

08.05.2025
Court No.13
Item No.12
Pk/ap

**FAT 54 of 2025
CAN 1 of 2025**

**Saibal Sarkar
Vs.
Smt. Sangita Ghosh**

Mr. A, C. Kar,
Mr. Anbirban Kar,
Mr. Munshi Ashiq Elahi,
Ms. Khushnuma Akter Ansari
... for the appellant.

Mr. Sukanta Chakraborty,
Mr. Sk. Zubair Ahmed
... for the respondent.

1. The instant appeal is directed against Order No. 43 dated 02.01.2025 passed by the learned Civil Judge (Senior Division), Additional Court, Hooghly Sadar in T. S. No. 190 of 2018. By the said order the plaint in the suit filed by the appellant was rejected under the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure.

2. The brief facts relevant for the instant appeal are that the appellant and the respondent are brother and sister. Their father had granted an oral licence in the year 2001 to the appellant/brother to construct the first floor on a particular property owned by the father.

3. Pursuant to such oral license, the appellant effected permanent construction on the first floor and was residing thereat.

4. During the lifetime of the father, he executed a deed of gift in favour of the respondent/sister of the entire property sometime in the year 2018.

5. Disputes and differences arose between the appellant and his father sometime in February, 2009. The father cancelled the licence-in-question in a letter dated 16.02.2009 addressed through his learned advocate.

6. The appellant replied to his father on two occasions, initially in the year 2009 denying the right to cancel the licence. Later on 04.04.2018 the father is stated to have executed a deed of gift and registered the entire property in favour of the respondent/daughter.

7. It was allegedly claimed in the purported deed of gift that the first floor property was more than 30 years old. There have been denials and disputes between the parties. The appellant thereafter filed T. S. No. 190 of 2018 before the Civil Judge (Senior Division) at Hooghly, inter alia, praying for

“a. A declaration that licence in favour of the plaintiff granted by the defendant no. 1 in respect of the suit property subsists being a licence with grant is perpetual;

b. The defendant no. 2 has no right to terminate the licence granted by the defendant no. 1 to the plaintiff in respect of the 1st floor of the suit property, the licence being perpetual;

c. Injunction restraining the defendants or any of them from terminating the

licence in favour of plaintiff in respect of the 1st floor of the suit property;

d. In alternative, if it be held that the licence is revocable then the plaintiff claims a decree of Rs.36,00,000/- as against the defendants.

e. Such further or other order or orders as to this Hon'ble Court may deem fit and proper."

8. During the pendency of the suit the original defendant no.1, father of the parties, died. Thereafter the respondent sometime in January, 2023 filed an application under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 before the Trial Court. The respondent contended that the suit was barred by laws of limitation since the original defendant no.1 had executed a Deed of Gift of the entire property in favour of the appellant and therefore, the plaintiff had no locus standi to file the suit. The suit, according to the defendant, was also barred by the laws of limitation.

9. Objections were invited and the matter was heard and disposed of in the impugned matter. The plaint filed by the appellant was rejected primarily on the ground that the suit is barred by the laws of limitation because the name of the defendant no.1 upon his death was expunged from the cause title and that licence automatically stood terminated on the death of the licensor.

10. It was held by the Trial Court that licence is a personal right. It was further held that since the plaintiff/appellant himself averred in the plaint that the late original defendant no.1 had contended that the licence was revoked, the Court went on to find that the licence came to an end with the death of the said defendant. The Court thereupon found that the appellant had no cause of action to file the suit and rejected the plaint under the provisions of Order VII, Rule 11(d) of the Code of Civil Procedure.

11. This Court is of the clear and unequivocal view that the Trial Judge has committed a fundamental error in ignoring the provisions of Section 60 of the Easements Act, 1882, which provides as follows:

“60. License when revocable. – A license may be revoked by the grantor, unless –
(a) it is coupled with a transfer of property and such transfer is in force;
(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.”

12. Sub-Section (b) of Section 60 clearly specifies that if the licensee acting upon such license, has executed a work of permanent character and incurred expenses for executing the same, such licence cannot be revoked. Such licence survives the death of the licensor.

13. While a clear statutory provision of that nature does not need any independent judicial pronouncement, Mr. Adhir Chandra Kar, learned Senior Advocate has

placed a reliance upon the decision of the Hon'ble Supreme Court of India in the case of ***Ram Sarup Gupta (Dead) by LRs. – Vs. – Bishun Narain Inter College & Ors.*** reported in ***(1987) 2 Supreme Court Cases 555.***

For the sake of convenience paragraph 15 is quoted below:

“15. In view of the above discussion we are of the opinion that the pleadings, evidence and the circumstances available on record, have fully established that Raja Ram Kumar Bhargava had granted licence to the school in respect of the building and the land attached to it for the purpose of imparting education and the school in furtherance of that purpose constructed additional buildings and it further incurred expenses in carrying out modification and extensive repairs in the existing buildings during the period, Raja Ram Kumar Bhargava continued to be the President of the Managing Committee of the school. He never raised any objection to it and there is nothing on record to show that licensor had retained right to revoke the licence. If a person allows another to build on his land in furtherance of the purpose for which he had granted licence, subject to any agreement to the contrary (*sic* he) cannot turn round, later on, to revoke the licence. This principle is codified in Section 60(b) of the Act. Moreover, conduct of the parties has been such that equity will presume the existence of a condition of the licence by plain implication to show that licence was perpetual and irrevocable. That being so, Raja Ram Kumar Bhargava could not revoke the licence or evict the school and the appellant being transferee from him could not and did not acquire any better right. The appellant therefore has no right to revoke the licence or to evict the school, so long the school continues to carry on the purpose for which the licence was granted. The trial court and the High Court have therefore rightly dismissed the suit.”

14. It is clear and explicit from the above and the averments in the plaint that the provisions of Section 60

of the Easements Act, 1882 is prima facie attracted to the core of the plaintiff/appellant.

15. This Court stops short of making any further pronouncement since the parties are entitled to lead evidence and establish their respective claims. This is so particularly when the defendant-sister has counterclaim in the suit seeking eviction of the appellant-brother from the first floor of the premises based on the Gift Deed executed by her father.

16. The next argument advanced by the learned Counsel for the respondent is that the appellant should have sought cancellation of the Gift Deed which is now barred by the laws of limitation. This Court is of the view that once the appellant is able to establish the ingredients of Section 60(b) and the date of construction etc. the portion of the Gift Deed which are incorrect. The right of the appellant to the first floor would be established automatically. The appellant therefore may not have to seek or make any prayer for cancellation of the Gift Deed. The provisions of Section 34 of the Specific Relief Act 1963 would have no manner of application to the core. These are the matters that would depend on the evidence led by the parties in the suit.

17. Suffice it to say that the impugned judgment and order dated 2nd January, 2025 is ex facie erroneous and

has been rendered without application of mind by the Trial Court.

18. For the reasons stated hereinabove, the impugned judgment and order dated 2nd January, 2025 passed by the learned Civil Judge (Senior Division) Additional Court, Hooghly Sadar is set aside. The suit is restored to the file and number of the learned Civil Judge (Senior Division) Additional Court, Hooghly Sadar.

19. Since it is submitted that both parties have filed their respective written statements, let inspection and discovery be completed by the parties within a period of three weeks from date. Issues may be framed by the Court below thereafter.

20. The parties may lead evidence and the suit and the counterclaim shall be decided by the Court below in accordance with law.

21. With the aforesaid observations, F.A.T. No. 54 of 2025 is allowed and disposed of.

22. In view of disposal of the appeal itself, the connected application being CAN 1 of 2025 shall also stand disposed of.

23. Costs of this appeal shall be the part of the costs in the suit.

24. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)