

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Biswaroop Chowdhury

M.A.T 1949 of 2025
IA No: CAN 1 of 2026
CAN 2 of 2026

Visva Bharati, a Central University and others
Vs.
Geeta Ghosh

For the appellants : Mr. Sucharita Biswas
Mr. Debapriya Gupta
Mr. Moni Shankar Sengupta

For the respondent : Mr. Abhrajit Mitra
Mr. Arindam Guha
Mr. Shuvasish Sengupta
Ms. Shalini Dey

Heard on : 06.05.2026

Judgment on : 06.05.2026

Sabyasachi Bhattacharyya, J.:-

In Re: CAN 1 of 2026

1. In view of sufficient explanations having been given, CAN 1 of 2026 is allowed, thereby condoning the delay in filing MAT 1949 of 2025.

2. There will be no order as to costs.

In Re: MAT 1949 of 2025

3. The present appeal has been preferred against an order whereby the learned Single Judge set aside an order passed by the appellant/Visva Bharati, refusing to mutate the subject property in the name of the respondent Smt. Geeta Ghosh, the wife of late Priyabrata Ghosh.
4. Learned counsel appearing for the appellants argues that in terms of Clause 10 of the parent lease deed executed in favour of late Gyan Ghosh, the ancestor of Priyabrata Ghosh, in the year 1951, the lessee will not, without the consent in writing of the lessor first had and obtained, assign, transfer, let out or mortgage the benefit of the lease thereby granted to any person, provided that such consent will not be withheld in case of a transfer, assignment or mortgage in favour of persons who are life members of the Visva Bharati.
5. Learned counsel submits that at that juncture, Visva Bharati was a registered society.
6. After Visva Bharati became a statutory body in terms of the concerned statute, that is, the Visva Bharati University Act, 1951, the concept of life members has become obsolete.
7. However, even otherwise, a bequest by way of a Will comes within the purview of the term “assign” in terms of Clause 10

and is precluded without a prior written consent in writing from the lessor, that is, Visva Bharati.

8. It is submitted that in the present case, although after the demise of Gyan Ghosh, the original lessee, the plot was mutated in the name of his son Priyabrata Ghosh, the same was done on the basis of his nomination by the other heirs and not on the strength of any transfer/assignment/Will.
9. Subsequently, on the demise of Priyabrata, who left behind as his heirs the present respondent Geeta Ghosh (his widow) and three sons, the mutation was sought by the respondent on the strength of the Will executed by her husband, Priyabrata Ghosh.
10. Learned counsel argues that the said bequest, without prior consent in writing of the lessor/Visva Bharati, was invalid in the eye of law and contrary to the terms of the parent lease and, as such, no mutation could be granted in favour of Geeta Ghosh on the strength of the said Will.
11. Learned counsel further argues that in the judgments which were relied on by the learned Single Judge, the proposition laid down by the learned Single Judge was not enunciated.
12. Seeking to distinguish the said judgments on facts as well as law, learned counsel submits that in paragraph no.9 of *State of West Bengal and another vs. Kailash Chandra Kapur and others* reported at (1997) 2 SCC 387, the Hon'ble Supreme Court categorically observed that in their generic sense, the words

“assign” or “transfer” include every kind of transfer of the property from one to another, including testamentary disposition.

- 13.** It was further held that thereby it would be construed that in an appropriate case where the property was assigned by testamentary disposition, it may be a transfer for the purpose of a particular Act or a Regulation, as the case may be, irrespective of the restricted meaning of the word “transfer” defined under Section 5 of the Transfer of Property Act.
- 14.** Learned counsel submits that the facts in the other two cases relied on by the learned Single Judge, being *Pawan Kumar Agarwal vs. State of West Bengal* reported at 2014 (1) CHN (Cal) 83 and the *State of West Bengal and others vs. Smt. Kusum Agarwal and another*, reported at 2018 SCC Online Cal 6916, were distinct and different from the present case.
- 15.** Learned counsel places reliance on paragraph no.3 of *Pawan Kumar Agarwal (supra)* and submits that the moot bone of contention in the said case was whether mutation could be effected unless transfer fees were paid.
- 16.** Again, in *Kusum Agarwal’s case (supra)*, the consideration before the court was regarding bequest to a stranger and whether it should be considered as an assignment of the demised premises which would take place on a future day.

17. In both *Kusum Agarwal's* case and *Pawan Kumar Agarwal (supra)*, the Division Bench and the learned Single Judge of this court respectively relied on *Kailash Chandra Kapur (supra)*.
18. However, in the present case, since there is no specific clause pertaining to bequest in the parent lease; rather Clause 10 thereof precludes any assignment without prior written consent in writing of the lessor. In terms of the said clause, no valid transfer was effected by the Will at all.
19. Accordingly, it is submitted that the premise of the impugned judgment of the learned Single Judge, that is, the probated Will in favour of the respondent, could not be a valid basis of directing mutation to be effected in favour of the respondent.
20. Learned senior counsel appearing for the respondent argues that before the writ court, a lease deed was produced which shows that all the heirs of Priyabrata, the deceased husband of the respondent, other than the respondent/widow had executed such deed relinquishing their rights in respect of the subject plot in favour of the respondent Smt. Geeta Ghosh.
21. Learned senior counsel submits that under similar circumstances, where there was a nomination of Priyabrata by the other heirs of late Gyan Ghosh, Visva Bharati, the appellant, itself had granted mutation in favour of Priyabrata.
22. Thus, the respective provisions of the aforementioned Clause were interpreted by the Visva Bharati/appellant in the manner

that if there is a nomination/release in favour of one of the heirs of the deceased lessee, mutation can be granted in favour of such nominee.

- 23.** It is further argued that irrespective of the Will, the mutation was rightly directed by the learned Single Judge to be granted in favour of the respondent in the light of the release deed by the other heirs of Priyabrata.
- 24.** Upon a careful consideration of Clause 10, it transpires that, in the light of the ratio laid down in *Kailash Chandra Kapur (supra)*, the appellant is justified in arguing that an assignment, which is prohibited without prior consent in writing of the lessor in the said Clause, comes within the broader ambit of a bequest.
- 25.** Clause 10 does not distinguish between a transfer *inter vivos* and a posthumous transfer and/or between a testate and intestate devolution.
- 26.** As such, there is a blanket bar to assignment, whether *inter vivos* or posthumous, in Clause 10 unless there is a prior consent in writing of the lessor.
- 27.** The effect of a Will which deviates from the normal line of succession definitely tantamounts to assignment in favour of one of the heirs of the deceased lessee in exclusion of the others.
- 28.** Hence, such contention of the appellants is justified and the respondent could not be held to be entitled, in view of the bar of

Clause 10 of the parent lease deed, to have rights as a lessee on the strength of the Will Itself.

29. In such context, we are also to look into Clause 11(b)(v) of the parent lease itself.

30. The said Clause is reproduced herein below:

“(v) if the Lessee dies without having made a transfer or bequest, valid according to the terms of these presents, and if the heir of the Lessee if he leaves one heir, or the nominee of the heirs if he leaves more heirs than one, does not become a Life Member of the Visva Bharati. Such legatee, heir or nominee of the heirs, of the Lessee, on becoming a Life Member of the Visva-Bharati, will be entitled, and shall be allowed by the Lessor, to hold the demises premises during the unexpired period of the term of the lease hereby created, and shall be recognized as a Lessee for all purposes subject to the conditions hereby stipulated.

Provided that admission of the legatee, heir or the nominee of the heirs of a deceased Lessee, as a Life Member of the Visva-Bharati, shall not be refused by the Lessor; and in the case of the Lessee’s death within 10 years of his admission as a Life Member of the Visva-Bharati on payment of full admission fees and subscriptions, such admission shall be effected by the Lessor without any further admission fee or subscription.”

31. From the said Clause, it is clear that if the lessee dies without having made a transfer or bequest, “valid according to the terms of the deed”, and if the heir of the lessee (if he leaves only one

heir) or the nominee of the heirs, if he leaves more heirs than one, does not become a life member of the Visva Bharati, the lessor, that is, the the Visva Bharati, can re-enter into possession of the premises.

- 32.** As such, an exception is carved out, precluding the lessor from re-possessing the premises, *inter alia*, for a class of heirs of the lessee, on the demise of the lessee, which class is nominated by the other heirs of the lessee.
- 33.** Although sub-clause (v) of Clause 11 puts in an additional rider that such nominee has to become a life member of the Visva Bharati to get the protection of the said sub-clause, the same is adjuncted by the proviso to the sub-clause which stipulates that admission of the legatee, heir or nominee of the heirs of a deceased lessee as a life member of the Visva Bharati “shall not” be refused by the lessor.
- 34.** Thus, the proviso and the provision of life membership cancel out each other and it was, even at the relevant juncture when Visva Bharati was merely a society, a matter of course, if an admission to life membership was sought, for the same to be granted.
- 35.** Thus, the proviso cancels out the additional requirement of life membership incorporated in the main body of sub-clause (5).
- 36.** Accordingly, it would be mandatory for Visva Bharati, even at the juncture when the parent lease was granted and Visva

Bharati was a society, to permit the nominee of the other heirs of a lessee to continue in possession of the subject plot till the expiry of the tenure of the parent lease.

- 37.** After Visva Bharati became a statutory university, the concept of life membership has been obliterated.
- 38.** Thus, the said provision has to be now read without the life membership adjunct accompanying the other requirement of the person wishing to continue in possession to be a nominee of the other heirs of the deceased lessee.
- 39.** We find that as lately as in the year 1995, to be precise, on January 1, 1995, Priyabrata, the son of Gyan Ghosh (the original lessee), on the demise of the latter, was granted similar relief of mutation in his name on the strength of nomination by the other heirs of the original lessee, Gyan Ghosh, since deceased.
- 40.** Hence, the Visva Bharati itself had interpreted Clause 10, read with Clause 11(b)(v) in the sense that if there is a nomination by the other heirs of a lessee in favour of one of the heirs, mutation would be granted as a matter of right in favour of such nominee.
- 41.** Thus, the learned Single Judge was justified in taking note of such grant of mutation in favour of Priyabrata in 1995 to come to the conclusion, *inter alia*, that similar relief ought to have been granted to the respondent.

- 42.** Although, as per our above discussion, the probated Will executed by Priyabrata in favour of the respondent/his wife could not be a valid consideration in the grant of mutation, even otherwise, since a registered release deed (nomination in another form) executed by the other heirs of Priyabrata was produced before the Writ Court, the benefit of Clause 11(b)(v), which was given to Priyabrata on the demise of Gyan Ghosh, ought also to have been given to the respondent, independent and irrespective of the Will bequeathing the property in her favour by Priyabrata.
- 43.** Thus, even sans the Will, the respondent has a right of mutation of the subject plot in her favour on the strength of the release deed by the other heirs of Priyabrata.
- 44.** Hence, although on somewhat modified reasons, we agree with the conclusion of the learned Single Judge in setting aside the impugned order of Visva Bharati refusing to grant mutation of the subject plot in favour of the respondent.
- 45.** As rightly pointed out by learned Senior counsel for the respondent, Clause 11(b)(v) further provides that apart from having the right to hold possession of the premises, the nominated heir of the lessee shall also be recognized as a lessee for all purposes, subject to the conditions stipulated in the lease deed.

- 46.** Thus, the effect of nomination by the other heirs of Gyan Ghosh in favour of Priyabrata, upon the demise of Gyan Ghosh, was that Priyabrata himself had become a lessee for all purposes.
- 47.** Hence, it cannot now be accepted, as contended by Visva Bharati/appellant, that the other heirs of Gyan Ghosh have to be embroiled afresh and have to give a fresh nomination to the present respondent for the purpose of her becoming a lessee or being entitled to mutation.
- 48.** We say so because at the juncture when nomination was given to Priyabrata and the subject plot was mutated in his favour by the Visva Bharati, the effect of the said mutation and nomination conjunctively was that Priyabrata had become a lessee for all purposes, subject, of course, to the other conditions prescribed in the lease deed.
- 49.** Hence, the expression “lessee” in Clause 11(b)(v) vis-à-vis the present respondent would connote Priyabrata himself, whose other heirs have already nominated the respondent to continue as a lessee for all practical purposes in possession of the subject plot, till the end of the tenure of the parent lease.
- 50.** In view of the above, we find that the learned Single Judge was justified in passing the impugned judgment and setting aside the order of the appellant refusing to grant mutation in favour of the respondent.

- 51.** Accordingly, MAT 1949 of 2025 is dismissed on contest, thereby affirming the impugned judgment dated September 9, 2025 passed in WPA 22202 of 2022 and directing the appellant-authority to mutate the name of the respondent Smt. Geeta Ghosh in terms of her prayer in respect of the subject property within a period of one month from date.
- 52.** CAN 2 of 2026 is accordingly disposed of as well.
- 53.** There will be no order as to costs.
- 54.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)

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