

**Debasis Biswas & Ors.
Vs.
Shanti Chandra Ghosh & Ors.**

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The appellants are 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 20, 2005 passed by the learned Civil Judge(Senior Division), First Court at Hooghly, in Title Appeal No. 93 of 1996 arising out of judgment and decree dated March 28, 1996 passed by the learned Munsif, Additional Court, Hooghly, in Title Suit No. 234 of 1991 is the subject matter of challenge in this appeal.

The appellants are the defendants in the suit. The suit for declaration of title is based on the deed of gift dated 17th July, 1985. The defendants contested the suit. The defendants filed the written statement. In the written statement it was alleged that Katholine Dutta never executed a deed of gift in favour of the plaintiff. The plaintiff was engaged by the husband of the defendant as a servant. During the pendency of the suit Smt. Bani Biswas and Smt. Madhabika Biswas were added as defendant nos. 2 and 3, who also filed their written statement denying all the plaintiff's allegations as made out in the plaint. The added defendants

stated that their father Sudhir Kumar Dutta, his elder brother Santosh Kumar Dutta and his younger brother Sukumar Dutta were own brothers, who purchased the suit property by virtue of a registered sale deed on 5th November, 1921 wherein Sukumar Dutta being as minor was represented by his mother as natural guardian. The suit property is a residential house. On 20th February, 1950 the suit property was partitioned amicably amongst the co-sharers, who accordingly possessed and enjoyed the suit property in accordance with their demarcated portions. Besides that courtyard, corridor etc. of the suit property were kept joint and being used by all the co-sharers.

After the death of her father, the defendant no. 2 or her men and agent used to oftenly visit to the suit property to look after and for manage the same. The defendant no. 2 recently settled at her house here along with her family members. At the relevant time the defendant no. 2 permitted the plaintiff's mother to occupy a portion of her house for her accommodation temporarily in exchange of discharging her duties to lookafter the said property and used to reside there.

Katholine Dutta, the original defendant, since after the demise of her husband Sukumar Dutta was very much dependant upon the plaintiff and the plaintiff taking advantage of said dependency and Katholina not being conversant with Bengali language rather was not able to read and write in Bengali practised fraud upon her for execution of deed in his favour with intent to grab the suit property, which is now being used as sword. The plaintiff in order to prove the deed examined 7 witnesses. The plaintiff examined himself as P.W 1

in order to corroborate his plaintiff's case in suit. The plaintiff being P.W 1 deposed that defendant transferred the suit property in his favour by virtue of a deed of gift and the deed of gift also witnessed by defendant no. 2, Bani Biswas. The signature of Bani Biswas on the deed of gift was marked as Exhibit-1. The said Bani Biswas, the defendant no. 2, was examined in suit as D.W 5. She admitted her said signature on the deed but stated that when she signed the deed there were no other signatures on the deed including of her aunt, the said Katholina Dutta. She also stated that she put her signature on the deed at the instance of the plaintiff without consulting anybody of her family. But during cross-examination she also admitted the signature of Shipra Dutta, another witness of the deed, which was marked as Exhibit-1/5, in suit.

The plaintiff deposed that Katholine got the draft of the deed from Ranjan Babu. One Nemai Das typed the said draft deed when Katholine herself, plaintiff and one Santosh Halder were present.

The plaintiff has duly proved the execution and attestation of the said deed of gift in accordance with law. The Trial Court on appreciation of the evidence as well as deposition of the relevant witnesses and on proper identification of deed of gift decreed the suit in favour of the plaintiff and moreover, Katholine Dutta in her written statement clearly stated that she intended to execute a deed in favour of the plaintiff to keep the wishes of her late husband that the plaintiff can have a right of residence in respect of the ground floor of the suit property. 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.

There is a clear finding of fact by the first appellate court as well as by the trial court with regard to the reasonable requirement of the plaintiff in respect of the suit premises. The said finding is based on cogent 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.)

