

22.07.2022
SL No.10
Court No.8
(gc)

SA 299 of 2013

**Biswanath Thakur
Vs.
Omprakash Thakur**

Mr. Arnab Roy,
...for the Appellant.

This matter was adjourned earlier on the prayer of Mr. Arnab Roy, learned Counsel representing the appellant. However, Mr. Arnab Roy, in spite of his best efforts has not received any instruction from the appellant.

We allow the prayer of Mr. Arnab Roy for leave to retire.

This second appeal was filed for admission on 3rd July, 2013 and is kept pending since then. In view thereof, we propose to consider the admission of the second appeal on the basis of the judgments of both the Courts and upon taking into consideration the grounds of appeal.

It appears from the judgments of both the Courts that the plea of benami transaction and gift in favour of the respondent are the subject matter of the suit. Both the Courts have held that the donor had sufficient fund to purchase the said property. The validity of the execution of the gift deed was primarily based on an

assertion that the donor who happens to be the mother of the appellant did not have the money and she was benamdar. Once the said plea was not accepted as a natural corollary, any challenge to the gift deed goes. There is no challenge that the gift deed was procured by coercion or undue influence. Moreover, the suit was filed in the year 1994. The plea of benami was no more available to the appellant at the relevant point of time.

In view of clear findings of both the issues by the Trial Court as well as the First Appellate Court, we do not find any substantial questions of law for which the second appeal can be admitted.

Hence, the second appeal being SA 299 of 2013 stands dismissed.

However, there shall be no order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)