

04.11.2022
SL No.23
Court No.8
(gc)

SA 56 of 2016
CAN 1 of 2013 (Old No: CAN 3191 of 2013)

Subhasish Das
Vs.
Rajyasree Guha

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant. The appellant was also not represented on the earlier occasion.

In view of our observation made in the earlier order, we propose to decide the question of admission of the second appeal.

The second appeal is directed against the appellate decree dated 8th February, 2013 affirming the judgment and decree dated 7th December, 2010 passed by the learned Trial Judge in a suit for eviction of licensee and recovery of khas possession. We have carefully gone through the judgment of the learned Trial Court as well as the First Appellate Court. The claim for licensee is based on an ownership claimed by the plaintiff on account of a deed of gift being executed in her favour. There is no material to suggest that the defendant ever denied the execution of the deed of gift. In fact, the learned Trial Court and the First Appellate Court has relied upon the evidence of the parties which would show that the deed was properly executed. In fact, all the attesting witnesses

to the deed of gift were the friends of the husband of the plaintiff but that does not by itself make the deed a questionable document. The plaintiff also did not deny that the attesting witnesses were not present at the time of execution of the deed of gift but she alleged that the attesting witnesses were the friends of the husband of the plaintiff. There was no specific plea that the donor had executed the said deed under pressure, coercion, fraud or undue influence. In fact, unlike a Will, the examination of attesting witnesses is not mandatory in view of Section 68 of the Evidence Act, 1872. The reason being that the Will takes effect after the death of the testator and the gift becomes effective as soon as the deed is executed and the donee accepts the gift from the donor, the defendant could not establish that the deed of gift was procured by practicing fraud or undue influence. The relationship between the parties is of brother and sister. It is not unlikely that the mother would voluntarily and willingly gift her share in the property in favour of the daughter.

It is an admitted position that the plaintiff is the younger sister of the defendant/appellant and daughter of late Amiyalal Das. Amiyalal during his lifetime executed two separate deeds of gift. One in favour of son that is the appellant and the other in favour of his wife and daughter jointly. The wife of Amiyalal decided to give her 50% share in favour of his daughter so that the plaintiff becomes absolute owner of the property. It is quite clear that Amiyalal wanted to gift one property in favour of the

son and the other in favour of the wife and daughter. Admittedly, the defendant has no right, title and interest in respect of the property in question. He could have some interest in the property provided the mother died intestate. In the deed of gift executed in favour of the daughter, the status of the appellant is that of a licensee which is revocable and as the defendant was not willing to leave the suit premises, the suit for eviction was filed.

In view of the fact that the deed of gift was proved in accordance with law and both the Courts below having arrived at a clear finding that the appellant could not prove that the said deed was procured by undue influence, we do not find any reason to interfere with the concurrent findings of facts in this regard. There is no real challenge to the execution of the deed of gift by the mother in favour of her daughter.

Under such circumstances, we do not find any reason to admit the second appeal.

The second appeal being SA 56 of 2016 stands dismissed at the admission stage.

In view of dismissal of the second appeal, the application being CAN 1 of 2013 (Old No: CAN 3191 of 2013) also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)