

16.05.2024  
Ct. No. 19  
Sl. No.03  
Cp

C.O. No. 653 of 2024

Khokan Kumar Maity  
Vs.  
Milan Maity & ors.

Mr. Sounak Bhattacharya  
Mr. Sounak Mandal

... for the petitioner.

Ms. Anandamayi Ghosh

.....for the opposite  
parties/defendants.

The revisional application arises out of an order dated January 31, 2024, passed by the learned Civil Judge (Junior Division), 1<sup>st</sup> Additional Court at Contai, Purba Medinipur in Title Suit No.120 of 2022.

By the order impugned, the learned court rejected an application under Order 26 Rule 10A of the Code of Civil Procedure and another application for calling the volume in which the deed of gift of 2005 was entered as the opposite parties contended that the original was lost.

The learned court took up the application for appointment of a scientific expert and held that in the absence of any admitted document containing the LTI of late Charu Chandra Maity, the comparison of the LTI of the father of the plaintiffs, late Charu Chandra Maity on the deeds of 2005 and 2016 could not be accomplished.

The plaintiffs claim right, title and interest in respect of the suit property, from Charu Chandra Maity,

through inheritance. According to the plaintiffs, Charu Chandra Maity died on September 2, 2003.

The defendants on the other hand claimed their right, title and interest on the basis of the registered deeds of 2005 and 2016. The deed of 2005, was not produced in original by the defendants and the certified copy was produced by the plaintiffs. The learned court was of the view that as the plaint case clearly indicated that Charu Chandra Maity died on September 2, 2003, the question of executing the deeds of 2005 and 2016, would not arise. The plaintiffs could easily prove their case by adducing evidence with regard to the actual date of death of late Charu Chandra Maity. Moreover, the question of comparison of the LTI of Charu Chandra Maity in the deed of 2016 and in the volume of the deed of 2005 with the LTI in the deed of 1992, would not arise. The deed of 1992, which the plaintiffs contended to bear the LTI of late Charu Chandra Maity, had been disputed by the defendants. Thus, under the law of evidence, unless there was an admitted LTI of late Charu Chandra Maity on record, or was made available, the question of comparison of the LTI would not arise.

I have perused the plaint case and the defence case. The defendants have denied execution of the deed of 1992, in their written statement. Thus, the finding of the learned court that the LTI of late Charu Chandra Maity in the deed of 1992, was not an admitted LTI, is correct. The

law is also clear that without an admitted LTI, the question of comparison of the LTI would not arise.

However, Mr. Bhattacharya, learned advocate for the petitioner, has produced documents of the defendants in which the recital included the factum of execution of the deed of 1992.

The trial has not commenced. Evidence has not yet been led.

Under such circumstances, the plaintiffs are at liberty to take advantage of the documents filed by the defendants at the appropriate stage, by either confronting them or by leading evidence.

The learned court correctly held that if the plaint case could be proved that late Charu Chandra Maity had died in 2003, then the deeds of 2005 and 2016 would automatically stand void. The plaintiffs are required to prove the date of death of their father.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**