IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Sugato Majumdar

SA/413/1984

SMT. BASANA BALLA MONDAL

VS

JYOTISH CH. MONDAL

For the Appellant	:	Mr. Haradhan Banerjee, Adv.
		Mr. Anit Kumar Rakhsit, Adv.
		Mr. Suresh Kumar Sahoo, Adv.
Hearing concluded on	:	29.09.2026
Judgment on	**:**	**06.10.2026**

Sugato Majumdar, J. :

The instant Second Appeal is filed against the Judgment and Decree dated 25th May, 1982 passed by the Learned Additional District Judge, 7th Court at Alipore in Title Appeal No. 821 of 1981 affirming the Judgment and Decree dated 10th July, 1981 passed by the Learned Munsif, 1st Court, Diamond Harbour in Title Appeal No. 441 of 1976.

The plaint case may be summarised as follow:

i) The entire suit property under suit *khatian* belonged to one Tarini Mondal as Bastu. Tarini Mondal died leaving three sons, namely, Ratan, Bhutnath and Banikanta as successors who inherited his

properties in equal shares. Ratan died and his 1/3 share was inherited by Amodini. Bhutnath died leaving behind two sons, namely, Pada and Sudhanya who inherited one third share of Bhutnath. Then Banikanta died leaving the Plaintiff as wife and the pro-forma Defendant No. 5 to 10 as sons and daughters who inherited his 1/3 share of suit land. Amodini sold her 1/3 share of Banikanta in terms of a deed dated 21st Ashwin 1364 B.S. Sudhanya, one of the sons of the Bhutnath, sold his shares of suit plot to the Defendant No. 1 to 4. This two and half cents of land was in the southern portion of the suit plot. At the time it was agreed between Banikanta and the Defendant Nos. 1 to 4 as well as Sudhanya, one of the sons of Bhutnath, that he would sale three and half cents of land to Banikanta and Banikanta would sell .3½ cent of land from the suit plot to the Defendant Nos. 1 to 4. In accordance with the agreement Sudhanya sold 0.3½ cent of non-suit land to Banikanta and Banikanta sold 0.3½ cent of suit plot to the Defendant Nos. 1 to 4. As a result of the whole transactions, Defendant Nos. 1 to 4 got .6 cent of land in the southern part of suit plot; Pada had his 2½ cents of land on the contiguous north of it and thereafter Banikanta possessed his 6½ cents which included his inherited as well as purchased land. The Defendant Nos. 1 to 4 constructed *pucca* structure on their portion.

ii) After Banikanta's death his heirs and successors namely his wife being the Plaintiff along with sons, daughters and pro-forma Defendant Nos. 5 to 10 got possession of the Banikanta's land with building standing thereon. In this way, properties were partitioned and parties had been leaving in exclusive possession in respect of the suit plot.

iii) Pada required money for which he conveyed 2½ cents of land, being the suit land to Pravabati being the wife of Sudhanya, in terms of its sale deed coupled with agreement for re-conveyance, for consideration of Rs.300. Pada, however, did not part his possession of that part of land. Provabati re-conveyed the property to Pada by a deed of sale dated 01/06/1973. Subsequently, Plaintiff purchased the suit land from Pada for consideration of Rs.500 in terms of Kobala executed on 13/07/1973 but registered on 05/11/1973. The suit was filed by the Plaintiff for vindicating his right in terms of the prayer as aforesaid.

The Defendant Nos. 1 to 3 contested the suit by filing written statement denying all material allegations. Initially, Pada sold to one Sudharshan Kayal the materials of his house in the year 1379 B.S. At a later stage, Pada sold the suit land to the present Defendant in terms of deed dated 7th Kartick, 1380 B.S. for a consideration of Rs.1,000/- on the strength of which the Defendant came into the possession. It was contended in the written statement that the Plaintiff created a false documents, ante-dated, in a fraudulent and collusive manner which is void. According to the answering Defendants, the suit should be dismissed.

On the strength of rival pleadings, following issues had been framed:

1. *Is the Plaintiff entitled to a decree as prayed for?*
2. *Has the Plaintiff acquired title by adverse possession?*
3. *Is the description of the suit land vague and indefinite?*
4. *Is the deed in favour of the Defendant fictitious and without consideration?*

5. *Is the deed in favour of provabati by Pada loan in substance?*

6. *Is the deed in favour of the Defendant ante-dated?*

The Trial Court considered the fact that though Ext.1, being the deed of the Plaintiff, had been executed on 19/07/1973 it was registered on 06/11/1973; the Defendant derived title in terms of a deed which had been executed and registered on 24/10/1973. After considering the dates, the Trial Court came to the conclusion that the earlier executed deed, though registered subsequently would prevail over the deed executed and registered later on in terms of Section 47 of the Indian Registration Act. It was further observed by the Trial Court that Pada transferred his interest in the suit land to Provabati in terms of a deed dated 17/04/1961 [Ext. A(1)] which was re-conveyed to Pada in terms of the deed dated 01/06/1973 [Ext.1(c)]. Thereafter Pada executed the deed and in favour of the Plaintiff on 19/07/1973. But the Learned Trial Court came to the conclusion that at the time of receiving consideration of Pada from the Plaintiff he had no title in the suit land. Accordingly, the Trial Court dismissed the suit. The Trial Court also considered and was carried on by the fact that there was no explanation why there was delay in registering the deed.

The First Appellate Court observed that Pada delivered possession to the Plaintiff of the suit land in the middle of Baishakh 1308 B.S. when Pada had no possession over the suit land and that the story of possession of Plaintiff is a myth. It was the further conclusion of the First Appellate Court that Ext. 1 was a fictitious documents created for the purpose of defeating the Defendant's title. The First Appellate Court also came to the conclusion that the Plaintiff had not been in possession and also that prayer for permanent injunction should not be allowed.

Accordingly, decree for permanent injunction had been denied. The First Appellate Court also noted that the suit was hit by Section 34 of the Specific Relief Act at consequential reliefs had not been prayed for.

On being aggrieved and dissatisfied, the instant appeal had been filed in terms of order dated 22/09/2026, the appeal was decided to be heard on grounds which are as follow:

"II. For that in view of the fact that the plaintiff purchased and proved the registered Deed of Sale dated 19.07.1973 (Ext.1) executed by the admitted owners Pada in favour of the plaintiff and the plaintiff having claimed Title on the strength of such purchase, the onus was upon the contesting defendants to prove that the plaintiff did not acquired any Title on the strength of said purchase and the learned Additional District Judge erred in law in deciding the case otherwise.

IV. For that the title Deed of the plaintiff (Ext.1) having contained specific recital about payment of consideration the learned Additional District Judge erred in law in requiring the plaintiff to prove payment of consideration once again in the present suit simply because the contesting defendants have denied such payment.

VII. For that the learned Additional District Judge erred in law in referring to the provision of Section 92 of the Evidence Act and in using the said provision against the plaintiff over looking all together that the plaintiff was not party to the said documents and any statement contrary to actual fact and going against the

interest of the plaintiff could be successfully challenged by her and that view of the matter of the finding of the Additional District Judge regarding possession was illegal and untenable.

IX. For that the learned Additional District Judge erred in law in not properly considering the question of possession on a consideration if evidence both oral and documentary adduced by the plaintiff in support of her case and the same had occasioned a failure of justice.

X. For that even assuming but not admitting that on the date of institution of the suit on 04.01.1974 the plaintiff was not in possession and the same having been filed within 12 years from the date of her purchase she could easily get a decree for possession against the contesting defendant and the learned Additional District Judge erred in law in holding that the suit was barred under Section 34 of the Specific Relief Act."

The Learned Trial Court considered the applicability of Section 47 of the Indian Registration Act, 1908 and decided that a deed, executed earlier, though registered later on, would prevail over a deed which was executed and registered later on. However, the Trial Court considered that there was no satisfactory explanation why the deed had not been registered immediately but after three and half months. The Trial Court influenced possibly by the plea of the Defendant which caste a doubt on the deed executed between the vendor and the Plaintiff that is to say the Ext.1 which had been executed on 19/07/1973 and was registered on 06/11/1973. According to the Trial Court there was not sufficient evidence to explain this time gap. Although the Defence was taken in the written statement, there was no counter-

claim made by the Defendant praying for cancellation of the instrument of the Plaintiff being Ext.1. The Trial Court was also oblivious of the provision of Section 23 of the Indian Registration Act, 1908. Section 23 provides a time frame of four months for registering the document after execution of the same. No explanation is needed in case the document is registered within four months; the Trial Court travelled beyond this scope and demand of the statute and observations on delay of registration, though within the time frame is redundant. Similarly, the observation of the First Appellate Court is also useless in this respect. The First Appellate Court also concluded that the suit was hit by the provision of Section 34 of the Specific Relief Act, 1963 but no reason is there for such abrupt inference though the Plaintiff prayed for the principal relief of declaration along with consequential reliefs.

The Trial Court was swayed by the fact that at the time of receiving consideration the vendor of the Plaintiff had no title. There is definite fact finding in the judgment itself that Ext.1 was executed on 19/07/1973. Prior to that Provabati re-conveyed the suit property to the vendor of the Plaintiff on 01/06/1973 in terms of Ext.1(C). Therefore, on the date of executing the deed the vendor of the Plaintiff had right, title and interest in the property even though he might not have title on the date of receiving consideration. The First Appellate Court weighed too much on the allegation of the Defendant pleaded in the written statement. Neither of the courts considered that no counter-claim was preferred by the Defendant to set aside the Ext.1. Both the Courts venture into unnecessary fact finding not in demand by the *lis*.

Mr. Banerjee, the Learned Senior Counsel, argued that both the Courts considered unnecessary material particulars without concentrating on the main issue. This demands interference of this Court particularly when clear provision of law was not considered.

Section 47 of the Registration Act, 1908 provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of registration. In other words, date of execution has primacy over date of registration and once registered the deed got its life and blood from the date of execution.

In **Gurbax Singh v. Kartar Singh [(2002) 2 SCC 611],** the Supreme Court of India held:

> **"3.** In view of the provisions of Section 47 of the Registration Act, 1908 it is well settled that a document on subsequent registration will take effect from the time when it was executed and not from the time of its registration. Where two documents are executed on the same day, the time of their execution would determine the priority irrespective of the time of their registration. The one which is executed earlier in time will prevail over the other executed subsequently. **"**

Both the Courts were too much carried, as stated above with the fact that on the date of receiving consideration the vendor of the Plaintiff had no title. However, on the date of the execution of the deed the vendor of the Plaintiff had full right, title and interest and though registered subsequently the validity of the deed, namely, Ext.1 dated back from the date of execution. Therefore, this is a prior deed to that of the deed of the defendant. The deed of the Defendant was executed subsequently, namely, on 24/10/1973; by that time the vendor had divested himself of all right, title and interest in the suit property. Therefore, no title could have been transferred and had not been conveyed or transferred in terms of the deed dated 24/10/1973. Although the Respondent/Defendant alleged that the Ext.1 was fraudulent, neither was there any evidence, nor was there any counter-claim to set aside the same.

Therefore, it is finding of this Court that the Plaintiff got right, title and interest in the suit property in terms of deed under Ext.1. Both the Courts below failed to appreciate and apply the correct principal of law in the given facts and circumstances demanding interference of this Court even though there are concurrent findings.

The Trial Court as well as the First Appellate Court did not conclude that the Appellant/Plaintiff is in possession of the suit property. This is a concurrent finding of fact which cannot be interfered into by this Court in Second Appeal.

For reasons stated above, this Court is of opinion that the order of the First Appellate Court should be partly interfered into and modified. This Court declares that the Plaintiff got right, title and interest in the property covered by Ext.1 being the deed of conveyance executed on 19/07/1973 and registered on 05/11/1973.

Accordingly, let the decree be drawn up, declaring the title of the Appellant/Plaintiff in the property as aforesaid. The Plaintiff /Appellant is at liberty to draw up appropriate proceeding and/or suit for recovery of possession.

The instant appeal is accordingly disposed of along with all pending applications.

Let T.C.R be returned.

(Sugato Majumdar, J.)