

DL. September  
9. 15, 2022

**S.A. 26 of 2022**

**Sri Ananta Mandal & ors.**

**Vs.**

**Smt. Anita Mandal & ors.**

The appellants are not represented, nor any accommodation is prayed on their behalf.

It appears that the matter was earlier appeared on October 1, 2021, when none had appeared on behalf of the appellants to move the appeal for admission. Accordingly, a direction was passed by a co-ordinate bench of this court for listing the matter on October 7, 2021 for recording dismissal. Thereafter the matter is again appearing in the list since September 7, 2022. We propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The present appeal has arisen out of a judgment and decree of affirmance dated November 18, 2005 passed by the learned Additional District Judge, Fast Track Court No. I at Hooghly, in Title Appeal No. 151 of 1992 arising out of judgment and decree dated May 22, 1992 passed by the learned Assistant District Judge at Hooghly, in Title Suit No. 101 of 1998, which is a suit for partition.

The plaintiffs/respondents filed the present suit for partition. All the defendants, who are the appellants herein, contested the suit by filing written statement. The trial court decreed the suit by declaring that the plaintiffs/respondents had  $\frac{3}{4}$  th joint

share in the suit property and the defendants/appellants had  $\frac{1}{4}$  th joint share in the suit property.

The plaintiffs/respondents claimed that one Bonomali Mondal was the original owner of the suit property. Bonomali executed a registered deed of gift in favour of his two grand sons, namely, Lakshman and Gobinda on May 13, 1950. The plaintiffs alleged that although the property was conveyed by way of gift but in the deed it was mentioned as deed of sale.

The defendants/appellants challenged the said deed of gift on the ground that the same was void, ineffective and not binding upon them.

The evidence would show that Lakshman and Gobinda are the sons of the original plaintiff, namely, Badal Chandra Mondal, which is an admitted position. There is also no dispute that Bonomali had two sons, namely, Badal Chandra Mondal and Chandi Charan Mondal. Badal had two sons, namely, Lakshman Chandra Mondal and Gobinda Chandra Mondal. Gobinda predeceased his father as a bachelor. The share of Gobinda devolved upon his mother, namely Usha Rani, who died in the year 1972. After the death of Usha Rani, her share was received by Badal and her sons and daughters. These facts are all admitted.

The plaintiffs contended that though Bonomali executed a deed of sale in favour of Lakshman and Gobinda, the nomenclature of the deed would not be relevant as the said deed was essentially a deed of gift. It was further contended that as the donees (purchasers) were minors, the question of payment of consideration did not arise and the recitals in the said deed are to be

considered as formal.

On the contrary, the defendants challenged the said deed of gift as the same was never acted upon and Bonomali never executed the said deed. It was contended by the defendants that in the absence of acceptance of the property by the donees, the alleged deed of gift is not complete.

The deed in question was executed by the grand father in favour of his two grand sons. At the time of execution of the deed of gift or sale, as proposed by the present appellants, the aforesaid two grand sons were minors. It is not expected that the minor grand sons would pay consideration money to their beloved grand father. It is also not expected that a grand father would accept consideration money (Rs. 50/-) from his beloved grand sons, who were minors at the relevant point of time. The defendants/appellants did not deny the execution of the said deed specifically. In the written statement, however, they have denied that the said deed was executed by Bonomali out of affection. The learned trial judge observed that the deed in question was almost 40 years' old and came from the custody of Lakshman in whose favour the same was executed by Bonomali along with Gobinda. Lakshman as plaintiffs' witness no. 2 has stated that by the said deed, his grand father Bonomali transferred 5 ½ satak of land in his favour along with his brother Gobinda. It was stated by him that after the death of his father, he got the said deed and paid rent.

The evidence and materials on record clearly suggests that Bonomali executed a deed on May 13, 1950 by which 5 ½ satak of land was transferred to Lakshman and Gobibnda. The

evidence of defendants' witness no. 1 and other defendants could not establish that the said deed was ever acted upon. On the contrary, the contemporaneous record, namely, the revisional settlement record of rights would show the names of the beneficiary and their shares were reflected in the said record of rights. The said document was marked as exhibit-2.

On the basis of the materials available on record, it cannot be said that the findings of the trial court were erroneous or based on no evidence. The first appellate court had taken into consideration the fact that Lakshman and Gobinda were minors on May 13, 1950 having their father, Badal Chandra Mondal, alive at that time and observed that it could be safely presumed that the consideration money against the deed of sale was paid by their father being their legal guardian .

Where father alone is the guardian of the minor as well as the property of a minor and where father had executed a deed of gift in favour of the minor sons and the parties are continuing to live together, in that case acceptance of gift can be presumed. In the instant case, the possession of Lakshman and Gobinda over 5 ½ decimals of land in the suit property by virtue of the transfer dated May 13, 1950 and recording of their names in the revisional settlement record of rights and paying rent by them are evident and merely because of an averment in the plaint that the transfer dated May 13, 1950 was a gift and not sale does not rob away the right, title and possession of Lakshman and Gobinda in respect of the suit property.

The factum of possession of Lakshman and Gobinda

along with other defendants as mentioned above and meticulously found by the first appellate court, in our view, justify the finding arrived at by the trial court.

It is well settled that jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.

In view of the settled position of law, the High Court would not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view.

In the instant case, we do not find any perversity in the concurrent findings of fact arrived at by both the courts below which could be said to be based on no evidence. Moreover, we find no substantial question of law involved in this appeal for which the same is required to be admitted.

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

There will be no order as to costs.

**( Soumen Sen, J. )**

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**( Uday Kumar, J. )**

