

04.11.2025

Item no.DL 11
Court No. 16

Asraf, A.R.(Ct.)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Case No. FA 194 of 2019
with
CAN 2 of 2025

In the matter of :

SMT. PARBATI ACHARJYA

.... Appellant

VS.

LAKSHMI DAS & ORS.

....Respondents

For the Appellant :

Mr. Prabal Mukherjee, Sr. Advocate

Ms. Pompey Bose

....Advocates

For the Respondent nos.1 & 2 :

Mr. Md. Nure Zaman

....Advocate

1. The present appeal arises against a judgment and decree whereby the suit filed by the plaintiff / appellant for declaration of title on the basis of a gift deed executed in her favour by her husband was dismissed.
2. The case of the defendants / respondents was that the gift deed was not duly proved to have been accepted by the donee during the lifetime of the donor within the contemplation of Sections 122 and 123 of the Transfer of Property Act, 1882.
3. Learned Senior Counsel appearing for the appellant submits that the gift deed was a registered deed which was marked as an exhibit. Moreover, the very factum of mutation of the

name of the plaintiff / donee in the records, which was proved in the suit, indicates that the appellant acted on the gift deed during the lifetime of the donor and took affirmative action on the gift deed by having her name mutated and taking possession of the property, which is substantiated by the mutation itself.

4. Upon hearing learned counsel for the appellant and the appearing respondents, we find that a sufficiently strong prima facie case for grant of injunction has been made out. Moreover, from the pleadings of the injunction application, it is evident that the balance of convenience and inconvenience and the factor of irreparable injury lies in favour of grant of injunction.
5. Accordingly, the respondents and / or their men and agents are restrained by an order of injunction from transferring, alienating and / or creating any third party interest in the suit property in any manner during the pendency of the application.
6. The appellant shall serve copies of the injunction application on respondent nos. 3, 4 and 5 indicating that the application shall be listed for hearing in the Monthly List of December, 2025, when an affidavit of service shall be filed by the appellant to that effect.

7. Service of copies of the application on the respondent nos. 1 and 2 is dispensed with in view of appearance through their advocate.
8. Let the Trial Court Records be called for in usual course.
9. The appellant shall prepare and file the requisite number of paperbooks within eight weeks from the date of service of notice of arrival of the Trial Court Records on the learned advocate for the appellant.
10. Liberty is given to the parties to mention the appeal for enlistment as and when the same is ready for hearing.
11. All parties shall act on the basis of server copy of this order, duly downloaded from the official website of this Court.
12. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)