

07.03.2022
SL No.24
Court No.8
(gc)

**SA 87 of 2021
With
CAN 1 of 2021**

**Jakir Hossain & Ors.
Vs.
Md. Aziz Sk. Alias Abdul Aziz & Ors.**

(Via Video Conference)

Mr. Sekhar Pal,
Mr. Mobakshar Islam,
...for the Appellants.
Mr. R. Islam,
Ms. Manika Sarkar,
...for the Respondents.

We have heard the learned Counsel for the parties.

The second appeal has come up for admission. As it reveals from the materials on record and the judgment of both the Courts, P.W-1 could not complete his evidence due to ill health and he claimed to have allowed his son to depose on his behalf. Although, no power of attorney was disclosed in the said proceeding to that effect. The Court, however, allowed the son of P.W-1 to depose as P.W-2. It is elementary that a power of attorney holder may depose for the principle for those acts done by him pursuant to the power delegated to him under the power of attorney and he cannot depose for the principal for act done by the principal. The instant case revolves around the legality and validity of an oral sale that alleged to have taken place in 1945. The P.W-2 was born only in the year 1971. He had candidly admitted that he had no knowledge about such oral sale. Moreover, subsequent to the first transfer

there are other transfers in between. As the record reveals, the documents on the basis of which the original plaintiff, Jamiruddin Sk. is claiming title to the suit property by virtue of sale deed executed by Biram Sk. in favour of Jaffar Ali and thereafter the said Jaffar Ali executed a registered Heba-bil-ewaj in favour of Sk. Asiruddin and the original plaintiff and later Sk. Asiruddin has transferred his share in the suit property in favour of the original plaintiff, Jamiruddin Sk. by executing a Deed of Exchange being Deed No.5058 dated 18th May, 1967 and these facts are being special knowledge of the original plaintiff as those acts were purported to have been done by him alone.

In view of such admitted facts, we are of the view that the Trial Court as well as the Appellate Court on proper appreciation of evidence gave findings against the appellants.

In view of the fact that no substantial question of law is involved in this second appeal, the second appeal being SA 87 of 2021 is not admitted and hence dismissed.

In view of the dismissal of the second appeal, the application being CAN 1 of 2021 is also dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)