

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

**S.A.T. 125 of 2022
With
CAN 1 of 2022**

**Sk. Asrat Ali
Vs.
Samsunara Begum**

**Mr. Aniruddha Chatterjee
Mr. Debjit Mukherjee
Mr. S. Chatterjee
Mr. D. Ganguly
Mr. K. Bhattacharjee For the Appellant.**

**Mr. Ayan Banerjee
Mr. S. Banerjee For the Respondent.**

In Re: CAN 1 of 2022

On 2nd January, 2023, we directed notice of this appeal to be given to the respondent. This was so because we thought that whether a substantial question of law arose from the impugned judgement and order dated 20th May, 2022 could be decided in her presence.

The flaw that we notice in the impugned judgement and order is that the learned judge assumed that the subject hebanama was made absolute by the learned 1st Court. This was not so because this declaration and the decree was the subject matter of challenge before the learned 1st appellate court. If the appellant succeeded the gift would be valid and if not the declaration made by the learned 1st court would be affirmed.

S.D.

Therefore, the rights of the parties were very

much sub-judice before the 1st appellate court. As transferee from the defendant, the appellant certainly had the right to defend the hebanama and prosecute the appeal. Therefore, the application of the appellant under Order 22, Rule 10 of the Civil Procedure Code was not only maintainable but ought to have been allowed. Thereafter, the rights of the parties ought to have been decided.

In those circumstances, a very substantial question of law arises in this appeal. At the same time we are of the view that no purpose will be served in hearing out this appeal by this court. The ends of justice would be sub-served if the first appeal is heard out by the learned court, on the basis of this judgement and order.

Accordingly, dispensing with all formalities, we dispose of this appeal by directing that the application for substitution under Order 22, Rule 10 made by the appellant is allowed. The appellant in the first appellate court be transposed as respondent. The learned 1st appellate court shall hear out the first appeal on merits after effecting the necessary substitution and amendment in terms of this order within six months of communication of this order.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

