

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.A. No.4 of 2019
+
CAN 1 of 2018
(Old No. CAN 8987 of 2018)**

With

**F.A. No.5 of 2019
+
CAN 1 of 2018
(Old No. CAN 8990 of 2018)**

**Gouranga Saha
Vs.
Barin Burman and Others**

For the appellant	:	Mr. Saumen Datta, Mr. Sudhir Kumar Sadhukhan, Ms. Moumita Basak
For the respondents	:	Mr. Sounak Bhattacharya, Mr. Anirban Saha Roy, Mr. Sounak Mondal, Mr. Abhirup Halder
Heard on	:	05.05.2025 and 08.05.2025
Hearing concluded on	:	08.05.2025
Judgment on	:	14.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeals arise out of the same suit and, as such, are taken up together for analogous hearing.

- 2.** The appellant filed a suit for declaration of his tenancy right in respect of the suit premises, which is comprised of four car parking spaces at 12, Beadon Row, P.S- Bortolla, Kolkata - 700 006, and consequential reliefs. The defendants/respondents filed a counter claim seeking eviction of the plaintiff/appellant as a trespasser. The suit was dismissed, against which F.A. No.4 of 2019 has been preferred, and the counter claim of the respondent was allowed, giving rise to F.A. No.5 of 2019.
- 3.** The bone of contention between the parties is their respective right, title and interest in the suit property.
- 4.** By an agreement dated February 4, 2003, one Chittaranjan Ghosh, a tenant under the original owners in respect of the original property at 12, Beadon Row, granted sub-tenancy of one big room, one kitchen and separate adjoining space to the plaintiff/appellant allegedly on oral consent of the owners/superior landlords.
- 5.** Subsequently, the owners entered into a development agreement with one Ashish Roy and one Dilip Kumar Saha for development of the suit building.
- 6.** On August 10, 2005, the said Ashish Roy, being a developer and one of the constituted attorneys of the owners, entered into a 'Deed of Rehabilitation of Tenant' with the plaintiff/appellant, agreeing that if the appellant vacates the said building as it originally stood, four car parking spaces with 20 per cent super built-up area would be sold on the Northern Side of the ground floor of the newly constructed building to the appellant at a consideration of Rs.2,50,000/-. It was recorded in the said deed that out of the total

consideration, Rs.2,00,000/- was being paid in advance and the balance would be paid later.

- 7.** The property was duly developed.
- 8.** Subsequently, on February 6, 2007, the owners of the property, represented by Ashish Roy, one of their constituted attorneys, granted lease to the plaintiff in respect of the newly constructed four demarcated car parking spaces on the Northern side of the ground floor on 12, Beadon Row. As per the lease agreement, the plaintiff would be entitled to remain as a lessee in respect of the said property (the present suit property) at a monthly rental of Rs.1000/-(calculated as interest at the rate of 2 per cent of the balance consideration amount of Rs.50,000), and upon the balance consideration amount being paid by the appellant, the appellant would be entitled to have a sale deed registered in his favour in respect of the said four car parking spaces, the outer time limit for which was stipulated as 21years.
- 9.** In the meantime, on January 27, 2007, the owners, through their constituted attorneys Ashish Roy and Dilip Kumar Saha, executed sale deeds in respect of the separate flats along with allocated car parking spaces on the western side of the building to the defendants as well as to one Pratima Saha, the wife of the appellant. The sale deed dated January 27, 2007 executed in favour of Pratima Saha is admittedly identical with the sale deeds executed in favour of the defendants, apart from the individual flats and car parking spaces being different.
- 10.** Learned counsel for the appellant argues that it is clear from the rent receipts and the documents produced by the appellant that the appellant

was inducted by the owners as a lessee in respect of the suit car parking spaces on monthly rental basis. If the appellant pays the balance consideration amount within 21 years, the said four car parking spaces will be sold to the plaintiff/appellant.

- 11.** It is argued that the respective sale deeds of each of the defendants as well as the appellant's wife clearly exclude the suit car parking spaces which were allocated specifically to the appellant. It is argued that the common and proportionate rights conferred on the purchasers in respect of the common areas and open spaces as well as other facilities exclude the four car parking spaces allocated to the appellant. It is argued that the learned Trial Judge overlooked the sale deeds of the defendants/appellants themselves, along with the Deed of Rehabilitation of Tenant and Lease agreement executed in favour of the appellants, which were all produced in the trial court, to hold that no proof of the right of the appellant to the suit spaces was furnished.
- 12.** Learned counsel appearing for the defendants/respondents contends that the suit was bad for non-joinder of Ashish Roy, under whom the plaintiff claims tenancy, although the principal relief sought was declaration of the plaintiff's tenancy rights.
- 13.** It is submitted that an application under Order I Rule 10 of the Code of Civil Procedure was filed by the plaintiff/appellant in the suit to add Ashish Roy as a party to the suit. However, by an order dated August 26, 2011, the same was dismissed, against which no revisional application was preferred

by the appellant. Thus, it is contended that the present suit is bad for non-joinder of necessary party.

14. It is contended by learned counsel for the appellant that Clause 13 of the sale deeds in favour of the defendants stipulated that the purchasers' interest in the undivided portion of land, as more fully described in the First Schedule, shall remain joint with the other co-owners of the building. The First Schedule, it is argued, describes the entire property, as evident from the description therein as well as the boundaries thereto. Hence, the said Clause clearly confers right on the defendants/respondents with regard to the entire open space adjoining the suit building, including the disputed car parking spaces.
15. It is contended that although the Third Schedule of the said sale deeds provides for an exception in respect of the areas demarcated as open covered car parking spaces, since there is a conflict between the said Clause and Clause 13, Clause 13 (being the earlier Clause) shall prevail. In support of such contention, learned counsel cites *Radha Sundar Dutta v. Mohd. Jahadur Rahim and others*, reported at AIR 1959 SC 24.
16. Learned counsel for next contends that the plaint Schedule does not stipulate the exact measurement of the suit property and, as such, the relief claimed is vague.
17. It is further argued that the owners retained no title and the entire property was vested with the developer. Thus, there was no scope of any lease being granted to the appellant by the owners through their constituted attorney.

18. It is pointed out that in answer to a question put to the appellant as witness, he categorically stated that he will not cite Ashish Roy as a witness, for which adverse inference ought to be drawn against the appellant.
19. Learned counsel for the respondents contends that the rehabilitation deed is in essence an agreement for sale and, thus, is compulsorily registrable under Section 17(1)(a) of the Registration Act. The lease deed executed in favour of the appellant, being for a period of more than one year, is also compulsorily registrable under Section 107 of the Transfer of Property Act. Since both deeds are unregistered, the Trial Court could not have relied on those.
20. Learned counsel contends that the causes of such documents cannot be looked into even for a collateral purpose, those being inadmissible in evidence. Counsel cites a judgement of a Division Bench of the Madras High Court in the matter of *Kotamreddi Seetamma v. Vannelakanti Krishnaswamy Row and another*, reported at AIR 1917 MAD 718, in support of the proposition that enactments relating to registration and attestation relate to public policy and the courts do not overlook the same readily.
21. Learned counsel cites *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another*, reported at (2003) 8 SCC 752, for the proposition that objection as to admissibility of documents in evidence may be classified into two categories, where the document is itself inadmissible and where the mode of proof is disputed. In the first case, merely because a document is marked as an exhibit, an objection as to admissibility is not excluded to be taken at the later stage. However,

objections as to mode of proof cannot be reopened later. In the present case, it is contended, the issue relates to admissibility of the documents and ought to be looked into at the hearing stage.

- 22.** Learned counsel next cites *G.M. Shahul Hameed v. Jayanthi R. Hegde*, reported at (2024) 7 SCC 719, where it was held *inter alia* that the court may not turn a blind eye to the fact that the Revenue would stand the risk of suffering huge loss if the court fails to discharge the duty placed on them as per provisions like Section 33 of the Indian Stamp Act. It is incumbent upon the courts to uphold the sanctity of the legal framework governing the stamp duty as the same is crucial for the authenticity and enforceability of instrument.
- 23.** Learned counsel appearing for the respondents also relies on *K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd.*, reported at (2008) 8 SCC 564, where it was held that use of an unregistered document, which is otherwise compulsorily registrable, to prove an important clause would not be a mere collateral purpose. A “collateral transaction” must be independent of or divisible from a transaction which requires registration. As such, even for a so-called collateral purpose, it is argued, an otherwise compulsorily registrable document, if unregistered, cannot be looked into.
- 24.** Upon hearing learned counsel for the parties, we arrive at the following conclusions:

Whether the Trial Court could look into the unregistered and insufficiently stamped documents

25. The plaintiff/appellant primarily relies on three documents. The first document, being a tenancy agreement between Chittaranjan Ghosh, a tenant, and the plaintiff, granting sub-tenancy of a room, kitchen and adjoining space in the building as it originally stood, is not compulsorily registrable, since the same created a monthly tenancy. That apart, the same has only collateral value as evidence, as it did not create any title or right which is germane for the present consideration. The said antecedent document merely shows that the plaintiff/appellant had been in occupation of the original building, justifying the developer of the original owners subsequently entering into an agreement with him.
26. One of the germane documents, however, is the Deed of Rehabilitation of Tenant dated August 10, 2005. The said deed, although purporting to have components of an agreement for sale, has merely collateral value for proving the tenancy and possession of the plaintiff/appellant. Things might have been otherwise if the present suit was for specific performance of the said agreement itself, in which case it would be a direct, and not collateral, evidence and might have been argued that the agreement was compulsorily registrable and could not be admissible as direct evidence in view of its non-registration and insufficiency of stamp duty. However, the present suit is for declaration of the plaintiff/appellant's tenancy right, in which context, the document merely proves possession of the suit car parking spaces being handed over to the appellant and forms a prelude to the grant of lease in

respect of the same to the appellant. Thus, individual clauses of the said deed need not be looked into for declaring the tenancy rights of the appellant. The said document is merely a component in the chain of events which circumstantially prove the build-up to grant of lease to the appellant.

- 27.** The crucial deed in the present context is the Agreement for Lease dated February 6, 2007. The said agreement also recognises the right of the plaintiff/appellant to have a deed of conveyance registered in his favour upon payment of balance consideration. However, such right is merely recognised on the strength of the prior Deed of Rehabilitation dated August 10, 2005. The lease agreement dated February 6, 2007, by itself, does not purport to be an agreement for sale but merely recognises such prior right conferred by the deed of rehabilitation.
- 28.** The document, as such, has to be seen in appropriate perspective, being an agreement of lease not exceeding 21 years. It is well-settled that Section 107 of the Transfer of Property Act mandates a lease deed to be registered in the event a lease of more than one year is created. However, it is equally well-settled that in the event such a deed is unregistered, the same purports to create a tenancy from month to month. Hence, *per se*, Section 107 does not mandate a lease deed to be registered in order to create a tenancy. Such a deed, if unregistered, can form a piece of evidence, coupled with delivery of possession, of the monthly tenancy created in favour of the lessee. Hence, the said document is also not a compulsorily registrable document.
- 29.** As per the terms of the lease agreement, monthly rent of Rs.1000/- is to be paid by the appellant-tenant for enjoying the lease. Hence, the said

document cannot also to be construed to be inadmissible in evidence due to non-registration and insufficiency of stamp duty.

- 30.** The judgments cited by learned counsel for the respondents in respect of inadmissibility of the documents-in-question are irrelevant for the present purpose. Regarding insufficiency of stamp, Section 33 of the Indian Stamp Act has to be read with Section 36 thereof. The latter provision stipulates that no document can be called into question on the ground of inadmissibility for insufficiency of stamp duty if no objection as to such admissibility was taken at the outset.
- 31.** Although, as a general proposition, the objection relating to admissibility, as opposed to mode of proof, can be taken at later stages of the suit, such right of the respondents in the present case is circumscribed by the provisions of the Indian Stamp Act. Since the bar of stamp duty emanates from the Indian Stamp Act, under Sections 33 and 35 of the same, the waiver thereto has also been read within the four corners of the said statute. Section 36 circumscribes Sections 33 and 35 and debars the defendants/respondents from raising the issue of admissibility specifically on the ground of insufficiency of stamp duty since such objection was not taken at the time of marking the Deed of Rehabilitation of Tenant and Lease Agreement as exhibits. Thus, such objection could not be taken at a later stage by the respondents, having lost the opportunity to do so at the stage when the concerned deeds were admitted in evidence and marked as exhibits.
- 32.** Also, as discussed earlier, the Deed of Rehabilitation of Tenant was used merely for the collateral purpose of establishing the tenancy right of the

appellant and not for the direct purpose of seeking a specific performance of the said agreement by treating the same as an agreement for sale. As such, its non-registration is irrelevant for its admissibility as evidence.

- 33.** The Lease Agreement, as discussed above, purported to be a piece of evidence to prove a monthly tenancy being created in favour of the appellant and hence, was not registrable.
- 34.** Thus, the said cited judgments do not help the defendants/respondents in any manner.
- 35.** Thus, this issue is held in favour of the appellant and the documents-in-question are admissible in evidence and could be looked into by the Trial Court while coming to its conclusions.

Interplay between the rights of the defendants/respondents and the plaintiff/appellant vis-à-vis the suit property

- 36.** The Deed of Rehabilitation dated August 10, 2005 clearly conferred possession in respect of the four car parking spaces along with 20 per cent super built-up area on the Northern side of the ground floor of the suit property in favour of the appellant. The said document precedes the sale deeds in favour of the respondents. Pursuant to the deed of 2005, a lease deed was entered into by the owners of the property through their constituted attorney Ashish Roy on February 6, 2007, thereby granting monthly tenancy, not to exceed the period of 21 years, in favour of the appellant. The appellant has also produced rent receipts with regard to the said property.

- 37.** There is no shade of doubt, as evident from the description of all the aforesaid deeds, that the four car parking spaces are demarcated and divided, being located on the Northern side of the ground floor of the suit building whereas none of the allocated car parking spaces sold to the defendants/respondents are situated on the Northern side of the suit property. The argument that the plaint description is vague cannot be accepted, since the four demarcated car parking spaces have been mentioned to be located on the Northern side of the property and clear boundaries have been provided in the Schedule of the plaint.
- 38.** As opposed to such right created in favour of the plaintiff/appellant, we are to look into the relevant clauses of the sale deeds executed in favour of the respondents, as exemplified by the Deed of Conveyance dated January 27, 2007 in favour of the appellant's wife, which is admittedly identical with the respondents' deeds.
- 39.** Learned counsel for the respondents has argued that Clause 13 precedes the First Schedule of the deed and as such must have primacy over the latter. Counsel has cited *Radha Sundar Dutta (supra)* in support of such proposition.
- 40.** However, such proposition cannot hold good in the context of the present case. The ratio laid down in the said judgment only applies in cases where there is a conflict between an earlier clause and a latter clause, in which case the earlier shall prevail. In the present case, however, the clauses of the sale deeds can be harmonized and, between themselves, create a complete scheme. By the sale deeds, self-contained flats on the upper

floors of the building have been allocated to the respondents, along with car parking spaces on the ground floor of the premises. Conspicuously, none of such specifically ear-marked car parking spaces of the respondents is situated on the Northern side of the property.

- 41.** As opposed thereto, the appellant's four car parking spaces are located on the Northern side and have been mentioned to be "demarcated and divided" in the Deed of Rehabilitation as well as the lease agreement in favour of the appellant.
- 42.** The next important question which arises is whether the said car parking spaces are covered by the undivided common space, over which all the respondents have proportionate share.
- 43.** Clause 13 of the sale deed in favour of the appellant's wife and the corresponding clauses in the respondents' respective sale deeds provides that the purchasers' interests in the undivided portion of land shall remain joint with the other co-owners. Such clause is circumscribed by the phrase: "as more fully described in the First Schedule". The First Schedule describes only the area of 6 cottahs and 12 chittaks, which is restricted to the area of the building standing thereon, and does not include the adjoining open spaces.
- 44.** It is the Second Schedule of the appellant's wife's sale deed (relied on by both parties as exemplifying the respondents' sale deeds as well) which prescribes that apart from the self-contained flats on the upper floors of the building and the ear-marked car parking spaces on the ground floor (none of which are on the Northern side), the purchaser shall have proportionate

undivided share or interest in the common area and facilities provided to the said building “mentioned in the Third Schedule” thereunder. Thus, the description of the common rights to the open spaces conferred by the Second Schedule is circumscribed by the Third Schedule.

45. Serian No.1 of the Third Schedule, which describes the particulars of the common areas and facilities, in no uncertain terms provides that such areas will comprise of open paths or passages and driveways *save and except areas demarcated as an open covered car parking space*. Thus, the Second Schedule, read with the Third Schedule, clearly provides that the common rights enjoyed by the purchasers by dint of their respective sale deeds would be restricted to the open paths, passage and driveways excluding the areas which are already demarcated as open or covered car parking spaces.
46. There is no conflict, thus, between Clause 13 and the Schedules to the deeds. The purchasers, by virtue of the said deeds, obtained title in respect of their respective flats situated on the upper floors of the building along with their ear-marked car parking spaces situated on the ground floor, except the appellant’s Northern-side four car parking spaces. The common rights of the purchasers are confined to the open paths or passage or driveways *save and except the areas demarcated as open or covered car parking spaces*.
47. Thus, the respondents’ sale deeds, read in conjunction with the Deed of Rehabilitation and Lease Agreement in favour of the appellant, make it crystal clear that the appellant’s four demarcated and divided car parking spaces, situated on the Northern side of the ground floor of the building,

come within the purview of the exception clause of the Third Schedule of the sale deeds of the respondents. Hence, there cannot be any manner of doubt that the respondents got title in their respective flats and allocated car parking spaces, along with the common open paths, passage and driveways, but specifically excluding the four demarcated car parking spaces pre-allocated to the appellant.

- 48.** Hence, this issue is decided in favour of the appellant by holding that the appellant has exclusive lease-hold rights and an actionable claim for purchase in respect of the four suit car parking spaces, in exclusion of the respondents.

Whether the suit is bad for non-joinder of necessary party

- 49.** It is to be noted that the appellant sought to implead Ashish Roy, the alleged landlord, by way of an application under Order I Rule 10 of the Code of Civil Procedure, which prayer was refused by the Trial Court itself. The respondents did not challenge such order; rather, they objected to the said application, resulting in the same being dismissed. Hence, the respondents cannot now turn around and argue that the suit was bad for non-joinder of the said Ashish Roy as a necessary party.
- 50.** That apart, it is not necessary that in every suit for declaration of tenancy rights, the landlord has to be impleaded as a party. A civil suit is maintainable under Section 9 of the Code of Civil Procedure as well as Section 34 of the Specific Relief Act if a legal right, status or character of a person in respect of an immovable property is infringed. The persons who

seek to infringe such rights are necessary parties and none else. The plaintiff/appellant here has sought for a declaration of his status as a tenant in respect of the property, irrespective of who is the landlord. Since the respondents, and not the landlord, have sought to infringe and dispute such right, it is the respondents who are necessary parties to the suit and accordingly arrayed as defendants. Neither the erstwhile owners nor Ashish Roy dispute the tenancy rights of the appellant and, as such, they are not necessary parties to the suit.

- 51.** In view of the above discussions, this issue is also decided in favour of the appellant, holding that the suit was not bad for non-joinder of necessary parties.
- 52.** In fine, we find that the learned Trial Judge failed to advert to the aforesaid relevant documents which were exhibited on behalf of the plaintiff/appellant as well as proceeded on erroneous application of law governing the field.
- 53.** The impugned judgment is also tainted by perversity inasmuch as the relevant clauses of the sale deeds of the defendants/respondents, in particular the Third Schedule thereof, which circumscribes the Second Schedule as well as the First Schedule, and the terms and conditions of the sale deeds and their legal effect, were completely overlooked, as were the Deed of Rehabilitation of Tenant and Lease Agreement, including the rent receipts, produced by the plaintiff/appellant.
- 54.** In such view of the matter, the impugned judgment and decree are bad in law and on facts and are required to be set aside.

- 55.** Accordingly, F.A. No. 4 of 2019 and F.A. No. 5 of 2019 are allowed, thereby setting aside the impugned Judgment and Decree dated September 18, 2018 passed by the learned Judge, Second Bench, City Civil Court at Calcutta in Title Suit No. 1244 of 2011, whereby the plaintiff/appellant's suit was dismissed and the respondents' counter claim was allowed. Consequentially, we decree the said suit in favour of the plaintiff/appellant, declaring that the plaintiff/appellant is a *bona fide* tenant in respect of the demarcated and separated suit property comprised of four car parking spaces. A decree of permanent injunction is also granted restraining the defendants/respondents and their associates from disturbing the peaceful possession and enjoyment of the plaintiff/appellant in respect of the said property in any manner whatsoever.
- 56.** The decree passed in the counter claim of the respondents, granting eviction against the appellant, is also set aside.
- 57.** There will be no order as to costs.
- 58.** A formal decree be drawn up accordingly.
- 59.** Interim applications, bearing CAN 1 of 2018 (Old No. CAN 8987 of 2018) in connection with F.A. No.4 of 2019 and CAN 1 of 2018 (Old No. CAN 8990 of 2018) in connection with F.A. No.5 of 2019, are accordingly disposed of consequentially.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)