

17.05.2022
SL No.7
Court No.8
(gc)

**FAT 156 of 2021
With
CAN 2 of 2021**

**Dilu Khan
Vs.
Sahajahan Khan & Ors.**

Mr. Rwitendra Banerjee,
Mr. Debdutta Pathak,
...for the Respondents.

The appellant is not represented. On the earlier occasion, the appellant was represented by two Advocates and on the prayer of Mr. R. Sinha, learned Advocate representing the appellant, the appeal was adjourned till this date. We made it clear in our earlier order that no adjournment shall be granted on this date.

The appeal is arising out of a preliminary decree passed in a partition suit. The principal grievance of the appellant is that the learned Trial Court has wrongly relied upon the gift deed alleged to have been executed on 7th March, 2013 as it would be evident from the evidence that the mother of the defendant No.8 had never put her L.T.I or signature on any such deed after knowing its contents. The outcome of the appeal is depending upon a finding on the said deed of gift. It appears from the impugned order that the defendant No.1 contended before the Trial Court that the erstwhile plaintiff No.5 who was transposed as defendant No.8, namely, Majbunnesha Bibi during her evidence as D.W.4 in T.S. No.46 of 2015 has stated that her mother had

never gifted 15 satak to the plaintiff Nos.1, 2 and plaintiff No.5 and she had never put her L.T.I or signature on any such deed after knowing its contents. However during the cross-examination, D.W.4 identified her signature and photograph on Exhibit 9 (deed of gift) and stated that she had grievances against the sub-registrar as regards her photograph and signature on the deeds. She also stated that she would make necessary complaint against Sahajahan and Shah Alam Khan. However, she could not produce any document to show that she had taken any steps for cancellation of the said document or lodged any complaint with the registering authority for recalling registration, though the registration took place on 7th May, 2013. She had admitted her signature on the impugned document. Once a procedure under Section 32 is followed, the sanctity is attached to the execution of the said document. The registered document has a lot of sanctity attached to it and such sanctity cannot be allowed to be lost without following the procedure prescribed under the Act. Curiously, the erstwhile plaintiff No.5 being transposed as defendant No.8 did not prefer any appeal against the said order. She has also not filed any suit or make any counter-claim in the pending proceeding for declaration and cancellation of the said deed of gift on the ground of fraud or coercion or any other grounds that may be available to her. In absence of such challenge thrown to the said document contemporaneously and not being established at the trial that the procedure required to be followed before registration

of a document under the Registration Act, 1908 has not been followed and also having regard to the fact that the erstwhile plaintiff No.5 did not apply before the sub-registrar or before the registrar concerned for recalling of the said registration on the ground of fraud, we feel that the learned Trial Court was justified in disregarding the said evidence and considering the said gift deed as fraud. We do not find any reason to interfere with the findings of the learned Trial Court.

Accordingly, the appeal being FAT 156 of 2021 and the application being CAN 2 of 2021 stands dismissed.

However, there shall be no order as to costs.

L.C.R. to be returned to the learned Trial Court immediately along with a copy of this order through the Office of the Registrar Administration (L&OM).

We request the learned Trial Court to expedite the final decree proceeding and conclude it preferably within a period of eight months from the date of communication of this order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)