

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SOUMEN SEN
&
THE HON'BLE JUSTICE AJAY KUMAR MUKHERJEE

SA 75 of 2020
Suresh Ch. Saha
Vs
Laxmi Saha & Ors.

Order dated: 21st March, 2022

Ajay Kumar Mukherjee, J. (oral):

1. This second appeal has come up for admission. However the appellant is not represented nor any accommodation is prayed on his behalf.
2. On the basis of the judgments of both the courts below and the materials available on record we propose to examine, if there is any substantial question of law involved in the second appeal.
3. The second appeal is arising out of the appellate judgment and decree dated 12th July, 2019 passed by the learned Additional District Judge, 4th Court, Malda in Title Appeal No. 04 of 2017 (10/17) affirming the judgment and decree dated 8th December, 2016 passed by the Learned Civil Judge (Junior Division), 1st Court, Malda in Title Suit No. 55 of 2007.

4. Plaintiff filed Title Suit No. 55/2007 contending that one Chowdhury Lal Saha was the original owner of 1.12 decimal of land in plot No. 588, 645 and LR record or rights was duly prepared in the name of said Chowdhury Lal Saha. Plaintiff purchased the said property along with other properties from said Chowdhury Lal Saha vide deed No. 6161 dated 30.7.1976 and thereby acquired title and possession over the suit property. Defendant is brother of the plaintiff, who is creating disturbance in the possession of the plaintiff in the suit property. Therefore, plaintiff filed the suit for declaration of title and permanent injunction.

5. Defendant contested the suit by filing written statement. Defence contention is, it is true that Chowdhury Lal Saha was original owner of the suit property and LRROR prepared in his name but the plaintiff never purchased the suit property from said Chowdhury Lal Saha and plaintiff's deed dated 30.07.1976 is fraudulent deed , which was prepared on the basis of false personification. Plaintiff practiced false personification in respect of his father Chowdhury Lal Saha and obtained the deed making conspiracy with the deed writer and witness. Said Chowdhury Lal Saha actually transferred the property in favour of the defendant by way of gift deed No. 4104 dated 27.03.1983 and delivered possession of the said property to the defendant. The defendant is in possession of the suit property for more than 12 years and as plaintiff has no right title in the suit property, so the suit is liable to be dismissed.

6. Learned Trial Court has framed 5 issues. Plaintiff himself deposed as PW1 and also adduced evidence of other two witnesses and proved original

deed No. 6161 for the year 1976 in his favour, which is marked as exhibit '1' and the certified copy of LRROR which is marked as exhibit '2'. On the contrary defendant adduced himself as DW1 and also adduced evidence of 4 other witnesses and he has also filed and proved the original deed of gift in his favour dated 27.03.1984 which is marked as exhibit 'A' and the signature of Chowdhury Lal Saha on the said deed of gift dated 27.03.1984 is marked as exhibit 'A1' to 'A5'. The signature of Raghunath Ghosh on the said deed is marked as exhibit 'B'.

7. It was argued on behalf of the defendant, before the Trial Court that plaintiff could not prove his sale deed and deed writer and witness of the deed was not examined and PW3 has admitted that plaintiff has no possession over the suit property and there is no witness that plaintiff paid consideration money to his father. On behalf of the plaintiff it was argued before the Trial Court that it is quite unnatural that money transaction between father and son would take place in presence of any person. The defendant in his written statement did not deny that there was no money transaction in between plaintiff and his father. The title deed in favour of plaintiff in respect of the suit property was executed prior to the gift deed in favour of the defendant and defendant failed to prove that plaintiff obtained his title deed by false personification as the report of the hand writing expert is in favour of the plaintiff. Learned Trial Court after hearing arguments on behalf of both the parties and considering evidence and exhibited documents came to conclusion that the deed of plaintiff came in existence prior to the deed of the defendant

and defendant sent the deed dated 30.07.1976 for comparison of L.T.I. of Chowdhury Lal Saha for expert opinion and finger print bureau opined that finger print of Chowdhury Lal Saha on the deed dated 30.07.1976 and L.T.I. register is identical. Moreover plaintiff's deed is 30 years old and in view of section 90 of the Evidence Act it can be safely presumed that the deed dated 30.07.1976 was executed by Chowdhury Lal Saha. Moreover DW1 in his evidence stated that he does not know whether his father sold the suit property to the plaintiff in 1976. He further observed that though PW3 in cross-examination stated that plaintiff is not possession of the suit property but plaintiff filed LRROR in respect of suit property which stands in his name and marked as exhibit '2'. Considering the fact that documentary evidence shall prevail over oral evidence regarding possession and that plaintiff's deed is earlier one and that defendant miserably failed to prove his case of false personification, learned Trial Court decreed the suit in favour of plaintiff declaring his right tile interest in the suit property.

8. Being aggrieved and dissatisfied with the said judgment passed by the learned trial court on 08.12.2016 defendant /appellant preferred first appeal which came up for hearing before Additional District Judge 4th Court, Malda. Learned First Appellate Court affirmed the judgment and decree passed by the Trial Court and dismissed the appeal on contest with the observation that plaintiff's sale deed was executed on 30.07.1976 by Chowdhury Lal Saha and said sale deed comprised of suit plot beside other plot and it was registered satisfying the condition laid down under section 54 of the Transfer of Property

Act. Plaintiff's sale deed is 30 years old carrying presumption under section 90 of Evidence Act in his favour and exhibit '2' shows evidence of possession in favour of plaintiff. Learned First Appellate Court further observed that plaintiff has denied execution of the gift deed in favour of the defendant and as such defendant was required to prove that the gift deed was at all acted upon by producing cogent evidence of possession like revenue record and furthermore when defendant has alleged the story of false personification in respect of plaintiff's sale deed he was duty bound to prove the same. Accordingly learned First Appellate Court came to conclusion, when the registered sale deed stands in favour of plaintiff and when Chowdhury Lal Saha already proved to have parted with the possession and ownership of the suit property, as appearing from the entry in the record of rights, then Chowdhury Lal Saha was not having any right title interest to execute gift deed in respect of the suit property, in favour of the defendant and defendant has failed to prove that the gift deed had ever acted upon. So learned First Appellate Court affirmed the judgment and decree passed by the Trial Court.

9. Being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the First Appellate Court on 12.07.2019 in Title Appeal No. 4/2017 defendant/appellant has sought to admit second appeal before us on the ground that learned courts below should have held that sale deed in favour of plaintiff never acted upon and plaintiff has no khas possession in the suit land and as such suit is not maintainable. Moreover learned courts below failed to

consider that even after the alleged sale deed the suit land was in possession of the father/donor and after deed of gift in favour of defendant/appellant.

10. It appears that plaintiff's sale deed is earlier one and there is nothing to show that section 54 of the Transfer of property Act has not been complied.

11. Though it has been contended by the defendant that the deed of plaintiff was created on the basis of false personification but the report of the hand writing expert nullifies the defence contention about false personification. Moreover, under the provision of section 90 of the Evidence Act the deed being 30 years old there is sufficient scope to presume its due execution.

12. The entry in record of rights stands in favour of plaintiff which raises presumption in favour of plaintiff in respect of his possession and also establishes the fact that the original admitted owner of Chowdhury Lal Saha had parted with possession after the aforesaid sale in favour of plaintiff. There is also nothing to show that defendant ever made any attempt for correction of record of rights which stands in favour of plaintiff after execution of alleged deed of gift.

13. In view of facts and circumstances of the case we are of the view that no question of law far from substantial question of law is involved in the present context and as such the appeal is liable to be dismissed.

14. SA 75 of 2020 is dismissed.

There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Let the copy of the order be send to the Civil Judge, (Junior Division), 1st Court,
Malda.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)