

Item- 127.	31-01-2023	SAT 2833 of 2003 CAN 1 of 2004 (old CAN 2102 of 2004)
sg	Ct. 8	Bidyut Adak Versus Niva Rani Das & Ors.

Mr. R.N. Bag, Adv.
Mr. Shankar Ranjan Sen, Adv.
Mr. Rohan Raj, Adv.
...for the appellant

The appellate judgment and decree dated 7th July, 2003 affirming the 3rd August, 1996 in a suit for declaration and injunction is the subject matter of challenge in this second appeal.

Mr. R. N. Bag, learned Counsel appearing for the appellant has submitted that there are inherent contradictions in the judgment of the trial court and the first appellate court in arriving at a finding that the deed of gift was procured by fraud and executed under duress. It is submitted that the pleading as to fraud and misrepresentation was wrong and the onus is on the plaintiff to establish that any fraud or coercion or undue influence was exercised by the defendant upon her in obtaining and procuring the said deed of gift. It is submitted that the evidence, on the contrary, would establish that the donor herself has visited the registry office and executed the deed of gift with full knowledge.

Our attention is drawn to a observation made by the trial court at page 14 of its judgment that the deed of gift was executed and registered by the plaintiff with her full knowledge and out of affection and cordial relation with the defendant.

We have carefully read the judgments of both the courts. The observation which has been relied upon by Mr. Bag is, in fact,

the submission made at the instance of the defendant and it is not a finding of the court as such. The defendant has also all throughout contended that the plaintiff executed the said deed with her full knowledge. If we read page 14 carefully with other pages of the judgment, it would be clear that by summarizing the submission of the parties, the said observation was made. In fact, the trial judge had gone hammer and tongs in demolishing the case made out by the defendants that the lady had executed the deed on her own volition. The evidence has been properly scanned by the trial court as well as by the first appellate court. The first appellate court has well summarized the evidence of the PW-1 and DW-1. The PW-1 has all throughout stated, even during her cross-examination, that the said document was not executed by her knowing its contents and she was a victim of circumstance.

It is an admitted position that the husband of the plaintiff late Gajendra Nath Das had two wives and had one son namely, Ashoke by his 1st wife and Mrinal Das is the son of Ashoke and the plaintiff is the 2nd wife and she has 6 daughters out of which the wife of the defendant is the youngest daughter and the other five daughters of the plaintiff were residing in their matrimonial home. The plaintiff Kishori Bala Das obtained the suit Ka-schedule property together with other non-suit land by virtue of *nirupan patra* deed dated 19th October, 1956 executed by her husband in her favour. The plaintiff possessed the suit property by paying tax to the government. The plaintiff had no son and as such, she gave marriage of her youngest daughter Pravabati with the defendant with a view to keep him in her house as a domesticated-son-in-law. After marriage, the defendant used to reside with his wife in the

house of the plaintiff most of the time. Since the plaintiff had no son, she had trust and faith on the defendant. The defendant used to look after all the landed properties of the plaintiff. At the relevant time, the plaintiff was an octogenarian and she suffered from old age ailments. The plaintiff claimed to be an illiterate, rustic and pardanosseen lady and she was fully dependant on the defendant no.1 and her youngest daughter Pravabati. The plaintiff alleged that taking the advantage of helplessness of the plaintiff, the defendant in the last part of Kartick 1393 BS expressed to the plaintiff that without having a power of attorney it would not be possible for him to carry out various works involving the suit property and other non-suit properties. It was represented that the power of attorney is necessary to represent the plaintiff before the various authorities including the Land Revenue Authority for mutation of other properties. Relying on such representation and believing it to be true, the plaintiff put her LTI before the Nandigram Registration office and had ultimately turned out a deed of gift. This deed of gift is under challenge.

In the evidence it has clearly come out that the plaintiff was pardanosseen, illiterate and rustic. In her evidence Kishori Bala Das has clearly stated that she never executed any deed of gift in favour of the defendant nor she had any intention to gift the suit property to the defendant. She had further deposed that the defendant took her LTI in a deed with a view to look after her landed property and the contents of the said deed was neither read over and explained to her nor she was aware that the impugned deed was a deed of gift. She further deposed that none of the attesting witnesses of the deed signed the document in her presence nor she put her LTI in

presence of them. It further transpired from the evidence of PW-1 that if she was aware that the impugned document then she would not have put her LTI on the document. In short, her evidence was that she never carried her mind with the document and accordingly, the said document cannot be said to be a document executed by her. That Kishori Bala Dasi was illiterate, rustic and pordannossean lady was also established at the trial. One of the daughters of Kishori Bala Das also deposed in favour of the plaintiff and she also had stated that she was aware that the defendant requested her mother to execute a power of attorney to look after the properties.

When the circumstance was such, it was incumbent upon the defendant to call the scribe and attesting witnesses to demolish the case of the plaintiff. Curiously, neither scribe nor attesting witnesses were called to prove the due execution of the said deed. DW-1 who is benefited by the said deed had deposed that he read over and explained to Kishori Bala Das and thereafter she put her LTI thereon.

However, having regard to the nature of the dispute, it was incumbent upon that the defendant to remove all suspicious circumstances surrounding the execution of the said deed by producing the scribe and any of the attesting witnesses of the disputed deed to prove the free will and volition of Kishori Bala Das in executing the said deed. It was also not appearing from the document that the said deed was read over and/or explained to Kishori Bala Das.

On such consideration, we are of the view that the fact on the basis of the findings arrived at by the trial court as well as the first appellate court in favour of the plaintiff, is a probable view and

which does not call for any interference in the second appeal. The concurrent findings of facts are based on preponderance of the probabilities and the evidence on record.

On such consideration, the second appeal stands dismissed at the admission stage.

(Uday Kumar, J.)

(Soumen Sen, J.)