

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

SAT 120 of 2023

Krishna Sadhukhan

-Versus-

Shankar Sadhukhan

For the Appellant : **Mr. D.N Chatterjee,
Mr. Md. Zakir Hossain.**

For the Respondent : **Ms. Krishna Das Poddar.**

Delivered on : **03.12.2024**

Prasenjit Biswas, J:-

1. This appeal is directed against the impugned judgment and decree passed by the First Appellate Court in connection with Title Appeal No. 12 of 2016. By passing the impugned judgment and decree the learned First Appellate Court set aside the judgment and decree dated 08.04.2016 passed by the Trial Court in T.S. No. 206 of 2010 whereby the suit was decreed on

contest by holding that this appellant/plaintiff has right, title and interest in the form of life interest in respect of the suit property.

2. One Balai Chand Sadhukhan was the original owner in respect of the suit property and he got the same by way of registered deed of partition being no. 5950 dated 15.12.1943 and he had dwelling house thereon. Balai Chand Sadhukhan was expired on 27.12.1983 leaving behind his heirs/legal representatives who inherited the property and subsequently transferred their shares in favour of the defendant/respondent (herein) Shankar Sadhukhan on 06.05.1987.

3. It is case of the plaintiff/appellant that one deed of life interest was executed in her favour and since then she and her mother are leaving at the suit property and as such his life interest has ripened into a Raiyati Satta. As the defendant/respondent is creating disturbance in her possession over the case property she instituted a suit before the trial court against the present respondent.

4. It is admitted position that Balai Chand Sadhukhan was the original owner in respect of the case property. It is the case of the defendant that the heirs/legal representatives of Balai Chand including this plaintiff/appellant transferred their shares to him by virtue of deed of sale being no. 1930 dated 19.09.1986 and as such this defendant became the absolute owner of the suit property. It appears that the plaintiff/appellant is claiming her title over the suit property by dint of the deed of life interest which was executed by the defendant/respondent in her favour. It is the claim of the plaintiff that the said

life interest has matured into absolute right. The other approach of this plaintiff/appellant is that he never transferred her share in favour of the defendant/respondent at any point of time and she did not put her signature on the said deed executed by the heirs of the said Balai Chand Sadhukhan in favour of the defendant/respondent. It is claimed by the plaintiff/appellant that the said deed executed by the heirs/legal representatives including her is of void one and by such deed her share was never passed to the respondent. It further appears from the materials on record particularly from the plaint that no prayer has been made by the plaintiff for declaring the deed of sale being no. 1930/1986 which was executed in favour of the defendant/respondent as void. Moreover, there was no averment in the body of the plaint to that effect and this ground was taken for the first time by the learned Counsel who appeared on behalf of the appellant in this appeal. The learned Trial Court committed mistake by holding that life interest of this plaintiff/appellant became absolute and she has right, title over the suit property. The learned First Appellate Court differs with the view of the Trial Court and observed that there is a difference between the term 'life interest' and 'life estate'. The plaintiff/appellant (herein) has claimed that life interest was created in her favour by the defendant/respondent by executing a deed but it is absolutely clear from the said deed of life interest that it was created over the suit property by the defendant/respondent in favour of the plaintiff by which she can reside and enjoy the suit property only but it does not synonymous to the ownership of the property. The suit was instituted by the plaintiff/appellant

with a prayer for declaration of her right, title, interest and possession over the suit property but no prayer has been made for declaration that the deed so executed by the heirs/ legal representatives of the Balai Chand Sadhukan is void and not binding upon her. The claim of the plaintiff is that the life interest so created by the defendant/ respondent by deed of life interest has matured into full right and ownership over the suit property. We find that in any circumstances it cannot be said that the said life interest of the plaintiffs over the suit property is matured into any absolute right. The interest/share of this plaintiff/appellant has already been transferred along with the other heirs of the said Balai Chand Sadhukhan in favour of the defendant/respondent and his right of life interest over the suit property which was given by the defendant/respondent by dint of a deed of life interest never creates any right, title over the property in question.

5. We, thus, do not find any merit in the instant appeal nor involvement of any substantial question of law. Accordingly, the appeal is dismissed.

6. There shall, however, be no order as to costs.

7. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)