

Item-26.	06-12-2022	SAT 261 of 2016 CAN 1 of 2016 (old CAN 6463 of 2016)
sg	Ct. 8	Gour Mondal & Ors. Versus Mrityunjoy Mondal & Anr.

The appeal is of the year 2016. The Additional Stamp Reporter has reported in its report dated 28th June, 2016 that the appeal is defective. The matter appeared in the warning list on 16th November, 2022 and continued to remain in the said warning list till it was transferred to regular list on 21st November, 2022. In spite of notice, the appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The appellate decree dated 29th March, 2016 affirming the decree of the Trial Court dated 24th September, 2013 passed in a suit for declaration is the subject matter of challenge in the second appeal.

The plaintiff is 85 years old and the plaintiff has two sons and two daughters but her younger son died at an early age and due to same, the plaintiff was suffering from depression. The elder son of the appellant/plaintiff is handicapped and the two daughters are married off and are staying at her matrimonial home. The respondent/defendants are the grand son of the appellant/plaintiff who being the sons of the younger son of the appellant/plaintiff. That due to such mental condition of the appellant/plaintiff after the death of the younger son the appellant/plaintiff became emotionally attached to her grand son and therefore a relationship of trust developed between them. The appellant/plaintiff further

stated that as her elder son is a handicap she became completely dependent upon the defendants/respondents. Taking the compassion of the appellant/plaintiff towards the respondent/defendants as an opportunity the respondent/defendants asked the appellant/plaintiff to execute one power of attorney for the purpose of paying the rent and recording her name in the records and the appellant/plaintiff fully relying upon the respondent/defendants in good faith went to the sub registry office at Goghat on 28th day of Sraban, 1416 B.S. executed the impugned deed of gift on the believe that the appellant/plaintiff is executing a power of attorney in favour of the respondent/defendants. The appellant/plaintiff further states that they have prior to the execution had purchased stamp paper and prepared the fact of the deed and on the day of the execution without giving any opportunity to the appellant/plaintiff to read over and understand its content hurriedly made the appellant/plaintiff to put her L.T.I. on the impugned deed and appellant/plaintiff under a bonafide believe executed the same thing that she is executing a power of attorney. It is the case of the appellants/plaintiff that some time in the month of Agrayan, 1416 B.S. she received a notice from the office of B.L. & L.R.O. and from the said notice she was astonished to learn about the execution of the said impugned deed of gift. Thereafter the plaintiff/appellant directed her daughter and elder son to collect the certified copy of the deed and on receiving the same the appellant/plaintiff came to know about the execution of the impugned deed. It is the specific case of the appellant/plaintiff that she was made to execute deed of gift in favour of the

defendants/respondents on the grab of the execution of power of attorney as such the appellant/plaintiff alleges that impugned deed of gift is void, fraudulent and ineffectuated and therefore the appellant/plaintiff filed the suit against the respondents/defendants, inter alia, praying for declaration of the title over the suit property and also prayed for declaration that the impugned deed of gift executed on 14.08.09 is void, fraudulent, collusive and illegal.

The defendants in their written statement have specifically stated that the plaintiff had purchased several properties and recorded them in her name prior to execution of the impugned deed. It could be presumed that she has knowledge of the execution of the impugned deed. She has no objection regarding change of the names in the record in respect of the suit property. But the elder son and younger daughter of the plaintiff instigated the plaintiff to file the instant suit. It was specifically stated that the appellant had executed the deed of gift in her full sense, knowledge and consent. She executed the deed at the Registry office.

The Trial Court found the execution of the deed of gift in order and dismissed the suit. The trial court disbelieved the case of the plaintiff that the said deed was executed under misrepresentation of the respondents. The Trial Court as well as the First Appellate Court had noticed several contradictions in the statement of the plaintiff. The allegation that the said deed was executed under misconception and relying on the representation of the defendants was demolished during cross-examination where she has specifically stated “after preparation of the deed I had read

over the same by my men. I had full knowledge about the impugned deed. I have no proof to show that the deed is the outcome of the fraud". She has also stated that she was not aware of the contents of the plaint as well as the affidavit in chief filed by her. She admitted that the case was initiated and looked after by her elder son.

On such consideration, we do not find any reason to interfere with the orders passed by both the Courts. The second appeal stands dismissed. However, there shall be no order as to costs.

The connected application stands, accordingly, dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)