

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 3213 of 2022

Manoj Gupta
Vs.
Om Prakash Agarwala & Anr.

Mr. Debmalya Ghosal
Mr. Chandrachur Biswas
Mr. Anirban Bose
... For the petitioner

Mr. Arif Ali
Mr. B.N. Joshi
Mr. S. Agarwalla
Ms. P. Garain
... For the opposite parties

1. Challenge in this revisional application is the order dated 17th August, 2022 passed in connection with Title Suit No.48 of 2011 by the learned Civil Judge (Senior Division), 1st Court at Alipore, whereby the learned Judge allowed an application under Section 137 of the Evidence Act read with Section 151 of the Code of Civil Procedure filed on behalf of the defendants on 12th March, 2020 with cost of Rs.3,000/-. By the order impugned, the learned Trial Judge allowed the defendants to examine one of the attesting witnesses of the deed of gift executed by the plaintiff.

2. Learned counsel appearing on behalf of the petitioner/plaintiff has advanced his argument that execution of deed of gift has not been denied by the

plaintiff who is himself the executor of the deed. In support of his argument, he has drawn my attention to the averments of the plaint where the execution of the deed was categorically admitted, raising the issue of practicing fraud and undue influence upon the plaintiff to execute the deed of gift and, therefore, further proof of deed of gift is not required within the meaning of Section 68 of the Evidence Act.

3. On the contrary, learned counsel appearing on behalf of the defendants/opposite parties herein has referred to Section 68 of the Evidence Act and has tried to make this Court understand that the deed of gift cannot be used in the evidence unless and until one of the attesting witnesses is examined.

4. After careful scrutiny of the entire plaint, I find that the execution of the deed has not been denied anywhere in the plaint by the plaintiff, who is the executor of the same. Therefore, according to proviso of Section 68 of the Evidence Act, further examination of attesting witnesses is not required when execution of the deed of gift has already been admitted by the executor who is the plaintiff of the suit, since deceased.

5. Considering the rival contentions on behalf of the parties and after careful perusal of the plaint, I am of the opinion that further proof of execution of the deed is not required in this case as the executor of the deed has already been admitted by the plaintiff/executor pursuant

to the proviso to Section 68 of the Evidence Act. That apart, the deed of gift has already been admitted in evidence.

6. Regard being had to the above, I am of the humble opinion that the deed of gift is not further required to be proved by examining any further attesting witness. Rather, the issue before the learned Trial Court is that whether the deed of gift was executed by practicing fraud or undue influence or misrepresentation upon the plaintiff or not.

7. In the aforesaid view of the matter, the impugned order dated 17th August, 2022 passed by the learned Civil Judge (Senior Division), 1st Court at Alipore in connection with Title Suit No.48 of 2011, stands set aside.

8. Learned Trial Judge is requested to dispose of the suit as expeditiously as possible considering its long pendency.

9. With the aforesaid observations, the revisional application, being CO 3213 of 2022, stands disposed of.

10. Learned counsel appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Trial Court forthwith.

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

12. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)