

Item-7. 21-04-2023

SAT 218 of 2015

^{sg} Ct. 8

Esrail Sk. & Ors.
Versus
Ajijul Sk. & Ors.

Mr. S.T. Mina, Adv.
Mr. Protick Sardar, Adv.

...for the appellants

The second appeal is arising out of a judgement and decree dated 23rd December, 2014 passed by the learned Additional District Judge, First Court at Jangipur, Murshidabad reversing the order of the learned Civil Judge (Junior Division) at Jangipur passed in a suit for cancellation of an instruction, declaration of title and permanent injunction.

The appellants are claiming to be donees of the suit property from their grandfather. The facts are little curious as the property which was gifted to the grandsons was attempted to be reverted to the grandfather by the grandson purportedly by a deed of gift executed on 10th September, 1986 on the assumption that there has been a valid gift in favour of the grandfather. Subsequently, the deed was prepared for partition on 14th June, 1990.

The plaintiffs filed a suit for a declaration that they were minor when the said alleged deed of gift was executed by them in favour of their grandfather and there is a strong possibility of impersonation at the Registry office resulted in the said alleged deed of gift to come in existence.

The learned Trial Court proceeded on the basis that the deed of gift was acted upon disregarding the main challenge thrown to the execution of the said deed of gift of the plaintiffs that they

could not have executed the said deed as they were minor and any such agreement would be invalid under Section 11 of the Indian Contract Act. The learned Trial Court in remiss of such evidence proceeded to hold the deed of gift and the partition deed sacrosanct and dismissed the suit.

The First Appellate Court in reversing the said judgment has taken note of the fact that till 10th September, 1986 neither the grandfather nor the plaintiffs denied the existence of the gift made in favour of the grandsons.

Having admitted that the properties were gifted to the grandsons, it needs to be seen whether on 10th September, 1986 the appellants were competent to execute any such deed of gift. In order to establish that they are minor and incapable of entering into any agreement without being rebutted of their legal guardian and on limited ground like necessities etc. the plaintiffs produced the school certificate issued by the Headmaster of Khamra Bhabki Junior High School. The said document was marked as Exhibit 1. There is no evidence on record to show that the plaintiffs were not the students of the said school or the entries were false, incorrect and/or manipulated. The evidence with regard to age of the appellants at the time of alleged execution of the said deed could not be rebutted. The learned First Appellate Court on the basis of such evidence reversed the judgment of the learned Trial Court and decreed the suit on contest.

The learned Counsel for the appellants has submitted that voter list was produced as rebuttal evidence. The learned First Appellate Court dealt with the issue and give primacy to the school certificate and held to be genuine following the decision of

the Hon'ble Supreme Court reported in *(2013) 1 AICLR 93* and a decision of our Court reported in *(2014) (1) CRLR (Cal) 365*.

We are also of the view that in the case of conflict between the voter list and birth certificate, more importance is attached to the birth certificate and that is the first primary evidence, which is acceptable as the proof of age of a person. The father of the plaintiffs could have easily produced the birth certificate of the hospital or the nursing home where his two sons were born or any Municipal record or any document from the Registration of Births and Deaths to disprove such document. In fact, when the school certificate is issued by the Headmaster, it is based on the declaration of the parents with regard to the date of birth of the child duly supported by documents in proof and verification of the age of the child.

In view of the preponderance of the evidence showing that the plaintiffs were minor on the date of execution of the deed dated 10th September, 1986, we do not find any reason to interfere with the order passed by the learned First Appellate Court. The appeal fails.

A copy of the decree passed by the learned First Appellate Court and affirmed by us shall be sent to the concerned Registry office for making proper note as regards its invalidity.

SAT 218 of 2015 is, thus, dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)