

24-07-2023
ct no. 13
sl. no. 4
sp

F.A. No. 135 of 2015
Batukesh Chakraborty
-Versus-

Anjali Chakraborty, since deceased represented by her
legal representative Bhaskar Chakraborty & Anr.

Mr. Sourav Sen,
Ms. Sohini Chakraborty

...for the appellants

Mr. Partha Pratim Roy,
Mrs. Srijoni Chongdar

....for the respondents

1. The appeal is directed against the judgement and order dated March 7, 2013 passed by the learned Civil Judge (Senior Division), 3rd Court at Alipore in T.S. No. 11220 of 2012, renumbered from original T.S. No. 58 of 2012.
2. The brief facts relevant to the case are that the plaintiff/appellant, is the elder son of late Gopesh Chandra Chakraborty. The said Gopesh Chandra Chakraborty died in the year 1994 leaving behind his wife, Anjali Chakraborty, the appellant and one Bhaskar Chakraborty, one of his sons, as his legal heirs.
3. During his life time, Gopesh Chandra Chakraborty acquired immovable properties at Jamsedpur and Calcutta. The Calcutta properties are situated in 17/C/1, Moore Avenue, Kolkata-700040 and premises no. 15/B/1, Moore Avenue, Calcutta-700040.

4. The suit property of premises no. 17/C/1, Moore Avenue, (now known as Manik Bandyopadhyay Sarani) Kolkata-700040 was, according to the plaintiff, purchased by late Gopesh Chandra Chakraborty in the name of his wife Anjali as “Benamidar”.
5. The plaintiff resides at Jamsedpur in a rented accommodation and had possession of premises no. 15/B/1, Moore Avenue, Calcutta-700040 jointly with others. Upon the death of his father, the plaintiff was in the process of seeking partition of the father’s property when he discovered in the year 2011 that the mother Anjali had executed a deed of gift in favour of the defendant no. 3, Basabi Chakraborty. Basabi is the wife of the defendant no. 2, Bhaskar Chakraborty.
6. The suit was filed by the plaintiff/appellant seeking a declaration that his mother Anjali Chakraborty was a mere “Benamidar” of his father late Gopesh Chandra Chakraborty. He had no income of his own. The plaintiff/appellant accordingly sought 1/3 share of the suit property by partition and succession.
7. The suit was contested by the mother Anjali Chakraborty and the defendant no. 3, Basabi Chakraborty by filing written statement. The

plaintiff/appellant examined two witnesses, i.e., himself and his paternal uncle. The defendant nos. 1 and 3 examined themselves. Issues were framed.

8. After hearing the parties, the suit was dismissed by the Court below, inter alia, holding that plaintiff could not establish that the property in question standing in the name of the defendant no. 1, Anjali Chakraborty was purchased out of the funds of her late husband Gopesh Chandra Chakraborty. The Court had considered the judgement of the Hon'ble Supreme Court in the case of **Jaydayal Poddar (Deceased) thr. Lrs. Vs. Mst. Bibi Hazra** reported in **(1974) 1 SCC 3**. Applying the tests thereunder, it was held by the Court below that Anjali was not a "Benamidar" of her husband.
9. The parties proved and exhibited 4 documents each. Substantial reliance is placed by the learned counsel for the appellant on diary entries and two letters stated to have been written by or under the instruction of Gopesh Chandra Chakraborty indicating that the suit property was actually purchased out of the funds of Gopesh Chandra Chakraborty. The construction on the property is also stated to have been paid for by Gopesh Chandra Chakraborty.

10. The letters in question are stated to have been signed by both Gopesh Chandra Chakraborty and Anjali Chakraborty, husband and wife.
11. Unfortunately, the said two letters have not been exhibited in the Court below. They may have been disclosed in the suit by the appellant in course of discovery and inspection. The said documents could demonstrate some intention of Gopesh that the suit property was not funded by him and was meant to be part of, and for the benefit of the entire family. The same is required to be demonstrated by the appellant/plaintiff in terms of the dicta in ***Jaydayal Poddar (Deceased) case, (supra)***.
12. The Court below did not find favour and did not rightly refused the said declaration ignoring the letters allegedly signed by Gopesh and Anjali together. The said documents were never exhibited and have crept into Court records by mere disclosure.
13. Counsel for the appellant would call upon this Court to exercise powers under Order 41 Rule 27 of the CPC to admit the documents in evidence as additional evidence.
14. This Court is not inclined to do so or even remand the matter back to the Court below for

reconsideration of the said documents for the reasons indicated herein below:

- a) The appellant has not proved the alleged letters dated 3rd November, 1988 and another letter being the year 1988, its contents or signature in the Court below.
- b) The appellant has not filed any application in the Court below or in this Court before filing the appeal, to seek review or recall of the decree or to prove a disclosed document.
- c) No application has been made even in this appeal, for leave to disclose or prove and exhibit the said document nine years after filing of the appeal.
- d) There is a declaration dated 4th November, 2011 by the appellant after the deed of gift dated 12th May, 2011 that he has no claim or connection with the suit property standing in the name of Anjali Chakraborty, his mother the defendant No. 1.

15. On the basis of the evidence on record, therefore, the appellant has not been able to demonstrate in the Court below, that Anjali was a “Benamidar” of her husband Gopesh in respect of the suit property.

16. What is interesting to note is the declaration dated November 4, 2011 admitted in evidence in the matter. The said document has been proved and brought on record by the defendant no. 1 Anjali. There is no cross-examination in respect of the said document.
17. By the said document, the appellant/plaintiff has declared that he had absolutely no objection to his mother exclusively dealing with and/or disposing of the suit property. Anjali had prior thereto, on May 12, 2007, gifted the property to Basabi Chakraborty, the respondent no. 3, her daughter-in-law.
18. The argument of the learned counsel for the appellant/plaintiff is that the declaration is subsequent to the gift deed and is even otherwise of no consequence, since the property was already standing in the name of Anjali. She did not need any such declaration.
19. The argument of the appellant reveals more than it seeks to convey. It completely contradicts the claim of the appellant in the suit.
20. The declaration in the year 2011 may have been required by Anjali to dispel any doubt, dispute or difference with regard to the property in question being transferred to her daughter-in-law by gift. The appellant may have fallen foul

with his mother pursuant to such transfer. Family tempers and egos in this regard, often crop up upon transfer of property and are not unknown.

21. For the reasons already recorded by the Court below and, those indicated hereinabove, the appeal fails and is hereby dismissed.
22. In view of the above, connected applications, if any, shall also stand dismissed.
23. Interim orders, if any, shall stand vacated.
24. There shall be no order as to costs.
25. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)