

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

RSA No.2 of 2006

Shri Pulakesh Datta,
S/o Late Pramode Datta of
Vill : Kamrangabari, P.O. Gouranganagar,
P.S. Kailashahar, District - North Tripura.

..... Appellant.

- Vs -

1. Shri Parimal Dey,
S/o. Late Pratul Dey of
P.O. & Vill. Jalai, P.S. Kailashahar,
District - North Tripura.

2. Shri Haripada Dey.

3. Shri Kritapada Dey

4. Shri Pulakita Dey

2 to 4 are the sons of Pratul Dey of
Vill :- Kamrangabari, P.O. Gournagar, P.S. Kailashahar,
District - North Tripura.

5. Sri Rasaraj Dey,
S/o Late Narendra Dey of
Vill. Kirtantill, P.O. Gournagar
P.S. Kailashahar, District - North Tripura.

..... Respondents.

**_B_E_F_O_R_E_
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellants : Mr. S M Chakraborty, Sr. Advocate,
Ms. B Chakraborty, Advocate.

For the respondents : Ms. P Dhar, Advocate.

Date of hearing and : 06.1.2015.
delivery of judgment.

Whether fit for reporting: **No.**

JUDGMENT & ORDER (ORAL)

This regular second appeal is directed against the judgment & decree dated 30th September, 2005 passed in Title Appeal No.2 of 1997 whereby the learned Fast Track Court (Additional District Judge, North Tripura, Kailashahar) dismissed the appeal of the present appellant (hereinafter referred to as the defendant) and upheld the judgment & decree dated 27.1.1997 passed by the learned Civil Judge, Senior Division, North Tripura, Kailashahar in Title Suit No.18 of 1995.

2. The undisputed facts are that the original plaintiff Baranga Bala Dattta was an issueless widow. At the time of filing of the suit she was aged about 80 years. It is not disputed that she was illiterate. She was the owner-in-possession of the suit land. The admitted case of the parties is that the original plaintiff Baranga Bala Datta had no child of her own and she had raised one Promode Datta, father of the defendant Pulakesh Datta, as her own son. Promode also died during the lifetime of Baranga Bala Datta. She fell seriously ill in the month of January, 1988 and executed one document on 14.1.1988 which was registered on 15.1.1988 and by this document she gifted her entire landed property in favour of Pulakesh Datta son of Promode Datta whom she had raised as her son. These facts are undisputed.

3. In the year 1995 i.e. 7(seven) years after the execution of the said deed, the plaintiff filed a suit alleging that since the defendant Pulakesh had not been paying attention to her and was not

looking after the land as per her directions she had appointed another person Rasaraj Dey to look after the land but when this person went to find out why the defendant was not looking after the lands he came to know that in fact a gift deed had been executed on 14.1.1988 registered on 15.1.1988 and that the defendant had filed an application for getting the land mutated in his favour in the Revenue records. On these allegations the plaintiff filed a suit alleging that the gift deed was got executed from her by fraud. The learned trial Court held that the plaintiff had proved her case and decreed the suit in her favour and held the gift deed to be *null and void*. The appellate Court upheld the judgment and decree of the learned trial Court but came to a finding that the pleadings of fraud were not sufficient but since no prejudice had been caused to the defendant the suit could be decreed.

4. This second appeal was admitted on the following question of law :

“Whether the findings of the Courts below on the question of fraud in respect of the execution of the gift deed are based on evidence?”

At the stage of arguments Mr. S M Chakraborty learned senior counsel, has raised another question which is as follows :

“Whether a suit in which adequate allegations of fraud have not been made can at all be decreed even if there is evidence of fraud?”

5. I shall deal with the second question first. The relevant pleadings read as follows :

“1) That, the plaintiff is an issueless widow of about 80 years old. She is illiterate and can somehow write her name only. She is the owner and possessor of land measuring 1.18 acres along with other lands appertaining to present c.s. plot Nos.429,380 under Khatian No.230 of mouja-Gournagar and present c.s.plot No.511 under Khatian No.117 of mouja-Kamrangabari respectively hereinafter referred to as the suit land specifically described in the schedule below within the jurisdiction of the learned Court.

2) That, as the plaintiff had no children, she brought up one Promode Dutta from his childhood as her son who died about 14 years back and the defendant is the son of the said late Promode Dutta who has been residing in the portion of the homestead land of the plaintiff from the time of his father and both the defendant and his father were dependent on the income of the properties of the plaintiff all along as they had no independent source of income.

3) That, as the plaintiff grew old and was unable to look after/manage all her properties personally, the defendant used to help the plaintiff in the matter of management of the properties of the plaintiff after death of his father residing in the northern viti hut of the homestead of the plaintiff and he has been residing therein till now and as the defendant is the son of the said brought up son Late Promode Dutta of the plaintiff, she always reposed implicit confidence and faith in the defendant and she even opened joint Bank account with the defendant to facilitate withdrawal through the defendant. The plaintiff kept all the valuable documents of her properties with the defendant and she also purchased properties benami in the name of the defendant and in fact a fiduciary relationship existed between the plaintiff and the defendant and they had been residing as if members of the same family.

4) That, in the month of January, 1988 A.D. the plaintiff fell seriously ill and became completely dependent on the defendant as she had no other near relative in the locality to look after her. She was extremely weak in body and mind and was unable to move from her bed. She was also incapable of understanding her affairs and of forming any rational judgment and in fact, she was not in proper sense during her said illness

but, the defendant taking this opportunity on 14.1.1988 managed to obtain signature of the plaintiff on a document from her residence, the contents of which was neither read over or explained to her nor the plaintiff was in a position to understand the same due to her said state of mind and body and the plaintiff apprehends that she might have put her signature on the said document considering that the defendant could not do anything against the interest of the plaintiff.

5) That, the plaintiff somehow recovered from her said illness after about 2/3 months but, she could not recollect what happened during her said illness nor she considered it necessary as the defendant continue to help the plaintiff as before."

6. A bare reading of the aforesaid averments makes it clear that a complete case of fraud had been pleaded in the case. The plaintiff has alleged that she (Baranga Bala Datta) was an old illiterate widow aged 80 years. She has further alleged that she was totally dependent on Promode Dutta and also on the defendant Pulakesh Dutta. She has clearly stated that it is the defendant who used to help her to manage the properties and she reposed implicit confidence and faith in the defendant. She had even opened a joint Bank account with him to facilitate the defendant withdrawing money from the joint Bank account. In Para 4 which has been quoted above she has clearly stated that she was seriously ill in the month of January, 1988 and she had no relatives to look after her. According to her, she was virtually senseless and does not know what happened during this period. In Para 5 she has made a similar allegation.

7. It is argued by Mr. Chakraborty that if she could not remember anything how could she make the allegations of fraud. This argument cannot be accepted because the substance of the fraud is that when the plaintiff was in an unfit state of mind, unable to look after herself, a document was got executed from her and she cannot say what that document was or how it was executed. In my view, no further averments could have been made in a case of this nature and the averments which have been quoted above clearly make out a case of fraud and are complete averments and therefore, the second question is decided against the appellant.

8. As far as the first question is concerned, it may be pointed out that the original gift deed has not seen light of day till now. That deed has been withheld from the Court. No explanation worth the name has been given as to where and when the gift deed went missing. No application for secondary evidence was filed by the defendant. Not only this, two of the witnesses of the plaintiff who are the members of the Gram Panchayet who have intervened in the matter have clearly stated that when they asked the defendant to produce the original gift deed he did not do so. Therefore, even prior to the filing of the suit the original gift deed had not seen light of day.

9. As far as the merits of the case are concerned, there are four attesting witnesses to the gift deed and there is one scribe of the gift deed. Out of the 4 attesting witnesses one has not been examined

by any party. Two of the so called attesting witnesses have been examined by the plaintiff. They are PW.2 Tota Miah and PW.5 Smt. Chaya Rani Dey. The two alleged eye-witnesses, produced by the plaintiff have clearly stated that they never signed as attesting witnesses on any gift deed executed by the original plaintiff. However, DW.2 Ershad Ali one of the attesting witness states the he had signed the document as an attesting witness but as found by both the Courts below his address given in the sale deed is different than that which has been given by him in Court and there is no explanation why the address is different.

10. As far as the conduct of the scribe is concerned, the less said the better. Here is a Scribe authorized under law to record such documents. If a scribe of this nature goes to the house of an eighty years old lady who is seriously ill then the least which is required of such a scribe is to ensure that a doctor is brought who should certify that the person is in a fit state of mind to understand what is being recorded. Here is a scribe who does not give any explanation as to how the signatures of two witnesses are stated to be on the document when those two witnesses stated on oath in Court that they have never signed such a document. No effort was made by the defendant to send the document to an examiner of question documents to prove that the signatures shown to be of PWs.2 and 4 were actually their signatures on the deed.

11. Last but not the least the defendant in a case where fraud had been alleged against him did not even step into the witness box to deny the allegations of fraud. Here is a defendant who admits that the plaintiff raised his father like a son; here is a defendant who is treated like a family member by the plaintiff, who opened the joint account with him and he does not have the courage to come to Court and state what were the true facts. Therefore, I find that no question of law much less substantial question of law arises in this appeal. As such the appeal being without merit is dismissed. No costs.

CHIEF JUSTICE

Sukhendu