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**SAT 248 of 2019
With
CAN 1 of 2019 (Old CAN 10356 of 2019)**

**Nurul Islam
vs
Abdus Salam & Ors**

**Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee,**

... For the Appellant.

The present appeal arises from judgment and decree dated 25th April, 2019 passed by the Additional District & Sessions Judge, 2nd Fast Track Court, Jangipur in Title Appeal No. 21 of 2016 reversing the judgment and decree dated 30th May, 2016 passed by Civil Judge (Junior Division), Additional Court, Jangipur in Title Suit No. 55 of 2014.

The plaintiff/respondent filed a suit for declaration of their right, title and interest in respect of the property against the defendants and also intended to protect the possession thereof. Admittedly, one Nirmal Kumar Singha Naolakkha was the owner of the suit property and divested his right, title and interest by executing a sale deed in favour of one Raghunath Sadani on 15th December, 1959. Upon the death of said Raghunath Sadani, the said property devolved upon his two sons and a daughter being the heirs and legal representatives. The aforesaid two sons executed a sale deed in favour of the plaintiff and got the same registered on 4th March, 2009. Subsequently, the daughter of the said Raghunath Sadani gifted her undivided one third share of the suit property by executing and registering the gift deed on 22nd April, 2016 and 25th April, 2016 respectively.

It is a specific stand of the plaintiff that they used to pay tax immediately after purchase of the property.

The defendant No. 1 surreptitiously claimed right, title and interest thereof having purchased the said property from the admittedly owner, i.e., Nirmal Kumar Singha Naolakkha. It is the specific stand of the said defendant that the said admitted owner executed and registered a deed of sale on 25th April, 1958 transferring and alienating his right, title and interest thereof in favour of the defendant No. 1, who was minor at such point of time through natural guardian, i.e., father and since thereafter they are enjoying the said property and also the record of rights has been mutated in this regard.

Admittedly, both the contesting parties are relying upon their respective deeds executed by the admitted owner and if the admitted owner had alienated his right, title and interest in favour of the defendant No. 1. Subsequent alienation would fall as a person cannot transfer the same right twice.

The moot issue that arose before the Court is whether the said admitted owner, infact, executed a sale deed dated 29th April, 1958 or not. The employee of the Murshidabad Sadar Sub Registrar Office was called as a witness to ascertain the veracity, genuinity and authenticity of the sale deed dated 29th April, 1958 as claimed by the defendant No. 1. Since the original deed was not produced but the certified copy of the deed, the question was put to him whether his office has issued such certified copy. Looking at the document and certificate appended thereto, the said witness categorically stated that no such application for certified copy was ever made nor the certified copy was issued by his office. He further proceeded to say that the deed number as relied upon by the defendant No. 1 does not

relate to the suit property nor the vendor and the purchaser named therein are the one as claimed by the defendant No. 1.

Both the Courts found that the certified copy of the deed relied upon by the defendant No. 1 is not a genuine document and, therefore, no title can pass through the same. It is no doubt true that the immovable property can be transferred only by a written document if it fetches the consideration of more than Rs. 100 and in view of Section 17 of the Registration Act, it is compulsorily registerable. A registered document conveying the right, title and interest, has been produced by the plaintiff/respondent and the certified copy of the sale deed relied upon by the defendant No. 1 was proved to be non-existent. Therefore, there is no infirmity and illegality in the impugned judgment of the Appellate Court in holding that the plaintiffs have the right, title and interest in respect of the suit property.

We, thus, do not find any substantial question involved in the instant appeal.

The same is hereby dismissed.

As the main appeal is dismissed, the connected application is also dismissed.

There shall be no order as to costs.

(Harish Tandon, J)

(Kausik Chanda , J)