

21.03.2024
Item No.8
gd/ssd

CO/3041/2023

ROKIYA BIBI
VS
DALIM SEKH & ORS.

Mr. Partha Pratim Roy
..for the petitioner.

Mr. Anirban Tribedi,
Ms. Sweta Bhatta,
Ms. sucheta Bhatta
..for the Opposite parties.

Affidavit of service filed in Court today is taken
on record.

This application under Article 227 of the
Constitution of India is at the instance of the plaintiff
and is directed against an order being No.53 dated
July 20, 2023 passed by the learned Civil Judge
(Junior division), Additional Court, Lalbagh, District
Murshidabad in Title Suit No.92 of 2015.

By the order impugned the petition filed by the
plaintiff/petitioner herein on 16th November, 2017
praying for comparison of the LTI of the executrix in
the impugned deed (Exhibit-A) with the LTIs of the
executrix in the deed being No.4390 dated 28th May,
1990 (Exhibit-1) by a fingerprint expert stood
rejected.

Mr. Roy, learned Advocate appearing for the
petitioner submits that in the application for

appointment of a fingerprint expert the petitioner has specifically stated about the execution of the deed being Exhibit-1 by Moslema Bewa and the opposite parties herein in their written objection filed against such application has not disputed the execution of the said deed being Exhibit-1.

He further submits that the learned Trial Judge without appreciating that in the deed executed in the year 1990 only the LTI of the executrix is present and neither the photographs of the executant nor the finger impressions of the rest nine fingers are available.

He, thus, submits that the learned Trial Judge acted illegally and with material irregularity by holding that the plaintiff did not deny either the passport size photograph or the finger impressions of rest nine fingers of the executrix.

The learned Advocate appearing for the opposite parties submits that the plaintiff in her evidence has miserably failed to prove the case made out in the plaint with regard to her allegations contained in the plaint that the deed was obtained by way of false personification of the original Moslema Bewa by other women in the matter of execution of the deed.

Heard the learned Advocates for the parties and perused the materials placed.

Section 73 of the Indian Evidence Act, 1873 states that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of that Court to have been written or made by that person may be compared with the one which is to be proved although that signature, writing or seal has not been produced or proved for any other purpose.

Therefore, a LTI which is admitted or proved to the satisfaction of the court to be the LTI of Moslema Bewa could be compared with the LTI appearing in the impugned deed.

Mr. Roy, learned Advocate would contend that the learned Trial Judge failed to appreciate that it has been proved to the satisfaction of the Court that the LTI of Moslema Bewa in the deed dated 28th May, 1990 is of Moslema Bewa in view of the fact that the opposite parties in their written objection have not disputed the execution of such deed.

The learned Trial Judge specifically noted that D.W.-1 in his cross-examination denied a suggestion of the plaintiff that Moslema Bewa and others sold the property to Abdur Roshid that is the PW-3 by way of a registered deed.

The learned Trial Judge further noted that P.W.-1 in her cross-examination specifically admitted that she has no personal knowledge regarding the execution or registration of the deed dated 28th May, 1990 being Exhibit-1.

The learned Trial Judge also noted that Abdur Roshid who was the vendee in respect of the deed dated 28th May, 1990 being Exhibit-1 deposed as P.W.-3 but did not corroborate the fact that Moslema Bewa since deceased was one of the executrix/vendor of the said deed.

It would be also relevant to point out at this stage that the original registered impugned deed being Exhibit-A bears the passport size photograph and finger impressions of nine more fingers of the executrix and the plaintiff did not deny either the said passport size photograph or finger impressions of nine fingers of the executrix to be that of her mother Moslema Bewa.

In the light of the aforesaid observations the learned Trial Judge rejected the application for appointment of a fingerprint expert for comparison of the LTI of Moslema Bewa.

The LTI in the deed dated 28th May, 1990 (Exhibit-1) cannot be said to be the admitted LTI of Moslema Bewa or proved to the satisfaction of the Court to be that of Moslema Bewa.

In view thereof, this Court is of the considered view that the ingredients of Section 73 of the Indian Evidence Act have not been satisfied in the case in hand. The learned Trial Judge was, therefore, right in rejecting the application for comparison of LTI by a fingerprint expert. The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution.

CO 3041 of 2023 accordingly, fails and the same stands dismissed.

Learned Civil Judge (Junior Division), Additional Court At Lalbagh is requested to dispose of the Title Suit No.92 of 2015 as expeditiously as possible.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)