

06.10.2023
SL No.15
Court No.8
(gc)

**RVW 62 of 2023
CAN 1 of 2023
In
SAT 103 of 2013**

**Shibtala Palli Sangha & Ors.
Vs.
Mohanlal Roy & Ors.**

Mr. Sanat Kr. Roy,
Mr. Abhishek Banerjee,
...for the Applicants.
Mr. Mahendra Prasad Gupta,
Mr. D.K. Saila,
Mr. A. Panja,
...for the Respondents.

1. This is an application for review of the judgment and order dated 2nd March, 2023.
2. The second appeal was not admitted by this Bench on 2nd March, 2023. In absence of the appellants, we have meticulously read the order of the Trial Court as well as the First Appellate Court and thereafter we arrived at a finding that the appeal does not involve any substantial questions of law. Both the Courts have returned the finding of facts on consideration of the evidence on record.
3. It is submitted on behalf of the applicants that the gift deed was obtained by fraud. Surprisingly, the plaintiffs did not lead any

evidence before the Trial Court. They did not even make any prayer for remanding the matter to the Trial Court in order to enable them to prove fraud as alleged. It is elementary that the plaintiff has to aver and prove at the trial in respect of the facts pleaded in the plaint in order to enable the Court to decide the issue. The plaintiffs cannot establish their right on the basis of the evidence of the defendants.

4. The plaintiffs did not adduce any evidence with regard to the gift deed to establish that the said deed was procured by fraud. The case of the plaintiffs is based on oral gift of an immovable property which is not permissible in law. In contrast to the claim of the plaintiffs, the defendants have produced the certified copy of the gift deed and, in fact, RSROR, and assessment register was produced to show that consequent upon the gift deed, the names of the defendants were duly mutated. In fact, D.W.4, an employee of the District Registry Office has proved the certified copy of the deed of gift.
5. In view thereof, we do not find any reason to review the order passed by this Bench in

which the second appeal was dismissed at the admission stage.

6. Accordingly, the review application being RVW 62 of 2023 stands dismissed.
7. In view of dismissal of the review application, the application being CAN 1 of 2023 also stand dismissed.
8. However, there shall be no order as to costs.
9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)