

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

Present:- The Hon'ble Justice Supratim Bhattacharya

SA 9 of 2017

**Mumtaz Hossain
Vs.
Parwaze Ahmed & Ors.**

For the Appellant : Mr. Animesh Das.

For the Respondent : Mr. Prajaaini Das
No.1

For the Respondent : Mrs. Sohini Chakraborty
Nos. 2 to 5 Mr. Arijit Sarkar

For the Respondent : Mr. Shehnaz Tareq Mina
Nos. 6, 7 & 8(a)-8(d) Mr. Pratick Sardar

Judgment Delivered On : 19.06.2026

Supratim Bhattacharya, J.:

1. The present appeal has been preferred by the appellant defendant No.1 being aggrieved by and dissatisfied with the judgment passed by the learned First Appellate Court that is the Additional District Judge 13th Court Alipore, 24 Parganas South in Title Appeal No. 238 of 2009 dated 3rd June, 2016 whereby the learned Court have been pleased to pass the following:

*“ Hence
ordered
that the appeal be and the same is hereby dismissed on
contest with cost.”*

2. Factual Matrix:

Some of the respondents herein were the plaintiffs namely Mrs. Safila Khatoon and Ors. who filed the suit seeking partition, declaration and permanent injunction through a plaint which was filed before the learned Civil Judge Senior Division 3rd Court at Alipore in Title Suit No. 22 of 2025.

Through the said plaint the respondents/plaintiffs had sought for a decree of declaration that the deed of sale dated 27.07.1946 executed in favour of Hasina Bibi the mother of the defendant No.1, be declared void and a decree of declaration that the appellant/defendant No.1 namely Mr. Mumtaz Hossain has no right, title or interest in respect of the suit property. A preliminary decree of partition was also sought for in respect of the suit property being thika land measuring about 3 cottahs, 5 chitakhs, 21 square feet with structure standing thereon situated at 55/h/5 Hossain Shah Road, P.S. Ekbalpur Kolkata-700023. The then defendant No.1 namely Mumtaz Hossain filed written statement against the plaint, the then defendant No.2 Jarina Bibi filed her written statement also. Thereafter the defendant No.1 namely Mumtaz Hossain filed a statement in reply against the written statement of the defendant No.2 whereby stating that the defendant No. 1 namely Mumtaz is the absolute owner of the suit premises and there are no other co-owners. It was further stated that vide a deed No. 2603 of the year 1946 dated

27.07.1946 the mother of the said defendant had purchased the shares in respect of the suit property from Jarina Bibi, Abdul Karim and Meher Afroz and thereby the said Hasina Bibi has become the absolute owner in respect of the suit property.

Considering the aforesaid plaint, written statement and the counter claim the learned Trial Court initially framed eight issues and thereafter another additional issue was framed. Altogether nine issues were framed :

- “1. Is the suit maintainable?*
- 2. Do the plaintiffs have any cause of action for filing the suit?*
- 3. Was Abdul Karim aged about 14+ years when his mother died?*
- 4. Did Hasina Bibi look after the suit property as pleaded in the written statement?*
- 5. Is the Deed of sale dated 27.07.1946 void ab-initio?*
- 6. Do the plaintiffs have share in the suit property?*
- 7. Are the plaintiffs entitled to get a decree as prayed for?*
- 8. What other reliefs, if any, the plaintiffs are also entitled to?*
- 9. Is the defendant no.1 entitled to get a decree for eviction against the plaintiffs?”*

During the course of trial the plaintiff No.1 namely Parvez Ahmed deposed as PW1 and exhibited fourteen documents which are as follows:

“(i) A receipt issued by Bhukailash Debutter Estate on 10.03.1919 in respect of the suit property marked as Ext. 1.

Document

(II) Notice dated 20.05.1936 issued by Bhukailash Estate of Central Bank of India in respect of the suit property is marked as Exht.2.

Exbt.3.

(III) Death certificate of Safila Khatoon issued by C.M.C. is marked as

Death certificate of Abdul Karim is marked as Exbt. 3(a)

Death certificate of Azizun Nessa is marked as Exbt. 3 (b)

(IV) Copy of letter dated 15.10.2003 written by advocate Nadimul Haque addressed to Sarfraz Ahmed and others as Exbt.4

(V) Original voter identity card of Abdul Karim is marked as Exbt.5

(VI)Original Kabilnama of Abdul Karim is marked as Exbt.6 (VII)

Present voter identity card of Abdul Karim is marked as Exbt.7 (VIII)

Copy of a notice issued by Calcutta Dock Labour Board dated 04.09.1989 on Abdul Karim is marked as Exbt.8

(IX) Notice dated 30.05.1984 issued by C.M.C. on Abdul Karim is marked as Exbt.9

(X) Progress report of Sultana Begum for the year 1969 issued by Khidirpur, Urdu School is marked as Exbt. 10

(XI) Two progress report of Parwaze Ahmed for the year 1968 and 1969 issued by Khidirpur Milani High School is marked Ext. 11 and 11 (a).

(XII)Death certificate of Syed Ahmad Hussain issued by KMC is marked as Exbt.12.

(XIII) Xerox copy B.P.L ration card of defendant no. 1 is marked as Ext. 13 on admission.

(XIV) Report of Q.D.E.B, C.1.D West Bengal with covering and forwarding letter is marked as Exbt. 14 collectively.”

On behalf of the defendants four witnesses deposed namely

(DW1) - Mumtaz Hossain, defendant No.1,

(DW2) - Md. Farooque defendant No. 2A (son of Jarina Bibi),

(DW3) - Syed Md. Amzad Ali a retired government officer who was an interpreting officer attached to the Hon’ble High Court,

(DW4) - Utpal Bandopadhyay Commissioner of Question Document Examination Bureau (QDEB), CID West Bengal.

The following documents have been exhibited on behalf of the defendants.

“(I) Notice of summons issued by 1st Munsif Court, Alipore in the year 1931 is marked as Exbt.A.

(II) Copy of notice issued by Bhukailash Estate of Central Bank of India on 20.05.1936 is marked as Exbt.C.

Envelope in which aforesaid notice was enclosed is marked Exbt.C/ 1.

(III) Death certificate of Hasina Bibi is marked as Exbt.D.

(IV) Purchase deed of Hasina Bibi for the year 1946 is marked as

(V) Four receipts showing payment of land revenue by Hasina Bibi is marked as Exbt.F series.

(VI) Four tax receipts issued by Central Bank of India in favour of Hasina Bibi is marked as Exbt. G series.

(VII) Notice issued by C.M.C. to Hasina Bibi for assessing annual valuation is marked as Ext. F.

(VIII) Two property tax receipts issued by K.M.C. in the name of Hasina Bibi is marked as Exbt. I series.

(IX) Copy of lawyer's letter dated 15.09.1989 is marked as Exht.J (Objected to).

(X) Copy of plaint of T.S 498/89 is marked as Exbt.K. (Objected to).

(XI) Information slip of 6th Munsif Court Alipore relating to T.S. 498/89 is marked as Exbt.L.

(XII) The seven ration cards of defendant no.1 and his family members are marked Exbt. M series.

(XIII) Lawyer's notice dated 15.10.2003 is marked as Exbt.N Postal receipts marked are marked Exbt. N/ 1 to N/6, A/D card is marked as Exbt. N/ 7

(XIV) Five returned letter with A/D card with endorsement not claimed are marked as Exbt. O series.

(XV) Four counter foil of rent bill are marked as Ext.P series (Objected to).

Documents filed by defendant No. 2 have been marked as follows:-

(XVI) Death certificate of Md. Halim is marked as Exbt. Q (with Objection)

(XVII) Copy of letter dated 25.11.1985 signed by Jarina Bibi addressed to Secretary Sea Farer Welfare Fund Bombay along with postal receipts and A/D card are marked as Exbt. R collectively (Objected to).

(XVIII) Copy of letter dated 01.06.1994 signed by Jarina Bibi in Urdu addressed to Accounts Officers Sea Farer Welfare Fund Bombay marked as Exbt. S (Objected to).

(XIX) Death certificate of Jarina Bibi is marked as Exbt.T.

(XX) Death certificate of Noor Afroz is marked as Exbt. U (Objected to).

(XXI) Certified copy of leased deed executed by Central Bank of India in favour of Azizan Bewa on 08.09.1939 marked as Exbt. V (Objected to)

(XXII) One Urdu document and translation of the said document marked Exbt. Z and Z/1.”

3. After trial the learned Trial Court has been pleased to decree the suit in preliminary form in part on contest thereby declaring that the plaintiffs have half share with regard to the schedule property and the defendant No.1 and the defendant NO.2 (series) have 1/4th share each in respect of the suit property. It was further declared that the deed of sale dated 27.07.1946 executed in favour of Hasina Bibi, the mother of the defendant No.1 is void and not binding upon the plaintiff and has cancelled the said deed.

Being aggrieved by and dissatisfied with the judgment and decree dated 10.07.2009 passed by the learned Civil Judge Senior Division 3rd Court Alipore in the said title suit the defendant No.1 Mr. Mumtaz Hossain preferred the first appeal before the learned District Judge at Alipore being Title Appeal No. 238 of 2009. The said appeal was heard and disposed of by the learned Additional District Judge 13th Court Alipore vide order dated 3rd June, 2016 thereby dismissing the said title appeal on contest. This judgment of dismissal of the title appeal on contest gives rise to the present appeal.

4. The learned counsel representing the appellant during his exhaustive submission has stated the following:

- i) That the respondents as plaintiffs filed the suit against the appellant praying for a declaration that the sale deed dated 27.07.1946 executed in favour of Hasina Bibi that is the mother of the appellant is void *ab initio* and not binding upon the plaintiff and a decree for declaration that the appellant has no right, title or interest by virtue of the said deed of sale. He has further submitted that the defendant No.1 filed written statement and thereby counter claiming and praying for a decree of eviction of the plaintiff and recovery of possession of the suit property.
- ii) The learned counsel on behalf of the appellant has submitted that the plaintiff has made untrue statement about the fact that Meher Afroz left India and settled at Bangladesh then East Pakistan and prior to leaving India in the year 1946 she had gifted her share through heba.
- iii) He has further submitted that during the year 1946 there was no existence of Bangladesh which came into existence during 1971 and there was no existence of East Pakistan also which became Pakistan in the year 1947.
- iv) He has further submitted that the story of Meher Afroz going to East Pakistan is absolutely false. He has further submitted that the report of the handwriting expert is not at all believable because the handwriting expert compared the signature of Sk. Abdul with the progress report of his daughter where allegedly

he had signed as Abdul Karim and not as Sk. Abdul Karim. He has further submitted that in the deed dated 27.07.1946 the signature is "Sk. Abdul Karim".

- v) He has further submitted that the signature in the progress report is not an authentic document.
- vi) He has also submitted that the signature of Sk. Abdul Karim ought to have been compared with any official document of the dock labour board or his bank account as because the said Abdul Karim was an employee of the dock labour board.
- vii) He has also submitted that Sk. Abdul Karim had signed on the deed in the year 1946 while his signature in the progress report was of the year 1969 so there was a gap of twenty three years and naturally the signature of the person invariably changed. As such the handwriting expert's report should not be taken into consideration while deciding the authenticity of the registered deed which is of pre-independence.
- viii) He has further submitted that the learned Trial Judge had decided the share of the parties following the Mohammedan law but has not considered that as per Mohammedan law minority terminates when an individual attains puberty and the said person is entitled to act in all matters effectively including his properties.
- ix) He has further submitted that both the learned Trial Court and the learned First Appellate court has not properly assessed the

age of Sk. Abdul Karim as per genealogy Azizan Bewa had three daughters and one son, the eldest of whom was Hasina Bibi, the second daughter was Jarina Bibi and the third was the son Sk. Abdul Karim while Meher Afroz was the youngest of all.

- x) The learned counsel has further submitted that in the written statement affirmed on 4th March 2004 Jarina Bibi has stated her age as eighty five years and she was born in the year 1919 so during the year 1946 when the deed was executed she was twenty seven years and Abdul Karim is two years younger to Jarina Bibi then in the year 1946 Sk. Abdul Karim was aged about twenty five years and Meher Afroz was aged about twenty three years. He has further submitted that as per his age Sk. Abdul Karim was major during the year 1946 .
- xi) He has further submitted that in the deed of 27.07.1946 Abdul has stated his occupation as service which means he was serving the dock labour board and a minor cannot get service in a government concern.
- xii) The learned counsel has further submitted that Jarina Bibi had put her LTI in the deed of 1946 when she was twenty seven years but during the year 2004 after fifty eight years when she affirmed her written statement she had signed in Urdu which knowledge she had acquired later. The learned counsel has further submitted

that the said Jarina Bibi had not executed any deed of conveyance either by signing or by putting her LTI anywhere.

- xiii) He has further submitted that both the learned Trial Court and the first Appellate Court did not examine the LTI of Jarina Bibi scientifically as per prescribed rule.
- xiv) He has further submitted that both the Courts that is the learned Trial Court and the learned First Appellate court has not considered that a person who can sign in a document can also give her thumb impression on a document.
- xv) He has further submitted that Jarina Bibi has stated that she is knowledgeable in Urdu only but the written statement filed by her was in English which was neither read over and explained to her while she had signed in Urdu so the said written statement cannot be taken into consideration.
- xvi) He has further submitted that from Exhibit B it appears that the Central Bank of India as plaintiff had filed a suit for eviction against the defendants in the year 1946 and from the said Exhibit it transpires that the first name in the defendants' list was Abdul Karim and if Abdul Karim was a minor during the year 1946 then the Central Bank of India a statutory authority could not have filed a suit in the name of the person who was a minor so it is apparent from the Exhibit B that at the relevant point of time

when the deed was executed in the year 1946 the said Abdul Karim was major.

xvii) He has further submitted that the said Abdul Karim died during the year 1977 but during his long lifetime he had not filed any suit for cancellation of the deed as because he was fully aware of the true facts and after the demise of the said Abdul Karim his legal heirs filed the suit challenging the said deed which is after a long delay.

xviii) He has further submitted that an application under Order XLI Rule 27 of the Code of Civil Procedure was filed before the first Appellate court which has not been disposed of and still pending adjudication.

Banking upon the aforesaid facts and circumstances the learned counsel has prayed for allowing the appeal and thereby remanding the present case for entire hearing.

5. The learned counsel representing respondents No.2 to 5 has harped upon the following:

- i) She has stressed upon the point that a second appeal should be heard only on the substantial questions of law framed as per Section 100 of the Code of Civil Procedure.
- ii) She has further submitted that as at the time of hearing of the appeal no further substantial question of law has been framed so

this appeal is to be heard on the two substantial questions of law which have been framed by the Hon'ble Division Bench.

- iii) The learned counsel during her submission has relied upon the judgment of the Hon'ble Apex Court reported in (2025) 6 SCC 465. She has relied upon Paragraph 33 onwards of the said judgment where it has been stated that jurisdiction of the Hon'ble High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure question of fact while exercising its jurisdiction under Section 100 of the Code of Civil Procedure. While placing the said judgment she has submitted that the appellant has argued on factual aspects only and did not argue on the substantial questions of law formulated.
- iv) As regards to the first substantial question of law framed the learned counsel has submitted that this cannot be a substantial question of law involved in the present second appeal and has further submitted that from the memorandum of the instant appeal it is clear that the valuation of the appeal preferred by the appellant is Rs. 70,100/- whereas from the counter claim filed by the appellant it is evident that the value of such claim is Rs. 7960/-. Thus it is clear that the instant second appeal preferred is only against the partition suit and not against the counter claim

since the judgment and decree passed in the counter claim has not been challenged so no substantial question of law should have been formulated on such counter claim. As regards to the second substantial question of law Section 3 of the Indian Majority Act, 1875 envisages that every person domiciled in India shall attain the age of majority on his completing his 18th year and not before that irrespective of his religion, rites and usages. Section 2(a) and (b) of the said Act however states that nothing herein contained shall affect the capacity of any person to act in the following matters which are marriage, dower, divorce and adoption and religion and religious rites and usages. She has further submitted that Section 11 of the Contract Act lays down that every person is competent to contract who is a major according to the law to which he is subjected and who is of sound mind and is not disqualified from contract by any law to which he is subjected.

- v) She has further submitted that from the conjoint reading of the aforementioned provisions it is clear that apart from marriage, dower, divorce and adoption the age of majority of a Mohammedan citizen of India is eighteen years. There is no separate law relating to transfer by sale by a Mohammedan citizen of India, such sale is guided by the general laws of contract and thus the age of majority even for a Mohammedan citizen is eighteen years.

- vi) The learned counsel had further submitted that several documents have been produced on behalf of the respondents to substantiate the age of Abdul Karim, those documents are a voter identity card issued in the year 1959 by the Calcutta Municipal corporation revealing the age of Abdul Karim to be twenty nine years. A kabilnama dated 05.03.1951 (Exhibit 6) of Abdul reveals the age of Abdul as twenty two years . It is further submitted that Exhibit 7 that is voter identity card of Abdul reveals that as on 01.01.1995 his age was sixty five years.
- vii) She has further submitted that from the notice of superannuation issued by the Calcutta dock labour board dated 4th September, 1989 it transpires that Abdul had completed sixty years on 01.03.1990 (Exhibit 8).
- viii) She has further submitted that Exhibit C being a notice of the Central Bank dated 20.05.1936 addressing Sk. Odu and others reveals Abdul to have been described as a minor she has stressed that the said document has been produce on behalf of the appellant. Emphasizing upon all the aforementioned documents learned counsel is confident enough to submit that Abdul was minor when the alleged deed of sale was executed. She has further submitted that on the contrary the appellant has not been able to produce any cogent evidence to show that the said Abdul was major at the time of execution of alleged deed.

- ix) She has further submitted that during the counter claim the appellant in Paragraph 3C has admitted the fact that Meher sometimes in the year 1946 transferred her share in the said property by a oral heba in favour of Hasina Bibi , Jarina Bibi and Abdul Karim and they had accepted the said gift (heba) .
- x) She has further submitted that it transpires that the appellant has admitted that Meher Afroz first transferred her entitled share by a oral heba so Meher Afroz cannot be said to have executed the alleged sale deed on 27.07.1946 transferring her share to Hasina Bibi.
- xi) The learned counsel has stressed upon the issue of handwriting expert's opinion.
- xii) She has further submitted that no substantial question of law has been formulated on this point. She has further submitted that through the order No. 30 passed in the title suit it is clear that the only objection which the appellant raised regarding the handwriting expert's report was that the expert should be examined and thereafter his report can be considered.
- xiii) She has further submitted that the expert was duly cross-examined by the appellant.
- xiv) She has further submitted that the fact of bearing the signature of Abdul appearing in the alleged deed of sale whether can be compared with the signature of Abdul appearing in the report

cards of his children or not cannot be agitated in this instant second appeal as the same is beyond the scope and ambit of the present appeal. As regards to issue raised by the appellant that there has been non-consideration of the application filed under Order XLI Rule 27 of the Code of Civil Procedure the learned counsel has submitted that no substantial question of law has been formulated on this point. Thus the appellant cannot argue on such point in the instant second appeal.

- xv) Banking upon the aforementioned facts and circumstances the learned counsel has submitted that both the Trial Court and the first Appellate Court have correctly decreed the partition suit in preliminary form upon cancelling the deed dated 27.07.1946 and has further submitted that the appellant is not entitled to have any relief as prayed for.

6. The learned counsel representing the respondents No. 6,7, 8a to 8d during his exhaustive argument has submitted that

- i) The predecessor in interest of the respondents No. 6 , 7, 8a to 8d that is the original defendant No. 2 has all along supported the case of the plaintiff with regard to fraudulent execution of the alleged deed of sale dated 27.07.1946 .
- ii) He has further submitted that through her written statement originally the defendant No. 2 has categorically denied to have

transferred her right, title and interest in the suit property by executing or registering any deed of conveyance in favour of anybody.

- iii) The original defendant No.2 has categorically clarified in her written statement that she is knowledgeable in Urdu and she signs in Urdu script and has further submitted that she has never executed any deed of conveyance either by signing or by putting her LTI anywhere and therefore the question of transferring her share to the mother of the defendant No.1 does not arise at all.
- iv) The learned counsel has further submitted that in all the pages of her written statement the defendant No. 2 has signed in Urdu.
- v) He has also submitted that sign of the original defendant No.2 that is the defendant No.2A after being substituted adduced evidence as DW2 specifically stating that his mother Jarina Bibi wrote a letter addressing the Secretary, Sea Farer Welfare Society Bombay which has also been signed in Urdu seeking payment of compensation in respect of her husband from 22.10.1929 till the year 1967.
- vi) The learned counsel has stressed upon the fact that the original defendant No.2 that is her mother had never put her thumb impression as because she was not illiterate and she had not executed any deed of conveyance either by signing or putting

her LTI anywhere and therefore the question of transfer does not arise.

- vii) The learned counsel has relied upon a judgment in the case between AEG Carapeit Vs. Ayderderian reported in (1960) SCC Online Calcutta 44 and stressed upon Paragraph 9 of the said judgment wherein it has been stated that

“9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.”

viii) The learned counsel has further submitted that as no question was put forward to the DW2 who is the son of the original defendant No.2 during his cross-examination as regards to the specific contention made by the defendant No.2 in her written statement as well the exhibited document, the contention of the defendant No.2 is deemed to have been accepted in its entirety.

7. The learned counsel representing the respondent No.1 has adopted the entire submission of the learned counsel representing the respondents No.2 to 5.

8. At the time of admission of the present appeal the following two substantial questions of law have been framed which are as follows:

“i) Whether the learned Judge of both the courts below committed substantial error of law in rejecting the counter claim on the ground of minority of Abdul Karim without considering the position that the executant having attained puberty at that time and as per Mohammedan Law minority terminates when the Abdul Karim attained the puberty or not?”

ii) Whether the learned Judge of the court below committed substantial error of law in not holding that in Mohammedan Law any person who has attained puberty he is entitled to act in all matter effectively including relating to his property or not?”

9. The moot point which has arisen is as to whether the alleged deed dated 27.07.1946 was executed by Abdul Karim, the brother or not and if at all executed is it valid in the eye of law and as to whether it was executed by Jarina Bibi the second daughter of Sk. Ahmed Hossain.

10. **Decision with reasons**

From the Exhibit No.7 that is the voter identity card of Abdul it transpires that the said Abdul was aged about 65 years as on 01.01.1995 and from the exhibit 8 that is a notice for being superannuated dated 04.09.1989 issued by the Calcutta Dock Labour Board it transpires that the said Abdul was said to be and had been superannuated from service of the Board after completion of 60 years of age on 01.03.1990. So from both the aforementioned two documents it transpires that the said Abdul was born during the year 1930. In addition to the above from the exhibit No.2 that is a notice issued by the Central Bank of India dated 20.05.1936 it transpires that on that date Abdul Karim was minor. So from the above documents it is evident that on the date of execution of the said deed in question that is 27.07.1946 the age of Abdul Karim was 16 years and he was not major.

It is fact that execution of a deed of sale or any deed involving transfer of property of a person is to be executed by him when being a major and not by a person who is minor. The Indian Majority Act, 1875 Section 3 provides that 18 years is the age of majority and in this present case at the relevant point of time that is on the date of execution of the said deed of sale by Abdul in favour of Hasina Bibi the said Abdul was not major. Through the judgment passed by the Hon'ble Apex Court in the case between Abdul Rahim and Ors. Vs. Sk. Abdul Zabbar and Ors. published in (2009) 6 SCC 160 it has been laid down that gift by a

Mohammedan has to be performed when he is sane and major applying the same principle in the present case the position being that the said Abdul being minor at the time of execution of the said deed the execution by Abdul if at all made is not valid in the eye of law. So the question of execution of the transfer of share in respect of his portion of the suit property is not at all acceptable in the eye of law. So the transfer of share by Abdul in favour of Hasina Bibi is void.

Exhibit 14 being a report of the questioned document Examination Bureau which has compared the signatures of Abdul on the said deed dated 27.07.1946 with the signatures appearing in the three progress reports of his daughter dated 27.09.1969 , 11.09.1968 and 24.09.1969 opines that the person who had put the signatures marked S1 to S3 that is on the progress reports did not put the signatures marked in Q1 to Q9 that is in the deed in question . The expert's report also corroborates that there was no signature of Abdul on the said deed in question.

Now as regards to the execution of Jarina on the said deed in question it has been stated and it is evident that there has been LTI of Jarina but from Exhibit R which is a letter dated 25.11.1985 sent by Jarina addressing the Secretary, Seafarer Welfare fund Bombay it transpires that Jarina Bibi has signed in Urdu and Exhibit S that is a letter sent to the Administrative cum Accounts Officer dated 01.06.1994 it also transpires that Jarina Bibi had signed in Urdu. From the

aforementioned facts it is evident that the said Jarina Bibi was conversant in Urdu and used to sign in Urdu. It is obvious that a person who has knowledge in any language will obviously sign in that language instead of putting her LTI. This also raises question as regards to execution by Jarina Bibi in respect of transfer of her share in respect of the suit property. In this regard, the contention of the respondents stand on a better footing and have legs to stand upon than those of the appellant.

From the above discussion it is apparent that transfer of share in respect of the suit property by Abdul Karim and Jarina Bibi in favour of Hasina Bibi through the deed dated 27.07.1946 has not been performed by either of them and if at all performed by Abdul is not at all tenable in law.

It is worth mentioning that a deed said to be executed in the year 1946 whether it can be challenged in the year 2004 or not. Though the appellant has not pressed upon this issue but has raised a mild question in this regard. So this Court deems fit to clear the picture and states that the respondents/plaintiffs and respondents/defendants No.2 came to be aware about the said deed in question that is the deed dated 27.07.1946 on receipt of a notice dated 15.10.2003 sent by a learned Advocate on behalf of the appellant /defendant No.1, asking the respondents to quit the suit property. From the said letter it transpires that the appellant /defendant No.1 claimed to be the

absolute owner in respect of the suit property obtaining the shares of Abdul and Jarina Bibi. Just after receipt of the said information about the deed in question that is on 15.10.2003 the plaintiffs/respondents have filed the suit on 30.01.2004 that is within a year of receiving the information. In this context this Court relies upon Article 59 of the Limitation Act, 1963 which states that a deed which is void, in this case the said deed dated 27.07.1946, is to be challenged or can be agitated within three years from the date of knowledge about the same. In this case it has come to the knowledge of the plaintiffs/ respondents and the defendant No.2 just on 15.10.2003 and the suit has been filed on 30.01.2004 so it is within the statutory period.

It is also fact that Muslim personal law applies only to marriage and inheritance and it does not apply to any case of transfer of a property *inter vivos*. In case of transfer of share of a property a person has to be major under the Indian Majority Act, 1875 and in such case Muslim personal law is not applicable whereby attainment of puberty is accepted.

The age of majority as regards to matter other than marriage, dower, divorce, and adoption is now regulated by the Indian Majority Act, IX of 1875. Section 3 of the Act declares that a person shall be deemed to have attained majority when he shall have completed the age of 18 years.

According to Islamic law, the minority of a male or a female terminates when he or she attends puberty. Among the Hanifis and the Shias, puberty is presumed on the completion of 15 years. Under the Indian Majority Act, 1875 (Section 3) minority ceases on the completion of the 18 year, unless a guardian of the person or property or both of the minor has been or shall be appointed before the minor is under the superintendence of a Court of wards, in which case the age of minority is prolonged until the minor has completed the age of 21 years.

Under the Mohammedan law, any person who has attend puberty is entitled to act in all matters affecting his or her status or his or her property but the law has been materially altered by the Indian Majority Act, 1875. Indian Majority Act applies to all matters involving Mohammedans except i) Marriage, ii) Dower and iii) Divorce. In all other matters, the age of majority remains 18 years.

11. So from the aforementioned discussion, this Court is at one with the judgment passed by the Trial Court and the First Appellate Court.

12. In such circumstances this Court finds no reason to interfere with the judgments of the Trial Court and the First Appellate Court.

13. With the above observations, the instant Second Appeal being No. **SA 9 of 2017** stands **dismissed**.

14. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

15. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)