

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**Present: - Hon'ble Mr. Justice Subhendu Samanta.**

**IN THE MATTER OF**  
**SA 52 of 2010**  
**Sarashi Roy since deceased**  
**Sri Nagendranath Singh**  
**Vs.**  
**Gourhari Ghosh & Ors.**

**For the appellant** : **Mr. Sourabh Guha Thakurata, Adv.,**  
**Mr. Dhiman Ray, Adv.,**  
**Mr. Dip Chandra, Adv.,**  
**Mr. Abhratanu Sarkar Adv.**

**For the respondents** : **Mr. Buddhadeb Ghoshal, Adv.,**  
**Mr. Sanat Kr. Roy, Adv.,**  
**Dr. R.P. Motilal, Adv.,**  
**Mr. Manomohan Basu Adv.**

**Reserved on** : **24.01.2025**

**Judgment on** : **20.03.2025**

**Subhendu Samanta, J.**

1. Instant second appeal has been preferred being aggrieved by and dissatisfied with the judgment and decree passed by the Learned Additional District Judge, 4<sup>th</sup> Court, Paschim Medinipur in the title appeal No. 69 of 2009 by reversing the judgment and decree of Learned Civil Judge (Senior Division) Jhargram in title suit No. 84 of 1997.

2. At the time of admission of the appeal, this court has formulated the questions of law as follows:

Whether the learned Judge in the lower appellate court substantially, erred in law in reversing the decree passed

by the learned trial Judge and in granting a decree for declaration of title in favour of the defendants with a further declaration that the deeds executed by the plaintiff were valid inasmuch as the plaintiff was a rustic village widow and the learned Judge applied wrong legal test in considering the case of a rustic village widow and in blindly relying upon the endorsement in the registered deed by the Sub-Registrar?

3. The above substantial questions of law, as framed by this court can be substantiated by two portions.

**Firstly** whether the 1<sup>st</sup> Appellate Court substantially erred in law of granting a decree of declaration of title in favour of the defendants in reversing the decree passed by the Learned Trial Judge.

**Secondly** Whether Learned 1<sup>st</sup> Appellate Court applied wrong legal test for not considering the case of the rustic village widow and blindly relying upon the endorsement in the registered deed by the Sub-Registrar.

**First Point-** for better determination of the substantial questions of law; it is required to go through the pleadings of the respective parties in the court of first instances.

4. It is the pleading of the appellant/plaintiff is that she is a widow and sole daughter of her parents. Her father was absolute owner of the suit property. After demise of her parents the entire suit property was devolved upon her. It is the case of the plaintiff that defendant No. 1 and 2 were made acquaintance with the plaintiff and their relationship developed in such a manner that defendant No. 1 and 2 called the plaintiff as “Dharmamata”(Like Mother). The plaintiff also regarded defendant No. 1 and 2 as “like son”. It is the further case of

the plaintiff the defendant No. 1 and 2 used to look after the plaintiff in all respect. In the month of March, 1985, the plaintiff suddenly became ill and was bed ridden at the time plaintiff requested the defendants to look after her landed properties regarding the recording of her name in the land record of rights at the settlement office, on that defendants suggested her to execute a power of attorney for looking after the settlement work. Plaintiff agreed and they had been to the Sub Registrar Office Jhargram, where defendant suggested plaintiff to say 'yes' before the Sub Registrar Jhargram. After 03 or 04 months the plaintiff recovered and went to settlement office, on enquiry she came to know that the 'Ka' suit property was sold away in favour of the defendant by virtue of 04 deeds of sale (properly described in the schedule Kha, Kha/1, Kha/2 and Kha/3 respectively). It is the further case of the plaintiffs that defendant also prepared one "Arpannama"(deed of gift) in her favour in respect of 02 Decimal of land in plot No. 341 for her life interest. Plaintiff filed the suit praying for declaration for her absolute ownership over the "Kha scheduled Property" with a further prayer for declaration of 05 deeds to be null and void and not binding upon.

5. Defendant/respondent contested the suit by filing joint pleadings/written statement contending inter alia that- respondent No. 3 and 4 are the sons of respondent No. 1 and 2 respectively. Respondent/defendant admitted the title of the plaintiff over the suit property and pleaded that their residential house was situated at a distance about 02 K.M. from village Lalgah. In the years 1985

defendant No. 2 got employment in a private sector at Jamsedpur. Family of defendant No. 1 and 2 were residing jointly and it was became difficult for sons, daughters of defendant No. 1 and 2 to continue study from their residential house so, they intended to purchase a property at Lalgah for betterment of the study of their sons and daughters. Accordingly defendant No. 1 and 2 contacted with plaintiffs maternal uncle, viz, Nagendranath Sinha Ray though one cousin brother of viz Chittaranjan Pal and they came to know that “Ka” scheduled property was going to sale. They approached plaintiff for negotiation to sale the property Plot 17 agreed to the proposal and consideration money was fixed at the rate of Rs. 25,000/-. The defendant has paid an advance amount of Rs. 1,000/- to the plaintiff in presence to her maternal uncle Nanigopal Singha Ray, Cousin brother, Ranjan Pal and one brother –in-law Sujit Ghosh in the last week of March in the year 1985. It was fixed that the remaining amount of Rs. 24,000/- would be paid at the time of registration of the deed.

6. It is the further case of the defendant/respondents that they conducted with one deed writer namely, Bankim Chandra Chowdhury for preparation of deeds and purchasing stamp papers for registration. On 17<sup>th</sup> April, 1985, the plaintiff herself went to the Sub-registry office, Jhargram with defendant No. 1 and 2 and executed 4 deeds in favour of the defendants No. 1 to 4. It is the further case of the defendants that those 4 deeds were drafted as per instruction of the plaintiff and she accepted the rest consideration amount of Rs.

24,000/- in presence of Sub-registrar of Jhargram Sub-registry office against proper endorsement. It is the further case of the defendants that plaintiff requested them for temporary residence in the scheduled property till renovation of her in-laws house; on such request, they permitted the plaintiff to reside in the suit property and on 20th April, 1985, an '*Arpannama*' deed (gift deed) comprising 02 decimals of land was executed by the defendant No. 1 and 2 on behalf of the minors defendants No. 3 and 4 in favour of plaintiff. The defendant also pleaded that on 20<sup>th</sup> February, 1996 defendants and her family members were evicted from the suit property by the plaintiff with the help of maternal uncle Nagendra Nath Singha Ray. In the last paragraph of the pleading defendants have pleaded for recovery of their possession in 'Ka' to Ka/3 scheduled properties by way of counter claim and prayed for dismissal of the suit.

7. By virtue of rival pleadings of the parties Learned Trial court has framed issues amongst them, issue No. 8 was framed in respects of the counter claim of the defendants.

8. Learned Trial court after considering the evidence on record has decreed the suit on contest against the defendants as follows:

**All the issues are, thus, disposed of, in favour of plaintiff. As a result, the suit of the plaintiff succeeds. Court's fees paid is sufficient.**

**Hence it is.**

**Ordered**

**That the suit be and same is decreed on contest with cost against the defendants.**

**Plaintiff do get the decree of declaration that the plaintiff has right, title, interest and possession in the "Ka" schedule property. That the plaintiff do get the decree of declaration that four impugned deed 17.04.1985 executed by the plaintiff in favour of defendant Nos. 1 to 4 are not legally valid and binding upon the plaintiffs. The impugned for deeds suffer from uncertainty and characteristic on transaction, as such is void ab-initio.**

**The suit is, thus, disposed of.**

9. However, by such decree the Learned Trial court has not dismissed the counter claim of the defendants. Against the said decree, an appeal was preferred before the Learned 1<sup>st</sup> Appellate Court. The 1<sup>st</sup> Appellate Court after hearing the parties has allowed the appeal by following orders:-

**Thus, appeal succeeds.**

**C.F., as paid on the memo. of appeal, is found correct.**

**Hence,**

**Ordered**

**that the appeal be and the same is allowed on contest with cost against the respondent.**

**Accordingly, the judgment, passed by the Ld. Civil Judge (Sr. Divn), Jhargram in T.S. No. 84/97 on 22.04.2008 and decree signed on 2.5.08 is hereby set aside.**

**Hence,**

**Ordered**

**That the suit be and the same is dismissed on contest with cost against the defendants.**

**Further, it is declared that as per prayer of the defendants, that defendants have their right, title and absolute interest over the said suit property as described in the 'Ka' schedule property, is declared and the deeds as described in the schedules 'Kha' to 'Kha/3' and 'Ga' are valid and genuine deed. But the plaintiff has her life estate right in respect of 'D' schedule land or property as life estate right and defendants have their absolute constructive possession over the suit 'Ka' schedule property.**

**Send a copy of this order to the Ld. Court below for information.**

**Also send a copy of this order to the Learned District Judge, Paschim Medinipur, for directing his office to note down the result against the concerned register.**

10. Hence this second appeal.

11. In deciding the first substantial questions of law, it has to be looked into whether decree of declaration of title granted in favour of the defendant by the Learned 1<sup>st</sup> Appellate Court by reversing the decree of Learned Trial Judge, is justified. It appears that the Learned 1<sup>st</sup> Appellate Court has passed the decree in favour of the defendants in terms of counter claim of the defendants/respondents on perusal of the pleadings of the defendants (joint written statement). It appears that in Para 37 the defendants have pleaded for recovery of possession against the plaintiff. From the Trial court record, it appears that the written statement was filed on 5<sup>th</sup> January 1998, but the WS was not

accepted on that date for non-filing of Vakalatnama. Such Vakalatnama was filed on 3<sup>rd</sup> March 1988 and the WS filed by the defendants No 1 to 4 was accepted. It appears that the defendant had not paid any court fee for his counter claim, rather the plaintiff was also not directed to file written statement against the counter claim of the defendants.

12. The provision on counter claim has been categorically enumerated in **Order VIII Rule- 6 (A)** of the Code of Civil Procedure as follows:

**Order VIII Rule -6 (A)**

**Counter-claim by defendant.-(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:**

**Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.**

**(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.**

**(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.**

**(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.**

13. According to the provisions of Order VIII Rule (6) A, counter claim has its same effect to that of a plaint. In this case the Learned Trial Court though framed an issue (Issue No-8), in respects of the counter claim but the plaintiff was not allowed to file written statement against the counter claim. Furthermore, the defendants also not put court fees in terms of the prayer in the counter claim. Thus the framing of issue No. 8 by the Learned Trial Court in respect of the counter claim of the defendant appears to me erroneous. The plaintiff never given any opportunity to file written statement against counter claim of the defendant still then the Learned Trial Court has framed issue No. 8 which is not proper in the eye of law.

14. Moreover, Learned 1<sup>st</sup> Appellate Court has observed that the defendants' possession over the suit property has been proved by the record of right, so they are entitled to the right, title, interest and possession over the suit property. The Learned 1<sup>st</sup> Appellate Court has never dealt with the plea of counter claim of the defendant and its maintainability for non-filing of written statement by plaintiff and abruptly decreed right, title, interest and possession in favour of the defendants except the scheduled land which was gifted life estate in favour of the plaintiff. The Learned 1<sup>st</sup> Appellate Court committed the error for not dealing with the plea of the counter claim of the defendant and categorically has failed to discuss about the merit of issue No. 8. It is surprising to note that the defendants never prayed for any right, title or interest over the suit property but they have only prayed for recovery of possession. The Learned 1<sup>st</sup> Appellate Court has

exceeded his jurisdiction by granting decree of right, title, interest and possession of suit property in favour of the defendants.

15. **Second point**:- To decide the second point of substantial questions of law, it is to be determined whether Learned 1<sup>st</sup> Appellate Court was justified by applying legal test for not considering the case of rustic village widow and blindly relying upon the endorsement in the registered deed by the Sub-Registrar.

16. The Learned Trial Court is of view that plaintiff is an old aged illiterate lady who can only put her signature, the 04 deeds were prepared and registered by inducing her by way of misrepresentation.

17. Learned 1<sup>st</sup> Appellate Court has observed that:-

***Considering the evidence on record including the peculiar fact as pleaded in the plaint, it is clear that plaintiff has admitted that she appeared before the Registrar, executed the deeds, knowing fully well that it was not "Ammaktar Nama", i.e. power of attorney. So, in the plaint, she had admitted that she executed that deed and it was signed by her. But during evidence she put LTIs.***

***Only to show that she is illiterate and that is an attempt to prove her illiteracy, but she is not illiterate, hand writing says so. We admittedly deeds were executed then invariably one deed would be found. But 4 deeds were executed and in 4 cases Sarash Debyya received consideration amount, i.e. in two cases Rs. 7,000/- each and in two cases Rs. 5,000/- each. Note of the Registrar is there that Sarashi received it in his presence and then admitted execution of the deed. Then it was registered. So, regarding the disputed deeds, there is no ground to believe that deeds were procured by the defendants by any means,. Rather, in the year, 1985 more than Rs. 25,000/- were paid and it was paid by the***

***defendants and good consideration money was passed.***

The First appellate Court is of further view that **“the plaintiff herself admitted before Registrar about execution of the deed and further fact is also proved that consideration money was passed, plaintiff received it in presence of Registrar and Registrar noted it”**.

18. To settle the contradictory findings of Learned Trial Court and Learned 1<sup>st</sup> Appellate Court. Let me discuss the issue by taking note of the entire pleadings of the parties.

19. Admittedly the plaintiff is an old rustic lady, who herself stated to be an illiterate person; that plea was contradicted by the defendant. To justify the facts, as to whether the plaintiff is an illiterate or literate lady, it is required to go through the evidence of the parties. From the evidence, PW 1 (plaintiff) stated in her examination-in-chief that she is an illiterate lady who can only sign her name. In the cross-examination the same statement of the plaintiff/appellant remains uncontroverted. The respondents did not place any witness before the trial court to prove that plaintiff is an illiterate lady.

20. In going through the other evidence on record more particularly in the impugned deeds in question, it appears that the plaintiff had put her signature over the all deeds in question. There are endorsements in each deeds that the contents of the documents was **“read over and explained”** to the plaintiff/appellant, if the appellant was a literate person the endorsement should be **“read and understand”**. Moreover, no evidence was placed on record to show

that the appellant has done anything, documentary regarding proof of her illiteracy. It is well known fact that a person cannot be said to be illiterate if he/she can put his/her signature only. The Learned 1<sup>st</sup> Appellate Court is of view that plaintiff tried to prove herself to be illiterate person by putting LTI at the time of evidence. Learned 1<sup>st</sup> Appellate Court is also of view that by the style of handwriting of the appellant, appearing in her signature, it can be assumed that the appellant is an illiterate person.

21. From four corners of the observation of the 1<sup>st</sup> Appellate Court it does not evident that Learned 1<sup>st</sup> Appellate Court has ever put the legal test regarding the law of land in case of exception of deed by a rustic village widow. Learned Counsel for the appellants submits that signature of the appellant in the endorsement without knowing the contents of it does not proof the execution of the impugned deed by the appellant.

22. Learned Counsel for the respondents submits that 04 sale deeds in questions are the registered deeds, registration of sale deed raise presumption of valid execution of sale deed and carries presumption of its validity. The Sub-Registrar has put is endorsement of each deeds regarding acceptance of consideration money by the appellant. He further submits that this court in the second appeal can only decided substantial questions of law. He further submits that the High Court cannot interfere in second appeal regarding the facts appearing in the pleadings before the trial court. In support of his

contention Learned Counsel for the respondent has cited the decisions of Hon'ble Apex Court reported in

**1. Jamila Begam Vs. Shami MD. AIR 2019 Supreme Court 72**

**2. K. Kankaratnam Vs. A Permal AIR 1994 Madra 247**

**3. Smt. Aannapoorani Ammal Vs. G. Thandar plant (1989) 3 SCC 287**

23. The true test regarding execution of a document by rustic village illiterate widow has first time elucidated by the Privy Council in the case of **Hemchandra R Chow Vs. Surodhon Devi Choudhurani reported in AIR 1940 PC 134** the Privy Council has held that **“proper and necessary test would be whether the lady has sufficient intelligence to understand the relevant and important matters, that she did understand same as they were explained to her and nothing was concealed and that there was no undue influence or misrepresentation”**

24. Hon'ble Supreme Court in **MST Kharbuja Kuer Vs. Jangbahadur Rai** reported in **AIR 1963 Supreme Court 1203** has also decided the same principal as follows:-

**“As regard documents taken from pardanashin women (illiterate ladies have been equated with pardanashin women by judge-made law) the court has to ascertain that the party executing them has been a free agent and duly informed of what she was about. The reason for the rule is that the ordinary presumption that a person understands the document to**

which he has affixed his name does not apply in the case of a paradanshin woman. The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardanashin lady to establish that the said document was entered into by her after clearly understanding the nature of the transaction. It should be established that it was not her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it but also by other evidence, direct and circumstantial”.

25. Hon’ble Allahabad High Court in **Ashok Kumar and Anr. Vs. Gaon Sabha Ratauli and Ors** reported in **AIR (1981) Allahabad 222** has held that rustic illiterate village woman would be entitled to the benefit available to Pardanasin lady

**It is not merely by reason of Pardah itself that the law throws its protection around a Pardanashin lady but by reason of those disabilities to which the life of action of people living in seclusion gives rise to the disabilities and with which a pardanashin suffers. Thus the protection necessarily arises from the cause such as old age, infirmity, ignorance, illiteracy. mental deficiency, inexperience and dependence upon others. Hence, when in a suit for cancellation of sale deed by the plaintiff, an illiterate, rustic village woman who was not fully capable of understanding and distinguishing between good and bad, the defendants alleged that she had executed a sale deed in their favour but the plaintiff was emphatic in her statement that she only intended to create a wakf and never intended to part with the property, the plaintiff being an illiterate rustic village**

**woman would be entitled to the benefit available to a pardanashin lady and it could be said that she was made to sign a document which she never intended to execute and hence the sale deed was liable to be cancelled**

26. Similar proposition of law has enumerated by the Privy Council in **Mst. Farid-Un-Nisa Vs Munshi Mukhtar Ahmad and Anr. AIR 1925 PC 204** wherein it was observed that

**“It is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not”.**

27. The legal tests as observed by the Hon’ble Supreme Court and Privy Council in the point of execution of a deed by a Pardanasin/ illiterate old village lady has been set out clearly. In this present case the appellant has demonstrated in the pleading containing inter alia that that she treated the respondents as “*like son*” she executed power of attorney in favour of the respondents, without knowing the contents of the document, she registered those deeds before the Registry office according to the instruction of the respondent. It is the case of the appellant that fraud, misrepresentation was acted upon by her for the respondent thereby they managed to execute 04 sale deeds instead of power of attorney.

28. In her evidences appellant has categorically stated that she was not aware about the contents of the registered documents and, consented before the registrar as per instruction of the respondent. The case of the respondents is otherwise, they intended to purchase a

property so they came to contact with the appellant through some relatives. It appears that except the suit property the appellant had no other property; the suit property is only her source of income; there were no reasons why the appellant shall transfer of the property in favour of the respondent. Moreover, the cause of transfer as stated by the defendant in the pleadings is different to that of the contents of the deeds.

29. It further appears that the 04 sale deeds in questions are executed and registered on 17.04.1985 while the “Arpannama Deed” was executed on 20.04.1985 in between those 04 days between the registration of sale deeds and “Arpannama Deed”, where appellant was residing? It further appears that so called “Arpannama Deed” in jiban satta (life interest) in favour of the appellant was executed by minors. The transfer by the minors in the eye of law is not a valid transfer. The execution of so called “Arpannama Deed” itself raise doubt as to why the respondents had allowed the appellant to stay in the suit premises for life interest though in the pleading they have stated that appellant asked them to stay in the suit property for a limited period of time.

30. The Learned 1<sup>st</sup> Appellate court has observed that the appellant has accepted consideration amount in presence of the registrar and some other persons. During the evidence of respondent before trial, the respondent could not produced the deed writer, but also witnesses to the deeds never appeared to support the case of the respondents.

31. After scanning the entire facts, rival pleadings and evidences of the parties, it is crystal clear that the execution of 04 (four) deeds in

question cannot said to be a conscious act of the appellant. Moreover, the relationship between appellants and respondents (as like mother and Son), as pleaded in the plaint has been successfully established. Thus, the parties to the lis were within such fiduciary relationship, where the respondents were in a position to dominate the will of the appellant. In these circumstances, Learned 1<sup>st</sup> Appellate Court had the duty to imply the test of law as proposed by the Hon'ble Apex Court regarding execution of deeds by Old village illiterate lady. Learned 1<sup>st</sup> Appellate Court has committed gross error for not applying the test. As per view of the Hon'ble Apex Court **Mst Khrbuja Kuer** the burden of proof shall always rest upon the person (respondent) who seeks to sustain transaction entered into with illiterate lady to establish that the said document was entered into by her after clearly understanding the nature of the transaction. It should be established that it was not only plaintiff/appellant physical act but also her mental act. The burden can only be discharge not only by proving that the document was explained to her and that she understood it but also by other evidences, direct and circumstantial.

32. The Learned Trial Court has observed that the respondent has not placed their valuable witness to disprove the claim of the plaintiff/appellant. According to the provisions of the Section 114 (g) of Indian Evidence Act, the duty was upon the respondent to place the relevant witness to disprove the claim of the appellant, but they have withheld to adduce their vital witnesses. Thus, according to the provisions of 114(g) of the Evidence Act, and adverse presumption can

be drawn that if the witnesses are produced, they would not support the case of the respondent.

33. It appears that the Learned 1<sup>st</sup> Appellate Court has reversed the finding of the trial court without being contradicting each and every point and views of the Learned trial court, but only applied wrong test in deciding the execution of the impugned 04 deeds by the appellant only in terms of endorsement in the deeds itself. The registration of a deed may presume its contents and endorsement therein to be correct, but such presumption is always a rebuttable presumption. The appellant appears before the trial court and pleaded illiteracy, the burden is upon the respondent to disprove that the appellant had conscious state of mind at the time of execution of those deeds. Except defendant (dw1) none of the witnesses of the deeds were placed by the respondent to shift the onus initially lies upon him.

34. It is the cardinal principle that when court of first appeal take different view, the judgment of 1<sup>st</sup> Appellate Court must show and conscience application of mind and record which is found based on the evidence adduced by the parties and the judgment against record the reason as to why the 1<sup>st</sup> appellate court defers from the judgment of the trial court. In this case judgment of 1<sup>st</sup> Appellate Court has not answered all the points arising for the determination of the evidence adduced therein before Learned Trial Court.

35. The 1<sup>st</sup> Appellate Court further has observed that the appellant is an illiterate lady which can be understand from the style of her handwriting; this proposition has no legal validity and it is absurd, 1<sup>st</sup>

Appellate Court is not an expert to verify handwriting of a person, moreover, this finding has not basis or strength from oral or documentary evidences. The 1<sup>st</sup> Appellate Court has also found the presumption of record of right in favour of the respondent and had observed that the respondent has title over the suit property. This proposition is also appears to me erroneous. Record of rights does not show any title of a person, rather it only prove the possession of a person over a particular plot of land. In this case the present respondent himself disclosed that he is out of possession, thus, the 1<sup>st</sup> appellate court has not gone into the merit of the pleadings and the evidences on record and came to an erroneous finding. The judgment of the 1<sup>st</sup> appellate Court has not passed by deciding the correct legal test of execution of deeds by rustic village widow and has blindly relied upon the endorsement in the registered deed by the Sub-registrar which is never sacrosanct and in this case the onus was always upon the respondent who failed to shift the onus to prove the same according to the law. In this particular case the appellant has successfully pleaded the case of misrepresentation and fraud induced upon her by the respondent which was categorically observed by the trial court. I find observation of trial court is valid, legal and reasonable in the attending facts and circumstances of this case.

The deed of “Arpannama” (gift deed) which was subsequent to the impugned 04 deeds is also an invalid document.

36. Findings of 1<sup>st</sup> Appellate Court was erroneous in setting aside the decree passed by the trial court.

37. Under the above observation the second point is also decided in favour of the appellant.

38. The second appeal thus, succeeds.

39. Hence, it is ordered that, instant 2<sup>nd</sup> appeal being SA 52 of 2010 is hereby decreed on contest without any order of cost.

The Judgment and decree of reversal passed by the Learned 1<sup>st</sup> Appellate Court is hereby set aside.

40. The judgment and decree passed by the Learned Trial Court is hereby affirmed.

41. The second appeal is disposed of.

42. Decree be drawn accordingly.

43. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

**(Subhendu Samanta, J.)**