

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.A. 392 of 2025

IA No: CAN 1 of 2025

CAN 2 of 2025

Sri Subhra Goswami
Vs.
Nirmal Kumar Mukherjee (deceased) and others

For the appellant	:	Mr. Rahul Karmakar Ms. Nita Saha Mr. Abhijit Ch. Majumder Ms. Nisha Agarwal
For the respondents	:	Mr. Tanmoy Mukherjee Mr. Souvik Das Mr. Rudranil Das
Heard on	:	04.11.2025
Judgment on	:	04.11.2025

Sabyasachi Bhattacharyya, J.:-

1. Since the questions involved in the appeal and the applications are similar, we are taking up the appeal for hearing, by dispensing with other formalities, as both the parties are before us.
2. The appellant filed a suit challenging a purported deed of settlement executed by the plaintiff/appellant's mother Smt. Rama Chatterjee.
3. The deed was alleged to be void in view of the executant Smt. Rama Chatterjee being physically and mentally unfit as she was suffering from Cancer during the relevant period.
4. The learned trial Judge dismissed the suit on two counts.
5. First, the plaintiff derived knowledge of the suit in the year 2004 from a criminal proceeding whereas the suit was filed only in the year 2009, thus rendering the suit barred by limitation.
6. Apart from holding that the suit was time-barred, the learned trial Judge also proceeded to hold that the plaintiff failed to prove her plaint case.
7. Upon hearing learned counsel for the parties and going through the materials-on-record, we find that the learned Trial Judge was justified on both grounds.
8. The appellant argues that in view of the deed being void *ab initio*, the question of limitation does not arise.

9. However, we are unable to agree with learned counsel for the appellant.
10. Learned counsel for the appellant has argued before us that no consideration passed for execution of the deed, nor was the impugned deed couched in the form of any of the modes of transfers as contemplated under the Transfer of Property Act.
11. However, in whatever manner a deed is couched, in the event there is registration and proper payment of stamp duty, title passes validly, since there is no particular form prescribed for a transfer deed.
12. In the present case, the relevant title deed was couched as a deed of settlement because certain rights were reserved for the husband of the transferor.
13. That apart, since the deed was admittedly a registered one, there was no question of any doubt about the execution of the same, since presumption of correctness was attached to it, which was never rebutted by the plaintiff/appellant.
14. In any event, the learned Trial Judge rightly held that the plaintiff/appellant abjectly failed to prove her case that the transferor was mentally or physically so unsound during the relevant period that she was not in a position to execute the impugned deed of settlement.

15. The case of non-passage of consideration is now argued from the bar for the first time and was neither argued in the trial court nor finds place in the plaint pleadings.
16. In any event, non-passage of consideration cannot be set uthe a deed, particularly since the transferor herself, the mother of the appellant, did not take such point during her lifetime despite her being alive for about three years even after the execution of the deed.
17. Thus, the ground of limitation also gains currency, since the deed not being void *ab initio* from any perspective, the plaintiff, having knowledge of the execution of the deed in the year 2004, ought to have filed a suit for declaration/cancellation challenging the same within three years thereafter.
18. Having not done so and having instituted the suit only in the year 2009, the suit was also palpably time-barred.
19. Hence, there is no merit whatsoever in the appeal.
20. Accordingly, F.A. 392 of 2025 is dismissed on contest, thereby affirming the impugned judgment and decree dated December 24, 2024 passed by the learned Civil Judge, Senior Division, Third Court at Howrah, District-Howrah in Title Suit No.113 of 2009.
21. Consequentially, CAN 1 of 2025 and CAN 2 of 2025 are also disposed of.

- 22.** There will be no order as to costs.
- 23.** A formal decree be drawn up accordingly.
- 24.** The trial court records be send down immediately.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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