IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Sugato Majumdar

CS/142/2001

M/S. BANWARILAL PASARI
VS
ANANDILAL NARENDRA KUMAR AND ORS

For the Plaintiff	:	Mr. Abhrajit Mitra, Sr. Adv. Mr. Sarvapriya Mukherjee, Adv. Mr. Arif Ali, Adv. Mr. Arnab Sardar, Adv.
For the Defendant No. 1	:	Mr. Dhrubo Ghosh, Sr. Adv. Mr. Debmalya Ghosal, Adv. Mr. Vivek Basu, Adv. Ms. Ajeyaa Chowdhury, Adv. Mr. Souvik Ghosh, Adv.
For the Defendant No. 10	:	Mr. Shyamal Chakraborty, Adv. Mr. Debajyoti Mondal, Adv. Ms. Manju Jaiswal, Adv. Mr. P. Das, Adv.
For the Defendant No. 11	:	Mr. Rishad Medora, Sr. Adv. Ms. Priyanka Mitra, Adv.
Hearing concluded on	:	11.06.2026
Judgment on	**:**	**28.07.2026**

Sugato Majumdar, J.:

The instant suit has been filed by the Plaintiff, praying for recovery of possession, mesne-profits and other reliefs.

The Plaintiff is a partnership firm registered under the Indian Partnership Act, 1932, carrying on business at 10, India Exchange Place, Kolkata-700001.

The sum and substance of the plaint case is as follows:-

a) The Premises No. 113, Park Street, Calcutta had been promoted and developed by the Defendant No. 2, a company registered under the Companies' Act 1956. The Defendant No. 2 had entered into agreement in writing with M/s Sanchaita Investment for sale of the entire first floor measuring about 12, 250 sq. ft. and four car parking space, for valuable consideration. The said M/s Sanchaita Investment paid the entire agreed amount of consideration to the Defendant No.2 and obtained possession thereon. The agreement was assigned to the Plaintiff with consent of the Defendant No.2. The Plaintiff agreed to pay the entire consideration money to the said M/s. Sanchaita Investment who originally executed the aforesaid agreement for sale. Thus the Plaintiff got possession of the entire first floor of the said premises with four car parking spaces in the basement.

b) Subsequently, the Hon'ble Supreme Court of India appointed a Commissioner over the said M/s Sanchaita Investment. The Commissioner attached the first floor of the premises along with the car parking spaces at basement. The Plaintiff raised objection before this Hon'ble Court and in terms of an Order dated 04/07/1985 the said attachment was removed on payment of rupees twelve lakhs. A cost was also assessed as Rs.2000/-. On compliance, the attachment was released and the Plaintiff became the absolute owner.

c) The Defendant No.1 is a partnership firm registered under the Indian Partnership Act, 1932, had its office on the top floor of the premises no. 113, Park Street. The partners of the Defendant No. 1 were related to the partners of the Plaintiff. The Defendant No. 1 approached the Plaintiff permitting them to use and occupy the said property till the Plaintiff would open a branch office thereat. Considering relationship between the partners, the Plaintiff allowed the Defendant No. 1 to use the said property on leave and license for short period without any monetary consideration.

d) The Plaintiff, on or about 13/03/1992 came to learn from a real estate agent that a portion of the said first floor was subject matter of two decrees in favour of one M/s P. Sen Technical Services Pvt. Ltd. And M/s P. Sen Engineering Pvt. Ltd. Those two decrees were passed in two undefended suit filed against the Plaintiff, the Defendant No. 1 and the Defendant No. 2. Applications to set aside those decrees were unsuccessful. Therefore, appeals were preferred which were pending at the time of institution of the instant suit. In the said appeals the Defendant No. 1 alleged, in affidavit filed, that there was an agreement for sale between the Plaintiff and the Defendant No. 1 in respect of the said property for a consideration of Rs.43, 86,375/- out of which a sum of Rs.22, 37, 315/- had been paid. The Plaintiff refuted that contentions and stated that the said payment was made in respect of other business transactions.

e) During pendency of appeals, in or about June 1993, the Defendant No. 1 and the Plaintiff agreed that the Defendant No. 1, would on behalf of the Plaintiff divide the said property into several units and would arrange for sale of the same at a price agreeable by the Plaintiff; this arrangement would exclude the space which were subject matter of appeals. The Defendant No. 1 would negotiate with the occupants of the said property who had been inducted by the Defendant No. 1 for paying fair price to the Plaintiff on account of sale or should vacate the same. Pursuant to such agreement, the Plaintiff authorized the Defendant No. 1 to divide the said property into several units and to negotiate with all the occupants.

f) The Defendant No. 3-8 are occupants of different portions, wrongfully inducted by the Defendant No. 1.

g) The Defendant No. 1 did nothing pursuant to the said agreement. The Plaintiff, also learned that the Defendant No. 3-8 were inducted by the Defendant No. 1 as a part of adjustment of dues arose out of some other transactions.

h) The Plaintiff lost faith in the Defendant No. 1 and cancelled the leave and license by a letter dated 26/02/2001 and asked them to vacate the said premises on or before 01/03/2001. But the Defendant No. 1 failed to hand over delivery of possession and continued wrongful occupation.

i) Since the Defendant No. 1 failed to hand over peaceful possession, the Plaintiff instituted the suit for recovery of possession. The Plaintiff also claimed mense-profits against the Defendant No. 3-8 who are in wrongful occupation, being inducted by the Defendant No. 1. Mesne-profit is calculated at a rate of Rs.50/- per square ft. per month for 8250 sq. ft., from 01/03/2001 till recovery of possession.

Written Statements were filed by some of the Defendants.

The contentions of the written statement filed by the **Defendant No. 1** may be summarized as follows:

a) The entire first floor of the building was purchased by M/s Sanchaita Investments and the same was subsequently transferred to the Plaintiff. The Commissioner of M/s Sanchaita Investment attached *inter alia* the entire first floor of the building. Subsequently, pursuant to an order passed by this Court the attachment was removed in favour of the Plaintiff. The Plaintiff purchased the said property for valuable consideration as stated in the written statement.

b) Sometime in the month of January, 1987, it was agreed between the Defendant No. 1 and the Plaintiff that the Plaintiff would sell and convey the said property, namely, the entire first floor, comprising an area of 12, 250 sq. ft., at an aggregate consideration of Rs.43, 86,375/-. The entire first floor would be divided into five units and shall be assigned to the persons at considerations which are as follows:

i.	Anandilal Narendra Kumar	2785 sq. ft.	Rs.9,88,775/-
ii.	Anandilal Narendra Kumar	1940 sq. ft.	Rs.6,88,700/-
iii.	R. Poddar	2774 sq. ft.	Rs.9,98,640/-
iv.	Akshat Poddar	2288 sq. ft.	Rs.8,23,680/-
v.	Avni Poddar	2463 sq. ft.	Rs.8,86,680/-

In terms of the agreement, the Plaintiff on or about the month of January 1987, delivered and handed over vacant possession of the said first floor of the building to the aforesaid proposed transferees who entered into possession and held the same till such time it was transferred to their assignees.

c) The Defendant No. 1 had been allotted an area of 2785 sq. ft. A demarcated portion thereof, admeasuring 1712 sq. ft. and the unit 2283 sq. ft. had been allotted to one Akshat Poddar who transferred it to M/s Delite Builders, who, in turn transferred the same to M/s P. Sen Technical Services Pvt. Ltd. and M/s P. Sen Engineering Pvt. Ltd. These two transfers are sub-judice in this Court in Suit No. 470 of 1991 and the Suit No. 471 of 1991.

d) In respect of the two units agreed to be sold to the Defendant No. 1, a total price of Rs.9,88,675/- was paid to the Plaintiff by cheques and a pay order which were accepted and received by the Plaintiff. This sum of Rs.9,88,675/- was part payment of the agreed price of Rs.17,44,200/-.

e) In respect of the unit measuring about 2774 sq. ft. allotted to the said R. Poddar, for a consideration amount of Rs.9,98,640/-, the entire amount was paid to the Plaintiff by two cheques dated 05/05/1987 and 01/09/1987. But the Plaintiff neglected and failed to execute and register any deed of transfer, committing thereby breach of agreement.

f) In respect of the unit admeasuring 2288 sq. ft. to be transferred to the said Akshat Poddar, out of total purchase price of Rs.8,23,680/-, a sum of Rs.1,50,000/- had been paid to the Plaintiff by a cheque dated 05/05/1987. A further cheque of Rs.6,73,680/- was handed over to the Plaintiff, to be encashed on execution and registration of the deed of transfer. But the Plaintiff neglected and failed to execute and register any deed of transfer for which the cheque was dishonoured. The said proposed transferee is still now ready and willing to pay subject to execution and registration of the deed of transfer.

g) In respect of the unit admeasuring 2463 sq. ft. to be transferred to Avni Poddar, part payment of Rs.1,00,000/-, the total consideration amount being Rs.8,86,690/-, had been made by cheque dated 04/05/1987. A further cheque of Rs.7,86,680/- dated 22/08/1987 was handed over to the Plaintiff, to be encashed on execution and transfer of a deed of transfer. But the Plaintiff neglected and failed to execute and register any deed of transfer for which the cheque was dishonoured. The said Avni Poddar is ready and willing to perform till now.

h) The Defendant No. 1 denied all other allegations made in the plaint and pleaded that the suit should be dismissed.

Written statement filed on behalf of the **Defendant No. 8** may be summarized as follows:

a) It is contended that since the month of July 1996, The Defendant No. 8 has been carrying on business from an office space, in its occupation, in a portion of Block-B, 1st Floor of the premises no. 113, Park Street, Kolkata-700016. The registered office of the Defendant No. 8 is situated threat.

b) By and under a letter dated 15/03/1988, the Defendant No. 1 assigned a portion of the Block-B of the said property, admeasuring 2060 sq. ft. in favour of Ms. Kiran Arya, Ms. Meeta Arya, Ms. Renu Singhal and Ms. Santosh Singhal on terms and conditions contained in the said letter. The said persons were given possession which was duly recorded. Subsequently, by and under an agreement dated 03/08/1990, the said Aryas and Singhals transferred in favour of M/s Dheklapara Tea Co. Ltd. the aforesaid portion for valuable consideration. Possession was also handed over. Thereafter, the said M/s Dheklapara Tea Co. Ltd., in terms of an agreement dated 29/03/1995, assigned in favour of M/s Bengal Tanning Industries the said part of the premises for valuable consideration followed by handing over possession.

c) By and under an agreement dated 17/07/1996, the said M/s Bengal Tanning Industries transferred its rights, title and interest in favour of the Defendant No. 8 for valuable consideration. Pursuant to that agreement, the Defendant No. 8 had been put into possession and is in continuous possession till now.

d) It is contended that the Defendant No. 8 is in lawful occupation and has been paying all the outgoing charges including property taxes payable to the Kolkata Municipal Corporation.

e) It is further averred that the Plaintiff is well aware of, has knowledge, and notice and has due consent of possession of the Defendant No. 8, of the office space as mentioned at the outset.

f) The Defendant No. 8 denies the allegations made in the plaint.

The sum and substance of the written statement filed on behalf of the **Defendant No. 10** may be summarized as follows:

a) On 05/01/2002, prior to institution of the instant suit and pursuant to an order passed by this Court in Company Petition No. 19 of 1999, the assets, properties rights and obligation of the Defendant No. 2 stood vested in M/s Jaypee Estate Pvt. Ltd. As a result, the Defendant No. 2 has ceased to exist. Since the said M/s Jaypee Estate Pvt. Ltd. is not made a party, the instant suit is bad for non-joinder of necessary party and mis-joinder of parties.

b) As averred in the plaint, Sanchaita Investment entered into an agreement for sale with the Defendant No.2 and thereafter on 21/04/1982, the said Sanchaita Investments nominated the Plaintiff as purchaser of the first floor along with four car parking spaces. By the admission of the Plaintiff, the said M/s Sanchaita Investment at best had an agreement for sale without the same being crystalized into any execution of deed of conveyance. Thus the Plaintiff is a nominee of the said Sanchaita Investment and as such, cannot seek to enforce any right or claim in respect of the said property. Since, the said Sanchaita Investment did not acquire any ownership of the said property, the Plaintiff, claiming through the said Sanchaita Investments could not have acquire any ownership, as averred.

c) It is averred in the plaint that the Plaintiff allowed the Defendant No. 1 to use the first floor on leave and license basis without any monetary consideration. The very fact that no money was ever paid by the Defendant No. 1 to the Plaintiff or received by the

Plaintiff from the Defendant No. 1, demonstrate that the entire story of leave and license is a gratuitous one. The Plaintiff having granted license to the Defendant No. 1 in the year of 1987 no explanation has been given by the Plaintiff as to why the Plaintiff waited for a period of almost 14 years to institute the suit. As such the suit is barred by the laws of limitation.

d) The Plaintiff averred in the plaint that it came to learn the sale of a portion of the first floor of the said premises on 13/03/1992, On that day, the Plaintiff must have knowledge of occupation of portion of the first floor of the said premises by the Defendant No. 3 to 8. In the circumstances, the very fact that the Plaintiff waited till 22/-3/2001, that is for a period of nine years to institute the suit disentitles the Plaintiff to get relief. The suit is barred by law of limitation.

e) From the contents of para.8 of the plaint, it appears that the Defendant No. 1 is claiming the entitlement of the first floor of the said premises on the basis of an agreement for sale. It is admitted in Para. 8 of the plaint that a sum of Rs.22,37,315/- was received by the Plaintiff from the Defendant No. 1. In the circumstances, the Plaintiff has no right to institute the instant suit.

f) It is admitted in Para.9 of the plaint that disputes and differences between the Plaintiff and the Defendant No. 1 arose on 01/04/1993. In Para. 10 it was contended that there was a settlement between the Plaintiff and the Defendant No. 1 in the month of June, 1993. The present suit was instituted on

22/03/2001, almost after 8 years. Therefore, the suit is barred by the law of limitation.

g) It was averred Para 10 (c) and 11 of the plaint that the Defendant No. 1 had been negotiating with the occupants of the first floor. While stating that no negotiation had ever been held by the Defendant No. 1 with the Defendant No. 3 to 8, there remains a tacit admission of the fact that the Plaintiff was aware of the occupation of the said premises by the Defendant No. 3 to 8 at least from the month of June 1993. But the Plaintiff waited till 22/03/2001 to institute the suit. As such, the suit is barred by acquiescence, waiver and/or the laws of limitation. The Plaintiff did not explain why the Plaintiff did not negotiate with the occupants of the first floor. Neither the Plaintiff nor N. K. Poddar nor the Defendant No. 1 ever approached the Defendant No. 10 to negotiate.

h) The premises no. 113, Park Street is presently owned by Sri Bijan Behari Mallick. The said premises has been let out on lease to the erstwhile Defendant No. 2 who had caused a multi storied building to be constructed thereon. On or about 10/12/1987, the Defendant No. 1 sold 2100 sq. ft. on the first floor together with two car parking spaces to one N. K. Balakrishnan Nair with liberty to let out or grant lease or sell or assign the said portion without any further consent of the Defendant No. 2. As a result, the said Balakrishnan Nair became the sole and absolute owner in respect of that portion. Initially, the said Balakrishnan Nair ran business from the said portion. Subsequently, by an agreement of assignment dated 11/02/1994 he assigned his right, title and interests in respect of the said portion to the Defendant No. 10 for valuable consideration. Peaceful and vacant possession was also handed over to the Defendant No. 10.

i) On application of Poddar Point Owners & Occupiers Association in C.S. No. 842 of 1989, Single Bench of this High Court directed the Administrator to record the change of ownership in case of transfer of any office flat. Pursuant to the direction, the Administrator recorded the change of ownership in favour of the Defendant No. 10. The Defendant No. 10 has been paying all the outgoing to the Administration without any default.

j) By a deed of lease dated 08/04/1997, the Defendant No. 10 granted lease in favour of one P.S.A Estate & Investment Ltd. for a term of 50 years ending on 15/10/2047, commencing from 16/10/1996. By another deed of sub-lease dated 02/06/1997, the said P.S.A Estates & Investment Ltd. granted sub-lease in favour of the State Bank of Hyderabad, being the Defendant No.5.

k) By an Order dated 05/01/2000, passed by this Court, in Company Petition No. 19 of 1999, the entire assets, properties, rights and obligations of the Defendant No. 2 vested in Jaypee Estate Pvt. Ltd. By a memorandum of understanding dated 18/01/2001 made between the said Jaypee Estate Private Ltd. and the Defendant No. 10, the former acknowledged the Defendant No. 10's entitlement over and in respect of the said portion. In terms of the said MoU, the Defendant No.10 paid a sum of Rs.5,25,000/- to the said Jaypee Estate Pvt. Ltd. In addition to the entitlement of the Defendant No.10 over and in respect of the said portion for the unexpired period of lease, granted by the Defendant No. 2 and or the said Jaypee Estate Pvt. Ltd. the owners of the premises, by an agreement dated 15/02/1994 agreed to sell the said unit to the Defendant No.10. The Defendant No.10 paid the entire consideration money to Smt. Jogeshwari Mullick and Shri Bijan Behari Mullick and also confirmed that the said unit would be registered and conveyed in favour of the Defendant No.10.

l) It is further averred by the Defendant No.10 that neither the Plaintiff nor the Defendant No.1 has any right, title or interest in the said property.

m) The Defendant No.10 denied all other allegations.

Sum and substance of the written statement filed on behalf of the **Defendant No.11** is as follows:

a) The premises no. 113, Park Street, Kolkata-700016 is presently owned by Shri Bijan Behari Mullick. The suit is bad for non-joinder of the said Bijan Behari Mullick.

b) The premises no. 113, Park Street was let out on lease to the Defendant No. 2 who caused to be constructed a multi-storied building. By an agreement dated 07/01/1989, executed between Smt. Ruchira Poddar, the Defendant No. 11 and the Defendant No. 2, the said Ruchira Poddar out of her allocation, transferred her right, title, interest and benefits of an office area admeasuring 940 sq. ft. situated at the middle portion of the first floor to the Defendant No. 11, for valuable consideration. By a letter dated 11/01/1989, the

Defendant No. 2 recorded allotment of one open car parking space in the said building for consideration of sum of Rs.10,000/-, in favour of the Defendant No. 11. The Defendant No. 2 became the owner of the said portion with effect from 07/01/1989 and the car parking space, with effect from 11/01/1989.

c) The Defendant No. 11 inducted the Defendant No. 3 as monthly tenant in respect of the said portion and the car parking space in terms of an agreement dated 18/09/1989.

d) On application by Poddar Point Owners'& Occupiers' Association in C.S. No. 842 of 1989 and under direction passed in the said suit, the Administrator appointed, duly recorded the change of ownership of the said portion as well as the car parking space. The Defendant No. 11 has been paying all the outgoings, without default, to the Administrator.

e) By an Order dated 05/01/2000, passed by this Court in Company Petition No. 19 of 1999, the entire asset, properties, rights and obligations of the Defendant No. 2 vested in Jaypee Estate Private Ltd. and the Defendant No. 2 ceased to exist. The suit is, therefore, bad for non-joinder of the said Jaypee Estate Pvt. Ltd.

f) The Plaintiff, as averred in the plaint, acquired interest in the first floor and four car parking spaces on 21/04/1982. As averred in the plaint, on 13/03/1992, the Plaintiff came to learn that P. Sen Technical Services Pvt. Ltd. and P. Sen Engineering Pvt. Ltd. had acquired a portion of the first floor of the alleged property. It is also averred in the plaint that the Plaintiff in the month of June, 1993, came to learn that the Defendant No. 1 wrongfully inducted the Defendant No. 3 to 8 in the said property. The suit was instituted on 22/03/2001. Therefore, the suit is barred by the law of limitation.

g) It is also averred that neither Sanchaita Investment nor the Commissioner of Sanchaita Investment is made party herein. Therefore, the suit is bad for non-joinder of necessary party.

h) The Plaintiff has no deed of conveyance or sale deed in his favour in respect of the said property as well as the car parking space. Therefore, the Plaintiff cannot assert any right of ownership.

i) It is averred in the plaint that the Plaintiff granted leave and lincence in favour of the Defendant No. 1 without any monetary consideration. It is impossible that an area of 12250 sq. ft. and four car parking spaces in one premier commercial area of Kolkata would be let out for a period of 14 years without monetary consideration.

j) The Plaintiff claimed its alleged right of ownership on the basis of the Order dated 04/07/1985. The said Order was not based in presence of the predecessor-in-interest of the Defendant No. 11. Consequently, objection could not be raised for the passing of the Order dated 04/07/1985. As a result, the right of the Defendant No. 11 could not be said to be affected.

k) In nutshell, denying all the allegations contained in the plaint, the Defendant No. 11 pleaded that the suit should be dismissed.

On the basis of rival pleadings, following issues are recast as follows:

1. *Whether the suit is barred by law of limitation or any other law?*

2. *Whether the Plaintiff can institute the instant suit?*

3. *Whether the suit is bad for non-joinder of necessary party or mis-joinder of party?*

4. *Whether there was leave and licence agreement between the Plaintiff and the Defendant no.1? If so, whether the said licence was validly terminated or determined?*

5. *Whether the Defendant nos. 3 to 8 are trespasser or have any possessory title for occupying the suit premises?*

6. *Whether the Plaintiff is entitled to decree of eviction against all or some of the Defendants at all?*

7. *Whether the Plaintiff is entitled to relief, prayed for?*

8. *Whether the Plaintiff is entitled to mesne profit? If so, at what rate?*

The Learned Senior Counsel for the Plaintiff, Mr. Mitra submitted that there is no claim against the Defendant No. 2 by the Plaintiff. The Plaintiff has not claimed any right of possession against the Defendant No.2.

Argument against Defendant No.1:

Mr. Mitra, Learned Senior Counsel, argued that although a plea has been taken that there was an agreement for sale between the Plaintiff and the Defendant No.1. No iota of evidence has been produced. There is no evidence that P.D. Pasari was authorized to enter into any agreement for sale on behalf of Plaintiff. It was further argued that the Defendant No.1 got no title to the suit property but derived its possession in the suit property from the Plaintiff which he subsequently parted with to his alleged assignees. Furthermore, there was no documentary evidence in support of assignment and nomination. An assignment can only be made by registered instrument which is missing here to substantiate his point. The Learned Counsel referred to **Punjab National Bank Vs. Sanchaita Instrument & Ors. (89 CWN 509), In Re: Jugal Kishore Yadav & Ors. [(2014) 5 CHN 379]**. According to Mr. Mitra, there is no evidence of transfer by Defendant No. 1 to any of its alleged assignee. The crux of argument was that the Defendant No. 1 got possession of the entire suit premises from the Plaintiff. The Defendant No.1 could not establish any other right. Subsequent transfer or assignments could not be established as no registered deed of assignment is on record.

Next, Mr. Mitra refuted the argument and plea that the suit is not maintainable in view of non-registration of firm which offended Section 69 of the Partnership Act, 1932. According to Mr. Mitra, the Learned Senior Counsel, Ext. K shows that Plaintiff firm had been registered. Referring to the ratio of **Raptakos Brett & Co. Ltd. Vs. Ganesh Prop. [(1998) 7 SCC 184],** it was argued that claim for recovery of possession of the suit property is neither offending to nor is barred by Section 69 (2) of the Partnership Act, 1932.

Next, referring to the argument of the Defendant No.1, that the Plaintiff has no right to the suit property, it was argued by Mr. Mitra that the Defendant No. 1 derived its right in the suit property from the Plaintiff. It is Defendant No. 1's case that he was put in possession of the suit property by the Plaintiff and he orally agreed to purchase the property from him. The Defendant No. 1 as a licensee is estopped under Section 116 of the Indian Evidence Act, 1872 to dispute the title of the licensor. This apart, there was no dispute on the title of the Plaintiff in the written statement. More so, this is not a suit for declaration of Plaintiff's title in the suit property but for recovery of possession from person/persons who got their possession from the

Plaintiff directly or indirectly. Therefore, there is no onus on the Plaintiff to prove his title.

Refuting the contention of the Defendant No. 1 that the later parted with the possession of the suit property as far back as in the year 1981 to different persons debarring the Plaintiff to claim any relief against such persons, Mr. Mitra submitted that the decree of recovery of possession against the Defendant No.1 would automatically be binding on all the persons who got possession from the Defendant No. 1 directly or indirectly.

Next limb of argument of Mr. Mitra was that the Defendant No. 1 claimed in the written statement that for some unit, despite receiving of the entire consideration, the Plaintiff failed to register deeds with respect of the same; the Defendant No. 1 and/or his alleged nominees attempted to make payment of the balance consideration but the same was refused by the Plaintiff. According to Mr. Mitra, this argument cannot be accepted as these are beyond the scope of pleading.

Plaintiff's Argument against Defendant No.8:

It was argued that the Defendant No. 1, by a letter, assigned 2060 sq. ft. super built up area in favour of one Kiran Arya, Meeta Arya, Renu Singhal and Santosh Singhal. This letter was no exhibited. These persons subsequently, as alleged, transferred their right, title, interest to another company in terms of an unregistered and unstamped document which had not been adduced in evidence. Thereafter, subsequent transfer of an assignment took place in terms of unregistered and unstamped documents which are not in evidence. The Defendant No. 8 derived its right, title and interest in 2060 sq. ft. super built up area from one Bengal Tang Industries in terms of an alleged agreement which is Ext. 3. It was argued that the document is unstamped and unregistered and is, therefore, liable to be impounded and to be sent to the Collector under Section 33 and 38 read with Section 40 of the Stamp Act.

It was pleaded by the Defendant No. 8 that there was a deed of conveyance from one Bijon Bihari Mallick in favour of the Defendant No. 8 purported to transfer the said 2060 sq. ft. super built up area for valuable consideration this is Ext. 7. It was argued that the fact that the Defendant No.8 acquired title from the Mallicks, is not in their pleading. Since there is no pleading that cannot be any evidence or argument. Mr. Mitra referred to **Bachhaj Nahar Vs. Nilima Mandal & Anr. [(2008) 17 SCC 491], Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari & Anr. [(2014) 5 SCC 312].** The Defendant No. 2 having accepted to the Plaintiff as the owner in terms of Ext. C, could not have purported to transfer the property to anyone else. Being a photocopy, this document is inadmissible in evidence. It was argued that the Mallicks cannot create any right in the property unto persons/entities deriving their rights directly or indirectly from the lessee, namely, the Defendant No. 2. References were made to **Kamini Kapoor Vs. Punjab National Bank [AIR 2013 Cal 206, CV 112], S.K. Sarma Vs. Mahesh Verma [(2002) 7 SCC 505]**.

<u>Plaintiff's argument against Defendant No.10:</u>

It was argued by Mr. Mitra by Senior Counsel that the Defendant No. 2 sold 2100 sq. ft. to one Balakrishna Nayar in terms of a letter signed by the Director of the Defendant No.2 who handed over possession of the said part of the premises to the Defendant No. 10 in terms of document marked as Ext. 8 and alleged agreement for sale was executed between the Mallick and Defendant No.10. Though pleaded, no document was produced. There is dearth of documentary evidence to establish the chain of title which subsequently behoved on the Defendant No. 10. Ext. 27 is a letter from the Mallicks to the Defendant No. 10 which stated that conveyance should be executed in favour of the Defendant No. 10 which suggests that the Defendant No. 10 was not owner. Without in any manner, admitting the Mallick's right to convey any part of the built up area during the subsistence of registered lease cum development deed dated 6th May, 1960 in favour of the Defendant No. 2, the Mallicks never, in fact, executed any deed of conveyance in favour of the Defendant No.10.

It was further argued that the Defendant No. 2 was transformed into J.P. Estate Pvt. Ltd., the Defendant No. 9, by way of a sanctioned scheme. No document is there on record. Memorandum of understanding was executed between the Defendant No. 9 and 10 which was unstamped and unregistered. It was further argued that mutation in the records of Municipal Corporation does not create any title on the property. **Pratima Ghosh & Ors. Vs. Binapani Paul & Ors. [(2004) 1 CHN 185]** was relied upon.

In nutshell, Mr. Mitra argued that the Defendant No. 2 having transferred the subject suit property by registered instrument dated 24/03/1981 (Ext. B) to Sanchaita Investment and also having confirmed and accepted the Plaintiff as the transferee from the Sanchaita Investment, could not have thereafter dealt with the same property. Plaintiff has a superior title to the suit property of registered instrument dated 24/03/1981 as well as order of Division Bench dated 4th July, 1985. Therefore, the Plaintiff has a better title to recover passion of the suit part from the Defendant No. 10.

<u>Plaintiff's argument against Defendant No. 11:</u>

Mr. Mitra, Learned Senior Counsel, submitted that as on record, the earlier Defendant No. 11 was M/s. Prakash Air Freight. By way of conveyance M/s P. Sen (Engineering Pvt. Ltd.) got the possessory title in respect of the area occupied by the Defendant No. 11. M/s. Prakash Air Freight was substituted by an order dated 5th

July, 2013 by the said M/s. P. Sen (Engineering Pvt. Ltd.) who was compelled to accept the written statement filed by the earlier Defendant No. 11, M/s. Prakash Air Freight. Division Bench recorded the fact that the M/s P. Sen (Engineering Pvt. Ltd.) had acquired title from the original Defendant No. 11 which is a admitted fact that the original Defendant No. 11 did not itself have any legal right in the suit property. The original Defendant No. 11 acquired title by way of agreement dated 7th January, 1989 from one Ruchra Poddar who was an assignee and family member of the Defendant No. 1 in course of evidence the new Defendant No. 11 had tender a deed of conveyance dated 08/12/2004 from Mallick to M/s. P. Sen (Ext. 28). It was argued that this is completely a new case beyond pleading which cannot be looked into.

Next it was argued that as a transferee from the Defendant No. 1 via Ruchira Poddar, the Defendant No. 11 cannot claim a better right than the Defendant No. 1 had. This is apart from the fact that the Defendant No. 11 has failed to prove the purported transfer from the Defendant No. 1 to Ruchira Poddar and then to the Defendant No. 11.

The Learned Counsel also argued at length on the point of mesne profit.

Argument of Defendant No.1:

The Learned Counsel for the Defendant No. 1 Mr. Ghosh, the Learned Senior Counsel, argued firstly on the maintainability of the suit alleging non-registration. It was in the argument that PW-1 was neither a partner nor an employee of the Plaintiff firm. No document was produced by PW-1 to demonstrate that the firm authorized him to depose. Neither the PW-1 disclose any registration number of the firm nor could he disclose any registration. On behalf of the Plaintiff the witness was reexamined and document purported to be certificate issued by the register of firm was adduced but marked for identification far from being proved. Therefore, Mr.

Ghosh, the Learned Senior Counsel, contended that registration of the firm is not proved. Referring to Section 58, 63, 68, 69 and 72 of the Indian Partnership Act, 1932, Mr. Ghosh submitted that the suit is not maintainable and is liable to dismissed.

Next, it was argued that alleged negotiation for letting out the premises on leave and licence basis was made by B. L. Pasari expired in the year 1999. There is no evidence to show who conducted subsequent negotiation on the issue of purported termination notice in February 2001. Therefore, the contention of the Plaintiff, as pleaded, has not been established and the suit is liable to be dismissed.

Argument on behalf of the Defendant No.10:

The first limb of argument of the Learned Counsel for the Defendant No. 10 was that the Defendant No. 10 had never been inducted nor had been given possession by Defendant No. 1 at any point of time. There is no privity of contract between the Defendant No. 10 on the one hand and the Plaintiff or the Defendant No. 1 on the other hand.

It was further argued that Bon Bihari Mallick being the owner of premises no. 1/13, Park Street, Kolkata-700016, executed a deed of lease in favour of the Defendant No. 2 for a period of 75 years, on 06/05/1960, with a right to construct a new building. After construction of 10 storied building in two blocks, the Defendant No. 2 sub-leased the constructed area to various persons. The Defendant No. 2 sub-leased a built up area of 2100 sq. ft. on the super built up area in favour of B. K. Nair as on 10/12/1987 on receipt of consideration. This receipt was issued by the Defendant No. 2. Interestingly the receipt was issued by Narendra Kumar Poddar as Director of Defendant No. 2 who is the sole proprietor of the Defendant No. 1. B. K. Nair the sub-lessee assigned its residual rights of sub-lease to the Defendant No. 10.

The said deed of assignment was marked as Ext. 25. Since then the Defendant No. 10 has been paying regularly outgoing charges name of Defendant No. 10 has also been mutated in the office of Kolkata Municipal Corporation.

Next, it was argued, in the line of Defendant No. 1 that the Plaintiff being not registered under the Indian Partnership Act, 1932, the suit is barred by Section 69 (2) of the Act.

Next, it was argued that the suit is barred by limitation. B.K. Nair acquired right and possession over built up 2100 sq. ft. area on the first floor of the premises with effect from 10/12/1987 but the suit was filed in the year 2001 and the Defendant No. 10 has been impleaded in terms of order dated 27/03/2002. In view of this fact the suit filed by the Plaintiff is hopelessly barred by limitation within twelve years from the date of coming into occupation by the Defendant No. 10 and its predecessor. It was also argued that in the plaint it was averred that the Plaintiff on or about 13th March, 1992 came to learn that M/s. P. Sen Technical Services Pvt. Ltd. and M/s. P. Sen Engineering Pvt. Ltd. instituted the suits being 470 of 1991 and 471 of 1991 against the present Plaintiff and obtained decree in the suit. The Plaintiff could not explain and justify why immediately no suit was filed but the Plaintiff but waited till 2001. According to the Learned Counsel for the Defendant No. 10, the suit must fail and is liable to be dismissed with compensatory costs.

<u>Issue No.1:</u>

Although the point of limitation was pleaded in the written statement of the Defendant No. 11, the Learned Counsels for the Defendants vehemently argued that the suit is barred under Section 69 (2) of the Indian Partnership Act, 1932. Since, this argument touches the maintainability of the suit the same should be addressed first.

Section 69 (2) of the Indian Partnership Act, 1932 stated as follow:

> "**69. Effect of non-registration.—**
>
> (2) No suit to enforce a tight arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

In this case Ext. K shows that originally the firm had been registered. It is not a case that the firm had never been registered. The partnership is not produce before this Court. It is not known who are the partners. It is admitted by PW-1 that one of the partners Banwarilal Pasari expired long before the year 2000. It was stated by PW-1 that the information of death of the said Banwarilal Pasari had been intimated to the register of firms, but the document purported to show such communication was marked as 'X' for identification. Therefore, there is no evidence that the information of death of the said Banwarilal Pasari have been communicated to the register of firm. Ext. K, the certificate of registration does not show who were the partners at that material point of time. PW-1 could not say who were the other partners of the firm after the death of the said Banwarilal Pasari. Therefore, it cannot be said with certainty whether the person who signed the plaint was a partner or who are the partners running the firm. There is another aspect. In case of two partners the partnership firm death of one automatically dissolved the firm. Alternatively there can be a stipulation in the partnership agreement that in spite of death of one partner the partnership business could dissolve or could continue. There is no evidence neither oral nor documentary, from which this Court can come to a conclusion who are the other partners and whether such partners are running the partnership business at present. This Court cannot come to any opinion as to whether the present partners, if any, are on the record of the registered of firms.

Mr. Mitra, the Learned Senior Counsel for the Plaintiff referred to the initial registration of the firm but that argument does not help him. The issue is, in terms of clear provision of Section 69 (2) of the Indian Partnership Act, 1932 as on the date, when the suit was filed, who were the partners of the firm as per the relevant entries in the register of firms. In other words whether the person suing, namely, the current partner or partners, as on the date of institution of the suit, were shown as a partner of a registered of firm. In **M/s Shreeram Finance Corporation Vs. Yasin Khan & Ors. [(1989) 3 SCC 476],** the Supreme Court of India stressed on this contingency.

In that case the firm was originally a registered one. Subsequently composition of partnership was changed; two original partners retired and one new partner joined and two minors were admitted to the benefits of the partnership firm. But at the time of suing on an agreement the names of the two new partners were not shown as partners in the relevant entries in the register of firms. The Supreme Court of India held that the suit was barred under Section 69 (2) of the Indian Partnership Act, 1932.

The Section 69 (2) of the Indian Partnership Act, 1932 has several contingencies. Requirement of Section 69 (2) is not only the registration of the firm but also the persons suing are or have been shown in the Register of Firms as partners in the firm. In this case, the partnership deed is absent in evidence. Plaintiff's witness no.1 could not state, after death of Banwarilal Pasari who were the other partners. Nothing is there in evidence that the person suing the instant suit was a partner and his name was shown in the Register of Firms as a partner. Therefore, the twin requirements of the provision are not satisfied.

Admittedly, as the plaint case is the Defendant No. 1 approached the Plaintiff permitting them to use occupy the property in question to which the Plaintiff agreed and allowed. The relationship, taking the plaint case as gospel truth, is based on agreement. It is neither statutory right nor common law right. Ratio of **Raptakos Brett & Co. Ltd. Vs. Ganesh Prop. [(1998) 7 SCC 184]** (supra), referred to by Mr. Mitra is not applicable since the decision is applicable and referred to statutory or common law right. Rights exerted herein, is based on mutual agreement.

As stated above, there is no evidence as to who are the present partner and whether the present partner suing is in the record of register of firms also, as discussed above, the right sought to be exerted here is based on agreement. Therefore, Section 69 (2) of the Indian Partnership Act, 1932 is applicable in this case and the suit is not maintainable in view of the clear provision of the Section 69 (2) of the Indian Partnership Act, 1932.

This issue is decided against the Plaintiff.

Accordingly, since the suit is not maintainable the substantive the issue need not be gone into.

In nutshell, the instant suit is not maintainable, hence dismissed without any costs along with all pending applications.

Let the decree be drawn up.

(Sugato Majumdar, J.)