

Item 19.12.
No. 2024
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1754 of 2023
IA No: CAN 1 of 2024

**Smt. Puspa Rani Bhaumik Alias Puspa Bhaumik @
Pushpa Rani Bhaumik
Vs
Sri Soumen Bhoumik & Anr.**

Mr. P Chaturbedi,
Mr. Dipanjan Bhattacharya.

...for the petitioner.

Mr. Dyutiman Banerjee,
Mr. Vishal Mallik.

... for the defendant No.1/opposite party No.1

In Re: CAN 1 of 2024

1. Affidavit of service filed by the petitioner be taken on record. It appears that both the copy of the revisional application as well as CAN 1 of 2024 was served upon the opposite party No.2 in terms of the order dated 22.08.2024, but none appears on behalf of the opposite party no.2 in court today.
2. From the order dated 22.08.2024, it is found that though Hon'ble Co-ordinate Bench prepared a draft order on CAN 1 of 2024 with a prayer for expunging the name of opposite party no.2 from the cause title of the revisional application, but the order was not signed on account of providing opportunity of hearing on the said application to the opposite party No.2. By necessary implication as well as

tone and tenor of the order dated 22.08.2024, the application being CAN 1 of 2024 was not disposed of by the Hon'ble Co-ordinate Bench as the order was not signed by the Hon'ble Co-ordinate Bench. It is needless to mention that opposite party No.2 in spite notice along with copy of the revisional application as well as CAN 1 of 2024 did not care to appear before this Court.

3. Considering all facts and circumstances, the name of opposite party No.2 be expunged from the cause title of the revisional application.
4. Department is directed to carry out necessary correction in the cause title of the revisional application.
5. Accordingly, **CAN 1 of 2024** stands disposed.

CO 1754 of 2023

6. Challenge in this revisional application is the order No. 37 dated 4th April, 2023 in connection with Title Suit No. 107 of 2018, wherein Learned Civil Judge (Senior Division), Bongaon, North 24 Parganas was pleased to reject one application under Order 12 Rule 6 of the Code of Civil Procedure. The suit was filed at the behest of the petitioner/plaintiff alleging, inter alia, that the subject property mentioned in the schedule to the plaint belongs to

plaintiff who acquired by registered deeds of sale dated 30.09.1975, 03.12.1984 and 20.12.1996.

7. Son/defendant No.1 younger son of the plaintiff used to reside over the properties along plaintiff. Sometimes in the month of October, 2015 some disputes cropped with regard to the boundary of the properties with the owner of the southern side land and for that reason measurement was required to be made either by the B.L & L.R.O. or by the Government Amin and for such reason defendant No.1 asked the plaintiff to execute registered power of attorney in favour of him so that it would be possible for him to remain present at the time of such measurement. On the basis of that proposal plaintiff asked the defendant to prepare the power of attorney and plaintiff being pardanasin lady having no knowledge about the property affairs signed that paper. On 28th October, 2015 defendant took the plaintiff to the registration office at Barasat and without reading over the contents of the same, the plaintiff put her signature on some typed stamp papers on the representation by the defendant that the plaintiff was executing power of attorney in favour of the defendant so that he would be in a position to look after the property affairs of the plaintiff. Subsequently, defendant specifically

disclosed that he wanted to make transfer or alienate the subject property in favour of some 3rd party on account of need of money. On being asked defendant disclosed about execution of deed of gift dated 28th October, 2015 and thereby he became the owner of the subject property. That was the reason for filing the suit being Title Suit No. 107 2018 which is now pending before the Learned Civil Judge (Junior Division), Bongaon. After filing of the suit the said son/opposite party No.1 entered appearance in the suit and filed one written statement and delineated an admission in paragraph 7 of the written statement which reads as follows:

“7. That actually the defendant no.1 is the son of Plaintiff but it is admitted fact that the defendant no.1 never acquired the Khas possession of the suit property and or accepted any Gift from the Plaintiff by any manner as well as the plaintiff has the absolute possession over the suit property and the plaintiff is enjoying the suit property by all act of possession as the true and absolute owner, so that defendant no.1 has no objection if the prayer of the Plaintiff has been allowed as sought for by the plaintiff in the plaint of this suit.”

8. Learned counsel appearing on behalf of the petitioner has further contended that opposite party No.2 being wife of defendant No.1 was impleaded on

her application by the order of the Court dated 11th February, 2019. Thereafter, added defendant No.2 filed written statement which was accepted by the Court order dated 26th November, 2019 which is challenged before this Court in CO 4131 of 2019, wherein Hon'ble Co-ordinate Bench disposed of the application giving liberty to the defendant no.2 to file written statement subject to payment of cost of Rs.3000/- to the plaintiff on account of delayed filing. Subsequently defendant No.2 failed to pay the cost imposed by the Hon'ble Co-ordinate Bench in CO 4131 of 2019 and Learned Trial Judge by his order dated 18.04.2022 rejected the written statement for non-payment of cost.

9. However, in view of admission made in the written statement by the defendant No.1, plaintiff has taken out an application under Order 12 Rule 6 of the Code of Civil Procedure for passing judgment on admission, but the Learned Judge refused to accept the prayer holding, inter alia, that admission is unusual and original deed of gift required under Order 7 Rule 14 of the Code of Civil Procedure has not been brought on record and register instrument cannot be revoked or cancelled on admission.
10. Learned counsel appearing on behalf of the petitioner has submitted that observation of the

Learned Trial Judge regarding unusual admission is not know to the law. The provision of Order 12 Rule 6 of the Code of Civil Procedure can only be invoked on an unequivocal and clear admission. He further submitted that only deed of gift has already filed by the defendant No.2 under *Firisty* .

11. Learned counsel appearing on behalf of the petitioner has drawn my attention to the written statement filed by the defendant No.1 in whose name alleged deed was executed.
12. Learned counsel appearing on behalf of the opposite party No.1 conceded the prayer advanced on behalf of the petitioner.
13. What I find from the order impugned in this revisionl application that Learned Judge dismissed the prayer of the application under Order 12 Rule 6 of the Code of Civil Procedure for want of impugned deed of gift and unusual admission.
14. It is not out of place to mention here that original deed has already been filed by *Firisty* on behalf of the defendant no.1. That apart, learned Judge in his order did not record the reason for coming to the conclusion that admission was unusual. The suit was filed with a prayer for declaration that the deed of gift dated 28.10.2015 is not at all binding upon the plaintiff and, therefore, question of

cancellation of register instrument does not arise.

15. It is further pertinent to mention here that in spite of receiving notice opposite party No.2 did not appear before this Court.

16. In that view of the matter, the order impugned in this revisional application stands set aside.

17. Learned Trial Judge is requested to dispose of the application under Order 12 Rule 6 of the Code of Civil Procedure dated 26.09.2019 afresh in compliance with the observation made hereinabove.

18. With this observation, the revisional application stands disposed of.

19. Connected application, if any, also stands disposed of accordingly.

20. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

21. All parties shall act on the server copy of this order duly downloaded from the official website of this Court

(Bibhas Ranjan De, J.)