

DL. September
11. 15, 2022

S.A. 30 of 2022

Ahmed Ali Molla & anr.

Vs.

Sahera Bibi

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 affirmation dated September 30, 2005 passed by the learned Additional District Judge, Third Court at Alipore, South 24-Parganas, in Title Appeal No. 215 of 2002 arising out of judgment and decree dated January 29, 2002 passed by the learned Civil Judge (Senior Division), Third Court at Alipore, in Title Suit No. 4 of 1998, which is a suit for declaration and permanent injunction.

The trial court tried two suits, namely, Title Suit No. 27 of 199 and Title Suit No. 4 of 198, analogously as per order no. 37 dated June 16, 2001. Title Suit No. 27 of 1997 was filed by Abdul Karim and others against Ayesa Bibi, Saheda Bibi and Ahmed Ali

Molla for declaration and permanent injunction. Title Suit No. 4 of 1998 was filed by Ahmed Ali Molla and Saheda Ahmed against Sahera Bibi for declaration, partition and injunction.

The learned trial judge, on the basis of the evidence on record, arrived at a finding that the plaintiffs in Title Suit No. 4 of 1998 have no cause of action to file the suit for partition because they have already partitioned the said property, which would be reflected from the deeds of gift executed by each other, and they are in exclusive possession of their portion in the suit property by reason of the said deeds of gift.

The moot question for determination was whether the deed of gift dated September 27, 1985 was acted upon and whether the deed of gift was accepted by the plaintiffs. It was also fell for consideration before the trial court as well as before the first appellant court whether the deed of gift was cancelled subsequently.

The suit property in both the suits relates to Q-40, S. A. Farookee Road. In Title Suit No. 27 of 1997, the plaintiffs claimed ownership to the extent of 16 annas share and in Title Suit No. 4 of 1998, the plaintiffs, who are the defendants no. 2 and 3 in Title Suit No. 27 of 1997, have prayed for partition to the extent of 2 annas share.

It was found that one Md. Ajim was the original owner of the suit property along with other properties being Q-43, |Diwan Bagan Nisar Mistry Lane and Q-42, S.A. Farookee Road. Md. Ajim died leaving behind him two daughters, namely, Sahera Bibi, who is the plaintiff no. 1 in Title Suit No. 27 of 1997 and the defendant in Title Suit No. 4 of 1998, and Saheda Ahmed, who is the plaintiff

no. 2 in Title Suit No. 4 of 1998 and defendant no. 2 in Title Suit No. 27 of 1997, and his wife, namely, Ayesha Bibi since deceased, who was defendant no. 1 in Title Suit No. 27 of 1997. According to Mohammedan law, Sahera and Saheda got 7 annas share each and Ayesha got 2 annas share in the properties left by deceased Md., Ajim. This is an admitted position that Sahera and Ayesha transferred their 9 annas share in respect of the properties being Q-42, S.A. Farookee Road and Q-43, Diwan Bagan in favour of Saheda Ahmed and her husband, Ahmed Ali Molla by way two deeds of gift dated September 27, 1985 (exhibits 4 and 5). As such, Saheda Ahmed and Ahmed Ali Molla became the exclusive owners of the properties being Q-43, Diwan Bagan Nisar Mistry Lane and Q-42, S.A. Farookee Road, as Saheda Ahmed already inherited 7 annas share in respect of the two properties.

It was also found that Auyesha Bibi and Saheda Ahmed transferred their shares in respect of the suit property in favour of Sahera Bibi and her husband, Ahjdul Karim, who are the plaintiffs in Title Suit No. 27 of 1997, by virtue of a registered deed of gift dated September 27, 1985 being exhibit-1.

The plaint case in Title Suit No. 27 of 1997 was that the plaintiff no. 2 inherited 7 annas share in the suit property as legal heir of deceased Md. Ajim and by virtue of the gift deed dated September 27, 1985 being exhibit-1 they became owners of 9 annas share in respect of the suit property. As such, they got 16 annas share in the suit property. On the other hand, the defendants in Title Suit No. 27 of 1997 claimed that the deed of gift dated September 27, 1985 (sexhibit-1) was never acted upon as the possession was

not delivered to the plaintiffs. Therefore, the defendants in Title Suit No. 27 of 1997 contended that the plaintiffs did not acquire 9 annas share in the suit property. The defendants further contended that by way of a deed of cancellation dated September 29, 1993, being exhibit-A, Ayesha Bibi and Saheda Ahmed cancelled the deed of gift dated September 27, 1985 (exhibit-1).

On the basis of the aforesaid facts and the evidence adduced by the parties, it needs to be ascertained whether any substantial question of law is involved in the second appeal or not.

It is evident that from the record that the heirs of Md. Ajim settled the dispute amongst themselves amicably. In view of the compromise arrived at between themselves, one house of Md. Ajim was given to his wife and two other houses to the defendants. By way of deed of transfer each of them transferred their respective shares. The deed of conveyance in the name of the wife of Md. Ajim was executed by both the defendants. The defendants executed deeds of gift in favour of Sahera Bibi and himself in respect of Q-43, Diwan Bagan Nisar Mistry Lane and Q-42, S.A. Farookee Road. All the parties accepted their respective deeds of gift. The deeds of gift are with Ahmed Ali Mollak, which were marked as exhibits. The claim of the plaintiffs' witness no. 1, that the deeds of Ayesha and Sahera were not proper as they were Urdu speaking ladies whereas the deeds are in Bengali, was not accepted.

Exhibit-1 clearly shows that Ayesha Bibi and Saheda Ahmed transferred their shares in favour of Ahdul Karim and Sahera Bibi. In view of the earlier settlement amongst the parties, the subsequent deed of cancellation of the earlier documents cannot

be accepted, since the earlier documents were all acted upon. After the transfer takes place and possession is delivered, the transferee lost all interest in the property. Any subsequent deed would have no effect once the transfer is legally effected.

In view of the clear findings of fact that the parties were initially exchanged the properties amongst themselves and the properties were settled in favour of the plaintiffs in Title Suit No. 27 of 1997 and on meticulous analysis of the evidence on record, it cannot be said that the decree passed by the first appellate court affirming the decree of the trial court suffers from any perversity. 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.)