

07 **15.06.
2022**

Ct. No. 04

Ab

SAT 530 of 2016

**Satya Narayan Ghosh
Vs.
Singdha Ghosh.**

**Mr. Tapash Kumar Bhattacharya,
Mr. Ashis Kumar Paul,
Mr. A. Bhattacharya.**

... for the appellant.

The concurrent finding of facts is sought to be assailed in the instant second appeal at the behest of the plaintiff/appellant.

A suit for declaration of title and recovery of possession was filed by the plaintiff/appellant contending that he purchased a property from the erstwhile owner in the year 1971. It is further averred that after purchase of the property the record of right was changed, but the father of the plaintiff/appellant and the original defendant put a pressure upon him to divest undivided 1/4th share in favour of the defendant/respondent. Pursuant to such pressure having created upon the plaintiff/appellant, a deed of release was executed and registered in the year 1974.

Curiously enough, a stand is taken in the plaint that the said deed of release was executed by the plaintiff/appellant without knowing the contents thereof. A case is sought to be made out that the intention of the parties while executing the said deed was to create a possessory right in favour of the defendant and his wife in the property without creating any title therein.

In course of the cross-examination, the plaintiff admits that the witnesses of the said deed are the neighbours but there is a conspicuous silence on the

facts whether those persons, who stood as witnesses in the said deed of 1974, had any enmity with the plaintiff. The suit was instituted for the first time in the year 2000 and it is sought to be contended that the purported deed of release executed and registered in the year 1974 is an outcome of fraud and misrepresentation. The plaintiff could not prove by cogent evidence that he was unaware of the contents of the said deed nor could prove that there was any fraud committed upon him.

A point is sought to be taken before us by the learned Advocate for the appellant that the trial Court has held that by virtue of the deed of release, the title cannot pass and, therefore, it ought to have held that the said deed of release has no bearing nor creates any title into the defendant.

Both the Courts have meticulously examined the contents of the purported deed of release and held that there is a clear stipulation therein that upon receiving a consideration, undivided 1/4th share in respect of the properties described in the schedule was divested in favour of the defendant.

The nomenclature of the document is not a determinant factor. What is required to be looked into the contents of the said document in order to ascertain the intention of the parties at the time of execution of the said property. There is no reflection in the said purported deed of release that the parties have intended to create possessory right but both the Courts have held that there was a clear stipulation discerned from the said deed by which the divestation of undivided 1/4th share was made in favour of the defendant. Furthermore, after the said purported deed of release having executed in the year 1974, the name of the defendant was duly mutated in the record of rights and

the parties were enjoying the property jointly.

Such being the facts, we do not find any substantial question of law involved in the instant appeal.

The appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

The connected application, if there be any, has become infructuous in view of the dismissal of the appeal and is accordingly dismissed.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)