

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
(Appellate Side)

Present:
Hon'ble Justice Shampa Sarkar

C.O. 1750 of 2023

Aduri Das and others
Vs.
Manojit Kumar Das and others

For the petitioner : Ms. Deblina Lahiri
Mr. Mrinmoy Chatterjee

For the opposite parties/defendants : Mr. Chitta Ranjan Chakraborty
Mr. Dipjyoti Chakraborty
Mr. Sumit Banerjee

Hearing concluded on: 20.03.2024

Judgment on: 12.04.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated April 21, 2023, passed by the learned Civil Judge (Junior Division) at Kalyani, Nadia, in Title Suit No.58 of 2015.

2. By the order impugned, the learned court rejected an application dated March 14, 2023, filed by the plaintiffs under Section 45 of the Indian Evidence Act, 1872. The plaintiffs had prayed for opinion of a scientific expert, upon comparison of the Left Thumb Impression (LTI) of late Jasoda Sundari Das on the alleged deeds bearing no.4944 of 1987 and the 4945 of 1987 with the LTI of late Jasoda Sundari Das in the patta deed, which was the admitted LTI of the deceased and was already on record. The opinion

sought was whether the LTIs in the alleged deeds was of the same person, whose LTI appeared on the patta deed.

3. The questioned deeds had been marked as X and Y for identification and had been filed by the principal defendants, who claimed that they had been gifted the property by late Jasoda Sundari Das. The plaintiffs denied such deed and contended that their mother could sign. Thus, the LTI on the questioned deeds were not that of their late mother. A prayer was accordingly made for comparison of the LTIs in the admitted patta deed with the deeds filed by the defendants in the suit. Appointment of a fingerprint expert was prayed for. The defendants objected to the application by filing their written objection, inter alia, contending that evidence was already closed and the suit was at the stage of argument. At such a belated stage, the only intention of the plaintiffs in asking for an expert opinion was to delay the suit and also to fill up the lacuna in the evidence.

4. Upon considering the rival contentions of the parties, the learned trial court was of the view that the plaintiffs had ample opportunity to cross-examine the defendants on the impugned deeds. Jasoda Sundari Das died in the year 1994 and the deeds were executed in 1987. No one had challenged the said deeds. Jasoda Sundari Das had also not challenged such execution of the gift deeds during her lifetime. Moreover, there was no allegation in the plaint that the deeds were either forged or obtained by false personification, at the behest of the principal defendants. According to the learned court, an opinion of an expert only had persuasive value and the court was not bound to accept the same. The learned court did not find

any special reason to send the questioned deeds for comparison of the LTIs on the said deeds with the admitted LTI on the patta deed, which had also been filed by the defendants.

5. Ms. Lahiri, learned Advocate appearing on behalf of the plaintiffs submitted that the learned court should not have been persuaded by the contentions of the defendants with regard to the belated filing of the application. Opinion of a scientific expert could be entertained by the court at any stage of the suit, even after closure of evidence. She submitted that comparison of the LTI would be crucial to prove the plaint case. The opinion would be useful for the plaintiffs as the plaint case was that late Jasoda had not executed the deeds of gift in favour of Monojit Das and Ajit Das.

6. Learned Advocate submitted that even though the court had the power under Section 73 of the Indian Evidence Act, 1872, to compare a signature or an LTI, but it would be hazardous and risky for the court to form an opinion by comparing the LTIs of the deceased Jasoda Sundari Das. Such exercise required technical knowledge. Comparison of LTIs involved a scientific process. It comprised of a complicated method, which could not be achieved by a casual glance.

7. Opinion, upon comparison of the LTIs, was usually rendered by a person who was qualified in such discipline and the courts should be extremely slow in venturing to form an opinion. The foundation of the defence case were those deeds of gift and the plaint case was based on allegation of fabrication and falsification of such deeds.

8. Mere delay in asking for an expert opinion, when the deeds were filed in court and marked X and Y for identification, should not be a deterrent. Nothing should prevent the court in the facts of this case, from allowing the application for expert opinion, upon comparison of the LTI of late Jasoda Sundari Das in the questioned deeds with the LTI in the admitted patta deed filed in the proceedings.

9. Ms. Lahiri relied on the following decisions :

- (a) ***Thumu Srikanth vs Akula Babu (A.P.)*** reported in **2010(6) ALT 233 and**
- (b) ***Swami Satyanand vs Rajiv Ranjan Kumar Singh*** reported in **2012(3) Cal. L.T. 600**

10. Mr. Chittaranjan Chakraborty, learned Advocate appearing for the opposite parties/defendants submitted that the PW1 namely Kanak Majumdar had admitted in her cross-examination that she had not asked for comparison of the LTI of Smt. Late Jasoda Sundari Das. She further admitted that Manojit used to reside in the suit property. Manojit had also filed a criminal case against some of the plaintiffs for alleged disturbance and attempts to grab the property. That PW1 did not have any document to assert her contention that even in 1987, Jasoda Sundari Das used to sign documents and not affix her LTI. The trend of the cross-examination of the PW1 would indicate that the plaintiffs were all along aware of the deeds of gift, which they had intentionally suppressed in the plaint.

11. It was further contented that the evidence of the defendants would show that all the children of late Jasoda Sundari Das were aware of the deeds of gift and the said deeds were executed because Ajit and Manojit had actually looked after late Jasoda Sundari Das, during her old age.

12. Mr. Chakraborty further contended that the evidence had been closed some time ago, but the application was filed at a belated stage, only to fill up the lacuna in the evidence. The appropriate stage to seek such expert opinion would have been when the documents were being tendered. The plaintiffs did not take any initiative at the relevant stage and continued with the cross-examination of the defendants. In the cross-examination of the defendants, questions with regard to the alleged deeds were also put to the defense witnesses. At such juncture, when the defence witnesses tendered and proved the deeds, the plaintiffs came up with a frivolous application only to fill up the lacuna in their evidence.

13. Having considered the rival contentions of the parties, this court finds that the suit was filed by some of the children of late Jasoda Sundari Das wife of late Piyari Mohan Das against Manojit Kumar Das, son of Smt. Jasoda Sundari Das, Ashoka(widow of Ajit), Chittaranjan, other heirs of Smt. Jasoda Sundari Das and the Block Land and Land Reforms Officer, (in short B.L.&L.R.O), Haringatha.

14. From the plaint case and the schedule, it appears that the suit for declaration and permanent injunction had been filed in respect of the following land :-

SCHEDULE

Mouja 53, Jaguli, P.S. Haringhata, District – Nadia,

<u>L.R.Kh. No.</u>	<u>L.R./R.S. Plot No.</u>	<u>Area</u>	<u>Classification</u>
952, 953, 954,	12	61 decls,	AUSH
955,956 &		16 Annas	
957, 958,			
Do	14	13 declss.	AUSH
Out of 45 decimals,			

Butted and bounded as:-
On the North: plot No. 12,

On the South : Bidyananda Bhawal,
On the East : Chittaranjan Das
On the West : Kishori Shil,

15. According to the plaint case, the said suit land originally belonged to Jasoda Sundari Das (since deceased) wife of late Piyari Mohan Das. Jasoda Sundari Das died leaving behind her sons namely, Sujit, Probhas, Promod, Manojit, Ajit and Chittaranjan and a daughter Smt. Kanak Majumdar, as her heirs and legal representatives. Each of them inherited 1/7th share in the suit land. The suit land was being jointly possessed and used for cultivation. The land was classified as 'Aush'. The names of the plaintiffs and the principal defendants had been recorded in the L.R. Khatian. Copy of the L.R. Khatian was annexed to the plaint. That the plaintiffs and the proforma defendant nos.2 and 3 were paying the rent to the government and rent receipts had been accordingly granted. All on a sudden, the plaintiffs received a notice from the B.L.&L.R.O. Haringhata, indicating that there would be a hearing on April 2, 2015, in the office of the B.L. & L.R.O, in connection with an application filed by the defendant no.1, Manojit Kr. Das, who claimed to be the owner of the suit property on the basis of a deed of gift executed by Smt. Jasoda Sundari Das.

16. The plaintiffs averred that when the L.R. record had been created, the defendant no.1 was personally present during such process, but did not raise any plea of ownership on the basis of any deeds of gift. The plaintiffs had reason to believe that the deeds of gift had been procured and were forged deeds. On March 23, 2015, the defendant no.1 along with his men and agents entered the suit property and tried to dispossess the plaintiffs.

No such deeds of gift were produced before the plaintiffs to substantiate such claim of ownership. The defendant no.1 threatened to dispossess the plaintiffs, but with the intervention of the local people, the defendant no.1 left the premises.

17. At the time of hearing of the injunction application, two deeds of gift No.4944 of 1987 and 4945 of 1987, executed in favour of Monojit Das and Ajit Kumar Das in respect of the suit property was produced. Accordingly, the plaint case was amended and pleadings and prayers with regard to such deeds were incorporated. The plaintiffs contended that the deeds were of 1987, but Jasoda Sundari Das died in 1994. Their late mother did not disclose the same to them. Jasoda Sundari Das was able to sign her name and she had put her signature on the progress report of one of the brothers which would indicate that she would not affix her LTI on the deeds. The plaintiffs also contended that the deeds of gift mentioned in schedule A and B had been obtained by Monojit Das and Ajit Kr. Das by practicing fraud and by false personification, only to grab the property from the other siblings. The deeds were not acted upon and were not binding on the plaintiffs. Hence, the deeds mentioned in A and B schedule were forged, being void, illegal, inoperative and not binding upon the plaintiffs. The schedules are quoted below:-

‘A’ SCHEDULE

Deed of Gift being No. 4944, for the year 1987,
Registered at ADSRO, Baringhara, Book No. I, Volume No. 85,
Page Nos. 84 to 87,
Donor : Jasoda Sundari Das,
Donee : Manojit Das,

‘B’ SCHEDULE

Deed of Gift being No. 4945, for the year 1987,

Registered at ADSRO, Baringhara, Book No. I, Volume No. 85,
 Page Nos. 88 to 91,
 Donor : Jasoda Sundari Das,
 Donee : Ajit Das,

18. It had been also contended in the plaint that during her lifetime by a registered indenture dated July 25, 1985, Late. Jasoda Sundari Das received 10 cottahs of homestead land in layout Plot No.50, R.S. Plot No.19 of Mouza Jagli, which she accepted by putting her LTI. So, the admitted LTI on the alleged deed, and the LTIs on the alleged gift deeds should be compared by an expert in order to test the genuineness of the alleged deeds of gift.

19. The prayers in the plaint are quoted below:

“aa) for declaration that ‘A’ and ‘B’ schedule Deed of Gifts are void, illegal, inoperative and not binding upon the Plaintiffs,
 a) For declaration that the plaintiffs have right, title and interest in the suit property mentioned in the Schedule of the plaint.
 b) Permanent injunction order may kindly be passed against the defendant No.1 so that he or she or his men cannot forcibly dispossess the plaintiff’s from the suit property and cannot sell out the entire suit land and cannot change the nature and character of the suit property, for ends of justice.
 c) For cost of the suit,
 d) For such other relief or reliefs may also be granted to the plaintiffs as may deem and proper for ends of justice and for equity.”

20. The contesting defendant filed a written statement and additional written statement denying the contentions of the plaintiffs and asserted right, title and interest in the suit land, on the basis of the deeds of gift. After the evidence was closed, the plaintiffs filed an application for examination of the LTIs in the questioned deed nos.4944 of 1987 and 4945 of 1987 with the admitted LTI in patta deed filed by the defendant no.1 in the suit. The LTI on the patta deed was admitted both by the plaintiffs and

the contending defendant. Thus, the plaintiffs contended that the comparison could be easily made by appointing an expert for the purpose.

21. It appears that the learned court rejected the application on four major grounds. First ground was delay. The second ground was grant of adequate opportunity to cross-examine the DW on such deeds, third ground was that the evidence had been closed and witnesses were discharged. The fourth ground was absence of pleadings in the plaint that the deeds were either obtained by fraud or false personification.

22. In my opinion, the plaint clearly indicates that each of plaintiffs claimed 1/7th share in the property along with the other two siblings namely, Monojit and Ajit. It was specifically pleaded that all of them were in possession and were cultivating the land. Their names had been mutated in the L.R. records. According to the plaintiff, during mutation, the defendant no.1 was also present, but he did not ever raise any claim of ownership in respect of the suit property. Only when the notice from B.L.& L.R.O., had reached the plaintiffs in 2015, they came to know that the contesting defendant was claiming ownership of the land. The deeds were only disclosed at the stage of injunction hearing, when the plaint was amended.

23. It is noteworthy to mention that from 1987 till 2015, no steps had been taken by Ajit and Manojit to correct the L.R. records. On the other hand, as per the plaint case, the L.R. records stood in the name of the plaintiffs and the other children of late Jasoda Sundari Das.

24. There are allegations that the deeds were obtained by fraud and executed by false personification. Specific contention of the plaintiffs was

that Jasoda Sundari Das did not usually affix her LTI, as she could sign. There is categorical denial of the execution of the deeds and the plaintiffs claimed that the LTI was not that of Jasoda Sundari Das. Only because the PW1 deposed that she had not asked for examination of the LTI by an expert, the same could not be a ground for rejection of such prayer.

25. The delay could always be compensated upon payment of cost, but in a situation when the defence case was totally based on the claim of ownership on the basis of the deeds, it would be unwise for the court not to allow comparison of the LTIs by a scientific process. The court is an expert of all experts and can always exercise power under Section 73 of the Indian Evidence Act, 1872, by comparing signatures. When the question of comparison of an LTI of 1987 with the LTI of 1985 arises, it would be improper for the court to decide the genuineness of the LTI by a mere glance. Opinion of such nature are usually given by technically qualified persons who are experts in the field.

26. The plaint case, at it has been run, would clearly indicate that even if the deeds were executed in 1987, something prevented the donees from correcting the record of right during the lifetime of the mother or even thereafter. The plaint case states that the L.R. records were corrected and the names of all the children had been entered after due mutation. Thus, the prayer for comparison of the LTI of the late Jasoda Sundari Das in the alleged gift deeds with the admitted LTI in the patta deed, is reasonable and fair.

27. In cases where there were supportive evidence pointing to the court's conclusions, it was well within the ambit of the power of the court to decide

the case on the basis of the exercise undertaken by it. Although, it is an admitted position that the court is not bound to accept the opinion of the expert and the expert's opinion is only advisory, but the law of evidence has been designed to ensure that for elucidation of any doubt with regard to any finger impression, the court could seek the aid of an expert opinion. The expert opinion is given by a person who has special knowledge and experience and is qualified in the discipline. The law of evidence is designed to ensure that the court considers such evidence which enables it to reach reliable conclusions. In the case in hand, the result of the suit would depend upon the proof of the execution of the deeds. The donor is not alive, but the admitted LTI of the donor is on record. The plaintiffs have run their case all through denying any execution of deeds by late Jasoda, that is, the predecessor-in-interest of the plaintiffs and the defendants (heirs). The property was also not mutated in the names of the donees, although the deeds were executed in 1987.

28. In such a case, the court should be slow in venturing into an opinion in the suit, without asking for a comparison of the LTI of late Jasoda Sundari Das on the questioned deeds with the admitted LTI on the patta deed, already on record. It is always up to the court to decide whether such opinion should be accepted or not. The opinion of the expert is not binding on the court.

29. This court also finds that the learned judge had erred in holding that the plaint case did not contain any pleadings or averments with regard to forgery, fraud or false personification. Paragraph 9 of the plaint clearly mentions that the deeds in schedule A and schedule B of the plaint had

been obtained by false personification and by practising fraud. The deeds were forged, according to the plaintiffs.

30. Evidence of an expert will be admissible under certain circumstances. By allowing the application for appointment of fingerprint expert, the court will not be denuded of its power to decide the suit on the basis of other evidence and attending circumstances. The discretion would be left with the court and admissibility of such expert opinion would be also governed by the principles of law of evidence.

31. Under such circumstances, the revisional application is allowed.

32. The order impugned is set aside.

33. However, for the delay, the plaintiffs must compensate the defendants by paying cost of Rs.10,000/- within 10 days from date. The learned court is directed to send the questioned documents being deed no.4944 of 1987 and deed no.4945 of 1987 as also the deed/Patta deed filed by the defendant no.1, bearing the admitted LTI of Smt. Josada Sundori Das for comparison of the same by an expert from the Questioned Document Examination Bureau, CID, West Bengal, Bhavani Bhavan, Alipore, provided the cost as directed is paid. A report shall be filed by the expert within a month from receipt of the documents. Cost of such examination shall be borne by the petitioners.

34. Such exercise by the court will be undertaken within a month from date.

35. The suit shall remain stayed till the opinion is received and thereafter, the learned court shall proceed in accordance with law.

36. Parties are to act on the server copy of this judgment.

(Shampa Sarkar, J.)