IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 247 of 2007

Sri Pusparath Mitra & Anr.

VERSUS

Smt. Minakshee Ghosh & Anr.

For the petition: Mr. Parimal Kumar Pahari, Adv.
Ms. Anandamayi Ghosh, Adv.

Last Heard on: September 28, 2026

Judgment on: October 12, 2026

Biswaroop Chowdhury, J:

The petitioner before this Court was an appellant in a Miscellaneous Appeal filed against Judgment and Order passed in pre-emption case and is aggrieved by the Judgment and Order dated 15/09/2006 passed by Learned Civil Judge Senior Division 1st Additional Court Burdwan in Misc Appeal No-66/05 by which the Learned Judge affirmed the Judgment and Order dated 06/10/2005 passed by Learned Civil Judge Junior Division 4th Court Burdwan in Misc Case No-2/97.

The ground of challenge in this application under Article 227 of the Constitution of India is that the Learned Trial Court and Appellate Court erred in dismissing the case of the petitioner on the point of limitation.

Although notice was issued to opposite parties but the opposite parties did not appear to contest the case.

Learned Advocate for the petitioner submits that the Learned Trial Court and Learned Appellate Court erred in dismissing the case under Section 8 of the West Bengal Land and Land Reforms Act 1954 on the ground of Limitation.

Learned Advocate further submits that both the Learned Courts erred in observing that the date of completion of registration was on 28th May 1996 although the registering officer signed the endorsement on 3rd October 1996 which is as per the provisions of Section 61 of the Registration Act 1908.

Learned Advocate submits that the Judgment and Order passed by both the Learned Courts cannot be sustained and the same should be set aside.

Learned Advocate relies upon the following Judicial decisions:-

Ram Saran Lal VS Mst. Domini Kuer.

Reported in AIR-1961. S.C. 1747.

Now the question for consideration is when the registration of sale-deed or any other document is deemed to be complete. In this regard it is necessary

to consider the provisions contained in Section 34, 35, 58, 59, 60, and 61 of the Registration Act.

The provisions of Section 34, 35, 58, 59, 60 and 61 are as follows:-

"***34. Enquiry before registration by registering officer***.*-(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:*

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon -

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders."

35. Procedure on admission and denial of execution respectively.-

(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61 inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the 2 [State Government] may, by notification in the 3 [Official Gazette], declare that any Sub-Registrar named in the notification shall in respect of documents the execution of which is denied. be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

58. Particulars to be endorsed on documents admitted to registration.-

(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:-

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

***59. Endorsements to be dated and signed by registering officer-**. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.*

60. Certificate of registration-

(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered",

together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in section 59 have occurred as therein mentioned.

***61. Endorsements and certificate to be copied and document returned**.-*

(1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No.1.

2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52."

Thus plain reading of the provision contained in Section 60 of the Registration Act will go to show that prior to affixing certificate containing the word 'registered' the Registering Officer has to apply his mind to the compliance of Section 34, 35, 58, 59, of the statute. Upon being satisfied with

regard to compliance the certificate is issued. Thus issuance of certificate is not a mechanical work:-

Further Section 61 will clearly go to show that unless endorsements and certificates which are given as mentioned in Section 59 and 60 are copied into the margin of the Register-book the registration of the document shall not be deemed to be complete as per sub-section (2) of Section 61. Thus unless the endorsement is made the document remain with the Registering Authority. In the instant case the signature of Registering Officer on the document mentioning 28/05/96 will go to show that the document was with the Registering Authority 03/10/96 on 03/10/96 pending such endorsement. The document was thus not returned prior to 03/10/96. Thus the cause of action if any will arise after 03/10/96. Hence both the Learned Courts erred in holding that registration was complete on 28/05/96, and cause of action arose on the said day.

In the case of Malay Kumar Bera VS Rabindra Nath Bera reported in 1977(1) CLJ-92 this Hon'ble Court observed as follows:-

'Registration is complete only when the certificate under Section 60, Registration Act is given and the endorsement and copying out the said certificate under Section 61 of the Registration Act are made. It follows therefore that the right of reconveyance occurs to the applicant on the date of completion of registration of the transfer and application under Section 16 presented to the collector before such date would be premature.'

Now with regard to the issue of delay in filing this case in the case of Chandra Sekhar Sarkar VS Baidya Nath Ghosh reported in AIR-1982 Cal. P-6 it was observed as follows:-

"3. Mr. Abhijit Kumar Baneriee, the learned Advocate for the petitioner argues that in view of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act is applicable in the instant case. He further contends that there is nothing in the West Bengal Land Reforms Act excluding the provision of Limitation Act. Reference is made to the decision of the Supreme Court in the case of (1) Mangu Ram (2) M/s. Ram Parshad Gondamal v. Municipal Corporation of Delhi, . At page 108 of the report Their Lordships observe as follows :--

"There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, Sub-section (2) is concerned. Whereas under the Indian Limitation Act, 1908, Section 29. Sub-section (2), Clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18, and 22 shall not apply and therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29 sub-section (2) of the Limitation Act 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit appeal or application by any special or local law the provisions contained in Sections 4 to 24, which

would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29 Sub-section (2) Clause (b) of the Indian Limitation Act 1908 specifically excluded the applicability of Section 5, while Section 29 sub-section (2) of the Limitation Act 1963 in clear and unambiguous terms provides for the applicability of Section 5....."

4. Sub-section (2) does not stand in the way of the legislature in making of a provision in the Special Act as to applicability of the Limitation Act, where such a provision is made in the local or special Act, Section 29(2) would have no application. Thus where a special or local law provides for any suit, appeal or application a period different from the period therefor by the provisions, and there is also a provision in such Act prohibiting the applicability of the general law of limitation, the provisions of the Limitation Act will not apply.

5. Mr. Pramatha Nath Palit, the learned Advocate for the opposite parties on the other hand contends that Section 8 of the West Bengal Land Reforms Act clearly specifies that the commencement for the period of limitation for making an application by an adjoining owner would be the date of transfer and the other termini of the said period would be the date of expiry of four months from the date of such transfer. He relies on the Bench decision of this Court in the case of Sm. Ashalata Bairagya v. Gopal Chandra Chakraborty reported in (1975) 1 Cal LJ 494. In this case the point for decision before Their Lordships was whether there was any scope for application of Article 137 of the Limitation Act. 1963 to

the period of limitation of four months prescribed in Section 8, commencing from the date of transfer. Their Lordships had no occasion to make any observation as to the maintainability of an application under Section 5 after the introduction of Section 29(2) in the Limitation Act of 1963.

6. In the above premises it must therefore be held where an application under Section 8 of the West Bengal Land Reforms Act is filed after the coming into force of the Limitation Act 1963. Section 5 will be applicable to the applicant and if he can show that he had sufficient cause for not filing the application within four months, the delay may be condoned."

Upon hearing the Learned Advocate and considering the provisions of Section 34, 35, 58, 59, 60, and 61 and the decision of this Court in the case of Chandra Sekhar Sarkar VS Baidya Nath (supra) it would have been reasonable to permit the petitioners to pursue the case after granting opportunity to the petitioner to file application for condonation of delay.

Hence both the Learned Courts erred in holding that registration was complete on 28/05/96 and cause of action arose on the said day. Moreover section 87 of the Registration Act 1908 as observed by Learned Appellate Court is not applicable as no dispute is raised with validity of document but with the date of completion of Registration. Although in ordinary course of delay the petitioner should have been directed to file application for condonation of delay and thereafter to proceed further but in the instant case as the petitioner has satisfied about the date of cause of action and considering the contentions of

the petitioner regarding application for certified copy of sale deed making enquiry and obtaining legal advice goes to show that there was cause of delay. Thus the delay if any should also be condoned, and the matter should be remitted to trial court to be decided on merits.

Hence this Application C.O. 247 of 2007 stands allowed.

The Judgment and Order dated 6th October 2005 passed by Learned Civil Judge (Junior Division) 4th Court Burdwan in Misc. Case No. 2/97 and order dated 15/09/2006 passed by Learned Civil Judge Senior Division in Misc Appeal No. 65/05 are set aside. The matter is remitted to the Learned Trial Court to consider and decide the Misc Case 3 of 1997 on merits in accordance with Law. As the matter is 29 years old learned Trial Judge is requested to dispose the case within 6 months from date of communication of this order.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)