

26 16.5.2023

Ct-08

SAT 408 of 2015

**Md. Mozahar Hossain
Vs.
Minor Nawaj Sarif**

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The minor defects reported by the stamp reporter are ignored.

The appellant is not represented.

The appeal appeared in the warning list on 6th March, 2023 with a clear indication that the same shall be transferred to the regular list on 21st March, 2023, since then the matter is appearing in the list. The appellant is having deemed notice of the matter.

The appellate judgment and decree dated 23rd December, 2014 affirming the judgment and decree passed by the trial court on 16th September, 2009 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal.

We have carefully read the judgment of both the courts below and the grounds of appeal in order to find whether this appeal involves any substantial question of law or not.

The trial court in decreeing the suit in favour of the plaintiff had taken into consideration that the possession of the plaintiff is proved from the rent receipt and the record of rights produced by P.W 3 and certain suspicious circumstances surrounding the execution of the impugned deed, on the basis of which the right of the plaintiff was denied by the trial court decreed the suit in favour of the plaintiff. The identity of the attesting witnesses has also showered.

In affirming the judgment of the trial court, the first appellate court considered the validity

of Hebabil Ewaj purported to have been executed by Anowara Bibi on 17.11.1988 in favour of the defendant no. 1 in respect of the suit property as she was illiterate pardanasin lady and suffering from rheumatism having her family. Anowara Bibi undoubtedly was an absolute owner of the suit property. She was married with the proforma defendant no. 2 and out of their wedlock one son and three daughters were born. These daughters were given marriage and thereafter Anowara used to live with her only son and husband in her matrimonial home. Out of her love and affection she executed Hebanama on 12.12.2001 and registered on 14th December, 2001 in favour of the plaintiff, who happens to be her grandson and since then the minor plaintiff was in possession of the suit property by cultivating the said land through his father in order to establish his assertion.

The plaintiff produced Hebanama deed that was registered on 14th December, 2001. Tax receipts and other relevant documents including the L.R & ROR indicate that the said deed was executed voluntarily following the legal formalities by the grandmother of the plaintiff.

The trial court as well as the first appellate court taking into consideration that Anowara was illiterate pardanasin lady, who was suffering from various ailments, and also having regard to the certain suspicious circumstances surrounding the execution of the impugned deed in favour of the appellant who happens to be one of the son-in-laws accepted the findings of the trial court.

The husband of Anowara Bibi in his evidence has supported the plaint case and his credibility

could not be impeached. Moreover, the recitals in Exhibit-A for which the suit land was transferred in favour of son-in-law of Anowara was also not proved.

On such consideration, we do not find any reason to admit the second appeal. The concurrent finding of facts does not call for any interference.

The appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)

