IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Prasenjit Biswas**

SA 393 of 2000

Shri Gopal Pal & Ors.

-Versus-

Pran Krishna Singha & Ors.

For the Appellants : **Mr. Bhaskar Ghosh, Sr. Adv.**
Mr. Ambu Bindu Chakraborty.

For the Respondents : **Mr. Jayanta Das.**
Ms. Soumitra Ghosh.

Hearing concluded on : **20.08.2026**

Judgment On : **17.11.2026**

Judgment uploaded on : **17.11.2026**

Prasenjit Biswas, J:-

1. The present appeal has been preferred at the instance of the defendants/appellants, assailing the judgment and decree dated 29th September, 1999 and 4th October, 1999, respectively, passed

by the learned Special Judge (E.C. Court)-cum-Additional District and Sessions Judge, Midnapore, in Title Appeal No. 160 of 1997.

2. By the impugned judgment and decree, the learned First Appellate Court set aside the judgment and decree dated 18th August, 1997, passed by the learned Trial Court in Title Suit No. 78 of 1992. The learned First Appellate Court, upon consideration of the matter, declared the plaintiffs' entitlement to a 2/3rd share in the suit property and, accordingly, restrained the defendants/appellants from interfering with the plaintiffs' peaceful possession in respect of their said 2/3rd share in the suit property.

3. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the learned First Appellate Court, the defendants/appellants have preferred the instant appeal, calling into question the legality and propriety of the impugned judgment and decree.

4. This appeal was admitted by the Hon'ble Division Bench of this court by passing an order dated 22.12.1999 and the following substantial question of law have been formulated-

> (1) Whether the Court of Appeal below in reversing the finding of the Trial Court erred in law substantially in not arriving at definite findings that the lands in question were alienated for legal necessity by the widows i.e. Sashi and Kusumi?

(2) Whether the Court of Appeal below erred in law substantially in not holding that the deed of transfer was not proved formally in terms of the provisions of the Indian Evidence Act?

(3) Whether the Court of Appeal below erred in law substantially in rejecting the counter claim of the defendants whereby the findings of the Trial Court were reversed without discussing any reason for such reversal?

5. All the points formulated hereinabove are taken up together for consideration and discussion, as they are intrinsically interrelated and overlap with one another. For the sake of brevity and to avoid unnecessary repetition, the same are being considered and adjudicated upon conjointly.

6. The plaintiffs/ respondents (herein) instituted a suit for declaration and permanent injunction in respect of the suit property mentioned in the schedule of the plaint. The suit was dismissed by the Trial Court by passing the judgement and the counter claim filed by the defendants was allowed allowing their title and possession in respect of the suit property.

7. Against the said judgement and decree passed by the Trial Court the plaintiffs preferred appeal which was allowed and the suit was sent back on remand and after remand the following two additional issues were framed-

(1) Was there any legal necessity in case of transfer in favour of the predecessor of the plaintiffs?

(2) Can the recitals of the alleged deed of sale be believed as a proof of evidence?

8. The learned Trial Court, upon consideration of the pleadings of the parties and the evidence adduced on their behalf, dismissed the suit instituted by the plaintiffs and allowed the counter claim filed by the defendants. While doing so, the learned Trial Court held that the defendants had been able to establish their possession over the entire sixteen annas share of the property described in Schedule 'Ka' to their written statement by adducing oral evidence. The learned Trial Court further held that the defendants had right, title, interest and possession over the suit property and had acquired title thereto by way of adverse possession. On the basis of such findings, the learned Trial Court concluded that the defendants were entitled to the reliefs prayed for in their counterclaim.

9. Being aggrieved by and dissatisfied with the aforesaid judgment and decree, the plaintiffs preferred an appeal, being Title Appeal No. 160 of 1997. The said appeal was allowed by the learned First Appellate Court, and the judgment and decree passed therein have been assailed in the present second appeal.

10. The learned First Appellate Court, upon reappraisal of the evidence and materials available on record, held that the plaintiffs

were entitled to a decree declaring their right, title and interest in respect of an undivided two-thirds share in the suit property. The learned First Appellate Court further held that the plaintiffs were entitled to a decree of injunction in respect of their said share.

11. At the very outset, the learned Advocate appearing on behalf of the appellants firstly contended that Sashi and Kusumi were admittedly illiterate and pardanashin ladies. In such circumstances, the burden lay upon the plaintiffs, who claimed and derived benefits under the two deeds in question, to establish that the said deeds were executed by Sashi and Kusumi upon their fully understanding the nature and effect of the transactions embodied therein. It was further submitted that the plaintiffs were required to prove that, prior to the execution of the said deeds, the executants had received independent advice and had acted with a clear understanding of the consequences of their acts. According to the learned Advocate, where a transaction is challenged on the ground that the executants were illiterate and pardanashin ladies, the burden of establishing the validity and genuineness of the transaction rests upon the persons seeking to derive benefits there from. In support of such contention, reliance was placed upon the decision of the Hon'ble Supreme Court in **Mst. Kharbuja Kuer v. Jangbahadur Rai and Others**[1], particularly paragraph 6 thereof,

[1] **AIR 1963 SC 1203**

as well as the decision of the Hon'ble Division Bench of this Court in **Kartick Prasad Gorai and Others v. Nemai Prasad Gorai and Others**[2], particularly paragraph 21 thereof.

12. Secondly, the learned Advocate for the appellants contended that the First Appellate Court, while reversing the judgment and decree passed by the learned Trial Court, failed to adhere to the principles governing the exercise of appellate jurisdiction as laid down by the Hon'ble Supreme Court in **Santosh Hazari v. Purushottam Tiwari**[3]. It was argued that, while reversing a judgment of dismissal or allowing a suit by setting aside the findings of the Trial Court, the First Appellate Court is required to undertake an independent and reasoned examination of the entire evidence on record, address the material findings recorded by the Trial Court, and assign cogent reasons for disagreeing with such findings. According to the learned Advocate, the First Appellate Court failed to discharge its duty in the manner contemplated by the aforesaid decision.

13. On the basis of the aforesaid submissions, the learned Advocate for the appellants argued that the First Appellate Court committed substantial errors of law in reversing the judgment and decree passed by the learned Trial Court. It was, therefore,

---

[2] **AIR 1998 Cal 278**

[3] **(2001) 3 SCC 179**

contended that the impugned judgment and decree passed by the First Appellate Court are unsustainable in law and liable to be set aside. Accordingly, the learned Advocate prayed for allowing the present second appeal, setting aside the impugned judgment and decree of the First Appellate Court, and restoring the judgment and decree passed by the learned Trial Court.

14. It is an admitted position that the suit property originally belonged to three brothers, namely, Adhar Pal, Sridhar Pal and Shibu Pal, each of whom had an undivided one-third share therein. Their respective names were duly recorded in the C.S. Record of Rights (C.S.R.O.R.). The suit property comprises two khatians, namely, Khatian Nos. 121 and 274.

15. Adhar Pal and Sridhar Pal died intestate, leaving behind their respective widows as their only legal heirs. The widow of Adhar Pal was Kusumi Dei, also known as Kusumi Pal, whereas the widow of Sridhar Pal was Sashi Dei, also known as Sashi Pal. According to the plaintiffs/respondents, upon the death of their respective husbands, Kusumi and Sashi inherited an undivided one-third share each in the suit property. Subsequently, by two registered sale deeds dated 23.03.1924 and 01.04.1924, respectively, Kusumi and Sashi transferred their respective one-third shares in favour of Ashutosh Singha, the predecessor-in-interest of the

plaintiffs/respondents (herein), upon receipt of the consideration money stipulated in the deeds.

16. The plaintiffs further contend that the consideration money for the aforesaid transactions was paid to Kusumi and Sashi out of the joint family fund (ejmali fund) of Ashutosh Singha, Pran Krishna Singha and Iswar Singha. It is their specific case that, following such purchases, the suit property continued to be possessed jointly (ejmali) by the predecessors-in-interest of the plaintiffs/respondents Nos. 2 to 11. Thereafter, Shibu Pal, the surviving brother of Adhar Pal and Sridhar Pal, also died, whereupon his share in the suit property devolved upon Ashutosh Pal, the predecessor-in-interest of the defendants/appellants.

17. On the basis of the aforesaid transactions and subsequent devolution of the respective interests, the plaintiffs claim that they acquired right, title and interest in, and possession over, the suit property by way of purchase and inheritance. According to them, although their predecessor-in-interest had acquired the requisite right and interest in the property, the subsequent R.S. Record of Rights was prepared erroneously and does not correctly reflect their lawful entitlement.

18. Per contra, the case of the defendants/appellants is that Kusumi and Sashi had become unchaste during the lifetime of their respective husbands and had left their matrimonial homes to live

with other persons. On that premise, the defendants contend that neither Kusumi nor Sashi inherited any right, title or interest in the suit property upon the death of their respective husbands. Consequently, according to the defendants, the subsequent transfers purportedly effected by them in favour of Ashutosh Singha were legally ineffective, and the plaintiffs' claim to title over two-thirds of the suit property is unsustainable.

19. The defendants/appellants have further challenged the validity of the two registered sale deeds dated 23.03.1924 and 01.04.1924, alleging that the same were procured by fraud and misrepresentation. It is also their contention that the transactions were not supported by any legal necessity. On these grounds, the defendants dispute the acquisition of any right, title or interest in the suit property by Ashutosh Singha or by the plaintiffs through him.

20. The defendants/appellants, on the other hand, assert that they are the owners of sixteen annas, that is, the entirety of the suit property. They deny that the plaintiffs/respondents or their predecessors-in-interest ever possessed the suit property at any point of time. Rather, they claim to have remained in continuous possession thereof and seek to sustain their claim, inter-alia, on the ground of adverse possession.

21. Thus, the rival claims essentially give rise to questions concerning the devolution of the respective shares of the original co-sharers, the entitlement of Kusumi and Sashi to inherit their husbands' interests, the validity and legal effect of the two registered sale deeds, the nature and continuity of possession over the suit property, and the correctness of the subsequent R.S. Record of Rights. The determination of these issues would require consideration of the relevant documentary and oral evidence on record, together with the applicable principles of succession, transfer of property and adverse possession.

22. It is contended on behalf of the plaintiffs/respondents, placing reliance upon the decision of the Hon'ble Division Bench of this Court in ***Sumati Pahari and Others v. Umapada Pahari and Others***[4]**, (Headnote- A, B, C and F**) that the production of registered deeds from the custody of the plaintiffs, being the vendees or their successors-in-interest, coupled with the recitals in the deeds recording delivery of possession to the purchasers, constitutes significant evidence in support of the acceptance and due execution of the transactions. It is further submitted that, once such registered instruments are produced and relied upon, the burden of rebutting the evidentiary presumption arising from their registration and the surrounding circumstances rests upon

[4] **2025 (3) Indian Civil Cases 313 (Cal.)**

the party who challenges their genuineness and legal effect. According to the plaintiffs/respondents, the defendants/appellants have failed to discharge that burden by adducing cogent, reliable and legally admissible evidence.

23. The suit was instituted, inter-alia, on the strength of two registered sale deeds executed by Kusumi and Sashi in favour of Ashutosh Singha, the predecessor-in-interest of the plaintiffs/respondents Nos. 2 to 11, on 23.03.1924 and 01.04.1924, respectively. The said instruments have been marked as Exhibits 1 and 2 in the present case. The transactions in question, therefore, took place in the year 1924, several decades before the institution of the suit and long before the birth of the parties who have subsequently entered the witness box.

24. In this context, the antiquity of the documents assumes considerable significance. Neither the plaintiffs/respondents nor the defendants/appellants could, by reason of their age, have had any personal knowledge of the circumstances prevailing at the time of execution of the deeds. The plaintiffs, being successors-in-interest of the original purchaser, were not in a position to testify from personal knowledge regarding the precise circumstances which compelled Kusumi and Sashi to alienate their respective interests in the suit property. Equally, the defendants could not claim personal knowledge of the circumstances surrounding the

execution of the deeds merely by reason of their relationship with the parties to the transactions. The absence of such personal knowledge, however, cannot by itself operate to the prejudice of the plaintiffs or render the registered instruments legally ineffective. Rather, in the absence of reliable evidence discrediting those instruments, their contents and the circumstances disclosed therein assume considerable evidentiary importance.

25. It is necessary, however, to distinguish between the evidentiary value of a registered instrument and the legal presumption, if any, arising from its registration. Registration of a document does not, by itself, conclusively establish the truth of every recital contained therein or the validity of the transaction in all its aspects. Nevertheless, the production of the original registered instruments from the custody of the persons claiming under them, together with recitals acknowledging the transaction and recording delivery of possession, constitutes relevant and material evidence in determining whether the transactions were genuinely intended to be acted upon. Such circumstances must be assessed cumulatively with the other evidence on record.

26. In the present case, the deeds were executed and registered in 1924, and the plaintiffs rely upon them as the source of their predecessor's title to the respective shares of Kusumi and Sashi. Significantly, the instruments contain recitals to the effect that

possession of the property transferred there under was delivered to the purchaser. Such recitals lend support to the plaintiffs' case that the transactions were not merely formal or colourable arrangements but were intended to operate upon the interests of the transferors in the suit property. The subsequent production of the instruments by the plaintiffs, who claim through the original purchaser, is also a circumstance which lends support to their claim under those documents.

27. The evidentiary significance of these circumstances must be examined in the light of the principle discussed in case of ***Sumati Pahari*** (**supra**). The proposition advanced on behalf of the plaintiffs is that, where registered instruments are produced from the custody of the persons claiming under them and their recitals are consistent with the alleged transfer and delivery of possession, the party impeaching those instruments must place sufficient material before the Court to discredit the transactions. Applying that principle to the facts of the present case, the defendants cannot succeed merely by making a bare denial of the execution or legal effect of the deeds. Their challenge must be supported by cogent evidence capable of displacing the evidentiary value of the registered instruments and the circumstances attending their production.

28. Another important aspect of the matter concerns the alleged absence of legal necessity for the execution of the deeds. In this connection, reliance has been placed by the learned Advocate for the plaintiffs/ respondents upon the decision of the Hon'ble Supreme Court in case of ***Smt. Rani and Another v. Smt. Santa Bala Debnath and Others***[5], **(paragraphs 13, 14 and 15)**. The principle emerging from the said decision, as relevant to the present controversy, requires the Court to examine the nature of the alienation, the legal character of the transferors' interest and the evidentiary burden resting upon the parties who challenge the transaction. The question of legal necessity cannot be determined in the abstract; it must be considered in the light of the recitals in the instruments and the evidence, if any, adduced to contradict them.

29. In the instant case, the deeds themselves disclose the circumstances in which the transactions were undertaken. Exhibit 1, executed by Kusumi, contains recitals explaining that certain portions of the shares of Kusumi and Sashi had previously been transferred in favour of their 'bhasur' (brother of their husbands), namely, Shibu, and an attempt had been made to repay the loan, but the liability had not been fully discharged. The deed further indicates that, following the death of Shibu, there was no person

---

[5] **AIR 1971 SC 1028**

available to look after the property and that the transferors had no other sufficient means to repay the outstanding loan. These recitals furnish an explanation for the alienation and are material in determining whether the transactions were supported by circumstances which the transferors considered to necessitate the sale.

30. It is true that the mere insertion of recitals in a registered deed does not invariably establish, as an incontrovertible fact, the existence of legal necessity. The Court must remain conscious of the distinction between a recital explaining the purpose of an alienation and independent proof of the truth of that recital. Nevertheless, where the transaction is of considerable antiquity, the persons who executed the instruments are no longer available to testify, and neither party possesses direct personal knowledge of the circumstances prevailing at the relevant time, the recitals in the registered instruments cannot be discarded without sufficient justification. It constitutes relevant evidence which must be weighed against the materials, if any, produced by the party disputing the transactions.

31. Here, the defendants have not succeeded in producing cogent and reliable evidence to demonstrate that the circumstances disclosed in the deeds were false or that the sales were otherwise unsupported by the purposes stated therein. Their

challenge rests principally upon the assertion that the transactions were unnecessary and invalid. Such an assertion, unsupported by satisfactory evidence, is insufficient to discredit instruments which were executed and registered more than a century ago. In the circumstances, this Court finds no adequate evidentiary basis for rejecting the explanation contained in the deeds merely because the plaintiffs could not independently testify to the events of 1924.

32. The defendants have also challenged the transactions on the ground that the deeds were procured by fraud and misrepresentation. This allegation requires separate consideration, since fraud cannot be presumed merely because a transaction is old or because the party challenging it disputes its legal effect.

33. It is a settled principle of law that a party alleging fraud must plead the material particulars of the fraud and establish the same by cogent evidence. A vague or general allegation that a registered instrument was obtained by fraud or misrepresentation does not, by itself, furnish a sufficient ground for declaring the instrument invalid. The pleadings must disclose the nature of the alleged deception, the manner in which it was practised, the persons responsible for it and the circumstances in which the party concerned was induced to execute the document. The requirement of specific pleading is particularly important where the challenge is

directed against an instrument which has remained in existence for several decades.

34. In the present case, although the defendants have alleged that the two sale deeds were obtained by fraud and misrepresentation, they have failed to substantiate that allegation by satisfactory evidence. No cogent material has been brought on record to establish the particular acts of deception allegedly practised upon Kusumi or Sashi, or to demonstrate that either of them executed the deeds under circumstances which vitiated their consent. In the absence of adequate particulars and convincing proof, the allegation remains an unsubstantiated assertion. The Court, therefore, cannot invalidate the registered instruments merely on the strength of such a general challenge.

35. The learned Advocate appearing on behalf of the appellants has placed reliance upon the decision rendered by this Hon'ble Court in ***Kartick Prasad and Others v. Nemai Prasad Gorai and Others***[6], particularly paragraph 21 thereof, in support of the contention that the protection afforded to a *pardanashin* woman in relation to the execution of a deed cannot automatically be extended to an illiterate male merely because he is unable to read or understand the contents of the instrument. It was argued that, where an illiterate male, having sufficient experience in dealing

---

[6] **AIR 1998 Cal 278**

with property, executes a deed, the party seeking to derive benefit from such instrument must establish that its contents were read over and explained to the executant and that the executant understood the nature and effect of the transaction. According to the appellants, in the absence of such proof, the registered deeds in question cannot be relied upon to establish the plaintiffs' claim to title over the suit property. Learned Advocate also placed reliance on the point upon the decision of the Apex Court in case of **Mst. Kharbuja** (**supra**)

36. The aforesaid submission requires consideration in the light of the facts and circumstances of the present case, particularly the considerable antiquity of the two registered deeds upon which the plaintiffs/respondents have founded their claim.

37. It is an admitted position that the two deeds were executed and registered in the year 1924, namely, on 23.03.1924 and 01.04.1924. The parties to the present litigation were either not born at the time of execution of the said instruments or were too young to have any personal knowledge of the circumstances surrounding their execution. Consequently, neither the plaintiffs/respondents nor the defendants/appellants could be expected to furnish direct oral evidence regarding the precise manner in which the deeds were executed, whether their contents were read over and explained to the executants, or whether the

executants fully understood the nature and consequences of the transactions. The absence of such direct evidence is, therefore, attributable to the considerable lapse of time since the execution of the instruments and must be assessed in that context.

38. The principal question, therefore, is whether the plaintiffs' claim should fail merely because they have been unable to adduce direct oral evidence concerning events which occurred more than a century ago, particularly when the defendants, who challenge the instruments, are equally unable to provide any reliable first-hand account of those events. In the considered opinion of this Court, the controversy cannot be resolved merely by placing the abstract burden of proof upon one party without examining the documentary evidence and the other circumstances appearing on record.

39. In this connection, it is necessary to bear in mind that the expression burden of proof is used in two distinct senses. First, it may refer to the legal burden resting upon a party to establish the facts necessary to obtain a judgment in its favour. Secondly, it may refer to the evidential burden, that is, the obligation of a party to adduce evidence on a particular issue as the trial progresses. The legal burden ordinarily remains upon the party asserting the affirmative of a particular proposition, subject to the applicable statutory provisions and the nature of the issue. The

evidential burden, however, may shift from one party to another in the course of the proceedings, depending upon the evidence adduced and the facts established.

40. The distinction assumes particular significance in the present case. Where the parties have joined issue on a particular question and have adduced evidence, the Court is required to evaluate the entire body of evidence and determine which version is more probable and sustainable in law. If the evidence, taken as a whole, enables the Court to arrive at a definite conclusion on the disputed issue, the abstract question as to which party initially bore the burden of proof may lose much of its practical significance. Conversely, where the evidence remains inconclusive and the Court is unable to determine the issue on its merits, the legal burden of proof assumes decisive importance, and the party upon whom that burden rests must bear the consequence of the failure to establish its case.

41. Applying these principles to the present controversy, it appears that the plaintiffs/respondents have relied upon the two registered deeds as the foundation of their claim to title. The instruments have been produced and marked as Exhibits 1 and 2. The plaintiffs' claim through Ashutosh Singha, in whose favour the deeds were executed by Kusumi and Sashi. The defendants, on the other hand, dispute the legal efficacy of the instruments and

contend that the plaintiffs have failed to establish the circumstances necessary to sustain their claim.

42. In such circumstances, the Court cannot confine its consideration to the absence of direct oral testimony regarding the execution of the deeds. It must also examine the nature of the instruments, their registration, the recitals contained therein, the circumstances disclosed by those recitals, the custody from which the documents were produced, and the other evidence bearing upon their genuineness and the transactions they purport to record.

43. It is true that registration, by itself, does not conclusively establish that the contents of a document were explained to its executant or that every recital contained therein is true. Equally, the mere production of a registered instrument does not dispense with the obligation of the party relying upon it to establish the title claimed under it. Nevertheless, the absence of direct oral evidence regarding events of such remote antiquity cannot, in itself, constitute a sufficient ground for rejecting the instruments. Their evidentiary value must be assessed cumulatively with the other circumstances established on record.

44. In the present case, the deeds contain recitals concerning the circumstances in which the transactions were undertaken, the interests purportedly transferred, and the delivery of possession to

the purchaser. Exhibit 1 also refers to the earlier transaction involving portions of the interests of Kusumi and Sashi, the outstanding loan, the unsuccessful attempt to discharge the liability, and the circumstances which allegedly necessitated the subsequent sale. These recitals are relevant to the determination of the nature and purpose of the transactions. Although such recitals are not conclusive proof of every fact stated therein, they constitute material evidence which cannot be disregarded merely because neither party possesses personal knowledge of the events of 1924.

45. The decision relied upon by the learned Advocate for the appellants must also be understood in its proper context. The principle discussed in ***Kartick Prasad Gorai*** (**supra**), concerning the protection afforded to a *pardanashin* woman and the proof required in relation to the execution of a deed by an illiterate person, cannot be applied mechanically without regard to the nature of the transaction and the evidence available in the particular case. The question whether a particular executant requires special protection, and whether the party relying upon the deed has discharged the requisite burden of proving its execution and the executant's understanding of the transaction, must be determined on the facts of that case.

46. The principle that a party relying upon a deed may be required to prove that its contents were read over and explained to an illiterate executant does not, by itself, establish that every registered instrument executed by an illiterate person is invalid in the absence of direct oral testimony from a person who witnessed its execution. Nor does it follow that, where the events are of remote antiquity and the original participants are no longer available to testify, the Court must necessarily reject the instrument. The evidentiary question must be determined by considering the applicable rules of law, the nature of the challenge, and the cumulative effect of the documentary and oral evidence.

47. It is also significant that the appellants' challenge cannot succeed merely by pointing out that the plaintiffs have not produced a witness who personally heard the contents of the deeds being read over and explained to Kusumi and Sashi. The appellants must establish the legal and factual basis of their challenge in accordance with the applicable law. At the same time, the plaintiffs cannot be relieved of their initial obligation to establish the title claimed under the deeds merely because the appellants are unable to furnish direct evidence concerning their execution. The Court must, therefore, distinguish between the initial legal burden resting upon the plaintiffs to establish their

claim and the evidential burden arising upon the production of the registered instruments and the surrounding circumstances.

48. Where the plaintiffs have produced the registered instruments upon which their claim is founded, the Court must examine whether the evidence as a whole is sufficient to establish the transactions and the title derived there under. If the defendants have not adduced cogent evidence to discredit the instruments or to establish the alleged circumstances rendering them ineffective, that failure may be taken into account while evaluating the rival claims. However, the ultimate conclusion must rest upon the evidence and the applicable legal principles, and not upon the mere failure of the defendants to prove their allegations.

49. In the instant case, the appellants have not been able to demonstrate, by reliable evidence, which the two deeds were forged, fraudulently procured, or otherwise incapable of conveying the interests which Kusumi and Sashi possessed. Their contention regarding the absence of proof that the contents were read over and explained must be examined against the background of the considerable age of the instruments and the absence of direct evidence from either side. In these circumstances, the Court is required to determine the issue on the basis of the available documentary evidence and the reasonable inferences which may legitimately be drawn there from.

50. It follows that the decision relied upon by the learned Advocate for the appellants does not, by itself, lend sufficient support to the proposition that the two registered deeds must be disregarded merely because the plaintiffs have been unable to adduce direct oral evidence concerning the circumstances of their execution. The said decision lays down a principle concerning the protection of certain executants and the burden of proving the circumstances surrounding the execution of a deed; it does not dispense with the Court's obligation to assess the entire evidence in each case.

51. Accordingly, this Court is unable to accept the appellants' submission that the plaintiffs' claim must fail solely on account of the absence of direct oral evidence regarding the execution of the deeds in 1924. The proper course is to examine Exhibits 1 and 2, their recitals, their registration, the circumstances of their production, and the other evidence on record, and thereafter determine whether the plaintiffs have discharged the legal burden of establishing their title. The decision in ***Kartick Prasad Gorai*** (**supra**), when considered in its proper perspective, does not justify a contrary conclusion merely because the parties are unable to testify from personal knowledge about events which occurred long before their birth.

52. It is further contended on behalf of the plaintiffs/respondents that the genuineness and legal efficacy of the two registered deeds dated 23.03.1924 and 01.04.1924 must be considered in the light of the principle embodied in Section 90 of the Indian Evidence Act, 1872. It is submitted that, having regard to the considerable antiquity of the instruments, neither the heirs of the transferors nor the heirs of the transferee, nor the witnesses to the deeds or the scribe, were available to testify regarding their execution when the deeds were challenged in the present proceedings. In such circumstances, the plaintiffs/respondents contend that the Court must assess the genuineness of the instruments by applying the statutory presumption available in respect of ancient documents, provided the conditions prescribed by law are satisfied.

53. In support of the aforesaid contention, reliance has been placed upon the decision of the Hon'ble Supreme Court in ***Rattan Singh and Others v. Inder Pal Singh***[7], particularly paragraph 71 thereof, wherein the Hon'ble Apex Court observed as follows:

> ***"71.*** *The presumption in favour of a 30-year old document is, therefore, a rebuttable presumption. Nothing prevented the plaintiff to rebut the presumption by leading appropriate evidence in order to disprove the same. Since the plaintiff failed to do so, the said*

[7] **AIR 2021 SC 899**

document would be binding on the plaintiff. As a matter of fact, the parties had acted upon the terms of the said document without any demur since 1963 and it was, therefore, not open to resile therefrom at this distance of time. Hence, the trial Court was right in holding the 1963 GPA, to be a genuine document."

54. The aforesaid decision is relevant to the controversy in hand, particularly with regard to the evidentiary value of ancient documents, the rebuttable nature of the presumption arising therefrom, and the significance of the conduct of parties who have acted upon such documents over a considerable period.

55. In support of his submission learned Advocate for the plaintiffs/ respondents cited a decision rendered by the Hon'ble High Court at Patna in case of **Haradhan Mahatha and others Vs. Dukhu Mahatha**[8] (paragraphs 10, 11, 12 and 15)

56. It is profitable to quote paragraphs 10 and 11 of the above referred report which are as follows-

"10. The principle underlying Section 90 is that if a document, thirty years old or more, is produced from proper custody and is, on its face, free from suspicion, the Court may presume that it has been duly executed and attested. The reason for incorporating Section 90 is founded on necessity and convenience. It is extremely difficult and sometimes impossible to prove handwriting, signature and execution and attestation of ancient

[8] **AIR 1993 Patna 129**

documents after lapse of many years. Further reason for incorporating this provision is that if the two conditions enumerated in Section 90 are fulfilled, then in relation to documents the execution and attestation of which are not denied, the necessity of formal proof is waived and thereby Court's time is saved.

11. The question arises in which case the Court should exercise discretion of raising presumption and in which one the discretion should be refused. In my view, there cannot be any straight-jacket for exercising discretion by the Court under Section 90 of the Act. If the two conditions laid down in Section 90 are fulfilled in relation to a particular document and its genuineness is not disputed, then the Court should exercise its discretion under Section 90 of the Act, even if the executant or attesting witnesses are alive and available, and admit the document into evidence thereby waiving its formal proof. Otherwise un-necessarily Court's time will be wasted in formally proving the document by examining witnesses and the same will frustrate the very purpose of incorporating Section 90 in the Act. It has been noted by Lord Hailsham in Halsbury's Laws of England, 4th Edition, Volume 17 in para 129 that such documents prove themselves notwithstanding the fact that one of the subscribing witnesses is alive.

12. In my view, if the executant or attesting witnesses are not alive or available in relation to a document, the genuineness of which is disputed and mode of proof as required under Section 69 of the Act is also not possible, the Court should raise a presumption under Section 90 of the Act in relation to due execution and attestation of document, if it comes to the conclusion that the document is such that it is likely to have been executed,

having regard to the common course of human conduct and there are no circumstances exciting suspicion of the Court such as artificiality and unnaturalness or correction or tampering with document. In the case of Shafiq-un-Nissa v. Shaban AH Khan, ILR XXVI Allahabad 581, the Privy Council was considering the effect of Section 90 of the Act. Both the conditions were in existence, but genuineness of the document was disputed and the Courts in India refused to mark the document as an exhibit under Section 90 of the Act and called the party for formally proving the document as in their opinion there was evidence in the case which raised great suspicions as to the document itself. When the matter was taken to the Judicial Committee the decision of the Indian Courts was upheld and it was observed thus :

"Under these circumstances, their Lordships are not surprised that the Judges, both in the Civil Court and in the Court of the Judicial Commissioner, exercised the discretion which is vested in them by Section 90 by not admitting the document to evidence without formal proof, although it is more than thirty years old, and purports to come from the proper custody. It should be added that the Court considered that there was evidence in the case which it is not necessary to go into, and to which in fact, their Lordships' attention has not been pointedly drawn -- which raised great suspicions as to the document itself."

57. Section 90 of the Indian Evidence Act, 1872, embodies a rule of evidence founded upon necessity and convenience. Where a document, purporting or proved to be thirty years old, is produced

from custody which the Court considers proper in the particular case, the Court may presume that the signature and every other part of the document which purports to be in the handwriting of a particular person is in that person's handwriting and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to have been executed and attested.

58. The rationale underlying this provision is readily understandable. As the years pass, the persons who executed ancient documents, the witnesses who attested them and the persons who prepared them may no longer be alive or available. It may consequently become extremely difficult, and in some cases practically impossible, to establish the handwriting, signatures, execution and attestation of such instruments by the ordinary methods of proof. To insist upon formal proof in every such case, notwithstanding the passage of several decades and the unavailability of the persons directly connected with the transaction, would often render the adjudication of longstanding proprietary rights unduly difficult and, in some cases, impossible.

59. The statutory presumption is, therefore, intended to address the practical difficulties associated with proving ancient documents. It enables the Court, upon satisfaction of the prescribed conditions, to presume due execution and attestation

without insisting upon the examination of persons who may have died long before the dispute arose. The provision facilitates the administration of justice by allowing the Court to consider ancient instruments on the basis of their age, proper custody and apparent character, together with the surrounding circumstances.

60. Nevertheless, the presumption under Section 90 is neither automatic nor conclusive. The mere fact that a document is more than thirty years old does not, by itself, compel the Court to accept it as genuine. The document must have been produced from proper custody, and the Court must consider whether its appearance and surrounding circumstances give rise to any reasonable suspicion concerning its genuineness. Circumstances such as apparent artificiality, unnatural recitals, material alterations, tampering or other features casting doubt upon the instrument may justify withholding the presumption or may rebut it once raised. Further, Section 90 does not dispense with proof of every fact asserted in the document, nor does it conclusively establish the truth of all its recitals or the legal validity of the transaction recorded therein.

61. The question, therefore, is not merely whether the deeds in the present case are more than thirty years old, but whether they satisfy the statutory conditions for raising the presumption and

whether the circumstances appearing on record warrant acceptance of their genuineness.

62. In the present case, the two deeds were executed and registered in 1924. They are, therefore, more than a century old. By the time their genuineness came to be challenged in the present proceedings, neither the original transferors, Kusumi and Sashi, nor the original transferee, Ashutosh Singha, was available to testify concerning the execution of the transactions. The persons who witnessed the deeds and the scribe who prepared them were likewise not available to furnish direct evidence regarding the circumstances in which the instruments were executed.

63. Consequently, neither side could reasonably be expected to produce direct oral testimony from the original participants concerning the precise manner of execution, the explanation of the contents, or the circumstances attending the transactions. The absence of such evidence must be considered in the light of the exceptional age of the documents and the very difficulty which the legislature intended to address by incorporating the provision relating to ancient documents.

64. In these circumstances, the Court must examine whether the deeds were produced from proper custody and whether their appearance, contents and surrounding circumstances are

consistent with genuine transactions. The fact that the plaintiffs/respondents claim through the original transferee and rely upon the instruments as the foundation of their title is a relevant circumstance in assessing their custody. The registration of the deeds, their recitals concerning the nature and purpose of the transfers, and the statements recording delivery of possession are also matters which may properly be considered in the overall evaluation of their genuineness. None of these circumstances, taken in isolation, is conclusive; their cumulative effect must be assessed in determining whether the statutory presumption is attracted.

65. It is also material that the deeds disclose circumstances explaining the alienations. As discussed earlier, Exhibit 1 contains recitals concerning an outstanding loan, the unsuccessful attempt to discharge the liability and the circumstances which allegedly led Kusumi to execute the sale. The instruments further contain recitals concerning the enjoyment of the property and delivery of possession to the purchaser. These features are relevant in examining whether the documents bear the characteristics of genuine instruments executed in the ordinary course of transactions concerning immovable property.

66. If, upon examination, the Court finds that the deeds are more than thirty years old, have been produced from proper

custody and are free from circumstances reasonably exciting suspicion, it may invoke the presumption under Section 90 in favour of their due execution and attestation. The burden would then lie upon the party challenging their genuineness to produce appropriate evidence capable of rebutting that presumption. The party challenging the deeds cannot succeed merely by pointing to the absence of witnesses who have been unavailable for several decades, particularly when the very purpose of the statutory provision is to obviate the necessity of such formal proof in appropriate cases.

67. In the present case, the appellants have alleged that the deeds were procured by fraud and misrepresentation and have questioned the circumstances in which the transactions were undertaken. However, such allegations must be established by cogent evidence. The mere assertion that the contents of the deeds were not explained to the transferors, or that the transactions were not supported by legal necessity, does not by itself rebut the statutory presumption of due execution and attestation, if otherwise attracted. The Court must distinguish between the genuineness of an instrument and the legal validity or binding effect of the transaction recorded therein. While Section 90 may assist in establishing due execution and attestation, the existence of transferable title, the capacity of the executants and

the legal consequences of the alienations must still be determined in accordance with the applicable law.

68. The decision in ***Rattan Singh*** (**supra**) assumes further significance because the Hon'ble Supreme Court emphasised not only the rebuttable character of the presumption concerning an ancient document but also the importance of the parties' conduct in relation to that document. The Hon'ble Apex Court observed that the document in question had been acted upon by the parties without demur since 1963 and that, in the absence of evidence sufficient to rebut the presumption, it was not open to the challenging party to resile from the document after such a long lapse of time.

69. The underlying principle is that the Court must consider the conduct of the parties alongside the documentary evidence. Where a document has been treated as genuine and acted upon over a considerable period, such conduct may provide significant corroboration of its authenticity and the parties' recognition of the transaction. A party cannot ordinarily be permitted to disregard the consequences of a transaction merely because, after the passage of several decades, it seeks to challenge the document, particularly when the challenge is unsupported by reliable evidence.

70. Applying the aforesaid principle to the present case, the Court must examine whether the parties and their predecessors-in-interest acted upon the two deeds and whether their subsequent conduct is consistent with the transactions recorded therein. The plaintiffs/respondents claim title through Ashutosh Singha under the two instruments, whereas the appellants dispute the effect of those transactions. If the evidence establishes that the deeds were acted upon and that the subsequent conduct of the parties is consistent with the transfers, such circumstances would lend further support to the plaintiffs' case. However, the binding effect of the deeds must ultimately depend upon the evidence of such conduct and the legal rights acquired under the transactions; it cannot be inferred merely from the passage of time.

71. It is, therefore, necessary to distinguish between the presumption of due execution and attestation under Section 90 and the question whether the transaction is legally binding upon the appellants. The former concerns the proof of the document as an ancient instrument, whereas the latter requires consideration of the title of the transferors, the nature of their estate, their capacity to alienate the property and the legal consequences of the transfers under the applicable law. The presumption under Section 90 cannot, by itself, cure a defect in title or conclusively establish the existence of legal necessity. Nevertheless, where due

execution and attestation are supported by the statutory presumption and the party challenging the document fails to establish any legally sustainable ground for avoiding the transaction, the instrument may properly be relied upon in determining the rights of the parties.

72. In the present case, having regard to the age of the two deeds, the unavailability of the original executants, the transferee, the attesting witnesses and the scribe, and the absence of cogent evidence substantiating the appellants' allegations of fraud and misrepresentation, the Court finds no sufficient basis to reject the instruments merely because their execution cannot now be proved through direct oral testimony from the persons who participated in the transactions. If the requirements of proper custody and absence of suspicious circumstances are satisfied, the presumption under Section 90 may appropriately be invoked in favour of their due execution and attestation.

73. Accordingly, the decision in ***Rattan Singh*** (**supra**) lends support to the plaintiffs/respondents' contention that the ancient deeds cannot be discarded on the basis of unsupported allegations, particularly where the party challenging them has failed to adduce appropriate evidence to rebut the presumption available under the law. To the extent that the evidence establishes that the parties or their predecessors-in-interest acted upon the deeds, their

subsequent conduct also assumes significance in determining whether the appellants can now disown the transactions.

74. In view of the foregoing discussion, the appellants have failed to establish sufficient grounds for rejecting the two registered deeds solely on account of the absence of direct evidence concerning their execution in 1924. Subject to the statutory requirements governing ancient documents being satisfied and the plaintiffs establishing the requisite title and legal efficacy of the transfers, the deeds are entitled to be relied upon in adjudicating the rival claims. The appellants cannot defeat the plaintiffs' claim merely by raising belated and unsubstantiated objections to instruments executed more than a century ago.

75. The defendants have further sought to defeat the plaintiffs' claim by alleging that Kusumi and Sashi had become unchaste during the lifetime of their respective husbands and had left their matrimonial homes to reside with other persons. On that basis, the defendants contend that the widows did not inherit any interest in the suit property and, consequently, had no transferable interest capable of being conveyed to Ashutosh Singha.

76. This contention, apart from raising a question of law concerning the widows' entitlement to inherit, is also founded upon a factual allegation which the defendants were required to establish by reliable evidence. The mere allegation that a widow

had become unchaste or had left her matrimonial home cannot, without proof of the relevant facts and consideration of the law applicable at the time of succession, be accepted as sufficient to negate her proprietary rights. The legal consequences of such an allegation must be determined with reference to the applicable personal law and the precise circumstances in which the alleged succession took place.

77. The evidence on record does not substantiate the defendants' version. It appears from the deposition of the witnesses that both Kusumi and Sashi remained alive until approximately 1985. More importantly, the defendants have not disclosed the names of the persons with whom the widows allegedly left their matrimonial homes, nor have they satisfactorily established where the widows resided thereafter. On the contrary, D.W. 1 stated in his evidence that he had occasion to see Kusumi and Sashi residing in the 'bastu' during their lifetime. This testimony materially undermines the defendants' allegation that both widows had abandoned the property and gone away to live with other persons.

78. In the absence of reliable evidence establishing the alleged conduct of Kusumi and Sashi, the defendants' assertion that the widows were disentitled to inherit their husbands' interests cannot be accepted merely on the basis of an allegation made in the

written statement. A party seeking to defeat an otherwise established claim of title must prove the factual foundation of the defence upon which it relies. In the present case, the defendants have failed to discharge that burden. Their allegation, therefore, does not furnish a sustainable basis for rejecting the plaintiffs' claim under the registered sale deeds.

79. The question of the widows' proprietary rights must also be considered in the light of the subsequent statutory development brought about by the Hindu Succession Act, 1956. Reliance has been placed by the learned Advocate for the plaintiffs/respondents upon the decision of the Hon'ble Supreme Court in ***Smt. Gulwant Kaur and Another v. Mohinder Singh and Others***[9], as well as the decision of the Hon'ble Division Bench of this Court in ***Bhabani Prosad Saha v. Sarat Sundari Choudhurani***[10].

80. The appellants have placed reliance upon the decision of the Hon'ble Supreme Court in ***Smt. Naresh Kumar (Dead) by LRs and Another v. Shakshi Lal (Dead) by LRs and Another***[11], particularly paragraphs 6, 12 and 13 thereof, in support of their contention that, under the traditional Hindu law prevailing prior to the commencement of the Hindu Succession Act, 1956, a Hindu

---

[9] **AIR 1987 SC 2251**

[10] **AIR 1957 Cal 527**

[11] **AIR 1999 SC 928**

widow held an estate of limited ownership in the property inherited by her and that her power of alienation was subject to the restrictions recognised by Hindu law. According to the appellants, alienation by a Hindu widow could bind the reversioners only if it was supported by legal necessity or was otherwise justified under the principles of Hindu law. In the absence of such necessity, the alienee would ordinarily acquire no more than the limited estate possessed by the widow, which would not prejudice the rights of the reversioners upon the termination of her estate.

81. The appellants have drawn particular attention to the observations of the Hon'ble Apex Court that, under the traditional Hindu law, no reversioner acquired a vested right to the property during the lifetime of the widow, and that the eventual reversioner did not claim through any person who had preceded him in the line of succession. The decision further explains the nature of a Hindu widow's limited estate and the legal consequences flowing from an alienation made by her.

82. The principle enunciated in the aforesaid decision is that the interest of a Hindu widow in property inherited by her under the traditional Hindu law was not equivalent to an absolute proprietary interest. Her estate was subject to limitations governing alienation, and she could ordinarily convey an absolute and binding title to the alienee where the transfer was justified by legal necessity or by

another recognised ground under the Hindu law. Where legal necessity was not established, the alienation was not necessarily void in its entirety; rather, the transferee would ordinarily acquire only the estate which the widow herself was competent to convey, leaving the rights of the reversioners unaffected upon the termination of her limited estate.

83. The Hon'ble Supreme Court has also explained that the actual existence of legal necessity was not invariably indispensable where the alienee established that a representation of necessity had been made and that, after making bona fide enquiries, he had reasonably satisfied himself that such necessity existed. In such circumstances, the alienation could bind the reversioners notwithstanding the subsequent failure to establish the actual existence of the necessity. Conversely, where neither actual legal necessity nor bona fide enquiry and a reasonable belief in its existence was established, the alienee would ordinarily acquire only the widow's limited estate, without prejudice to the rights of the reversioners.

84. The appellants contend that the aforesaid principles govern the present controversy because the two sale deeds dated 23.03.1924 and 01.04.1924 were executed by Kusumi and Sashi before the commencement of the Hindu Succession Act, 1956. According to them, even assuming that Kusumi and Sashi had

inherited their respective husbands' interests in the suit property, they could not have conveyed an absolute and indefeasible title to Ashutosh Singha, the predecessor-in-interest of the plaintiffs/respondents, unless the alienations were supported by legal necessity or another legally recognised ground. It is, therefore, argued that the plaintiffs cannot claim an absolute title to the shares purportedly transferred under the two deeds merely by relying upon their registration.

85. The appellants further submit that the recitals contained in the deeds, by themselves, cannot conclusively establish the existence of legal necessity. They contend that the plaintiffs were required to establish either that the transfers were, in fact, necessitated by circumstances recognised under traditional Hindu law or that the purchaser had made bona fide enquiries and, upon reasonable grounds, satisfied himself as to the existence of such necessity. In the absence of such proof, according to the appellants, the alienations could not prejudice the rights of the reversioners beyond the limited interest which Kusumi and Sashi were competent to transfer.

86. The legal proposition relied upon by the appellants is undoubtedly relevant to the extent that it explains the nature of a Hindu widow's estate and the restrictions upon her power of alienation under the traditional Hindu law. However, the

applicability of that principle to the present case must be examined in the context of the precise nature of the estate inherited by Kusumi and Sashi, the circumstances surrounding the execution of the two deeds, the recitals contained therein, and the subsequent statutory development brought about by the Hindu Succession Act, 1956.

87. It is also necessary to distinguish between an alienation made by a Hindu widow during the subsistence of her limited estate and the subsequent enlargement of her proprietary interest by operation of Section 14 of the Hindu Succession Act, 1956. The latter provision enlarged the estate of a Hindu female in property possessed by her, subject to the statutory conditions and exceptions, and ordinarily converted a limited estate into an absolute estate. Consequently, the legal effect of the subsequent legislation cannot be ignored while determining the present rights of the parties. At the same time, the mere subsequent enactment of Section 14 cannot automatically validate an alienation which was otherwise ineffective against the reversioners under the law applicable at the time of its execution.

88. In the present case, the two deeds were executed in 1924, and their recitals disclose the circumstances in which the transfers were allegedly made. Exhibit 1 refers to the earlier transaction concerning portions of the interests of Kusumi and Sashi in favour

of Shibu, the outstanding loan, the unsuccessful attempt to repay the liability, and the absence of sufficient means to discharge the same following Shibu's death. The deeds also contain recitals concerning the enjoyment of the property by metes and bounds and the delivery of possession to the purchaser. These recitals constitute relevant evidence in assessing the circumstances surrounding the alienations, although their evidentiary value must be considered alongside the other materials on record.

89. It is equally significant that the appellants have alleged that Kusumi and Sashi were disentitled to inherit their respective husbands' interests because of their alleged conduct during their husbands' lifetimes. That allegation, however, must first be established by reliable evidence before it can be used to defeat the plaintiffs' claim at its foundation. The question whether the widows acquired the interests in the suit property in the first place is logically anterior to the question whether their subsequent alienations were binding upon the reversioners. If the widows acquired no interest, the deeds could not transfer any such interest; if they did acquire an interest, the nature and extent of their power of alienation must be determined by applying the law governing their estate at the relevant time.

90. Thus, the decision relied upon by the appellants correctly identifies the principles governing the alienation of a Hindu widow's

limited estate under traditional Hindu law. Nevertheless, whether those principles ultimately assist the appellants in defeating the plaintiffs' claim depends upon the proof of the relevant factual and legal ingredients. In particular, the Court must determine whether Kusumi and Sashi inherited the shares claimed by the plaintiffs, whether the alienations were supported by legal necessity or bona fide enquiries concerning such necessity, and what legal consequences followed from the operation of Section 14 of the Hindu Succession Act, 1956, upon the interests, if any, retained by the widows.

91. Accordingly, the aforesaid decision cannot be applied in isolation to conclude that the two sale deeds were ineffective merely because the appellants dispute the existence of legal necessity. Its ratio must be applied to the established facts, the recitals in the registered instruments, the evidence adduced by the parties, and the applicable provisions of Hindu law. The ultimate determination must turn upon whether the appellants have established that the alienations were ineffective against the interests which they claim as successors or reversioners, rather than upon the abstract proposition that a Hindu widow's power of alienation was restricted under the traditional Hindu law.

92. The principle embodied in Section 14 of the Hindu Succession Act, 1956, is that property possessed by a female

Hindu, whether acquired before or after the commencement of the Act, shall ordinarily be held by her as full owner and not as a limited owner, subject to the statutory exceptions contained therein. The provision was enacted to enlarge the limited estate of a Hindu female into an absolute estate where the conditions prescribed by the section are satisfied. The decissions cited above are relevant to the consideration of the nature of a Hindu woman's proprietary interest and the effect of the statutory enlargement of that interest.

93. In the present case, however, the defendants have failed to establish their principal contention that Kusumi and Sashi were wholly disentitled to inherit the interests of their respective husbands. Nor have they established any other legally sustainable ground for holding that the widows lacked the capacity to transfer their interests under the registered instruments. In the absence of such proof, the defendants' challenge to the plaintiffs' title on this ground cannot be sustained.

94. Another circumstance which deserves consideration is the subsequent recording of the names of Kusumi and Sashi in the R.S. Record of Rights approximately thirty years after the execution of the sale deeds. Such subsequent entries cannot, by themselves, conclusively establish title in favour of the persons whose names appear therein, nor can they automatically nullify an

earlier registered conveyance. A Record of Rights ordinarily carries a rebuttable presumption of correctness in respect of the matters which the applicable law requires to be recorded, but it does not, merely by virtue of an entry, create or extinguish proprietary rights independently of the underlying title.

95. Accordingly, the subsequent appearance of the names of Kusumi and Sashi in the R.S. Record of Rights must be considered along with the registered deeds, the recitals contained therein and the other evidence concerning the devolution and possession of the suit property. If the plaintiffs establish a valid transfer of the widows' interests in favour of Ashutosh Singha, a subsequent revenue entry, standing alone, would not be sufficient to defeat the title derived under those instruments. Conversely, the precise evidentiary effect of the subsequent entries would depend upon the applicable statutory provisions and the circumstances in which the entries were made.

96. It is also significant that the recitals in both deeds indicate that Shibu, Kusumi and Sashi were enjoying the property by metes and bounds. The deeds further explain that, following the death of Shibu, the transferors were faced with difficulties in looking after the property and arranging repayment of the outstanding loan, which circumstances led them to execute the conveyances. These recitals are consistent with the existence of identifiable interests in

the property and provide an explanation for the transfers. In the absence of convincing evidence disproving these circumstances, the recitals cannot be brushed aside as meaningless or fictitious.

97. On an overall assessment of the evidence, this Court finds that the plaintiffs have produced the registered instruments upon which their claim is founded; the instruments contain recitals concerning the circumstances of the sales and delivery of possession; and the defendants have failed to establish by cogent evidence that the transactions were vitiated by fraud or misrepresentation or that the transferors lacked the requisite transferable interests. The defendants have also failed to substantiate their allegation that Kusumi and Sashi were disentitled to inherit their husbands' interests by reason of the alleged conduct attributed to them.

98. It is further evident from the pleadings of the defendants/appellants that they have adopted two distinct and mutually inconsistent stands in support of their claim of right, title and interest over the suit property. On the one hand, they seek to justify their claim on the ground that they are entitled to succeed to the suit property as reversioners and that the two registered sale deeds executed by Kusumi and Sashi in favour of Ashutos hSingha were ineffective in law. On the other hand, they assert that they have been in possession of the suit property for a

sufficiently long period and have thereby perfected their title by adverse possession. These pleas have been advanced without a clear and specific foundation in the pleadings and without adducing cogent evidence establishing the essential ingredients of either claim.

99. The distinction between the two pleas is material. A claim founded upon reversionary rights proceeds on the premise that the claimant derives title through the legally recognised line of succession and that the alienation made by the limited owner was ineffective against the reversionary interest. A claim based upon adverse possession, on the other hand, presupposes possession which is hostile to the title of the true owner and which has continued openly, peacefully and uninterruptedly for the period prescribed by law. The two claims, therefore, rest upon different legal foundations and require proof of different factual ingredients. Although alternative pleas may be permissible in appropriate circumstances, a party cannot succeed merely by asserting both claims without specifically pleading the material facts necessary to establish each of them.

100. In this connection, reliance may be placed upon the decision of the Hon'ble Supreme Court in ***Chatti Konati Rao v. Palle Venkata Subba Rao***[12], wherein the Hon'ble Apex Court

[12] **(2010) 14 SCC 316**

considered the essential requirements for establishing title by adverse possession. The Court observed that the appellants in that case had failed to establish their claim of adverse possession, particularly when their initial case was founded upon an alleged purchase of the property or, alternatively, upon possession under an agreement for sale, neither of which had been substantiated by the production of the relevant documents. The decision underscores the necessity of establishing the factual foundation of the plea of adverse possession through specific pleadings and cogent evidence.

101. The principle emerging from the aforesaid decision is that a plea of adverse possession cannot be sustained merely on the basis of a general assertion of long-standing possession. The party setting up such a plea must specifically plead and establish the date from which the possession became adverse, the nature of the possession, the identity of the true owner against whom the possession was hostile, and the manner in which the hostile possession continued openly and uninterruptedly for the prescribed statutory period. Mere possession, however long, does not necessarily amount to adverse possession. Unless the possession is shown to have been accompanied by the requisite hostile animus and to have continued in the manner required by law, no title can be acquired on that basis.

102. Applying the aforesaid principles to the facts of the present case, it appears that the defendants/appellants have failed to establish the essential ingredients of adverse possession. Their principal contention is that Kusumi and Sashi were not entitled to inherit the interests of their respective husbands and that the plaintiffs' predecessor-in-interest, Ashutosh Singha, consequently acquired no valid title under the two registered sale deeds. At the same time, the defendants assert that they themselves have acquired title by adverse possession. However, they have not satisfactorily established the precise point of commencement of their alleged hostile possession, the nature of the hostility asserted against the plaintiffs or their predecessors-in-interest, or the manner in which such possession continued openly and uninterruptedly for the requisite statutory period.

103. It is also significant that the defendants have not established their claim of reversionary title by proving the necessary facts concerning the devolution of the property upon them. A mere assertion that the plaintiffs' predecessor acquired no valid title under the registered deeds does not, by itself, establish that the defendants are the lawful owners of the suit property. Equally, the failure of the plaintiffs to establish any particular aspect of their claim, if such failure were to occur, would not automatically confer

title upon the defendants. The defendants must succeed on the strength of the legal and factual foundation of their own claim.

104. The defendants' reliance upon reversionary rights and adverse possession must, therefore, be examined separately. If their case is that they are entitled to the property as reversioners because the alienations made by Kusumi and Sashi were ineffective against their interest, they must establish the relevant line of succession and the legal basis of their alleged reversionary entitlement. If, on the other hand, they seek to establish title by adverse possession, they must prove the requisite hostile possession for the prescribed statutory period. Neither claim can be accepted merely because the other party's title is disputed.

105. In view of the aforesaid discussion and the principles laid down in ***Chatti Konati Rao*** (**supra**), this Court finds that the defendants/appellants have failed to establish the essential ingredients of their plea of adverse possession by specific pleadings and cogent evidence. Their alternative assertion of reversionary rights, without establishing the necessary legal and factual foundation, cannot cure that deficiency. Accordingly, the plea of adverse possession does not furnish a sustainable basis for defeating the plaintiffs/respondents' claim founded upon the two registered sale deeds.

106. In view of the foregoing discussion, and having regard to the evidentiary value of Exhibits 1 and 2, the explanation contained in the deeds regarding the circumstances of the alienations, the absence of cogent evidence substantiating the allegations of fraud and misrepresentation, and the failure of the defendants to establish their principal factual defences, this Court finds that the defendants have not successfully rebutted the plaintiffs' case founded upon the registered instruments. The decision in ***Sumati Pahari***(**supra**), relied upon by the plaintiffs/respondents, lends support to the consideration of the registered deeds and the surrounding circumstances in the manner discussed above.

107. All the points formulated by the Hon'ble Division Bench of this court are decided accordingly.

108. In view of above facts and discussion made above I find nothing material to interfere the impugned judgment and decree dated 29th September, 1999 and 4th October, 1999, respectively, passed by the learned Special Judge (E.C. Court)-cum-Additional District and Sessions Judge, Midnapore, in Title Appeal No. 160 of 1997.

109. Accordingly, the instant appeal be and the same is hereby **dismissed**.

110. The judgment and decree dated 29th September, 1999 and 4th October, 1999, respectively, passed by the learned Special

Judge (E.C. Court)-cum-Additional District and Sessions Judge, Midnapore, in Title Appeal No. 160 of 1997 is herby affirmed.

111. No order as to costs.

112. Let a copy of this Judgement along with the Trial Court Records be sent down to the Trial Court at once.

113. Urgent Photostat copy of this judgment be supplied to the parties upon payment of requisite fees as per provision of law.

(Prasenjit Biswas, J.)