

**Smt. Kalyani Rani Manna (Maity)
Vs.
Sri Fanindra Nath Bera & Ors.**

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This second appeal has come up for admission. However, the appellant is not represented nor any accommodation is prayed on her behalf.

On the basis of the judgments of both the courts below and the materials available on record we propose to examine, if there is any substantial question of law involved in this second appeal.

The second appeal is arising out of the appellate judgement and decree dated 24th December, 2019 passed by learned Additional District Judge, Fast Track, 1st Court, Tamluk, Purba Medinipur, in Title Appeal No. 31 of 2012 affirming the judgement and decree dated 18th February, 2010 passed by learned Civil Judge, Junior Division, 2nd Court at Tamluk, Purba Medinipur, in Title Suit No. 03 of 2007.

The plaintiff has filed a suit for declaration that the properties mentioned in 'Ka' schedule to the plaint belongs to her. The plaintiff also claimed that the sale deed described in Ka/1 schedule to the plaint is forged, illegal and void ab initio. The basis of the claim of the plaintiff is that at the time of execution of deed of gift on 4th October, 1982 by the grand mother of the plaintiff in respect of 'Ka' schedule property, the plaintiff was a minor and her father Kalipada Manna executed the deed of gift on her behalf and took possession. It was stated that due to mistake the fact of her remaining minor on 4th

October, 1982 was not mentioned in the said deed of gift. Subsequently, on attaining majority, the plaintiff got married and started living at her ancestral house. As such, the father of the plaintiff was in possession of the said deed of gift on her behalf. At the time of preparation of L.R.R.O.R the plaintiff asked her father for recording her name in the record of rights which her father assured that the property has been recorded in her name. Being assured, she did not make any further enquiry. However, due to need of money when she came to her father's house and requested her father to sale out the property, she came to learn that her name was not recorded in the L.R.R.O.R, instead the same was recorded in the name of the defendants. On an enquiry made by the plaintiff, the defendants disclosed about the existence of a sale deed in their name. Subsequently, the plaintiff collected the certified copy of the sale deed mentioned in "Ka/1" schedule to the plaint i.e. the sale deed executed on 12th May, 1983 and registered on 16th May, 1983 at Sub-Registry office, Hanschara and came to learn that the impugned sale deed had been procured by the defendants in collusion with the father of the plaintiff. The plaintiff alleged that the deed is a forged one and at the time of execution of the sale deed she was 16/17 years old and she used to study at Dibakarpur High School at that relevant time. The headmaster of the said school issued a certificate regarding her date of birth showing that she was minor at the relevant time. Since the plaintiff was minor, she had no legal right to transfer the suit property. It was alleged that she had never transferred the suit property in favour of the defendants nor she accepted any

consideration money in lieu thereof and the signature appearing in the alleged deed is not her signature.

The defendants in their written statement admitted that grand mother of the plaintiff was the owner of the 'Ka' schedule property and the defendants used to possess the land as 'Bargadar'. The plaintiff is the elder daughter of Kalipada Manna. The defendants came to know from the father of the plaintiff that the plaintiff was born in the year 1964. At the time of execution of deed of gift, on 2nd October, 1982 by Kiranbala Bag, the plaintiff was major and the same was duly executed in presence of deed writers, witnesses to the deed. The plaintiff executed the said deed of gift in respect of the suit property and started possessing the same through the defendants who are Bargadars at the time of execution of the registered deed of gift in favour of the plaintiff. Thereafter, the plaintiff decided to purchase some property at Gobordhanpur and was willing to sale the suit property. The defendants agreed to purchase the suit property at market price of Rs.8,000/-. On that basis, the plaintiff executed the deed of sale dated 12th May, 1983 in favour of the defendants in presence of the witnesses in open Majlish. The plaintiff also accepted the consideration money in presence of the witnesses before executing the deed and thereafter registered the same on 16th May, 1983 at the concerned Sub-Registry office. On the same date, the plaintiff purchased some properties at Gobordhanpur in respect of plot no. 404 and remained in possession therein. Both the deeds have been executed by the plaintiff herself as a major.

On the basis of oral and documentary evidence, the trial court arrived at a finding that the plaintiff did not have right, title and interest and possession over the suit property. On the contrary, in the oral and documentary evidence the defendant nos. 2,3 and 4 and Exhibit-D series established that the defendants are in possession of the suit property. In arriving at such conclusion, the trial court had relied upon that the plaintiff did not examine her parents in order to prove the date of birth of the plaintiff from the school-leaving certificate. The trial court was of the view that the parents are the best persons to prove her date of birth at the time of execution of 'Ka' schedule property or at the time of execution of deed of gift on 2nd October, 1982. The plaintiff during her cross-examination admitted that she accepted the deed of gift. The plaintiff also has not taken any step to prove Exhibit-2 i.e. school-leaving certificate. Moreover, P.W3, who happens to be the then headmaster of Dibakarpur High School, has fairly admitted during cross-examination that in the relevant column of admission register the date of birth of the plaintiff in the said school was left blank. The evidence of P.W 3 does not establish the fact that the appellant took admission in the said school for the first time or not. P.W 3 disclosed that the appellant admitted in the school on 29th January, 1980 and admittedly P.W 3 was not present at the time of issuance of school-leaving certificate. The headmaster also could not prove the contents of the admission register nor he could verify the date of birth of the plaintiff/appellant. It is claimed that the plaintiff did not produce the best evidence i.e her parents who were alive at

the relevant time. The trial court has rightly relied upon the decision of the Hon'ble Supreme Court reported in AIR 1988 SC 1796. Moreover, it is admitted by P.W 3 that the admission register in respect of the column "name of the school from which she came does not fill up". Further more, it appears from the evidence of P.W 3 that he has no personal knowledge with regard to issuance of such school-leaving certificate. As such there is no evidence to show that the appellant/plaintiff was minor either at the time execution of the deed of gift or at the time of execution of the sale deed in favour of the defendants.

It is also mentioned that at the time of execution of sale deed in favour of the defendants on 16th May, 1983, she was present in the registry office and she presented the said documents before the registering authority and there was no mention in the said sale deed that she was minor at the relevant time.

The plaintiff also admitted her signature in the sale deed marked as Exhibit-B.

The findings arrived at by the both the courts below cannot be said to be perverse. The date of birth was vital to the issues and could not be proved by the plaintiff.

On such consideration, we do not find any merit in the second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

