

Form No. J(2)

In the High Court at Calcutta  
Civil Appellate Jurisdiction  
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya  
And  
The Hon'ble Justice Uday Kumar

**F.A. 125 of 2019**  
**IA No: CAN 3 of 2021**

**Sibani Rakshit and others**  
**Vs.**  
**Keya Dey (nee Das)**

For the appellants : Mr. Probal Kr. Mukherjee, Snr. Adv.  
Mr. H. Das

For the respondent : Mr. Asit Baran Raut  
Mr. Asit Kumar Chowdhury  
Mr. Tuhin Subhra Raut

Heard on : 10.04.2025

Judgment on : 10.04.2025

**Sabyasachi Bhattacharyya, J.:-**

1. CAN 3 of 2021 is an application for expunging the name of the appellant no.1 who has met her demise during pendency of the appeal.
2. Since the heirs of the said deceased are already on record, we allow CAN 3 of 2021 without any order as to costs, thereby directing the name of the appellant no.1 to be expunged.

3. The learned Advocate-on-record for the appellants shall carry out the necessary consequential amendment to the Memorandum of Appeal and the paper book accordingly.
4. The appeal is taken up for hearing.
5. Heard learned counsel for the parties.
6. The present appeal has been preferred against the dismissal of a suit filed by the present appellants primarily for declaration that a deed of appointment of new trustee (the defendant/respondent) dated October 9, 1991 executed by Smt. Sefalika Rakshit is illegal and void *ab initio* and for further declaration and perpetual injunction, which are ancillary to and consequential to the main relief.
7. Although evidence was led by both parties on a full-fledged trial, the learned trial Judge dismissed the suit only on the ground of limitation.
8. Learned senior counsel appearing for the appellants contends that in paragraph no.13 of the plaint, it was categorically stated that the cause of action for the suit arose on January 19, 2003, when Smt. Sefalika Rakshit, the then trustee of the suit estate, died.
9. Subsequently, according to the said paragraph, on February 29, 2003 the plaintiffs/appellants obtained a certified copy of the

deed of appointment of new trustee and thereafter filed the suit on August 20, 2003.

- 10.** It is argued that the defendant herself, in her cross-examination as DW-1, categorically admitted that the fact of her appointment as trustee in the year 1991 was not known to the plaintiffs.
- 11.** In such view of the matter, it is argued that the learned trial Judge acted in a perverse manner in overlooking the said admission to observe that the suit was barred by limitation, having not been filed within three years from the execution of the impugned deed.
- 12.** It is contended that Article 59 of the Schedule to the Limitation Act, 1963 clearly provides that the starting point of limitation in respect of suits for cancellation or setting aside of an instrument is the date when the facts entitling the plaintiff to have the instrument cancelled first become known to him.
- 13.** Since from the plaint pleadings it is evident that the plaintiffs learnt about the contents of the impugned deed upon obtaining a certified copy thereof in the year 2003, the suit was filed well within limitation, in the same year.
- 14.** It is next argued that the documents produced by the defendant in support of her case primarily related to electricity bills, tax receipts etc. between the year 2001 and 2004.

15. Apart from the fact that such documents *per se* do not disclose the execution of the impugned deed, even if it is assumed that the earliest of the said documents, that is, the electricity bill for the year 2001, should be taken into consideration, the suit, which was filed in the year 2003, would not be barred by limitation.
16. Learned senior counsel takes us through the contents of the impugned deed.
17. It is submitted that there is nothing on record to indicate that the plaintiffs had any knowledge of the execution of the impugned deed prior to the demise of Smt. Sefalika Rakshit.
18. It is further pointed out by learned senior counsel appearing for the appellants that the PW-1, in his cross-examination dated May 7, 2012, stated that it was not a fact that he did not know about the trust deed dated October 9, 1991 for the first time after the demise of Sefalika.
19. Thus, in evidence, it was stated that the plaintiffs had no knowledge of the deed prior to the demise of Sefalika.
20. Learned counsel appearing for the defendant/respondent contends that in the absence of any disclosure in the plaint as to the date of knowledge of the deed attributable to the plaintiffs, the suit is palpably barred by limitation, since it is an admitted

position that the disputed deed was executed long back in the year 1991 whereas the present suit was filed in the year 2003.

- 21.** That apart, learned counsel places reliance on the cross-examination of PW-1 to contend that the PW-1 admittedly had been visiting the trust property since his childhood and was well-acquainted with the affairs of the trust.
- 22.** As such, it can very well be assumed that the plaintiffs had full knowledge of the execution of the impugned deed in the year 1991 as well as the fact of the defendant being appointed as a trustee by the previous trustee Sefalika by dint of the said deed.
- 23.** Learned counsel further places reliance on the examination of the priest, that is, DW-2 to underscore his arguments.
- 24.** It is submitted that from the evidence of DW-2, it is elicited that since 1991 the defendant had been performing the daily *Seba Puja* and had been rendering various services and, as such, acting in terms of the assailed deed.
- 25.** Upon a careful consideration of the materials on record and on hearing learned counsel for the parties, we arrive at the following conclusions:
- 26.** The primary impediment before the plaintiffs with regard to limitation is that the plaint does not clearly disclose the exact date of knowledge of the impugned deed so far as the plaintiffs are concerned.

- 27.** The relevant paragraph of the plaint in such context is paragraph no.13 which states that the cause of action for the suit arose on January 19, 2003, when Smt. Sefalika Rakshit died, and on or about February 29, 2003, when the plaintiffs obtained a certified copy of the deed of appointment purportedly executed by Smt. Sefalika Rakshit.
- 28.** However, the mere averments in the plaint cannot be the sole determinant of the issue of limitation after the trial court, on a full-fledged trial, has considered the pleading of the parties, the evidence on record and the arguments of the parties.
- 29.** The learned trial Judge, while passing the impugned judgment, considered the entire evidence on record and came to certain findings as to limitation. Thus, we have to look at the entire evidence on record, read in conjunction with the pleadings of the parties, to assess the legality of the findings of the trial court on such issue.
- 30.** That apart, there are two factors which mitigate the non-mention of any specific date of knowledge in the plaint.
- 31.** First, we find from the statement of the defendant herself, in her cross-examination as DW-1 dated June 27, 2014, that she categorically admitted that “the appointment in the year 1991 was not known to the plaintiffs”.

- 32.** In the immediately preceding sentence in her cross-examination, the appointment of the priest Sasanka Sekhar Banerjee has been spoken about by DW-1.
- 33.** However, the expression “appointment” used in the sentence whereby DW-1 admits that the plaintiffs did not know about the appointment in the year 1991 cannot be connected to the appointment of the priest, since it is an admitted position that the priest had been acting in such capacity in respect of the trust property long prior to 1991, almost from the inception of the original trust.
- 34.** Thus, the phrase “appointment in the year 1991” could not relate to the appointment of the priest but could only be connected with the execution of the impugned deed, which was admittedly executed in the year 1991.
- 35.** It is trite law that in the event there is an admission on the part of a party, mere lack of specific pleadings by the other party pales into insignificance, since admission is the best evidence which one can have.
- 36.** That apart, the defendant/respondent heavily relies on the admissions in the plaint and on the evidence of the PW-1 to the effect that there was collection of rent from the tenants of the trust property by the defendant even during the lifetime of Sefalika.

- 37.** We find from paragraph no.10 of the plaint that the plaintiffs only state that they are entitled to accounts from the defendant for the collection of rent made from the tenants of the trust property.
- 38.** However, it is the defendant herself, deposing as DW-1, who categorically asserted that she had been collecting rent in respect of the property.
- 39.** However, we have to keep in mind that mere collection of rent from the tenants of the trust property need not necessarily mean that the collector of the rent was acting in the capacity of a trustee. The collection of rent from the tenants might be in various capacities.
- 40.** Insofar as the defendant is concerned, it is admitted in the evidence of the defendant herself as well as the other witnesses that the defendant was looked upon by the executant of the impugned deed, that is, Sefalika as her foster daughter.
- 41.** Even in her cross-examination, DW-1 admits that she was appointed as a trustee by the impugned deed to look after Sefalika and not after the trust property.
- 42.** Therefore, there cannot be any manner of doubt that Sefalika, during her final years, was entirely dependent on the defendant.

- 43.** Thus, the mere act of the defendant Keya collecting rent from the tenants of the trust property does not *ipso facto* indicate that she had been appointed as a trustee.
- 44.** Rather, going by preponderance of probabilities, it is much more likely that Sefalika, the then trustee, was dependent on the defendant/respondent for the purpose of collection of rent from the tenants on her behalf.
- 45.** As such, the plaintiffs' knowledge of collection of rent by the defendant from the tenants of the trust property, even if such knowledge could be attributed to them, does not automatically translate into the plaintiffs' knowledge of the execution of the 1991 deed.
- 46.** In her cross-examination dated June 9, 2014, the defendant, as DW-1, admitted that her name had not been recorded in the records of the Municipal Corporation as owner of the trust property.
- 47.** Furthermore, she admitted that in the records of KMC (Kolkata Municipal Corporation) the name of Sefalika Rakshit was recorded as owner of the suit holding.
- 48.** Hence, there could not arise any occasion for the plaintiffs to be aware that the defendant was asserting her rights in the capacity of a trustee by virtue of the impugned deed of 1991.

- 49.** Moreover, all the documents which have been produced by the defendant in support of her contention that she acted in the capacity of trustee range between the years 2001 and 2004.
- 50.** As such, the suit would not have been time-barred even if the date of knowledge of the plaintiffs regarding the impugned deed could be attributed to the earliest of such receipts, which is of November, 2001 whereas the suit was instituted in August, 2023, that is, within two years thereafter (the limitation period being three years from the date of knowledge as per Article 59 of the Schedule to the Limitation Act, 1963).
- 51.** Thus, we do not find anything on record to attribute the knowledge regarding the deed of 1991 to the plaintiffs before three years from the date of institution of the suit.
- 52.** In the absence of any proof of such knowledge, a meaningful interpretation of paragraph 13 of the plaint, read in the light of the evidence on record, would be that during the lifetime of Sefalika, who was the then trustee as per the original trust deed of Haridassi, the plaintiffs/appellants had no occasion or reason to apprehend the existence of the 1991 deed. Only after the demise of Sefalika, when the plaintiffs sought to assert their right of *Sebaitship* by virtue of heirship in terms of the original deed of trust executed by Haridassi, did they become aware about the deed of appointment and accordingly applied for a

certified copy thereof. Upon obtaining the same and learning about the contents thereof, the suit was filed.

- 53.** Hence, although not in explicit terms, the contents of paragraph no.13 of the plaint, read with the admission of DW-1 that the plaintiffs did not have knowledge of the impugned trust deed prior to the demise of Sefalika, go on to indicate that the suit was filed within the limitation period of three years from the date of knowledge of the plaintiffs, since the plaintiffs/appellants became aware of the contents of the impugned deed only after the demise of Sefalika on January 19, 2003, upon getting a certified copy thereof.
- 54.** In such view of the matter, we are of the opinion that the learned trial Judge erred in law and in fact and acted in a perverse manner in overlooking the categorical admission of DW-1 as to lack of knowledge of the plaintiffs before the demise of Sefalika and even otherwise, erroneously attributed knowledge of the disputed deed to the plaintiffs prior to the demise of Sefalika in 2003.
- 55.** Accordingly, we are of the considered opinion that the decision rendered by the learned trial Judge solely on the issue of limitation, holding the suit to be time-barred, is required to be set aside and the matter to be remanded to the learned trial

Judge for a full-fledged adjudication on merits on the other issues.

- 56.** Accordingly, FA 125 of 2019 is allowed on contest, thereby setting aside the impugned judgment and decree dated November 21, 2017 passed by the learned Judge, Fourth Bench, City Civil Court at Calcutta, District - Calcutta in Title Suit No.1238 of 2003 by holding that the said suit was filed within the limitation period and remanding the matter to the learned trial Judge for adjudication on the other issues involved in the suit on merits on the basis of the evidence already on record.
- 57.** It is expected that such exercise shall be concluded by the learned trial Judge as expeditiously as possible, preferably within a year from the date of communication of this order to the learned trial Judge.
- 58.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)