

D/L.22.
February 18, 2025.
MNS.

SA No. 280 of 2014
+
CAN 1 of 2013 (Old CAN 9760 of 2013)

Kumar Sabita Barik and another
Vs.
Smt. Namita Barik and others

Mr. Anit Kumar Rakshit

... for the appellants.

1. The present Second Appeal has been preferred by one of the defendants and the proforma defendants in a suit for declaration that a gift deed executed by the admitted owner late Mrityunjoy Barik in favour of the defendant no. 1/appellant no. 1 was void, inoperative and not binding on the plaintiffs as well as for declaration of the title of the plaintiffs and consequential permanent injunction.
2. The learned Trial Judge declared the half share of the plaintiffs in the suit property but did not grant any decree as prayed for in respect of the gift deed.
3. However, the learned Appellate Judge partially modified and partially reversed the decision of the learned Trial Judge by holding that each of the plaintiffs have 1/6th share and that the deed of gift was void, inoperative and not binding on the plaintiffs.
4. The premise of the conclusion of the learned Appellate Judge regarding the deed was a

sequence of events, which was established by plaintiff no. 1 as PW1. The alleged donor Mrityunjoy Barik was hospitalized between August 31, 2004 and September 8, 2004 in the Nandakumar Hospital due to cerebral infraction. Thereafter, he was advised to be taken to the Tamluk Hospital and was discharged from the Nandakumar Hospital on September 8, 2004.

5. In the wee hours of the morning on September 9, 2004, that is, the very next day, the said Mrityunjoy Barik met his demise. The gift deed-in-question was allegedly executed on September 4, 2004, in the thick of the illness of Mrityunjoy Barik when he was hospitalized.
6. Learned counsel appearing for the appellants argues that the learned Appellate Judge erred in law in reversing the findings of the learned Trial Judge in the absence of any specific challenge to the registration of the document and/or any pleading as to impersonation of the said donor.
7. It is further argued that the learned Appellate Judge traversed beyond the pleadings by passing a decree invalidating the gift deed, thereby reversing the trial court's judgment and decree to that extent.
8. However, on a perusal of the judgment of the learned first Appellate Court, we find that there were clear averments in the plaint as to the said Mrityunjoy Barik being an eighty year-old

gentleman having suffered a cerebral thrombosis and being admitted to the Nandakumar Hospital from August 31, 2004 till September 8, 2004, when he was referred to Tamluk Hospital for better treatment. It has also been averred in the plaint that the defendant no. 1, in collusion with others, took the unconscious alleged donor Mrityunjoy Barik to Khanchi Sub Registry Office from Nandakumar Hospital and got the said so-called deed of gift registered. In fact, it has also been specifically averred in the plaint that Mrityunjoy Barik was not in a position on September 4, 2004, the purported date of the gift deed, to execute the said deed.

9. Thus, we find that the foundational pleadings, which provided the basis to the evidence of the PW1 to that effect at the juncture when the gift deed was executed, the alleged donor Mrityunjoy was not and could not be in a position to execute the gift deed, are amply present in the plaint.

10. The learned Appellate Judge, by application of the parameter of preponderance of probabilities, has arrived at a conclusion which is one of the plausible views in the facts and circumstances of the said case.

11. As such, we do not find any reason to substitute our views for that of the First Appellate Court, particularly since there is no legal or factual error or

perversity in the judgment of the first Appellate Court.

12. Thus, we do not find any substantial question of law involved in the present appeal.

13. Accordingly, the appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. The connected application, being CAN 1 of 2013 (Old CAN 9760 of 2013), also stands dismissed accordingly.

14. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)