

Item No.1
21.12.2023
Court. No. 19
GB

C.O.3810 of 2022

Sree Sree Kalachand Jew Thakur
Represented by Sri Nitai Charan Dash Adhikari
@ Nityananda Dash Adhikari & Anr.
VS
Sri Shankar Mohanti

*Mr. Raghunath Das,
Ms. Monalisa Das*

...for the Petitioners.

*Mr. Amit Baran Dash,
Ms. Ankana Sarkar*

...for the Opposite Party.

In the cause title of the order dated October 11, 2023 the name of the petitioner 'Sri Nitak Charan Das Adhikari' be corrected as 'Sri Nitai Charan Das Adhikari'.

Let the correction be incorporated by the department and the same be treated as a part of the earlier order. Rest of the order dated October 11, 2023 remains unaltered.

The revisional application arises out of an order dated September 29, 2022, passed by the learned Civil Judge (Junior Division), 1st Additional Court at Contai, District – Purba Medinipur in Title Suit No.79 of 2014.

By the order impugned, the learned court, while recognizing that the 30 year old document was admissible in evidence, did not allow the petitioners to mark the deed of gift as an exhibit. Such deed was executed in favour of the deity by the original owner in 1946, but marked 'x' for identification. The learned court observed that the only reason for not allowing the deed to be marked as an exhibit is

the fact that the petitioners could not prove custody of the same.

Mr. Dash, learned advocate appearing on behalf of the opposite party submits that the validity of the deed of gift was challenged in an another proceeding and the High Court had held that the deed of gift was not executed in accordance with law. Mr. Dash further submits that how the petitioner acquired custody of the said deed of gift, was not available either in the plaint or in the examination-in-chief. Thus, without proof of custody, the said deed of gift should not be marked as an exhibit.

Having heard the learned advocates for the respective parties, this Court is of the view that the deed of gift being no.1869 of 1946 was executed almost 77 years ago. There is a presumption with regard to a 30-year old document as regards its contents. Paragraph 14 of the evidence in-chief explains how the petitioner/deity had come in possession of the property. The deed of gift was executed by the owner. The grandfather of the present sebaite had acted on the basis of such deed of gift, by mutating the name of the deity in the records. The deity is now represented by the sebaite who claims through the grandfather and as the sole surviving sebaite.

Thus, this Court is of the view that further proof of custody is not required. The validity of the deed of gift, the corroborative value of the deed of gift, the evidentiary value of the contents of the deed of gift, are subject to the final trial. The opposite party/defendant will get an opportunity to

rebut such evidence in accordance with law. As the evidence of the defendant/opposite party is not closed, the defendant can adduce evidence in accordance with law. The court is directed to mark the deed of gift, which has been marked 'x' for identification, as an exhibit.

On account of the delay caused, the petitioners will pay Rs.2,000/- as cost to the opposite party.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)