

100 **12.12.
2024**

Ct. No. 08

Ab

**SA 4 of 2023
IA No. CAN 1 of 2022**

**Sri Ashok Kumar Sen
Vs.
Sri Amal Kumar Sen**

**Mr. Partha Pratim Roy.
... for the appellant.**

A suit based on title and recovery of possession filed by the plaintiff/respondent was dismissed by the Trial Court, but the Appellate Court reversed such decree, as a consequential effect, the suit was decreed against the defendant/appellant.

Admittedly, Satish Chandra Sen, Jagadish Chandra Sen and Khitish Chandra Sen were the owners and possessors of the several lands being the full blood brothers. Subsequently, a Title Suit being No. 115 of 2023 was filed before the learned Civil Judge (Senior Division), 1st Court, Contai, for partition and the compromise was effected amongst the aforesaid three brothers and on the basis thereof, a final decree for partition was passed.

The property described in Schedule- 'ka' to the plaint was allotted to the father of the parties herein, namely, Satish Chandra Sen, who during his lifetime executed the deed of gift on 13th September 2012, which was duly registered in the office of the Registrar, giving the aforesaid property to the plaintiff/respondent.

The defendant/appellant being the brother of the plaintiff/respondent and another son of said Satish Chandra Sen has not challenged the deed of gift as of now and it further appears from the records that the said deed of gift was marked as Exhibit-2 without any objection.

The logical inference, which could be drawn from the aforementioned facts that the said deed of gift having not challenged by the plaintiff/respondent stairs at his face and in the event the Court finds that the rightful owner has gifted his property to another person, the gift being one of the mode of transfer under Section 122 of the Transfer of Property Act, it creates right, title and interest into such person immediately upon execution and registration and acceptance thereof. The plaintiff/respondent acquired right, title and interest in respect of the 'ka' schedule property and later on instituted a suit for recovery of possession alleging the defendant/appellant as permissible occupant.

Multiple defence have been taken by the defendant/appellant including the one that by virtue of his long possession in the property, he perfected his title by way of adverse possession. Though it is pleaded in the written statement that the father being nonagenarian was not capable of understanding state of things, but there was no counterclaim filed by the defendant/appellant seeking appropriate relief in this regard.

The Trial Court was of the view that the schedule appended to the deed of gift does not tally with the schedule given in the plaint and in view of the vagueness in the description of the property, the suit is liable to fail. The Trial Court was further of the view that since the induction as a permissive occupier, as pleaded by the plaintiff/respondent, could not be proved, nor revocation was ever made, the suit is liable to fail. So far as the plea of adverse possession is concerned, the Trial Court did not find any substance in it and decided such issue against the defendant/appellant, which is further affirmed by the first Appellate Court.

As indicated above, the deed of gift was marked as Exhibit-2 without any objection nor any challenge was thrown with a specific prayer that the said deed is an outcome of fraud, misrepresentation, coercion or undue influence. Not a single iota of evidence adduced by the defendant/appellant, which would touch upon the authenticity and the validity of the said deed of gift and, therefore, the Appellate Court proceeded to decide the issue on the basis of the aforesaid deed.

Mr. Partha Pratim Roy, learned Advocate appearing on behalf of the appellant, vociferously submits that the property gifted by the father of the parties and the property for which the recovery of possession is sought is vague in nature and the decree, if any, passed, would be incapable of execution.

Our attention is drawn to the deed of gift containing the schedule of the properties and we do not find any ambiguity in the description rather it conveys the manifest intention of the donor that the property owned by him, as included in the said schedule, is gifted to the plaintiff/respondent. The schedule of the plaint is also indicative of certain properties over which the defendant/appellant is found in possession and the moment the description appears to be sufficient enough to identify it, as mandated under Order VII Rule 3 of the Code of Civil Procedure, such point cannot defeat the rightful claim of the defendant/appellant.

It is a matter to be decided at the time of execution and not for the purpose of thwarting the claim, which is duly proved by the parties. The plaintiff/respondent has acquired right, title and interest on the basis of the deed of gift (Exhibit-2) and, therefore, he is entitled to recover the possession from a person having no title in respect thereof.

Considering the relations between the parties, the concept of the permission having granted from a

particular date becomes obliterated and the Court must decide the cause or the claim on the basis of a given fact. The Rule that in the event the plaintiff fails to prove the induction of the defendant as a permissive occupant, the suit should fail, cannot be applied as an universal Rule, but depends upon the facts of the each case.

Both the parties are full blood brothers and the moment the rightful owner has divested his right, title and interest in favour of the plaintiff/respondent, the defendant/appellant lost right to remain in occupation and, therefore, there is no impediment on the part of the Court to grant a decree based upon the title.

We, thus, do not find any substantial question of law involved in the instant appeal. The appeal is, thus, dismissed. Consequently, the connected application being CAN 1 of 2022 is also dismissed.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)