

Court No. 8

SA 10 of 2021

05.07.2022

(AD 14)

(S. Banerjee)

Nemai Chandra Naskar & Ors.

Vs.

Padma Naskar

with

CAN 1 of 2022

The second appeal appeared in the warning list on 22nd June, 2022 and continued to appear in the list until it was transferred to the daily cause list on 28th June, 2022.

The appellants are not present.

This appeal is directed against the judgement and decree passed by the learned First Court of Additional District Judge, Fast Track Court, Howrah in Title Appeal No. 63 of 2005. The fact of the case in short is that – the plaintiffs, appellants herein, filed a suit for declaration and permanent injunction contending inter alia that Kamala Naskar alias Panchu Bala Naskar was the wife of the brother of plaintiffs, since deceased, and aunt of the defendant nos. 1 to 5. She was the owner of a bastu land measuring about 3 cottahs 5 chittaks 3 square feet together with a structure standing thereon being premises no. 12, Padma Kumar Roy Chowdhury 2nd By-lane, Shibpur, Howrah. She was incapable of doing anything due to old age and six months before her

death, the defendant no. 1 taking advantage of her incapacity presented purported deed of settlement containing some LTI allegedly put by Kamala Naskar for registration of the same on 16.08.1983. An application under Section 73 of the Registration Act was filed by defendant no. 1, since deceased, and defendant nos. 2 to 5 before the District Registrar, Howrah falsely representing that Kamala Naskar fell sick and had to go out of the office of the Sub-Registrar, Howrah and Sushil Kumar Naskar under such circumstances presented the document. On 01.11.1983 said Panchubala died. The presentant, i.e., Sushil Kumar Naskar initiated a proceeding under Section 36 of the Indian Registration Act for procuring statement of the representatives of the deceased. The representatives, pursuant to receipt of notice, appeared before the competent authority and denied execution and the registration was refused. The District Registrar, however, withheld the order to be passed in case no. 1 of 1984 and subsequently on 31.10.1990 passed an order for registration of the purported document. According to the plaintiffs the said order is void and defendant nos. 2 to 5 along with defendant no. 1, since deceased, were trying to grab the property. An application was filed for stay of operation of the order but no order was passed and the instrument was registered on 07.11.1990 vide deed no. 5215. On 16th December, 1990 at 4 p.m., the

defendants armed with weapons came and abused the plaintiffs and made an attempt to break open the main door of the suit property which gave birth to the Title Suit No. 317 of 1990. The defendants, however, denied all allegations levelled against them and the learned trial court after considering the evidence on record, both oral and documentary, was pleased to pass a decree restraining the defendants from dispossessing the plaintiffs without due course of law. Learned First Appellate Court, however, while evaluating the evidence of the witness did not find any cogent document to substantiate the claim of the plaintiffs/appellants as to the illness of Panchubala who executed the instrument in question that could have incapacitated her. It was presented for registration and the District Registrar in his wisdom found that the deed so presented was executed by Panchubala and the said order of the District Registrar was not challenged before any forum. Once the District Registrar found that the deed was executed by none else than Panchubala alias Kamala Naskar, learned first appellate court, in our view, was justified in passing the impugned judgement reversing the judgement and decree passed by the learned trial court. In view of Section 114 of the Evidence Act, illustration (c) it is to be presumed that official acts have been regularly performed and in this case we do not find any evidence to rebut such presumption. After all the

onus lies upon the parties to prove the case asserted by them. But in this case the plaintiffs/appellants failed to discharge their onus and, in our considered opinion, the order of the learned first appellate court does not suffer from any perversity. No substantial question of law is also involved in the matter.

Hence, we are not inclined to admit the appeal. The appeal stands dismissed along with connected applications.

(Soumen Sen, J.)

(Siddhartha Roy Chowdhury, J.)