

Item-30. 18-05-2023

sg Ct. 8

SAT 319 of 2016
Tapan Kumar Ghosh
Versus
Hari Narayan Ghosh & Ors.

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The matter is appearing in the daily cause list since 14th February, 2023. In spite of having due notice and knowledge that the matter is pending, the appellant is not represented.

The appeal is defective since 5th August, 2016.

The appellate judgement and decree of the First Appellate Court dated 21st March, 2016 affirming the judgment and decree of the Trial court dated 31st March, 1995 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal.

We have read the judgments of both the courts. The plaintiff could not prove its claim and the suit was dismissed. Smt. Probhamoyi Ghosh, since deceased, was the original plaintiff. She claimed to be owner of the suit property purchased out of her stridhan property in 1948 and after purchase she constructed two storeyed pucca building on the suit land and used to reside therein with her two sons. The defendants used to look after her said property as she was suffering from various ailments. She was about 80 years. The defendants asked her to execute power of attorney in order to enable them to look after her properties and she was asked to put signature on several papers without

explaining the contents thereof. Suddenly, in June, 1995 she was asked to leave the house of the defendants in order to enable the defendants to raise construction. When she refused, the defendant disclosed to her she lost her title in the suit property as she had already gifted the suit property in favour of the defendants by executing a deed of gift on 7th April, 1982 followed a rectification deed dated 19th September, 1989. The suit was decreed. The defendant no.2 contested the said suit. He relied upon the deed of gift to prove his claim. Both the parties adduced evidence on the basis of oral and documentary evidence.

The trial court has arrived at a finding that this deed of gift was fraudulently obtained from the original plaintiff. The fact that she never executed any deed of gift was proved. It was established from evidence of DWs. 1 and 2 that they used to look after the plaintiff and taking advantage of the old age of the mother and exercising their dominating position, they executed the deed of gift without proper understanding of the contents of the said deed by their mother. DW-1 did not file any written statement. DW-3 has stated that he was ignored about the said deed. There was no evidence to show that the principal plaintiff had ever put her signature after knowing the contents of the deed. There was no evidence to show that the plaintiff executed an affidavit on her own in support of the mutation of the appellant before the concerned authority.

On the basis of the preponderance of probabilities, the Trial Court decreed the suit and the First Appellate Court has affirmed the said decree. On such consideration, we do not find any reason

to interfere with the judgment and order passed by the First Appellate Court in affirming the judgment of the Trial Court.

The appeal stands dismissed at the admission stage.

(Uday Kumar, J.)

(Soumen Sen, J.)