

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**S.A.T. 107 of 2020
With
CAN 1 of 2021**

Naba Kumar Roy and Anr.

Vs.

Sukumar Roy & Ors.

**Mr. Rwitendra Banerjee
Mr. S. Chatterjee
Mr. D. Pathak
Mr. S. Kundu**

... For the Appellants.

**Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal**

... For the Respondents.

Re: CAN 1 of 2021

We hold that there is no delay in filing the appeal taking into account the judgement and order of the Supreme Court in the suo motu case started by it on the question of limitation in filing the, inter alia, appeals during the Covid-19 pandemic.

The central issue involved in this partition suit is whether the subject deed of gift was valid? If held to be valid, the property gifted would not form part of the properties for partition amongst the parties in the suit. The alleged deed of gift is over thirty years old. Automatically, a presumption operates about its validity under Section 90 of the Indian Evidence Act, 1872.

S.D.

The question before the learned trial court and

the first appellate court was whether the respondents/plaintiffs had been able to rebut this very strong presumption in favour of the appellants/defendants producing the deed of gift. The learned trial court held in favour of the defendants but the first appellate court reversed the judgement and decree. Since the said presumption operated in favour of the defendants, cogent and substantial evidence had to be produced by the plaintiffs to rebut this presumption.

On examination of the judgement of the learned first appellate court, we find that there is a detailed analysis of law but hardly any discussion on facts and evidence and determination on the basis thereof to rebut this strong presumption in favour of the defendants.

Although the narration of the above facts suggest that a substantial question of law has arisen, for speedy determination of the issue involved and in the interest of justice, we do not think that admitting this appeal as a second appeal on a substantial question of law would enure to the benefits of the parties.

We think that a proper course would be to remit the matter to the learned first appellate court to determine all questions before it, including the validity of the said deed of gift afresh within four months of communication of this order.

We order accordingly.

Let the suit before the learned trial court be stayed for a period of four months from the date of communication of this order to the first appellate court and to abide by any direction to be passed by that court on disposal of the first appeal.

This second appeal is formally admitted and disposed of by this judgement and order. The connected application is disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

