

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

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**C.O. 2113 of 2022
Sri. Amit Begwani
versus
Smt. Ranu Parui & Ors.**

For the Petitioner	: Mr. Sakya Sen, Advocate Mr. Tarak Nath Sarkar, Advocate
For the Opposite Party No.1	: Mr. Shyamal Chakraborty, Advocate Mr. Manabendra Thakur, Advocate Mr. Swarup Kr. Ghosh, Advocate
Heard on	: 18.04.2023, 04.05.2023
Judgment on	: 15.01.2024

Bivas Pattanayak, J. :-

1. This Civil Revisional application has been filed under Article 227 of the Constitution of India challenging the impugned order dated 23rd June, 2022 passed by the learned Civil Judge (Junior Division) at Ghatal, Paschim Midnapore in Title Suit No. 68 of 2021 dismissing the application of the petitioner-defendant no.1 for rejection of plaint.

2. The brief fact in nutshell is that the opposite party no.1-plaintiff filed a suit for declaration and injunction being Title Suit No. 68 of 2021 against the petitioner-defendant no.1 and *proforma* defendant no.2-opposite party no.2, contending *inter alia* as follows:

- (i) The husband of the plaintiff-opposite party no.1 Sri Mahadeb Parui (*proforma* defendant no.2-opposite party no.2) was the owner of

the land, comprised within L.R Dag No. 81, Khatian No. 420, Mouza-Nuniagoda, Pargana-Chetuar, P.S-Daspur, Paschim Medinipur, measuring more or less 5.580 decimals, by way of purchase through two sale deeds executed on 11th April, 2008 and 3rd August, 2011 which was duly mutated in his name in the revenue records of the concerned District.

(ii) The *proforma* defendant no.2-opposite party no.2, gifted the aforesaid property more fully described in the 'Ka' schedule of the plaint to his wife, the plaintiff-opposite party no.1, by way of a deed of gift executed on 12th June, 2019 and registered on 30th August, 2019. Since there was marital discord between the plaintiff and her husband, for future well-being of the plaintiff, with the intervention of relatives, *proforma*-defendant no.2 (husband of the plaintiff) gifted the aforesaid property to the plaintiff.

(iii) The said property gifted to the plaintiff-opposite party no.1 was duly accepted by her. Though the plaintiff-opposite party no.1 had the absolute right, title, interest and possession of the 'Ka' schedule property but she could not get the said property mutated in her name for the reasons spelt out in the plaint.

(iv) In the meantime the plaintiff-opposite party no.1 came to learn that her husband (*proforma* defendant No.2-opposite party no.2) has transferred the 'Ka' schedule property by way of two sale deeds (*Ka/ 1* schedule) in favour of the petitioner-defendant No.1 on 28th June, 2019 and 9th July, 2019 respectively.

(v) The plaintiff-opposite party no.1 in the suit challenged the aforesaid two deeds to be fraudulent, void, illegal, inoperative, not binding and devoid of consideration amount.

3. The petitioner-defendant no.1 in the aforesaid suit filed an application under Order VII Rule 11 of the Civil Procedure Code for rejection of the plaint on the ground that prior to registration of the deed of gift in favour of the plaintiff on 30th August, 2019, the *proforma* defendant no.2 already transferred by way of two sale deeds executed and registered on 28th June, 2019 and 9th July, 2019 respectively, the entire 16 annas share in 'Ka' schedule property in favour of petitioner-defendant no.1 upon payment of full consideration amount. Thus the *proforma* defendant no.2 did not have the right, title and interest over the property to make further gift of such property subsequently in favour of the plaintiff, his wife. The plaintiff cannot claim her right, title and interest over the property in question on the basis of an illegal deed which was registered two months later. Further mutation of the property in question in the revenue records has also been done in favour of petitioner-defendant no.1. On such count, the petitioner-defendant no.1 prayed for rejection of the plaint for want of distinct cause of action.

4. Upon hearing the learned advocates for respective parties and considering the materials placed before it, the learned Trial Court dismissed the application of the petitioner-defendant no.1 for rejection of plaint.

5. Being aggrieved by and dissatisfied with the impugned order of the learned Trial Court, defendant no.1 has filed the present revisional application.

6. Mr. Sakya Sen, learned advocate for the petitioner-defendant no.1 submitted that by virtue of two sale deeds executed and registered in favour of petitioner-defendant no.1 on 28th June, 2019 and 9th July, 2019 respectively by *proforma* defendant no.2-opposite party no.2, he became the absolute owner in respect of 'Ka' schedule property and that the aforesaid property has been duly mutated in the name of petitioner-defendant no.1 and he is also enjoying the possession of the property in question. The plaintiff on the basis of an illegal deed of gift registered after almost two months of the two deeds of sale executed and registered in favour of the petitioner-defendant no.1, has claimed her right over the 'Ka' schedule property which is not at all sustainable in the eye of law. The registration of the two sale deeds in respect of 'Ka' schedule property in favour of petitioner-defendant no.1 being prior in time as against the registration of the gift deed in favour of plaintiff-opposite party no.1, the operational effect of the said gift deed loses its sanctity in the eye of law. He further submitted that Section 47 of the Registration Act provides that a registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. The language of Section 47 of the Act clearly shows that the said provision is not applicable to documents which are compulsorily registrable. Since the deed of gift is a document which is compulsorily registrable under law, hence Section 47 of

the Act providing that the document shall operate from the date of execution does not apply in case of gift deed. Therefore, the plaintiff cannot claim her right, title and interest over the property in question from the date of execution of deed of gift.

He further submitted that the plaintiff-opposite party no.1 in the plaint has sought for declaration of the impugned two sale deeds to be null, void, inoperative and not binding on the plaintiff, however, the plaintiff has not sought for cancellation of the aforesaid two sale deeds of the petitioner defendant no.1. Therefore, without seeking for cancellation of the aforesaid two sale deeds, the mere declaration sought for by the plaintiff-opposite party no.1 is barred under Section 34 of the Specific Relief Act. The plaintiff-opposite party no.1 in the guise of declaratory suit in actuality sought for cancellation of the sale deeds and, therefore, payment of *ad valorem* court fees should be on the valuation of the suit properties and/or on the basis of the consideration amount of the aforesaid two sale deeds. The plaintiff-opposite party no.1 has deliberately and intentionally undervalued the suit to avoid payment of *ad valorem* court fees.

Moreover, the plaintiff-opposite party no.1 has also sought for declaration that the record of rights in respect of the property in question recorded in favour of the petitioner-defendant no.1 are void, illegal and erroneous, however, as per Section 51C of the West Bengal Land Reforms Act, the Civil Court has got no jurisdiction to entertain and decide such issue.

He further submitted that as per the plaint, fraud has been committed upon *proforma* defendant no.2-opposite party no.2, however, it is needless to note that *proforma* defendant no.2, who had the special knowledge of

commission of fraud upon him, if any, has not made any allegation of fraud against the petitioner-defendant no.1. The cause of action of the husband of the plaintiff cannot be pleaded by the plaintiff to be her cause of action. Thus, the plaintiff has been set up by her husband (*proforma* defendant no.2-opposite party no.2) to file such frivolous suit without any cause of action. The suit of the plaintiff is totally collusive one between her and her husband.

In light of his aforesaid submissions, he prayed for rejection of the plaint by setting aside the impugned order of the learned Trial Court.

7. In reply to the contentions raised on behalf of the petitioner, Mr. Shyamal Chakraborty, learned advocate for plaintiff-opposite party no.1 submitted that the deed of gift in respect of 'Ka' schedule property was executed on 12th June, 2019 in favour of plaintiff by *proforma* defendant no.2, her husband. Such execution of deed of gift is prior to the date of execution of two sale deeds of petitioner-defendant no.1. Though the registration of the deed of gift in favour of the plaintiff has been made on 30th August, 2019 which is after the registration of two sale deeds in favour of the petitioner-defendant no.1, yet as per provisions of Section 47 of the Registration Act, once a document, which is required to be registered compulsorily, is registered, the effect of such document relates back to the date of its execution. Therefore, the right, title and interest of the plaintiff over the 'Ka' schedule property relates back to the date of execution of deed of gift on 12th June, 2019 and thus the petitioner-defendant no.1 cannot claim his right over the suit property on the basis of two sale deeds

executed at a later date. To buttress his contention, he relied on the following decisions:

- i. ***Hamda Ammal versus Avadiappa Pathar and 3 Others***¹
- ii. ***Thakur Kishan Singh (dead) versus Arvind Kumar***²
- iii. ***Gurbax Singh versus Kartar Singh and Others***³
- iv. ***Naba Kumar Mondal versus Chhabi Mondal***⁴

He further submitted where an executant of deed wants the same to be annulled, he has to seek cancellation of such deed. Whereas when a non-executant seeks annulment of a deed, he has to seek for declaration that the deed is invalid or non-est or illegal or that it is not binding on him. Since the plaintiff is not an executant of the two sale deeds which are under challenge in the suit, hence she has sought for a declaration that those deeds are invalid or illegal and not binding. For the reasons as above, the question of seeking for cancellation of the two sale deeds does not arise at all. Accordingly, the suit is not hit by Section 34 of the Specific Relief Act.

Moreover, as the plaintiff is not an executant of the two sale deeds, she is not required to pay court fees on the sale consideration mentioned in the sale deeds and the court fees would be payable as would be computable under Section 7(iv)(c) of the Court-fees Act, 1870. In support of his contention, he relied on the following decisions:

¹ (1991) 1 SCC 715

² AIR 1995 SC 73

³ (2002) 2 SCC 611

⁴ 2016 (3) CHN (Cal) 457

- i. ***Suhrid Singh Alias Sardool Singh versus Randhir Singh and Others***⁵
- ii. ***Naba Kumar Mondal versus Chhabi Mondal***⁶

Furthermore, the plaintiff in the suit has prayed for several reliefs including one for declaration that the record of rights issued by the concerned authority is erroneous or illegal, as such in the event, one of the prayers/reliefs is found to be not tenable, that does not lead to rejection of the plaint as a whole.

In light of his aforesaid submissions, he prayed that the impugned order of the learned Trial Court dismissing the application of the petitioner for rejection of plaint should be affirmed and the civil revision be dismissed.

8. Having heard learned advocate for respective parties, it is found that the petitioner-defendant no.1 has sought for rejection of plaint precisely on the following grounds:

Firstly, Section 47 of the Registration Act providing that the document shall operate from the date of execution, does not apply in case of deed of gift which is compulsorily registrable under law.

Secondly, the suit is barred under Section 34 of the Specific Relief Act in absence of prayer for cancellation of the two sale deeds by the plaintiff and the suit has been deliberately undervalued.

Thirdly, the declaration sought for by the plaintiff that the record-of-rights in respect of the property in question recorded in favour of the petitioner-

⁵ (2010) 12 SCC 112

⁶ 2016 (3) CHN (Cal) 457

defendant no.1 are void, illegal and erroneous is barred under Section 51C of the West Bengal Land Reforms Act, 1955.

And *lastly*, the plaintiff has no cause of action since the act of fraud, if any, has been committed upon the husband of the plaintiff (*proforma* defendant no.2).

9. Before delving into merits of the application, it would be appropriate to refer to the relevant provisions under Order VII Rule 11 of Civil Procedure Code which is reproduced hereunder:

“[R 11] Rejection of plaint.—*The plaint shall be rejected in the following cases:—*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-

papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

9.1. Bearing in mind the aforesaid provision, the only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The Court is to consider only the plaint as a whole and in case the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f), the same has to be rejected.

9.2. Upon going through the plaint, it is found that the plaintiff has asserted her right over the ‘Ka’ schedule property on the basis of a deed of gift executed by her husband (*proforma* defendant no.2) on 12th June, 2019 and registered on 30th August, 2019. The petitioner-defendant no.1 has claimed his right over the suit property on the basis of two sale deeds executed and registered on 28th June, 2019 and 9th July, 2019 respectively. It is not in dispute that execution of the deed of gift is prior to the two sale deeds. Undisputedly, the registration of the two sale deeds is prior to the registration of deed of gift.

10. The first ground raised on behalf of the petitioner is that Section 47 of the Registration Act is not applicable to documents such as deed of gift which are compulsorily registrable and, therefore, upon registration of deed of gift, the same shall not operate from the date of execution.

10.1. At this stage, it would be profitable to refer to the proposition of law laid down by Hon’ble Supreme Court and this Court as hereunder.

10.2. In *Hamda Ammal (supra)*, the Hon'ble Supreme Court observed has observed as follows:

“4. . . . The legislature being alive to such situations has already provided in Section 47 of the Registration Act that it shall operate from the time from which it would commence to operate if no registration thereof had been required or made and not from the time of its registration. Thus in our view the vendee gets rights which will be related back on registration from the date of the execution of the sale deed and such rights are protected under Order XXXVIII Rule 10 CPC read together with Section 47 of the Registration Act.

x x x

12. *In the above case this Court has gone even to the extent that not only a sale deed but even an agreement of sale will prevail over attachment before judgment made subsequent to such agreement for sale. We do not want to express any opinion with regard to the case of an agreement for sale, but we are of the confirmed opinion that a sale deed having been executed prior to attachment before judgment, though registered subsequently will prevail over attachment before judgment.”*

10.3. In *Thakur Kishan Singh (dead) (supra)*, the Hon'ble Supreme Court has held as follows:

“3. The findings recorded by the High Court and the trial court have been assailed by Shri Sen, the learned Senior Counsel appearing for the appellant, and it is claimed that the lease deed having been registered after the material date, it could not confer any title on the respondent as the right title-in-interest of the respondent's predecessor already stood vested in the State prior to registration of the lease deed. The

argument does not appear to be sound. Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. [See Ram Saran Lall v. Mst. Domini Kuer, AIR 1961 SC 1747 (1749) and Nanda Ballabh Gururani v. Smt. Maqbool Begum, 1980 UJ (SC) 597]. Since, admittedly, the lease deed was executed on 5th December, 1949, the plaintiff after registration of it on 3rd April, 1950 became owner by operation of law on the date when the deed was executed. Therefore, the land did not vest in the State. And the courts below did not commit any error in negating the claim of appellant.”

10.4. This Court in *Naba Kumar Mondal (supra)* has observed as follows:

“3. Parties are closely related to each other. The plaintiff is the maternal aunt of the defendants. Admittedly the husband of the plaintiff was the maternal uncle of the defendants and he was the owner of the suit property. He executed a deed of gift bequeathing the suit property in favour of his wife on 2nd May, 2000. Registration of the said deed of gift was completed on 29th April, 2002. Husband of the plaintiff also executed another deed of gift bequeathing the suit property in favour of his nephews (defendants/appellants) on 30th May, 2000. Registration of the said deed was completed on 22nd February, 2001. Parties are thus making rival claims of title over the suit property through those two deed of gifts.

4. Section 47 of the Registration Act says that once a document, which is required to be registered compulsorily, is registered, the effect of such document

relates back to the date of execution of the deed. If the principle underlying section 47 of the Registration Act is applied in the present case, then we have no hesitation to hold that the deed of gift which was executed by the husband in favour of his wife on 2nd May, 2000 was earlier in point of time than the deed of gift which was executed by the plaintiff's husband in favour of his nephews on 30th May, 2000. Thus, we have no hesitation to hold that the wife derived title in respect of the suit property from her husband by virtue of the deed of gift executed by him in her favour on 2nd May, 2000. We, thus, do not find any illegality in this part of the findings of the Courts below."

10.5. Section 47 of the Registration Act provides that a registrable document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. Bearing in mind the aforesaid proposition, it is no more *res integra* that a document on subsequent registration will take effect from the time of its execution. Where two documents are executed on different dates, the date of their execution would determine the priority irrespective of date of their registration. It is well-established that a document so long is not registered is not valid yet once it is registered it takes effect from the date of its execution. Reverting back to the facts of this case, the deed of gift executed by *proforma* defendant no.2 in favour of his wife (plaintiff) on 12th June, 2019 is prior to execution of two deeds of sale in favour of petitioner-defendant no.1. If the principle underlying in Section 47 of the Registration Act that once a document is registered, the effect of such document relates back to the date of execution of the deed, is

applied to the present case, this Court has no hesitation to hold that the deed of gift, executed by the *proforma* defendant no.2-husband in favour of the plaintiff-wife on 12th June, 2019, being earlier in point of time than the two sale deeds executed on 28th June, 2019 and 9th July, 2019 respectively by the husband of the plaintiff in favour of the defendant no.1, upon registration on 30th August, 2019, relates back to the date of its execution on 12th June, 2019. Thus, the argument that the plaintiff-wife cannot derive title in respect of the suit property from her husband by virtue of deed of gift executed by him in her favour on 12th June, 2019 does not hold good.

11. The Second ground raised challenging the plaint is that without seeking for cancellation of the two sale deeds, mere declaration sought for by the plaintiff-opposite party no.1 that those deeds are inoperative and not binding, is barred under Section 34 of the Specific Relief Act.

11.1. In order to appreciate such ground raised, it will be profitable to reproduce Section 34 of the Specific Relief Act as hereunder:

“34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”

11.2. The proviso to Section 34 envisages that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title omits to do so. The question which arises at this juncture is whether the plaintiff, in the facts and circumstances of the present case, is able to seek for cancellation of the two deeds than mere declaration that those deeds are inoperative and not binding.

11.3. At this juncture, it would be appropriate to reproduce the observation of Hon’ble Supreme Court in *Suhrid Singh Alias Sardool Singh (supra)* :

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he

has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of ₹19.50 under Article 17(iii) of Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.”

11.4. From the above proposition, it manifest that where an executant of a deed wants it to be annulled, he has to seek cancellation of the deed but if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. Admittedly, the plaintiff is not an executant of the two sale deeds which is under challenge in the suit (*Ka/1 schedule*). Applying the proposition laid down by the Hon’ble Supreme Court as above since the plaintiff is not an executant of those two sale deeds, hence she had to seek for declaration of those deeds as invalid or illegal, inoperative and not binding upon her and not cancellation. Therefore, it cannot be said that the plaintiff omitted to seek for cancellation which she under law could have than a mere declaration. Accordingly, the ground that the suit is barred under Section 34 of the Specific Relief Act falls short of merit.

11.5. The petitioner-defendant no.1 has also raised the issue that the suit filed by the plaintiff is undervalued. Mr. Sen, learned advocate for the petitioner-defendant no.1 urged that the plaintiff-opposite party no.1 in the guise of declaratory suit in actuality sought for cancellation of the sale

deeds and, therefore, payment of *ad valorem* court fees should be on the valuation of the suit properties and/or on the basis of the consideration amount of the aforesaid two sale deeds. The plaintiff-opposite party no.1 has deliberately and intentionally undervalued the suit to avoid payment of *ad valorem* court fees. *Per contra*, Mr. Chakraborty, learned advocate for plaintiff-opposite no.1 relying on *Suhrid Singh Alias Sardool Singh (supra)* and *Naba Kumar Mondal (supra)* has submitted that as the plaintiff is non-executant of the sale deeds, hence she has prayed for declaration and the court fee would be computable as per Section 7(iv)(c) of the Court-fees Act. In order to appreciate the aforesaid issue, it would be profitable to refer to the following proposition.

11.6. The Hon'ble Supreme Court in *Suhrid Singh Alias Sardool Singh (supra)* has observed as follows:

“8. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

9. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the “coparcenery” and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under Section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek

cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.”

11.7. This Court in *Naba Kumar Mondal (supra)* has observed as follows:

“5. Mr. Chatterjee, learned advocate appearing for the defendants/appellants submits that the suit was not properly valued and sufficient court fees has not been paid and as such, he submits that the Courts below ought to have dismissed the suit for non-payment of proper Court-fees. According to him, the suit should have been valued on the basis of the valuation of the suit property which was allegedly given by the plaintiff’s husband in favour of the plaintiff.

6. We cannot agree with such submission of Mr. Chatterjee as it is settled law that when a person who is not party to the document wants to avoid the effect of such deed, he is not required to value the relief claimed in the suit as per the valuation of the suit property. Thus, we hold that the relief claimed in the suit by way of declaration was properly valued by the plaintiff and sufficient Court-fees was also paid thereon.”

11.8. In view of the aforesaid proposition laid down by Hon’ble Supreme Court as well as this Court, the argument that the suit filed by the plaintiff is undervalued does not stand to reason.

12. The third ground raised by the petitioner-defendant no.1 is that the declaration sought for by the plaintiff that the record-of-rights is void, illegal and erroneous, is barred under Section 51C of the West Bengal Land Reforms Act, 1955. It is pertinent to note that the plaintiff has prayed for several other reliefs including the declaration that the records of rights are void, illegal and erroneous. Hence, such ground pressed into service by

the petitioner-defendant no.1, if accepted, would amount to rejection of a particular portion of a plaint. The rule does not justify rejection of any particular portion of a plaint. The concept of a partial rejection is apparently inapplicable to the provisions of Order VII Rule 11 of the Code. There could be partial striking out of the pleadings under Order VI Rule 16 of the Code, but not rejection of plaint. There may be more than one relief in a suit. In case of more than one relief, where one of the reliefs appears to be specifically barred in law that *ipso facto* does not make the entire suit liable to be rejected. The Hon'ble Supreme Court in ***Madhav Prasad Aggarwal versus Axis Bank Ltd***⁷ held that under Order VII Rule 11(d) it is not permissible to reject plaint *qua* any particular portion of a plaint including against some of the defendants and continue the same against the others. The plaint has to be rejected as a whole or not at all in exercise of power under Order VII Rule 11(d) of the Code. Thus, the rejection of the plaint on the aforesaid ground falls short of merit. However, whether such declaration can be entertained or not is a matter to be decided during the course of trial.

13. Last but not the least it has been urged on behalf of the petitioner-defendant no.1 that as per the plaint, the act of fraud is upon *proforma* defendant no.2 and not upon the plaintiff and, therefore, the plaintiff has no cause of action and there is collusion between the plaintiff and her husband (*proforma* defendant no.2) in instituting the suit. The aforesaid aspect of collusion and fraud as alleged in the plaint can be found out only

⁷ (2019) 7 SCC 158

during the course trial. Fraud is a question of fact which is to be established in the course of trial. In such a situation, the plaint cannot be rejected solely on such ground. (*See M/s. Cambridge Solutions Ltd., Bangalore versus Global Software Ltd. And Ors.*⁸).

14. In light of the aforesaid discussion, revisional application being **C.O. 2113 of 2022** stands dismissed. The impugned order dated 23rd June, 2022 passed by the learned Civil Judge (Junior Division) at Ghatal, Paschim Midnapore in Title Suit No. 68 of 2021 is affirmed. No order as to costs.

15. All connected applications, if any, stand disposed of.

16. Interim order, if any, stands vacated.

17. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)

⁸ *AIR 2009 Mad 74*