In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present: The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Sandip Kumar De

FA 120 of 2025

Amarendra Nath Mitra
Vs.
Sm. Sudha Mitra and Ors.

For the appellant	:	Mr. Saptarshi Banerjee, Ms. Satarupa Ghatak, Mr. Purnendu Modak, Advs.
Heard on	:	03.09.2026.
Judgment on	:	03.09.2026.

Sabyasachi Bhattacharyya, J.:

1. The affidavit of service filed today, which indicates that substituted service of notice of the appeal has been effected on the respondents, be kept on record.

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2. In any event, since the respondents did not contest the suit in the Trial Court, further service of notice on the respondents is dispensed with and the appeal is taken up for hearing.

3. By the impugned judgment, the appellant's suit for specific performance of an agreement for sale of the 1/7th share of the predecessor-in-interest of the respondents in the subject property was dismissed by the learned Trial Judge. The suit proceeded *ex parte*, since the defendants/respondents did not appear despite service of summons.

4. The impugned judgment was passed primarily on four grounds:

(i) There was no schedule in respect of which the plaintiff/appellant was seeking specific performance;

(ii) The agreement for sale, comprised in a money receipt, was insufficiently stamped;

(iii) There was no witness to the agreement for sale; and

(iv) There was no signature of the plaintiff on the said agreement.

5. Learned counsel appearing for the plaintiff/appellant argues that insofar as stamp duty is concerned, by application of Sections 3 and 4 of the Indian Stamp Act, 1899, as amended in West Bengal, if a transaction comprises of several documents, it would suffice if one of them is sufficiently stamped. In the present case, it is argued, the agreement for sale is a prelude to the deed which is ultimately to be executed. As such, it was not necessary in law that the agreement itself has to contain the entire stamp duty required

to effect the transfer, the balance stamp duty being payable along with the sale deed, as and when executed.

6. Learned counsel next contends that in paragraph no. 6 of the plaint, the property-in-question was sufficiently described. As such, mere absence of a formal schedule in the plaint did not vitiate the suit.

7. Thirdly, it is contended that the concerned agreement was contained in a money receipt, which carried the broad terms of the agreement. As such, the same was in the nature of a promise, which can be equated with an agreement and is binding on the predecessor-in-interest of the defendants/respondents and hence, the defendants. Even in the said agreement, it is pointed out, it is recorded that it would be binding on the successors of the predecessor-in-interest of the defendants, that is, the defendants.

8. In support of such contention, learned counsel cites *Bommaka Nagabhushana Reddy vs. W. Srinivasa Rao* reported at *(2002) 9 SCC 664* where the Hon'ble Supreme Court observed that an agreement for sale of a property and a promise to transfer a property convey the same meaning and effect in law. A promise to transfer a property is an agreement for sale of a property.

9. Learned counsel next cites the decision of a learned Single of the High Court of Punjab and Haryana in the case of *Gurmail Singh vs. Sukhdev Singh,* where the learned Single Judge observed that the concept of requirement of mandatory attestation of documents by two attesting witnesses is limited to a few documents, if separately

provided in some statute. By way of an example, under Section 63 of the Indian Succession Act, 1925, a Will is required to be attested by two attesting witnesses whereas a similar provision exists under Section 123 of the Transfer of Property in respect of a deed of gift. Section 68 of the Indian Evidence Act, 1872, it was held, is dependent upon the requirement, independently cast by a different statute, that the particular instrument is required to be attested.

10. *Ipso facto,* Section 68 does not cast any duty on the parties to have a document attested by two witnesses, until and unless some independent statute casts such duty.

11. Upon hearing learned counsel for the parties, we find substance in three of the four arguments advanced by learned counsel for the appellant.

12. Insofar as there being no formal schedule in the plaint, we find from the money receipt, which was Exhibit 1 in the suit, that the broad contours, the terms and conditions of the agreement are substantially contained therein. The said receipt records that the executant thereof, that is, the predecessor-in-interest of the defendants/respondents, thereby agreed to transfer his 1/7th share in the property mentioned therein to the plaintiff/appellant. Thus, the said document itself comprises the agreement sought to be enforced in the suit.

13. The particular property, in respect of which 1/7th share of the predecessor-in-interest of the defendants/respondents was agreed to be conveyed, has been categorically described in the agreement.

14. The said document, read in conjunction with paragraph no. 6 of the plaint, amply describes the subject property of the agreement. As such, the absence of a formal schedule to the plaint did not vitiate the claims made therein.

15. In any event, the reliefs sought in the suit were not regarding corporeal rights in the subject property as such, but the plaintiff sought the specific performance of a particular agreement which was described in the plaint. Hence, the lack of a schedule in the plaint, contrary to what was held by the learned Trial Judge, did not vitiate the suit itself.

16. Secondly, as rightly observed by the learned Single Judge of the Punjab and Haryana High Court in the matter of *Gurmail Singh* (supra), Section 68 of the Indian Evidence Act merely provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution.

17. Thus, the foundational pre-requisite of the said section is that the document is already required by some other independent statute to be attested. Section 68 of the Evidence Act, *per se*, does not cast any duty on the parties to have an attestation of a document, unless separately provided by some other law.

18. There is no law known to us, with respect, which casts any duty on the parties to have an agreement for sale to be attested. In the absence of any such statutory provision, Section 68 of the Evidence

Act is not attracted to an agreement for sale at all. Thus, the learned Trial Judge erred in law on such account as well.

19. Insofar as the absence of signature of the plaintiff/appellanto the agreement is concerned, as held by Hon'ble Supreme Court in *Bommaka Nagabhushana Reddy* (supra), a promise to transfer a property is an agreement for sale of the property. In the present case, the money receipt containing the terms of the agreement between the parties comprised of the agreement itself and was binding as against the predecessor-in-interest of the defendants/respondents, who executed the same. The plaintiff/appellant, by his conduct as well as by filing the suit and asserting his rights in terms of the agreement, categorically made himself amenable to the said agreement and submitted to the same. Thus, the consensus *ad idem*, insofar as the predecessor-in-interest of the defendants/appellants is concerned, is explicit from the agreement itself and insofar as the plaintiff is concerned, is evident from his conduct.

20. That apart, oral evidence was led by the plaintiff/appellant in support of his plaint case asserting that there was a mutual agreement between the parties on the strength of Exhibit 1, thus ruling out the question of further signature of the plaintiff being required on the said document. As such, we cannot agree with the learned Trial Judge on the said ground as well.

21. However, insofar as the insufficiency of stamp is concerned, the arguments advanced by the appellant are not tenable in the eye of

law. Section 3 of the Indian Stamp Act, 1899 (as amended in West Bengal) is not germane at all in the present context, whereas Section 4 thereof is only attracted where there exists, in the case of any sale, several instruments which are employed for completing the transaction. In the present case, as in any other suit for specific performance of agreement, there exists as on this date only one document evidencing the proposed transaction, that is, the agreement for sale itself.

22. Thus, it would be premature to argue that there is a sale deed which is comprised of several instruments. The execution of a sale deed in terms of the agreement-in-question would only be subject to the outcome of the suit.

23. Accordingly, the contingency of a sale deed coming into existence in future cannot be the premise of Section 4 of the Indian Stamp Act. For Section 4 to be applicable, there has to exist at present several instruments which together comprise an already-concluded sale.

24. Moreover, if the logic sought to be advanced by the appellant is to be accepted, no agreement for sale, on the strength of which a suit for specific performance or any other suit is filed, would ever need to be impounded, thereby rendering nugatory the provisions of Sections 35, 36 etc. of the Indian Stamp Act itself.

25. In such view of the matter, since the agreement for sale comprised in the money receipt, that is, Exhibit 1, was insufficiently stamped in terms of Schedule IA of the Indian Stamp Act, as amended in West Bengal, the bounden duty of the learned Trial Judge was to

direct impoundment of the said document and thereafter to pass a decree for specific performance on the basis of the uncontroverted evidence already on record.

26. Instead of doing so, the learned Trial Judge erred in law in dismissing the suit outright, *inter alia* on the ground that the agreement was insufficiently stamped. Thus, the appropriate course of action would be to send the matter on a limited remand, directing the Trial Court to complete the exercise as envisaged under the Stamp Act for the purpose of impounding the document.

27. Accordingly, FA 120 of 2025 is allowed, thereby setting aside the impugned judgment and decree dated July 24, 2023 passed by the learned Civil Judge, Senior Division at Sealdah, District – South 24 Parganas in Title Suit No. 144 of 2013 and sending the suit back to the learned Trial Judge on a limited remand for the sole purpose of directing impoundment of Exhibit 1. Upon the document being impounded and the correct stamp duty being assessed, the learned Trial Judge shall grant an opportunity to the plaintiff/appellant to deposit the stamp duty assessed on the said document, by treating the same to be an agreement for sale of the $1/7^{th}$ share of the property intended to be thereby transferred. Upon such deposit being made by the plaintiff/appellant within the time as granted and/or extended by the learned Trial Judge, the learned Trial Judge shall pass a decree for specific performance of the contract, comprised in Exhibit 1, in favour of the plaintiff/appellant. In default of such payment, however, the suit shall be dismissed by

the learned Trial Judge. It is expected that such exercise shall be concluded as expeditiously as possible, preferably within two months of the trial court records reaching the said Court.

28. The trial court records be sent down by special messenger at the cost of the appellant, to be deposited within a week from date.

29. Interim orders, if any, stand vacated.

30. There will be no order as to costs.

31. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)

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(SSS)