IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

S.A. 339 of 1986

Sk. Md. Yasin & Ors

-Versus-

Sk. Asraf Ali, since deceased represented by Asmani Begum & Ors.

For the Appellants	:	Mr. Amjad Ali Mr. Mr. Amit Chaudhury Mr. Sarrwar Hossain
For the Respondents	:	Mr. Samim Ahmed Mr. Dyutiman Banerjee
Heard on	:	30.07.2024
Judgment on	:	10.12.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. This Second Appeal has been directed against judgement and decree dated 3rd April 1984 passed in Title Appeal no. 11 of 1980. By the impugned judgment the learned court below affirmed the order of dismissal of the suit passed by the Trial court in Title suit no. 157 of 1977 dated 28th November 1979.

2. Plaintiff's case in brief is that predecessor of the plaintiff Sk Md. Yasin filed a suit for declaration of his 16 anas share in all the seven item mentioned properties described in the schedule to the plaint. It is stated in the plaint that plaintiff/appellant and the defendant/respondent are brothers by relation and who are sons of Umed Ali. Plaint case is Plaintiff got Rs. 20/- in one ceremony called *'mukhdekhani'* at the time of his birth and Rs. 40 at the time of another religious ceremony called *'sunnat'* as gift from his relatives and said money was lying deposited with his father. Plaintiffs specific case is, he purchased the property mentioned in item no. 1 of the schedule to the plaint from that money lying deposited to his father in 1329 BS.

3. Further case of the plaintiff is that from the earnings, derived from the said purchased property of the plaintiff and also with the help of his earnings as manual labour, plaintiff purchased the properties mentioned in the item no. 2 of the schedule to the plaint on 29th Baisakh 1339 BS at a salami of Rs. 16/- by virtue of deed, marked exhibit 6, which was executed by Sk. Amjed Ali, who was authorized by the owner to execute the deed. Since then plaintiff has been possessing the same exclusively and adversely to others.

4. Plaintiff's further case is after acquisition of those two lands mentioned in item no.1 and 2 of the plaint schedule, the plaintiff took settlement of the land mentioned in item no.3 to the plaint from his superior landlord for a salami of Rs. 5/- and for the rental of Rs. 8 annas per annum. Plaintiff's further case is he took settlement from landlord Ashutosh Mitra by virtue of an unstamped document marked Exhibit-7 on 27th Kartick 1344 BS and the amount of salami was paid by plaintiff from the income derived from the lands

mentioned in item no. 1& 2 to the plaint. Since then plaintiff has been possessing the same exclusively and adversely to others.

5. Plaintiff's further case is that his father Umed Ali and his other three brothers took settlement of tenancy of the properties in item no.4 of the schedule from the landlord at a salami of Rs. 55/- and at a rent of Rs. 4 & 12 annas per annum. It is stated that the said brothers of Umed Ali gifted their 3/4th share to the plaintiff on 10 Falgun 1360 BS corresponding to 22.2.1954 and delivered khas possession in his favour. Thereafter plaintiff's father Umed Ali also made oral Heba of the rest 1/4th share of the said property in favour of his son i.e. the plaintiff on 10 Baisakh 1360 BS by exhibit-9 and delivered khas possession of the same to the plaintiff. Therefore, the plaintiff acquired title and got possession in respect of the entire property in item no.4 of the schedule to the plaint in exclusion to all others.

6. Plaintiffs further case is that he also got the properties mentioned in item no.5 of the schedule to the plaint by purchase in auction court sale in a rent suit for Rs. 120/- on 07.04.1946 selling ornaments of his wife and has been possessing the same exclusively and adversely.

7. The plaintiff further took settlement of the lands mentioned in item no. 6 of the plaint schedule from the landlord for Rs. 125/- as salami and at a rental of Rs. 14/- per annum by virtue of the deed dated 03.12.1946, which is marked eexhibit-6 (a) and has been possessing the same exclusively and adversely.

8. The plaintiff also purchased the properties mentioned in item no. 7 of the schedule to the plaint from his own fund and also acquired title by adverse possession and he is possessing the same for much more than 12 years.

9. Accordingly the plaintiff is owner of each and every property mentioned in item no. 1 to 7 in the schedule to the plaint. However, his brother who is the defendant have threatened him to dispossess from the suit property and as such his exclusive title and possession in the suit property became clouded and for which he filed the suit for declaration of title and injunction.

10. The defendant contested the suit by filing written statement denying all material allegations made in the plaint. The defence case is that father of the parties Sk Umed Ali died leaving behind the parties as sons and one daughter. His specific case is that the properties mentioned in the schedule to the plaint are the exclusive property of sk. Umed Ali who purchased the same from his own fund and also possessed the same exclusively till his death, after which the parties to the suit and their sister started possessing the same in ejmal (jointly) and separately by mutual arrangement for convenience of possession and cultivation, though no partition took place by metes and bounds. He further submits that the plaintiff being older than the defendant by 20 to 22 years was paying revenue as a co-sharer. Infact the plaintiff was being entrusted with the recording name in the settlement records and taking advantage of their fathers illiteracy, plaintiff somehow managed to get his name recorded in the C.S. and R.S. record of Rights.

11. After discussing about acquisition of title item-wise the trial court came to a finding that plaintiff could not have money of his own to purchase properties mentioned in the plaint and the entries in the record of rights and in the dakhilas are of no importance, since they were prepared on the basis of the deeds, where plaintiffs name appeared as Benamdar.

12. Trial court further held relying upon commissioner's report that defendant have successfully proved that he is also in possession of some properties in the schedule to the plaint. But plaintiff has not prayed for recovery of possession of those properties by making appropriate prayer in the plaint and as such the suit is barred under section 34 of the Specific Relief Act. Accordingly Trial Court concluded that the properties mentioned in the schedule to the plaint are joint properties and thereby he dismissed the suit.

13. Being aggrieved by the judgment and decree passed by the Trial Court, plaintiff preferred abovementioned First Appeal before the Appellate Court. Learned First Appellate Court/court below conquered with the view of the Trial Court and came to a conclusion that from pleader commissioner's report marked exhibit B, it appears that he found possession of the defendant and therefore, plaintiff is out of possession in respect of some portions of the two plots mentioned in item no.5 of the schedule to the plaint and relying upon the judgment reported in **AIR 1974 Cal 283** and **AIR 1968 SC 2685,** the court below came to a conclusion that even if the plaintiff is in possession of some portions of the property but he is not in possession, of some other suit properties and since he has not prayed for recovery of possession, he is not entitled to get declaration of title for his fractional share and he further held that the suit also suffers from non-joinder of necessary parties and thereby he also dismissed the appeal by the impugned judgment and thereby affirmed the judgment of the Trial Court.

14. This court framed following four substantial questions of law for adjudication.

(i) *Whether the learned Courts below erred in law in dismissing the suit in relying upon the previous commissioner's report without any field notes as opposed to the entries in the CS and RS Records of Right which carries presumption of correctness unless rebutted.*

(ii) *Whether the learned Court below has erred in law on the substitution of law under Mohammeden Law as there is no presumption that the property belongs to the joint family while disposing the suit based on the principle of Hindu Joint Family.*

(iii) *Whether the learned Courts below were justified in proceeding on the premise that the suit property is joint, in view of no presumption of jointness being available in Mohammeden Law, in particular since the property in question has been shown to have been kept distinct from any joint property.*

(iv) *Whether the learned Court below failed to appreciate that in absence of presumption of joint families, the only test that could have been relied upon by the defendant is the actual user of the property and assertion of right by the father with respect to the property of his own. The learned Courts below have failed to consider the Mohammeden Law that there is no presumption of doctrine of advancement, yet the record of right fully support the plaintiff's case and in view of provisions of Estate Acquisition Act the defendant has no right to the suit land.*

Decision

15. The case of the parties in a nutshell is that while plaintiff prays for a declaration of his entire share in the suit property and also for declaration that defendant has no share therein, the defence contention on the other hand is all the properties mentioned item-wise in the plaint are joint property to the parties Both the courts below on appreciation of fact and law dismissed the suit and the appeal.

16. The well settled principle of law is that High Court's interference in second Appeal with the finding of facts by the courts below, in absence of any perversity or manifest error is uncalled for. In other words, perversity in arriving at a factual finding gives rise to the substantial questions of law for adjudication in the second appeal. In ***Gurnam Singh Vs. Lehna Singh*** reported in **(2019) 7 SCC 641**, Supreme Court held that in a second appeal, the High Court cannot substitute its own opinion for that of the first Appellate

Court, unless it finds that the conclusion drawn by the court were erroneous being :-

(1) contrary to the mandatory provision of the applicable law: or

(2) Contrary to the law as pronounced by this court : or

(3) Based on inadmissible evidence or no evidence

17. Now what is broadly meant by 'decision based on no evidence' has also been explained by Supreme Court in ***Nazir Md. Vs. J. Kamala***, reported in **(2020) 19 SCC 57** where it was held:-

> ***33.4.*** *The general rule is, that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where : (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.(emphasis added)*

18. Now let me consider the instant appeal in the above-mentioned touchstone in the light of substantial questions of law framed by this court. Needless to reiterate that property in suit divided in seven items, and I am to discuss reasonableness of decision taken by the courts below, item wise.

19. Plaintiffs case is property mentioned in item no. 1 was acquired by him on 22nd Ashar, 1329 BS, though registered deed of sale, marked exhibit-1 when plaintiff was just a child and plaintiff's further case is that the money which was paid towards consideration was kept to his father who actually paid the same on behalf of the plaintiff, whereas defence contention is that it was purchased by their father in the Benam of plaintiff and accordingly it is a joint property. The defendant who asserts that the plaintiff was merely a name lender and actually the consideration price was paid by their father, the burden primarily lies upon defendant to prove the same who asserts plea of

Benami purchase. In this context reliance can be placed upon a decision reported in **(1974) 1 SCC 3** ***(Jaydayal podder (deceased and another) Vs. Mosammad Bibi Hazra and others).***

20. While dealt with the said issue Trial Court rejected the plaintiffs contention about acquisition of title by plaintiff from his own fund. The trial court held no account book was maintained by the father showing that plaintiff obtained said consideration price from two religious ceremonies. The relevant portion of Trial Court's observation in respect of Item no.1 may be reproduced below:

> *"now the plaintiff having failed to prove his source of money for the acquisition of the property the entries in the records of rights became without any foundation and the same loss its presumption of correctness or presumption of possession, specially when the entries have been disputed and the parties have adduced evidence being fully aware of their rival claims in this regard. Similarly the dakhilas in favour of the plaintiff loses its weight to give rise to a presumption of possession as because it is quite natural that the dakhilas will stand in the name of the person in whose favour the document of title or government records stands. Ext. B is the report of the commissioner for LOCAL INSPECTION who has been examined as the D.W.s on behalf of the defendant. This ext. B goes to show the subdivision of the plot no. 544 into two kitas, one of which is alleged to be under the possession of the defdt. The area land of such alleged possession of the defendant is about 9 cents i.e. merely half of the entire plot which is in conformity with the defendant's case."*

21. In view of above it is clear that Trial court relied upon exhibit B which is local inspection report and which may be in support of defendants contention in respect of his possession in a portion of the property. It is settled law that the purpose of local inspection commission can never be to collect evidence in support of possession. Learned Trial Court ignoring the deed stands in the name of plaintiff and also ignoring the entries in the record of rights and the tax receipts, (dakhilas), decided the issue of possession and ownership in respect of the property on the basis of local inspection commissioners report, where I find perversity in the orders impugned. Trial court also without any

cogent document or evidence disbelieved plaintiffs contention that the sub-division of the plots were made for the purpose of irrigation facilities only and the Trial court placed the burden upon the plaintiff and held that the defendant has succeeded to discharge his onus of proving the acquisition of properties in item no. 1 of the schedule to the plaint, by his father Umed Ali and not by the plaintiff. The first appellate Court while dealt with the same issue held that Trial court was right in his observation as there is no convincing oral or documentary evidence to show that the acquisition of the property in item no.1 during the childhood of the plaintiff/appellant has been really made with the money received from the two ceremonies and thereby he cannot accept plaintiffs contention. He further observed that the plaintiff admitted in cross examination that the paper relating to title deed of their entire family used to be kept in the custody of his father all along and as such the Trial Court was justified in disbelieving the plaintiffs case that the consideration money was paid by plaintiff or that plaintiff ever possessed the same before the death of his father. Here also placing burden upon plaintiff to prove that it was not a Benami property inspite of the fact that deed and record of rights and dakhilas stands in the name of plaintiffs, the court below made a perverse finding that plaintiff ever possessed the said property before the death of his father and he placed reliance upon the plaintiff's evidence that the deed was lying with his father, which cannot be the sole basis of coming to a conclusion that the property was a Benami property and the plaintiff was merely a name lender.

22. So far as item no.2 of the schedule to the plaint is concerned plaintiffs case is said property was purchased out of income derived from the usufruct

of his property mentioned in item no.1 and also from his earnings as manual labour and from that fund he paid the consideration price of Rs. 60 and since purchase he is in exclusive possession of the same. Here defence contention is that the said property mentioned in item no.2 also purchased in the Benam of plaintiff. During trial plaintiffs settlement deed is marked as exhibit-6. The Trial Court doubted about plaintiffs sufficient fund to purchase the said property out of income derived from the land mentioned in item no.1. He made an arithmetical calculation and found that plaintiff started to look after property mentioned in item no.1 not before 1347 BS. The Trial Court observed that at the relevant point of time plaintiff's father was alive and he was acting as a 'karta' of their family. He also disbelieved the entries in the record of right and dakhilas and did not want to give any weightage, as the entries therein were made on the basis of the deed which stood in the Benam of plaintiff. The perversity of the order is that the concept of 'karta' is unknown under the Mohammedan Law. In the judgment reported in ***AIR 1963 patna 108***, Division Bench held in ***Sk. Md. Zaffir Vs. Sk. Amiruddin and others*** that although the members of a Mohammedan family might live in commensality, yet they do not form a joint family in the sense in which that expression can use according to Hindu Law. Hence, in the case of an acquisition in the name of one or the other member of the family, there is no presumption as under Hindu Law that it was to be joint and it can be held to be divisable among all the members. Ignoring the settled provision of law the courts below disbelieved the deed as well entries in the Record of rights and dakhila and relied upon the concept of 'karta' and based their decision upon the

presumption derived from the concept of 'karta' like Hindu joint family, though it has got no recognition in the eye of law.

23. So far as item no. 3 is concerned again plaintiffs case is that it is plaintiffs self acquired property which he took on settlement from his superior land lord at a salami Rs. 5/- and at rental of Rs. 8 annas per month and he is in possession of the said property all along. However, defendant in his written statement has described the said property as a Benami purchase by his father. Plaintiff's concerned document of title is marked as exhibit-7 and the entry in the record of right marked as exhibit 3 (b) stands also in the name of the plaintiff but here also the courts below came to a finding that the property described in item no. 1 and 2 were actually acquired by the father and as such plaintiff cannot have any connection with the said property before 1347 BS in view of the arithmetical calculation made by the courts below as to when plaintiff became capable of earning. It was further observed that since it is unbelievable that plaintiff got in touch with the property mentioned in item no.1 and 2 prior to 1347 BS, he cannot purchase the property mentioned in item no. 3 in the year 1344 BS from his own fund. Appellate Court also on the same ground disbelieved the plaintiffs case. The perversity of finding herein is that the entire arithmetical calculation to show that plaintiff cannot have any earning prior to 1347 B.S., was made on the basis of surmises and conjecture and not supported by documentary or oral evidence.

24. Plaintiffs case in connection with the property mentioned in item no.4 in the schedule to the plaint is that said property was taken on settlement by the father of the parties and his three brothers from the then land lord at a salami of Rs. 55/- and at a rent of Rs. 4/- and 12 annas per annum. Further case of

the plaintiff is that the brothers of the plaintiffs father gifted their 3/4th share to the plaintiff and deliver khas possession in his favour on 10th Falgun 1360 BS. Plaintiffs further case is that his father having no financial capacity to pay the salami at the time of taking settlement, the plaintiff provided that money and the father on moral responsibility made an oral Heba in respect of his 1/4th share of the said property mentioned in item no.4 in favour of plaintiff and delivered khas possession on 10th Baisakh 1360 BS and thereby plaintiff became owner and possessor of the entire property mentioned in item no.4 to the exclusion of others. Defendant in their written statement have denied that any such transfer took place in favour of plaintiff either by their father or by the brothers of their father and their specific case is that the parties in the suit jointly inherited the said properties and also are in possession of the same. Learned Trial Court while dealt with the issue held that acquisition of the said property by the father of the parties and his three brothers is not disputed as defendant also claiming interest in the said property but so far as the legality and validity of the deed of Heba dated 10th Falgun 1360 BS, which is an unregistered deed and marked as exhibit-9 is concerned, the court held even if oral Heba is permissible and property can be gifted by delivery of possession under Mohammedan law but since such provision is in conflict with the section 26 (c) of Bengal Tenancy Act, the provision under Bengal Tenancy Act will supersede the personal law of the Mohammedan. The court also came to a finding that exhibit-9 does not contain signature of any witness which is in contravention to the law of execution of a deed of gift as provided under the Transfer of Property Act. The court further held that mere acceptance of the document in evidence by marking the same as exhibit cannot overthrough the

mandatory provision of execution and as such the plaintiff did not acquire title in the said property under the then prevailing law and as such the property in item no.4 remained with their father Umed Ali and his three brothers and after their death both the parties are entitled to have their share in terms of their fathers share.

25. In ***Mehboob Sahab Vs. Saiyad ismail and others*** reported in **(1995) 3 SCC 693** it was held that in case of Mohammedan gift it is not required to be writing and consequently need not be registered under the Registration Act for a gift to be complete but what is required is that there should be declaration of the gift by the donour and acceptance of the gift by the donee either expressly or impliedly or acceptance of the gift on behalf of the donee and most importantly delivery of possession of the property which is the subject matter of the gift by the donoer to the donee. The donee should take delivery of possession of that property either actually or constructively. Learned Trial Court did not consider the essential ingredients of valid gift in case of a Mohammedan. Learned First Appellate Court also supported the view of the Trial court that the Hebanama in favour of plaintiff is an unregistered instrument and as no attesting witness had put signature on the document, it cannot be regarded as genuine or valid document and thereby the Appellate Court also rejected plaintiff's contention on the ground that plaintiff's testimony to that effect remained uncorroborated. In fact both the courts below did not consider the essential ingredients of a valid gift in case of a Mohammedan and thereby jumped to a perverse conclusion.

26. So far as property mentioned in item no.5 is concerned plaintiffs case is plaintiff purchased the said property through court auction in 1946 at a price

of Rs. 120/-. The sale certificate has been marked as exhibit 4 and plaintiff claimed that he got the consideration price by selling ornament of his wife. On the contrary the defendant in his written statement has stated that the father of the parties and his other brothers were original owners of the property but since the other brothers of plaintiffs' father left the property long back, so the father of the parties acquired title by way of adverse possession due to long user and after the death of their father both the parties became joint owners in respect of the said property. Learned Trial Court while dealt with the said issue observed that there is no iota of document that plaintiff got purchase price of said deed by selling ornaments of his wife and reliance cannot be placed upon plaintiffs uncorroborated oral testimony of collecting money by selling ornaments and thereby concluded that the story of acquisition of property in item no.5 of the schedule to the plaint by the plaintiff is not trustworthy. However plaintiff in the said case proved the deed in connection with item no.6 dated 03.12.1946 which is marked exhibit 6 (a) which is an Amalnama. But the first appellate Court while affirmed the view of Trial court in connection with property mentioned in item no. 6 held that though the deed stands in the name of plaintiff but plaintiff failed to show source of his income.

27. So far as property in item no. 6 is concerned, again its plaintiffs case is that the property mentioned in item no.6 was taken on settlement by the plaintiff from the landlord at a salami of Rs. 125/- and at a rent of Rs. 14/- per annum in the year 1946 and since then he is possessing the same exclusively. Learned Trial Court did not believe plaintiffs exhibited documents but relied upon plaintiffs own assertion to show that in 1946 plaintiffs financial condition was not good and for which he compelled to sale ornaments of his wife and

since plaintiff failed to disclose any other source of income, so it cannot be relied that the property was purchased from plaintiffs own fund though the property stands in the name of plaintiff. Here also Trial Court came to a conclusion that the property mentioned in item no. 6 was in fact purchased by plaintiffs father at the Benam of plaintiff. In this case also though the entry in RS ROR and dakhilas showing payment of rent by the plaintiffs are proved but the Trial Court discarded the documentary evidence and relied upon the commissioner's report who noted that the lands were sub divided by creating boundary (ayles) and the other ground is that plot no. 176 has not been included in exhibit 6(a). It would be mere repetition to say that the report of leaned commissioner, who is not expected to report in respect of possession in order to fish out evidence, cannot supersede the oral and documentary evidence, adduced by the plaintiffs and both the courts below made a perverse finding discarding oral and documentary evidence and by placing reliance upon report of local inspection commissioner in respect of possession.

28. So far as the property mentioned in item no. 7 is concerned plaintiff's case is that he acquired title in the said property by way of adverse possession which however has been denied by the defendant in his defence. The Trial court rejected plaintiffs contention on the ground that there is variance between pleading and evidence. While in the plaint plaintiff claimed that he acquired title in the said property by way of adverse possession but during evidence he has come up with a new case that he took settlement of the said land from the landlord in 1341 BS, which both the courts below disbelieved in the absence of proper explanation. The courts below also disbelieved plaintiffs case as no date mentioned in the plaint, as to when his claim of acquisition of

title by adverse possession started. The entry in record of rights also does not support plaintiffs case of adverse possession. Here also the courts below relied commissioners report and also the alleged poor financial condition of plaintiff prevailing in 1347 BS.

29. From the aforesaid item wise discussion in respect of the property mentioned in the schedule to the plaint, it appears that the courts below in one hand relied upon commissioner's report to establish joint possession of the parties but on the other hand dismissed the suit for want of prayer for recovery of possession and thereby made a conclusion that the suit is barred under section 34 of the Specific Relief Act. In this context it is to be made specific that there is no dispute that both the parties are legal heirs of Umed Ali and the parties are brothers by relation. In the written statement no clear assertion has been made by the defendant that any ouster has been made by defendant even if defendants case of co-sharership is taken into account. It is well settled that in order to establish ouster as between co sharer there must be evidence of an open assertion of a hostile title by one of them to the knowledge of the others. If defence case is taken to be true that the properties are enjoying by the parties by demarcating the same mutually, even then mere non participation in the profits by one party and exclusive occupation by the defendant in that part is not conclusive proof of ouster. The ouster has to be proved to the knowledge of one party or the other through pleading and evidence and it always depends upon facts and circumstances of a particular case and such assertion is completely absent in the present case, so that court can come to a conclusion that since there is an ouster between co-sharer and since no prayer for recovery or possession has been made by the plaintiff in his plaint, the suit is

barred under section 34 of the Specific Relief Act. In fact the courts below were not justified in dismissing the suit on the ground that the suit is barred under section 34 of the Specific Relief Fact, relying upon the commissioner report who observed that plaintiff was not found in possession of a portion of the suit property and also not considering the absence of case of ouster by the defendant.

30. It is nobody's case that plaintiff does not have any amount of share in the property. On the contrary, the real controversy between the parties in the suit is whether the seven items mentioned in the schedule to the plaint are exclusive property of the plaintiff or they are the joint properties of the parties. There is also no dispute about the geneology and in such event, even in plaintiffs worst case, he is entitled to get decree in terms of his admitted share in the suit property and suit cannot be dismissed for want of prayer for recovery of possession. In this context it also needs to be mentioned that under order VII Rule 7 of the Code of Civil Procedure, court can always mould relief.

31. In the light of the foregoing discussions the appeal being **S.A. 339 of 1986** succeeds and is accordingly allowed. The impugned judgments and order passed by the courts below dated 28.11.1979 and 03.04.1984 are hereby set aside. The case is remanded to the Trial court for deciding the issues afresh on merits after giving opportunity to both the parties to contest and to write a judgment afresh preferably within a period of six months from the date of communication of the order.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)