

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya  
&  
The Hon'ble Mr. Justice Supratim Bhattacharya

FMA No. 1274 of 2025

Shiuli Pal  
-vs-  
The State of West Bengal and others

For the appellant : Mr. Debasish Chattopadhyay,  
Mr. Tirthankar Basu,  
Ms. Suman Biswas, Advs.

For the State-respondents : Mr. Jayanta Samanta, Jr. Govt. Adv.,  
Mr. Priyabrata Batabyal, Adv.

Heard on : April 2, 2026.

Judgment on : April 2, 2026.

**Sabyasachi Bhattacharyya, J.:**

1. The present challenge has been preferred by the appellant against an order of the learned Single Judge whereby the writ petition of the appellant was dismissed.

2. In the said writ petition, the appellant complained that despite Probate having been obtained by the appellant in respect of a Will executed by the original owner, one Ramesh Chandra Deb, who was the allottee in respect of the subject plot, the application for mutation made by the appellant in terms of the bequest was not allowed by the Estate Manager, Development and Planning Department, Government of West Bengal.
3. Learned counsel appearing for the appellant argues that by dint of grant of Probate, the appellant stepped into the shoes of the original allottee/testator and as such is entitled to such mutation.
4. By taking the Court through the provisions of the purported lease agreement, learned counsel points out that in terms of the same, the original allottee/testator was merely to deposit 10% of the premium or salami as mentioned in the earlier clauses of the said agreement. Should such offer be accepted, the respondent authorities were only to appropriate the said sum towards payment of the premium or salami aforesaid.
5. Thus, even if the said document is construed to be an offer of lease given by the original allottee/testator, by dint of acceptance of the subsequent payments made in terms

thereof, there was acceptance of the said offer on behalf of the respondent authorities.

6. Learned counsel also takes us through several annexures, which were placed before the writ court, evidencing the payment of such premium/salami.
7. Learned counsel cites a coordinate Bench judgment of this Court in the matter of *Smt. Chhabi Chowdhury Vs. The State of West Bengal and others* reported at (2024) 1 WBLR(Cal) 126 where under similar circumstances, the coordinate Bench had directed mutation to be effected in the name of the legatee of the Will of the original allottee/testator.
8. A copy of the Special Leave Petition filed against such judgment is also handed over in Court, from where it transpires that the Hon'ble Supreme Court affirmed the said decision of the coordinate Bench.
9. Learned counsel further points out that vide letter dated November 26, 2013, the Estate Manager, Kalyani Urban Development Department, Government of West Bengal had written to the original allottee/testator placing reliance upon Clause – 9(c) of the lease agreement. Thus, it is contended

that even the respondents proceeded on the premise that the document-in-question was a lease deed.

10. However, the learned Single Judge turned down the prayer made in the writ petition on the sole premise that there was no transfer of title as envisaged in Sections 105 and 107 of the Transfer of Property Act, 1882 ( in short “the 1882 Act”) in the absence of a registered lease deed having been formally executed.
11. It is contended that such premise of the impugned judgment was erroneous inasmuch as the allotment by way of lease in favour of the original allottee/testator, in whose shoes the appellant has stepped in by virtue of the probated Will, was acceded to by the respondents themselves by their conduct.
12. *Per contra*, learned counsel for the respondent authorities submits that no formal registered deed of lease was ever entered into between the respondents and the original allottee/testator.
13. It is argued that in the absence of such deed, the original allottee/testator could not claim any title to the property and, consequentially, seek mutation.

14. It is further contended by the respondents that by virtue of Probate, the legatee merely entered into the shoes of the original allottee/testator and cannot claim better title than the testator himself had.
15. In the present case, since the original allottee/testator himself did not have title to the property, the legatee is also not entitled to have a mutation in her name.
16. It is next argued by the respondents that it will be evident from the notice dated November 26, 2013 that the original allottee/testator did not comply with the provisions of Clause – 9(c) of the lease agreement, which mandates the allottee to construct building according to the rules as may be prescribed and according to plans, elevations, designs etc. as may be sanctioned by the Government or any local or statutory authority in that behalf, within five years from the date of acceptance, and on default, the Government shall have the right to resume possession of the land and forfeit all or part of the money paid by the lessee.
17. By placing reliance on the said clause, it is contended that the original allottee/testator having not complied with the same and being subjected to a notice under the said provision, the

name of the present appellant, who claims through such original allottee, cannot be mutated in respect of the property.

18. Upon hearing learned counsel for the parties, we find that *prima facie*, the document of lease agreement relied on by the appellant is in the form of an application/offer for the grant of lease and by itself is not a lease deed as such.
19. Although the same contained all the relevant clauses associated with the lease intended to be given, the same *per se* is not a lease deed.
20. However, it is conspicuous that in the last paragraph of the same, it is stipulated that should the respondent authorities accept the offer of the allottee, the sum of premium/salami paid by the allottee should be appropriated.
21. We find from the documents on record that such payment was duly made by the original allottee/testator and accepted by the respondent authorities, thus giving a seal of sanction to the lease agreement/offer made by the original allottee/testator.
22. Even from the notice dated November 26, 2013 issued by the Estate Manager to the original allottee, we find two important features to evince. First, the document-in-question

has been referred to as a “lease agreement” by the Estate Manager.

23. Secondly, Clause – 9(c) of the said lease agreement has been relied on to contend that the same was not complied with by the original allottee/testator. Clause- 9(c) contemplates that in the event no construction as envisaged therein is made by the allottee within five years from the date of acceptance, the Government shall have the right to “resume possession” of the land and forfeit all or part of the money paid by the lessee.
24. Thus, by necessary implication, if a notice of resumption is given, it has to be presumed that as a precondition of such notice, the allottee must be in possession of the plot in the first place. Unless the possession was handed over to the allottee, there arose no question of “resumption” of such possession by the respondent authorities.
25. The second aspect of Clause 9(c) is that as per the said provision, *per se*, the lease between the parties is not automatically terminated even if construction is not made thereupon by the allottee within five years.

26. We say so because in the selfsame Clause, a rider has been provided that the lessee may be given extension of time at the discretion of the Government.
27. In the present case, apart from issuing a notice alleging non compliance of Clause – 9(c) by the original allottee/testator, nothing is on record to indicate that possession was resumed by the authorities in furtherance of the same. It is also not borne out by the records as to whether the time for making the construction was extended. Extension may be implied or expressed. Since the possession was never taken from the original allottee/testator, nor was the money paid by the lessee forfeited expressly, it has to be assumed that the rigours of Clause – 9(c) were never invoked by the respondent authorities, despite a notice in that regard having been served.
28. Hence, it is clear from the conduct of the parties that both the original allottee/testator and the respondent authorities proceeded on the premise that pursuant to the payment made in accordance with the lease agreement, the same was treated to be a document creating the jural relationship of lessor-lessee between the respondents and the original allottee.

29. By dint of Probate of the Will of the original allottee, the present appellant has stepped into his shoes and, accordingly, is entitled to all the consequential rights which enured in favour of the original allottee/testator.
30. Hence, the stress laid by the learned Single Judge on title having not passed in favour of the original allottee is a non-issue in the context of the case.
31. It is well-settled that while mutating a property in the name of a person, the concerned authority does not have the jurisdiction to decide title. The Estate Manager, while mutating the property, is only required to see whether a *prima facie* case of entitlement to the plot has been made out and whether the possession vests with the persons seeking mutation.
32. Since a notice was given by the respondents themselves invoking Clause 9(c), treating the document-in-question to be a lease agreement, it cannot now be argued by the respondents that no lease agreement was entered into between the parties and/or that possession was not taken by the original allottee.
33. In a suit for declaration of title, the passage of title by dint of a registered document may be relevant. However, in order to establish the jural relationship between the parties for the

present purpose, the strict rigours of the Transfer of Property Act, 1882 Act and/or the Registration Act, 1908 do not apply and such jural relationship is governed by the scheme under which the allotment was made in favour of the original allottee/testator by dint of a lease agreement, which was construed by both parties to create a lessor-lessee relationship.

34. The coordinate Bench, in *Smt. Chhabi Chowdhury* (supra), which was affirmed by the Hon'ble Supreme Court, proceeded in similar circumstances to hold that the legatee of the original allottee is entitled to have mutation in her name.
35. The factual circumstances of the said reported case are evident from the narration of facts rendered by the coordinate Bench as well as by the Hon'ble Supreme Court, while deciding the Special Leave Petition against the same. It is evident therefrom that the cardinal issues involved therein were similar to the present case.
36. In such view of the matter, we come to the inevitable conclusion that the learned Single Judge erred in law in laying too much stress on passage of title within the contemplation of the Transfer of Property Act, 1882 and the Registration Act,

1908, without looking at the issue from the focal lens of the parties as well as the trappings of the jural relationship created by the lease agreement, coupled with payment of salami by the original allottee and acceptance of the same by the respondent-authorities as well as the subsequent notice issued by the Estate Manager invoking Clause 9 (c) of the lease agreement, where the character of the said document as a lease agreement and the possession of the original allottee were admitted.

37. Thus, the impugned judgment cannot be sustained in the eye of law and in the facts of the case.

38. Accordingly, FMA No. 1274 of 2025 is allowed on contest, thereby setting aside the judgment dated August 30, 2024 passed in WPA No. 27364 of 2023. The respondent no. 4, that is, the Estate Manager, Urban Development Department, Government of West Bengal, is hereby directed to mutate the subject property in the name of the appellant as expeditiously as possible, preferably within three months from the date of communication of this order to the said respondent.

39. There will be no order as to costs.

40. Urgent photostat certified copies of the order, if applied for, be supplied to the parties at an early date.

I agree.

**(Sabyasachi Bhattacharyya, J.)**

**(Supratim Bhattacharya, J.)**