dismiss the suit on contest against the plaintiff

6. Being aggrieved by and dissatisfied with the judgment and decree passed by the Trial Judge, the plaintiff preferred aforesaid First Appeal being T.A. No. 379 of 1994 and after hearing learned court below was pleased to

set aside the judgment passed by the Trial Court and granted a decree for declaration that the transaction dated 25.06.1974 was a mortgage by conditional sale or loan transaction under Bengal Money Lenders Act and that the impugned transaction is not out and out sale and accordingly passed preliminary decree in favour of plaintiff appellant.

7. Being aggrieved by the said judgment and decree dated 31.03.1997 present second appeal has been preferred by the Defendant/Appellant. This court vide its order dated 10th October, 2023 has been pleased to formulate the following substantial questions of law:-

- (i) Whether the court below has erred in not appreciating that the defendant was able to prove that the price of the sale appreciating the deed, is not abnormal in view of other sale deeds submitted by the defendant and marked as Exhibit “Uma” and “Cha”.*
- (ii) Whether learned court below has erred in not considering that no agreement was entered into for re-conveyance of the disputed land along with the impugned deed.*
- (iii) Whether learned court below has erred in holding that the plaintiff should be treated equally with the pardanashin lady and is entitled to protection under section 105 and 111 of the Evidence Act.*

8. Mr. Jayanta Bhattacharya learned counsel appearing on behalf of the appellant submits that from the averments made in the proceeding initiated by the plaintiff under section 4 (1) of the West Bengal Restoration of Alienated land Act, it is clear that plaintiff has unequivocally admitted that

the suit property was sold by her and the said proceeding thereafter dismissed as against the plaintiff but she did not prefer any appeal. He further contended that the suit property has been purchased on actual consideration amount prevalent at the market. The Respondent herein executed the deed on being satisfied about the sale transaction. The Trial court rightly held that there is no agreement for re-conveyance. From the recital of the deed it is clear that nothing was recorded about intention of the seller for such re-conveyance. Moreover the suit was filed on 17.12.1984 whereas impugned deed was executed on 02.06.1974. From the evidence in the record, it appears that the property is in possession of the defendant and Trial Court rightly held if the transaction was a mortgage, then the plaintiff would not have waited for such a long time for re-conveyance and learned Trial Court disbelieved the plaintiff's contention that the property in question was sold at a very lower price. In fact to substantiate plaintiffs claim he produced one title deed marked exhibit -3 wherefrom it appears that 12 decimal of land Bastu land was sold whereas the suit land is agricultural land and as such Trial Court observed that it would not be proper to compare price of a Bastu (danga land) with an agricultural land and furthermore the said land situates in a different mouza at a distance of half a mile.

9. Mr. Bhattacharya further argued that though plaintiff/respondent has stated that the market price of the suit property was around Rs. 6000/- to Rs. 7000/- but in the evidence plaintiff/respondent had stated that the then market price was Rs. 20,000/- to 25,000/-. The defendant/appellant produced two separate title deeds dated 21.07.1973 and 05.08.1977 being

exhibit “Uma” and “Cha” by which the value of the suit land was calculated to the satisfaction of the learned Trial Court. Most importantly the plaintiff/respondent could not produce any document to prove that she paid land revenue in respect of the suit property and on the contrary from exhibit “ka” it is evident that defendant appellant has paid the land revenue.

10. Referring section 58 of the Transfer of property act 1882, Appellant contended that in the present context no condition is embodied in the said deed and as such the sale deed cannot be treated as a mortgage deed. Though learned court below described plaintiff as pardanashin, lady but the conditions required to be satisfied for treating a lady as pardanashin is not available in the present case. Appellant has relied upon judgment of **Prakash Vs. Je Aradhya**, reported in **AIR 2023 SC 3950** in support of his contention.

11. Mr. Sounak Bhattacharya learned counsel appearing on behalf of the respondents argued in reply to appellants contention that merely because the impugned document does not contain any re-conveyance clause so, it cannot be said that the document is an out and out sale and not a loan in substance or mortgage. Such argument is a baseless argument because, it is settled principle of law that if a document does not contain re-conveyance clause, the same can still be treated as a sale deed and not a loan document. Section 37A of the Bengal Money lenders Act 1940 overrides the provisions of section 58(c) of the T.P. Act, in cases where loan is secured by a mortgage and the mortgagor ostensibly sales the mortgage property on any of the condition specified in sub-section (c) of section 58 of T.P. Act, notwithstanding anything to the contrary contained in the proviso to the

said sub-section , the transaction shall always be deemed to be a mortgage by conditional sale for the purpose of the said sub-section.

12. Mr. Bhattacharya further argued that the real character of a transaction is to be ascertained from the recital of the deed, viewed in the light of the surrounding circumstances.

13. In the present context it is an admitted position that the husband of the plaintiff expired leaving the plaintiff and two minor sons as legal heirs and successors. Plaintiff as per the recital of the deed had allegedly sold the property to the defendant in its entirety and it is not clear what happened to the share of minor sons, because after the death of the husband of the plaintiff the plaintiff and her two minor sons became the owner of the suit property to the extent of 1/3rd share each. The impugned deed does not specify that the plaintiff has sold the share of the minor sons representing them as their mother and natural guardian. This shows that the plaintiff did not have the intention to sale the suit property but only intended to take a loan to sustain herself by mortgaging the suit property. He further submits that the plaintiff although a rustic illiterate village lady but she never had the intention to act against the best interest of her minor son. Regarding the consideration price made in the deed and in connection with two deeds marked as exhibit "Uma" and "Cha" Mr. Bhattacharya Submits that said two properties were sold to the third parties. On careful perusal it appears that the properties covered under exhibit "Uma" and "Cha" are "shali" properties whereas the suit property has been classified as "Danga" property. Naturally the contemporary price of a "shali" land will differ from contemporary price of "Danga" land and for which the exhibit "uma" and "cha" cannot be taken

as a yardstick or bench mark to determine the price of the suit property. Moreover, defendant as DW-1 admitted in his cross examination that the properties covered in the “um” and “cha” schedule situates 1.5 miles away from the suit property and as such the price of the said properties cannot be compared with the price of the schedule property. Furthermore it can be seen from exhibit “uma” that the defendant had sold 16 ½ decimal of land to third parties at Rs. 750/-. It can also be seen from exhibit “cha” that the defendant has sold 16 ½ decimal of land to the third parties at Rs. 800/-. However the alleged sale deed executed by the plaintiff in favour of the defendant no.1 shows that the plaintiff had allegedly sold the suit property measuring 27 decimal which is classified as danga at Rs. 500/-. Moreover, it has also been admitted by defendant no. 1 in his cross examination that the schedule property situates just by the side of Government Road and the properties covered under exhibit “uma” an “cha” are located far away and at an interior place of the village. Accordingly Mr. Bhattacharya submits that exhibit “uma” and “cha” cannot be used as a parameter to compare the price of the suit property.

14. Mr. Bhattacharya further argued that the defendant’s witness no. 2 and 3 had categorically admitted in their cross examination that the price of suit property in 1974 was Rs. 900/- to 1000/-so the plaintiff’s case of abnormal low valuation has been admitted by the defendant’s witness in their deposition. Defendant as DW 1 in his cross examination further admitted that he has no document to show that the suit property was valued at Rs. 500/- at the material point of time and accordingly it is palpably clearly that the plaintiff never had any intention to sell the suit

property at a much lower rate than the contemporary value of the suit property. He further pointed out that DW-1 (defendant) in his cross examination admitted that the usufructs of suit property yields yearly return to the extent of Rs. 400/- to 500/- and as such there was no occasion for the plaintiff to sell the suit property to the defendant at such a low price of Rs. 500/-, when it is the admitted position that the usufructs derived from the suit property gives annual return to the extent of Rs. 400 to 500/-.

15. Mr. Bhattacharya further argued that the impugned deed is an outcome of fraud practiced upon an illiterate and village rustic lady. From the impugned deed it is clear that the plaintiff put LTI on the said deed before registry office and the defendant assured plaintiff that the alleged sale deed is a deed of mortgage and there is a re-conveyance clause in it and the plaintiff was made to understand that her land will be re-conveyed to her immediately on repayment of the loan amount. It also revealed from the deed that the contents of the said alleged sale deed was never read over or explained to the plaintiff in Bengali. He further argued that after sudden death of her husband, plaintiff was under tremendous financial constraints and she was compelled to take loan from the plaintiff and the circumstances was such that the plaintiff was under total control of the defendant and taking advantage of the same, fraud was practiced upon the plaintiff by concealing material facts from her. The Court below rightly treated the plaintiff as a Pardanashin lady and as such, she is entitled to protection under section 105 and section 111 of the Evidence Act. Even the DW-2 Madan Mohan Choudhury in his deposition has stated that he is an attesting witness to the deed but he had not uttered a single word that the

contents of the said deed were read over or explained at the time of the execution or registration of the deed.

16. Mr. Bhattacharya further argued that learned Trial Judge while passed the decree had laid too much emphasis to the fact that since the plaintiff had admitted in a proceeding that the impugned document is a sale deed, she cannot approbate and reprobate at the same time. In this context learned Trial judge had failed to consider section 36 of the Bengal Money Lenders Act 1940, which lays down that any borrower at any point of time can make an application to the court having jurisdiction to entertain suit by the lender for recovery of the principle and interest of a loan made before or after the commencement of the Act for taking accounts and for declaring the amount due to the lender and the principle of *res-judicata* shall not apply. He further contended that in view of section 40 (6) of the Bengal Money Lenders Act 1940, it is always open to the plaintiff to lead evidence even contrary to the written document to prove that the impugned document is a loan in substance and not a sale deed. Contradicting the argument advanced on behalf of the appellant, Mr. Bhattacharya submits that the possession of the suit property was never handed over to the defendant by the plaintiff, which is apparent from the R.S. record of Right which stands in the name of the predecessor-in-interest of the plaintiff. Document shows that even in 1992 the Khazna was paid in the name of plaintiff's predecessor. Even after the publication of L.R. record of Right, the name of the plaintiff and her sons were recorded. Thus the Record of Right being the document of possession, stands in favour of plaintiff and as such it can be safely concluded that defendant never got the possession of the suit

property and plaintiff had no intention to sell the suit property to the defendant at any point of time. Mr. Bhattacharya in this context relied upon following judgments

- (i) 1993 (1) CLT 121 (Para 6)
- (ii) 70 CWN 982 (para 50-57)
- (iii) AIR 1966 SC 902 (para 6)

DECISION

17. The distinction between two types of transaction namely a mortgage by conditional sale and out and out sale is purely one of intention and if it is not shown that the relationship of the debtor and creditor intended to subsist, there cannot be any mortgage and oral evidence can hardly substantiate intention of the parties. It is well settled in view of judicial pronouncement in ***Sarnalata tat Vs. Chandri charan Dey*** reported in ***AIR 1984 Cal 130*** that a borrower in order to get the protection of section 37A of the Bengal Money Lenders Act must show firstly that there is a loan secondly such loan has been secured by executing a mortgage and thirdly the borrower ostensibly sells the mortgaged property on any of the conditions enumerated under section 58(c) of the Transfer of Property Act namely:

- a)** that on default of payment of the mortgage money on certain date, the sale becomes absolute or
- b)** that on condition of such payment being made such sale shall become void or
- c)** that on such payment being made the buyer shall transfer the property to the seller.

18. If the above condition are fulfilled then only the transaction is to be treated as a mortgage by conditional sale and the debtor is entitled to relief.

19. However, the term “loan” has been defined in section 2(12) of the Bengal Money Lenders Act which includes any transaction which is in substance a loan.

20. In the present context on perusal of the contents of the impugned deed it appears that it has been clearly mentioned therein that the same was an absolute sale for a total sale consideration of Rs. 500/-, which necessitated to the vendor to strengthen capital of her husband’s business. In the deed there is no agreement of re-conveyance clause and nothing has been recorded about intention of the seller for such re-conveyance. Section 58(c) of the Transfer of Property Act lays down that no transaction shall be deemed to be mortgage, unless the condition of sale and agreement for re-conveyance are embodied in the same document. However there is no quarrel with the proposition of law that while deciding the question as to the nature of the transaction, the court must consider the effect of section 37A which overrides the proviso to section 58(C) of the Transfer of Property Act. The question of considering surrounding circumstances only comes, if the recital of the documents are ambiguous from which the intention of the parties is not clearly deducible

21. In **Bappuswami Vs. Patty Gowandar** reported in **AIR 1966 SC 902**, the Apex Court pointed out four circumstances to come to the conclusion that the document can be called as mortgage by conditional sale which are:-
(a) the condition for repurchase was embodied in the same document

(b) the consideration shown in the transaction was far less than the real value of the property

(c) the original title deed was not transferred to the vendee after the execution of the document and the rent for the land was also continued to be paid by the vendor and

(d) the consideration for the re-conveyance and that for the original transaction was the same.

22. In the light of aforesaid parameters laid down by the Apex Court now let me consider whether the impugned transaction in the present case is an out and out sale or is a mortgage by conditional sale. I have already stated that in the impugned deed the condition for re purchase has not been embodied in the same document and it is also not the case of the plaintiff that the original title deed was not transferred to the vendee after the execution of the documents and since there is no clause for repurchase in the impugned deed in the present context, the question of comparing the consideration for re conveyance and the consideration of original transaction does not arise.

23. Now let me see whether consideration shown in the transaction, was far less than the real value of the property to gather any contrary intention of the parties. In this context Mr. Bhattacharya learned counsel appearing on behalf of the respondent has relied upon two circumstances

(i) the consideration price of the property and

(ii) That the court below held that the plaintiff is entitled to get the advantage as a pardanashin lady.

24. It is true that the plaintiff by the impugned deed have allegedly transferred 27 decimal of land which is classified as “Danga” at Rs.500/- and whereas the properties covered under exhibit “Uma” and “Cha” are Sali properties, out of which under exhibit “Uma” defendant has sold 16 ½ decimal of land to a third party at Rs. 750/- and property under “Cha” Schedule is measuring 16 decimal, which was also sold by defendant to a third party at a consideration of Rs. 800/-. Accordingly respondent submitted that the contemporary prices of Sali land will differ from the contemporary price of a danga land and as such exhibit “Uma” and “Cha” cannot be taken as a yardstick or bench mark to determine the price of the the suit property and this is also because said “Uma” and “Cha” Property situates at a distance of 1.5 miles from the suit property and at an interior place whereas plaintiff’s property situates by the side of the main road. However it appears that plaintiff’s deed was executed on 25.06.1974 and the deeds marked exhibit “Uma” and “Cha” were executed on 21.10.1973 and 05.08.1977 respectively. At the same time plaintiff/respondent also produced a title deed being exhibit-3 wherefrom it appears that 12 decimal of Bastu land was transferred at a consideration of Rs.1000/- in the year 1968. Mr. Bhattacharya learned counsel appearing on behalf of the respondents also laid emphasis on the evidence of DW-2 and 3, who admitted in cross examination that the price of suit property in 1974 was Rs.900/- to 1000/-. Accordingly plaintiff/respondent’s contention was that the consideration price shown in the deed is much less than the contemporary price. Learned Trial Judge after scanning evidence came to a finding that there is no agreement of re-conveyance and in the subject deed

nothing has been recorded about intention of the seller for such re-conveyance. Moreover, the suit was filed on 17.12.1984, whereas the deed was executed on 02.06.1974 which is after long laps of time. Accordingly Trial Court held if the transaction was a mortgage then the plaintiff should not have allowed to pass a long time for re-conveyance and the trial court also did not accept that the property was sold at a low price.

25. In this context it needs to be mentioned that settled principle of law is when prima facie there is nothing to show that there exists any relationship of creditor and debtor between the parties nor there is any prior transaction by and between the parties prior to the conveyance, even if the consideration of sale does not represent the market price, the transaction in substance can be sale. Though plaintiff in the plaint alleged that defendant is a money-lender and has a business for the same but there is nothing to show that defendant had any such money lending business. There may be various factors which may compel a person to sell a property at a price which may not reflect the market value but that does not lay down as a general proposition that whenever there is a sale of property at the value lower than its market value it will lead to definite conclusion that the transaction is in substance a loan.(Re-AIR 1984 Cal 130).

26. Similarly, though the court below held that the plaintiff is a village illiterate lady, so she is virtually akin with that of a pardanashin lady who enjoys the protection under section 105/111 of the Evidence Act and as such there is every likelihood that fraud was practiced upon such lady but in this context it appears from the submissions of learned counsel for the respondent that the plaintiff lady cannot be treated as pardanashin lady as

she presented herself before the registry office as well as before the Trial Court. Moreover from the evidence adduced by present appellant Nimai Chandra Mondal, it is evident that the plaintiff/Respondent was doing business in selling rice and as such she should not be treated as pardanashin lady.

27. There is another aspect of the matter. Present plaintiff initiated a proceeding under West Bengal restoration of alienated Act 1973 before the appropriate authority claiming the impugned sale as distress sale, which however was rejected by the authority on 16.10.1984. Learned counsel for the respondent strenuously argued that in the said proceeding initiated under section 4(1) of the West Bengal Restoration of alienated Act, the plaintiff respondent has admitted that she sold the property. More importantly, plaintiff did not prefer any appeal against said dismissal order dated 16.10.1984. Now the question is once plaintiff admitted the impugned transaction as a sell in a proceeding, whether she can afterwards claim the same transaction as mortgage by condition sale.

28. In the case reported in **72 CWN 867** it was held that suits may come and go, withdraw with or without liberty to sue afresh, dismiss or decreed, no matter which, but statements made therein, no matter where, in pleadings petitions affidavits or evidence, remain for ever and for all purposes too allowed by law such as to be proceed with as admissions, when they are found to be such, so long as they are not rebutted or to be confronted with under section 145 of the Evidence Act.

29. Learned Trial Court also held that the plaintiff respondent had not produced any document to prove that she paid land revenue in respect of

the suit property and on the contrary from exhibit “ka” it is evident that the defendant appellant has paid the land revenue. Plaintiff is her evidence admitted that she does not pay land revenue for last 14/15 years and though she said that she paid rent only for five years after the impugned transaction but she admitted that she has not filed any document to support the same.

30. Mr. Bhattacharya on behalf of the Respondents argued, if the matter is considered from different angle then also the deed is illegal in view of the fact that from the impugned deed, it is apparent that the plaintiff had allegedly sold the property to the defendant in its entirety and it is not clear what happened to the share of minor sons. This is because defendant as DW-1 in his cross examination has clearly admitted that the husband of plaintiff expired leaving behind him the surviving plaintiff and two minor sons. He accordingly contended that this clearly shows that the plaintiff did not have the intention to sell the suit property but only intended to take a loan to sustain herself by mortgaging the suit property.

31. I am not agreeable with Mr. Bhattacharya that simply because the share of minors had not been mentioned in the deed, so it is such a surrounding circumstances which inevitably lead to a conclusion that the deed was loan in substance. There may be very many reasons for not mentioning the share of the minors or presentation on behalf of the minor in the deed. Moreover even if the transaction was made suppressing minor's share, then minors would have prayed for cancellation of their share by initiating appropriate proceeding after attaining majority which according to the appellant they did not make though plaintiff admitted in evidence that

her elder son crossed the age of 20 years. Accordingly I find no substance in such contention.

32. Though there is an endorsement in the deed that the contents of the deed was read over and explained to the plaintiff but plaintiff argued that fraud was practiced upon plaintiff as she was allegedly assured that there is re-conveyance clause being a deed of mortgage and that she was made to understand that her land will be re-conveyed to her immediately on repayment of the loan amount. In this context I find that the identifier of deed Madan Mohan Choudhary had faced the dock as DW-2 and no suggestion was put to him that the contents of deed was not read over or explained to her, nor any suggestion was put to him that plaintiff put signature on the deed without understanding contents therein. Plaintiff admitted in her evidence that inspite of getting sufficient opportunities she never lodged complain anywhere alleging fraud.

33. Similarly, I do not find any substance in the contention of the plaintiff that the admission of plaintiff as made by him in the earlier proceeding can be contradicted by saying that section 40(6) of Bengal Money lender Act 1940 lays down that notwithstanding anything contained in the Evidence Act, the evidence adduced by a borrower in a suit to which the Act applies or a suit brought by a borrower for relief under section 36 contradicting varying adding to subtracting from the terms of any document creating or witnessing a loan shall be admitted.

34. But section 40(6) of the Act can hardly give protection to plaintiff when language of deed in question has a definite and unambiguous meaning and as such in the present context parole evidence is not

admissible to show that the plaintiff meant something different from what she had actually admitted in the earlier proceeding. Section 40(6) would have come to an aid if the description of the deed is susceptible to more than one interpretation but here I find no ambiguity in the recital of the deed. Moreover such argument might have any relevancy if the other surrounding circumstances like possession in the land, payment of rent, evidence regarding nature of transaction etc. were found in favour of plaintiff. Since all the circumstance are against the respondents/plaintiff, she cannot be permitted to say contrary to the written evidence that the impugned document is loan in substance and not a sale deed. It also appears that the possession is with the defendant and though plaintiff/respondent by filing RS record of right wanted to establish that it stands in their name but it appears that said recording was made long before the impugned transaction and accordingly such recording cannot have any bearing upon the impugned transaction. The khazna receipt for the year 1992 also cannot have any bearing in support of possession, since on the basis of entry in the record of right, if someone pays any amount to the Government, Government is supposed to grant receipt but it cannot ipso fact proves possession of the plaintiff in the suit property specially when the defendant by way of documentary and oral evidence has established that since purchase defendant/appellant is in possession of the suit property. Plaintiff as PW-1 admitted in examination in chief in clear terms that she handed over possession of the land to Appellant herein, 3/4 months after putting LTI on the deed. She further admitted during cross-examination that after few years of impugned transaction she left the village where property

situates. She further admitted that she has no witness to prove that she had gone to defendant to repay money with interest but defendant refused to accept money.

35. Considering all the aforesaid factors I find that the court below was not justified in setting aside the order impugned with the observation that the transaction dated 25.06.1974 was a mortgage by conditional sale and for which the plaintiff is entitled to get decree.

36. SA 495 of 1999 is allowed. The impugned judgment dated 31.03.1997 passed by Additional District Judge, 8th Court Alipore in T.A no. 379 of 1994 is hereby set aside and the judgment and decree passed by learned 6th Munsif Alipore in T.S. No. 584 of 1994 dated 31.08.1994 and decree dated 17.09.1994 are hereby affirmed.

37. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)