

(1969) 02 CAL CK 0027**Calcutta High Court****Case No:** Appeal from Appellate Decree No. 1580 of 1960

Kartick Chandra Karmakar

APPELLANT

Vs

Panchu Gopal Karmakar

RESPONDENT

Date of Decision: Feb. 5, 1969**Acts Referred:**

- Transfer of Property Act, 1882 - Section 118

Hon'ble Judges: S.K. Chakravarti, J; P.N. Mookerjee, J**Bench:** Division Bench**Advocate:** Syamacharan Mitter and Syama Prasanna Roy Chowdhury, for the Appellant; Mukunda Behari Mallick, Mahendra Kumar Ghose and Bhabani Sankar Bagchi, for the Respondent**Final Decision:** Allowed**Judgement**

P.N. Mookerjee, J.

This appeal is by the Plaintiff and it arises out of a suit for partition.

2. The dispute is with regard to item No. 1 of the plaint properties.
3. In the said property, the Plaintiff claimed 12 annas share on the footing that he had 4 annas, as his ancestral interest and 8 annas by purchase from a co-sharer Dasimoni.
4. The defence denied the Plaintiff's title by purchase, as aforesaid. With regard to the other properties, the shares were not in dispute and the matter, as decided by the Courts below with regard to them, has been accepted by both parties.
5. The learned trial Judge accepted the Plaintiff's case and gave him a decree in respect of 12 annas share of item No. 1.
6. On appeal, the said decision has been modified by the learned District Judge by reducing the Plaintiff's share to 8 annas and giving the remaining 8 annas to the

Defendants upon the view that, by the alleged sale (Ex. 1), the Plaintiff did not acquire any interest in the said property as the said transaction was not a valid sale in law, but that the Plaintiff and the Defendants had their original ancestral 4 annas share in the said property and also acquired from Dasimoni her 8 annas interest equally on devolution after her death.

7. In this second appeal, the Plaintiff-Appellant contends that the learned District Judge was wrong in rejecting his claim of 8 annas share on the basis of the above document (Ex. 1). The point depends upon the construction and effect of the said document. That document purports to be a document of sale, but its relevant term is that the property was being sold for a consideration of 10 maunds of paddy, valued at Rs. 15, to be paid to the vendor annually every year until her death. According to the learned District Judge, this was not an ascertained or ascertainable figure or quantity and accordingly, it could not be valid price under the law. Presumably, the learned District Judge had also in view that price must be money consideration and on that test also, it would fail to be price under the law.

8. In our opinion, the learned District Judge was in error in taking the above view. In the document itself, the 10 maunds of paddy, which were to be paid to the vendor annually until her death, were valued at Rs. 15. The money equivalent was, therefore, clearly stated in the document and on the terms of the document, it was a fixed amount to be paid annually and it was not variable. It was then really in the nature of an annuity in terms of money and there is no question that such an annuity can be valued according to well-established modes. In such view, we would hold that the disputed document (Ex. 1) would pass the test of a sale, the consideration being clearly price within the meaning of the law, even if price be taken to be represented by money only and to be ascertained or ascertainable.

9. Even assuming that the disputed document (Ex. 1) would not answer validly the description of a sale, there can be no question that it would be a valid Deed of Exchange (vide Section 118 of the Transfer of Property Act). If the above consideration be not money, it would be a case of exchange of one property or one thing for another, neither thing being money and it would, obviously, then come under the said section.

10. The Plaintiff's title to the disputed 8 annas share would, then, clearly be established by the above document, be it treated as a Deed of Sale or a Deed of Exchange.

11. Upon this view, we would allow this appeal, set aside the decision of the learned District Judge and restore that of the learned Subordinate Judge only with this variation that the time for amicable partition, as provided therein, would now be varied to three months from the date of arrival of the records before the learned Subordinate Judge.

12. There will be no order for costs in this Court.

S.K. Chakravarti, J.

13. I agree.