

13.7.2023

ct. 236

sk,sl. 36

C.O. 3769 of 2014

Deepika @ Chandi Mistry-vs-Shyamal Kr. Mandal

None appears on behalf of the petitioner.

The matter is appearing almost after nine years.

The Hon'ble Supreme Court in Robin Thapa Vs Rohit Dora, reported in AIR 2019 S.C.C. 3225 held that:

“8 Ordinarily a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits”.

This application under Article 227 of the Constitution of India challenges the Order No. 21 dated 3rd September, 2014 passed in Title Suit No. 113 of 2012 by the learned Civil Judge, Junior Division, 1st Court, Baruipur.

By the impugned order learned trial court refused to accept the petition for amendment of plaint incorporating the fact that deed of gift dated 30th March, 1992 executed by Lalit Mohan Mandal in favour of Shyamal Kr. Mandal was obtained by fraud on the ground that the plaintiff/petitioner

did not disclose the date of his knowledge about the deed of gift in question.

In my view, the learned trial court ought to have allowed the prayer for amendment of the pleadings and the point indicated by the learned trial court in the impugned order could be considered in course of trial. The order impugned in my humble opinion should not be allowed to remain in force and should be set aside which I accordingly do consequently.

The learned trial court is directed to adjudicate the petition for amendment afresh.

In the light of observation made hereinbefore the revisional application is, thus, allowed.

Let a copy of this order be sent down to the learned trial court forthwith.

(Siddhartha Roy Chowdhury, J)