

**Sobha Rani Pal
Vs.
Namita Rani Ghosh & Ors.**

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The appellant is not represented, nor any accommodation is prayed on his behalf.

The appeal was earlier listed on October 1, 2021, but none had appeared on behalf of the appellants to move the appeal for admission. Thereafter the matter was again appearing in the list since September 7, 2022. We, however, propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmation dated December 13, 2005 passed by the learned Civil Judge(Senior Division), Kandi, Murshidabad, in Title Appeal No. 53 of 2002 arising out of judgment and decree dated June 27, 2002 passed by the learned Civil Judge (Junior Division), 1st Court, Kandi, Murshidabad, in Title Suit No. 17 of 1991 is the subject matter of challenge in this appeal.

The plaintiff filed the suit for declaration and injunction. The plaintiff alleged that the suit property originally belonged to late Dokarilal Ghosh, the father of the plaintiff and the defendant nos. 1 and 2. Dokarilal had three daughters, the plaintiff being the eldest of said three daughters. The mother of the plaintiff Sorbamongala Ghosh died after two/three years prior to the filing of the suit, after the death of her husband Dokarilal, who died five/six years ago. Dokarilal prior to his death executed a deed of gift dated 25.6.1973 in favour of the plaintiff. The plaintiff gave her father permission to reside in the house on plot no. 1899

and plot no. 1900. The plaintiff after the death of her father she gave permission to her mother to reside in these two plots. The plaintiff's house is separated from these two plots by a plot of land in between. Prior to the execution of the deed of gift in her favour, the plaintiff used to reside with her parents till the death of her mother. The plaintiff's financial condition being not good, she used to reside with her parents. The plaintiff's father was illiterate. The said gift deed was written as per his instruction and executed it after it was read over to him. After the execution of the said deed, the plaintiff used to possess the suit property by mutual arrangement separately. Thereafter, the plaintiff's father instituted a suit for declaration that the deed dated 25.6.1973 was void and benami. The plaintiff has come to know that a solenama was filed in that case and the said case was disposed of by a solenama (compromise) decree. The plaintiff was unaware of the said solenama or its terms and conditions. The husband of the plaintiff also did not inform her about it. The original gift deed was given by the plaintiff to her father for safe custody. The plaintiff is an illiterate village lady somehow can manage to sign her name. The plaintiff did not give any power to her advocate to write the solenama. She was unaware of the terms and conditions of the solenama. The Court had no jurisdiction to pass any such decree without her consent.

It was contended that the father of the plaintiff was desirous of transferring the property to her by way of gift.

It was alleged that the mother of the plaintiff during her lifetime gifted 1/4th share of plot no. 1896 to her son Abani Mohan Ghosh.

Subsequently, Abani in turn transferred the same to the defendant nos. 3 to 5. These persons did not get possession of the property.

The plaintiff accordingly claimed declaration of title, possession and injunction. The defendants contested the proceeding.

It was specifically contended that the plaintiff along with her sisters, the defendant nos. 1 and 2 and her mother Sarbamongala Dasi inherited the properties of Dokarilal Ghosh on his death in equal share while possessing such share Sarbamongala transferred 5 decimal of plot no. 1896 of Mouza-Srihatta to Abani (plaintiff's brother) by registered deed of gift dated 31.12.1986. Abani thereafter sold this land to defendant nos. 3 to 5. The defendant nos. 7 to 9 admitted the case of the plaintiff.

On such pleading seven issues were framed and the suit was heard. The plaintiff claimed to be the exclusive owner of all the properties in the deed of gift. The reliefs claimed for declaration by the plaintiff that the solenama decree of O.S 39/76 is void, in operative and without jurisdiction. The defendant nos. 3 to 5 did not acquire any title on the strength of their purchase deed.

Learned Trial Judge dismissed the suit on the ground of limitation.

It is clear from the evidence that the appellant became aware about the existing of the said decree in 1986 when enforcement of the solenama decree Sarbamangala executed a deed in favour of Abani and thereafter Abani came to possess his portion of the property in question. The plaintiff was unable to prove of her knowledge of the solenama decree as it cannot be said that she was completely unaware of the existence of the solenama decree

dated 14th December, 1978 contemporaneously. The mother of the plaintiff had executed the deed in favour of Abani in December 1986 and there has been subsequent transfer made by Abani clearly shows that in 1986 the plaintiff was aware of the existence of the said deed, if not earlier. The suit was admittedly filed beyond the period of limitation.

Taking into consideration the aforesaid factors, the Trial Court decreed the suit on contest. The first appellate court also agreed to the said findings of the learned court below.

The findings arrived at by the Trial Court as well as the first appellate courts are based on prudent evidence.

In view thereof, we do not find any reason to interfere with the concurrent findings of fact arrived at by both the courts below. 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.

(Uday Kumar ,J.)

(Soumen Sen, J.)

