In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. No.83 of 2016

Sri Niharendu Mitra
Vs.
Smt. Swagata Mitra and Others

For the appellant	:	Mr. Saptansu Basu, Mr. Debdutta Sen, Mrs. Suchishmita Ghosh Chatterjee, Mrs. Ledia Dasgupta
For the plaintiffs/respondents	:	Mr. Om Narayan Rai, Mrs. Deblina Lahiri, Mr. Mrinmoy Chatterjee, Mr. Aayush Sharma, Mr. Vineet Tiwari
Hearing concluded on	:	06.02.2025
Judgment on	:	11.02.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises from a suit filed by the plaintiffs/respondents for declaration of their share in respect of the suit property, for partition and for declaration that a registered Deed of Family Settlement dated December 9, 1992 is fraudulent, manufactured, ineffective and not binding on the plaintiffs/respondents. In the said suit, the learned Trial Judge passed a preliminary decree of partition on the premise that the said deed did not confer any title on the defendant nos.1 and 2, namely Sri Niharendu Mitra and Smt. Ranju Mitra.

2. Learned senior counsel for the appellant/defendant no.1 argues that the learned Trial Judge failed to take into consideration that the deed-in-question, even if not construed as a deed of gift, at least operates as a Will, conferring rights on the defendant no.1/appellant posthumously on the demise of Sri Monoranjan Mitra, the original owner of the property. Since Probate or Letters of Administration of the said Will can be obtained, which would directly affect the outcome of the partition suit, the Trial Court ought to have stayed its hands awaiting such Probate/Letters of Administration before passing a preliminary decree. Learned senior counsel, in his usual fairness, contends that although it was argued all along in the court below on behalf of the defendant no.1/appellant that the deed is a gift deed, transferring title in favour of the defendant nos. 1 and 2 *in praesenti*, on a proper construction of the same it transpires to have the characteristics of a Will, which was overlooked by the learned Trial Judge.

3. As such, it is contended that the impugned preliminary decree be set aside and the proceedings of the partition suit be stayed in order to enable the beneficiaries of the Will to obtain Letters of Administration thereof.

4. It is argued alternatively on behalf of the appellant that, by virtue of the said Deed of Family Settlement, present rights were created, the operation of which was merely postponed till the death of the executant, which is a certain event. Hence, the rights created thereby form a vested interest and not a contingent interest, within the contemplation of the Transfer of Property Act, 1882 (hereinafter referred to as "the 1882 Act").

5. In support of his contention, learned senior counsel cites *P.K. Mohan Ram v. B.N. Ananthachary and others*, reported at *(2010) 4 SCC 161*, where the Supreme Court observed that an interest can be said to be a vested interest where there is an immediate right of present enjoyment or a present right for future enjoyment. It is argued that in the present case, the rights were conferred immediately upon the execution of the registered deed but the enjoyment thereof was merely postponed till the certain event of the demise of the executant.

6. Learned senior counsel next cites a Three-Judge Bench decision of the Supreme Court in the matter of *Sahu Madho Das and others v. Pandit Mukand Ram and another*, reported at *AIR 1955 SC 481*, where it was held that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively.

7. Learned senior counsel next cites another Three-Judge Bench decision of the Supreme Court in *Kale and others v. Deputy Director of Consolidation and others*, reported at *(1976) 3 SCC 119*, where the Supreme Court laid down certain propositions regarding the binding effect and essentials of a family settlement, *inter alia* being that such settlement must be a *bona fide* one so as to resolve family disputes, must be voluntary and not be induced by fraud, coercion or undue influence. The family settlement may even be oral, in which case no registration is necessary and registration would be necessary only if the terms of the family settlement are reduced into writing, creating present rights.

8. The appellant also cites an unreported Division Bench judgment of this Court in *Ashim Kumar Jana and another v. Biswajit Das and others*. In the said case, it was held, *inter alia*, that in order to ascertain whether an interest is vested or contingent, the court should undertake the task of construction with a bias in favour of the vested interest unless the contrary intention is seemingly definite and clear. It was also held that in the event the enjoyment of property is postponed and the current income is enjoyed by the executant, the gift is vested and not contingent.

9. Learned senior counsel appearing for the plaintiffs/respondents contends that the contention that the deed dated December 9, 1992 is a Will is being advanced for the first time in the present appeal, although the consistent case of the defendant no.1/appellant in the court below was that the same was a deed of gift conferring present rights on him. Hence, this Court cannot look into a third case beyond the pleadings and evidence of the parties by observing that the deed is a Will. It is argued that the parties are to be confined to their respective arguments in the court below. Whereas the plaintiffs had claimed that the concerned deed is a manufactured one and is not binding on the plaintiffs, the defendant no.1/appellant contended specifically that it was a deed of gift conferring present rights on him. Hence, the third case being sought to be argued here ought not to be entertained.

10. Secondly, it is contended that even if the concerned deed is construed as a Will, it does not make any difference, since a Will does not create any present rights even upon the demise of the testator unless a valid Probate or Letters of Administration is obtained. No case has been made out at any stage that the defendant no.1/appellant or the other beneficiary of the deed even applied for Probate/Letters of Administration of the said document, let alone any valid Probate or Letters of Administration being produced before the Trial Court. Thus, nothing hinges on such interpretation of the deed. What the court has to look into is whether any present rights were conferred by the said document, which proposition has rightly been turned down by the learned Trial Judge.

11. As to the scope of interference by the appellate court, learned senior counsel appearing on behalf of the plaintiffs/respondents cites *Dollar Company, Madras v. Collector of Madras*, reported at *(1975) 2 SCC 730*, where a Three-Judge Bench of the Supreme Court held that the appellate power is subject to the prudent condition that a court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong.

12. Thus, the plaintiffs/respondents support the impugned judgment and preliminary decree.

13. We find from the evidence adduced in the trial court and the impugned judgment and decree that the plaint case of the concerned deed being a fraudulent or manufactured document was neither proved nor accepted by the learned trial Judge. There has been no challenge to such findings in the judgment by the plaintiffs/respondents. Accordingly, we proceed on the premise that the deed of 'family settlement' was otherwise validly executed.

14. Hence, the scope of the present enquiry boils down to the legal effect of the said document and as to whether the same conferred any vested interest or present title on its beneficiaries and thus is binding on the plaintiffs/respondents.

15. Upon hearing learned counsel for the parties, the following issues crop up for consideration in the present case:

(i) *What is the nature of transfer contemplated by the Deed of Family Settlement dated December 9, 1992 – whether* inter vivos *or otherwise?*

(ii) *Whether the Appellate Court can go beyond the pleadings and the case made out by the parties before the Trial Court in interpreting a document on which the arguments of the parties hinge?*

(iii) *Whether, even if the said deed is interpreted as a Will, which would be a third case not made out by the parties in the pleadings or evidence, such finding would affect the outcome of the present appeal?*

DECISION OF THE COURT

(i) What is the nature of transfer contemplated by the* Deed of Family Settlement *dated December 9, 1992 – whether* inter vivos *or otherwise?

16. The appellant has argued before this Court that vested interest was created by virtue of the deed of settlement.

17. Section 19 of the 1882 Act defines "vested interest" to be an interest which is created on a transfer of property in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is *to take effect forthwith or on the happening of an event which must happen* (emphasis supplied).

18. On the other hand, Section 21 of the said Act defines "contingent interest" to be an interest which is created on the transfer of property in favour of a person *to take effect only on the happening of a specified uncertain event or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property*. In the former case, such interest becomes a vested interest on the happening of the event and in the latter, when the happening of the event becomes impossible.

19. The Supreme Court in *P.K. Mohan Ram (supra)*, reiterated the said position by holding that an interest can be said to be a vested interest where there is an immediate right of present enjoyment or a present right for future enjoyment. The settlement deed under consideration in the said case was examined in the light of the said observation by looking into the substance thereof, the treatment of the subject by the settlor/executant, the intention appearing both by the expressed language employed in the instrument and by necessary implication and the prohibition, if any, contained against revocation thereof.

20. The said principle is germane in the present case too. Thus, we shall presently delve into an examination whether the deed of 'family settlement' dated December 9, 1992 created an immediate right of present enjoyment or a present right for future enjoyment.

21. In the unreported judgment of *Ashim Kumar Jana (supra)*, a co-ordinate Bench of this Court merely reiterated the same proposition, adding that the court should undertake the task of construction with a bias in favour of a vested interest unless the contrary intention is seemingly definite and clear. It was also held that in the event the enjoyment of property is postponed and the current income is enjoyed by the executant, the gift is vested and not contingent.

22. Let us now examine the nature of the deed-in-question in the backdrop of the ratio laid down in the aforementioned decisions.

23. Although the nomenclature "Deed of Family Settlement" was used in the deed at hand, it is well-settled that the nomenclature of a document is not material. What is to be seen is the substance of the document, as also reiterated in *P.K. Mohan Ram (supra)*.

24. By virtue of the said deed, the executant thereof, namely, Monoranjan Mitra (since deceased) clearly indicated that it was to take effect after his demise, also recording therein that it would be open for him to transfer the subject-property during his life-time and if so done, such transfer could not be legally opposed by anybody.

25. Certain key expressions used in the said Bengali document, if translated in English, are germane for the present consideration.

26. The deed starts with a statement that the executant's life was reaching its end due to his advanced years and that he might meet his demise at any time. The said statement sets the tone of the clauses which followed.

27. It is further stated that the deed was being executed keeping in view the future and to avoid any dispute between the executant's children in his absence. The deed clearly mentions that the rights created by virtue of the same would operate "in his absence", which phrase is repeated as a common refrain throughout the document.

28. Thus, the rights created by virtue of the document were all supposed to take effect in future, after the demise of the executant.

29. Importantly, the executant categorically mentions in the document that if it was necessary for him to transfer the subject-property of the deed during his lifetime, he would do so in accordance with law and none could create any hindrance thereto; if such hindrance was created, the same would be deemed to be unlawful and would be ignored.

30. Such clause in the deed is telltale and expresses the intention of the executant unambiguously.

31. Importantly, evidence has been brought on record before the trial court that the executant acted in terms of the right of transfer reserved in his favour in the deed by executing title deeds, transferring portions of the subject-matter of the deed of family settlement in favour of others during his lifetime and after the execution of the said deed.

32. The combined effect of the above provisions is that no present interest, either for present or future enjoyment, was created thereby since, if it was the intention of the executant to create a vested interest *in praesenti* in favour of the beneficiaries of the deed, the enjoyment of which would merely be postponed, he would not have reserved the right to himself to transfer the self-same property during his lifetime, to which none could create any obstruction lawfully, and would not also have acted on such clause by actually transferring portions of the property after the execution of the deed.

33. The reservation of such right in the deed and exercising the same by effecting transfer of part of the subject property subsequently during his lifetime clearly denote that the title remained vested fully in the executant, which militates against the contention of the appellant that a present right was created in favour of the appellant and the enjoyment of the same was merely postponed.

34. It is not that the right was created in the present but would take effect later onafter the demise of the executant.

35. On the contrary, the clear language of the deed leaves no manner of doubt that the interest itself would operate after his demise and till his demise, the executant would retain full right therein, including the right to transfer the subject property during his lifetime.

36. Thus, the requirements of Section 19 of the 1882 Act relating to vested interest are not fulfilled. Rather, Section 21 of the said Act, speaking about contingent interest, might still be attracted, since the interests proposed to be created by the deed-in-question were intended to take effect only after the demise of the testator.

37. Hence, the document cannot, by any stretch of imagination, be construed as a deed of gift, as consistently argued in the court below by the defendant no. 1/appellant, nor can it be interpreted to have created vested interests *in praesenti* by its execution in favour of the appellant. Thus, the first issue is decided against the defendant no.1/appellant. We are of the clear opinion that no transfer *inter vivos* happened by virtue of the concerned deed dated December 9, 1992.

(ii) Whether the Appellate Court can go beyond the pleadings and the case made out by the parties before the Trial Court in interpreting a document on which the arguments of the parties hinge?

38. The next issue is now taken up for adjudication. Under normal circumstances, a third case cannot be made out by the court, either the court of first instance or the appellate court, beyond the pleadings and evidence led by the parties. However, we find no reason as to why, after the trial is concluded and the entire evidence is before the court, the Trial Court or the Appellate Court cannot interpret the legal effect of an exhibited document, which is the pivot of the respective cases of the parties and also the bone of contention in the *lis*.

39. In the event a document is exhibited and extensive arguments are advanced on the interpretation of the same, at the final hearing of the suit, the prerogative shifts to the realm of judicial interpretation and does not remain any longer within the restricted domain of the parties' respective cases. Since the concerned Deed of Family Settlement has been marked as Exhibit-A, it was open to the Trial Court as well as this Court to interpret its legal effect in the light of the applicable laws. Considered from such perspective, there is no absolute fetter on the court to interpret a document in a particular way, despite none of the parties having argued on the nature of the document from the court's perspective.

40. This issue is, thus, held against the plaintiffs/respondents. We are of the opinion that on the question of legal interpretation of a document, which has been exhibited and is before the court and of which the parties seek an interpretation, there is no bar for the court to lend a third interpretation regarding the nature of the document and the rights which it purports to create, which emanates from a plain reading of the said document and is, thus, a purely legal issue. Legal effect and interpretation of a document, it is well-settled, is a pure question of lawif it springs out of an interpretation of the language and terms of the document only, without going into any disputed fact.

(iii)Whether, even if the said deed is interpreted as a* Will*, which would be a third case not made out by the parties in the pleadings or evidence, such finding would affect the outcome of the present appeal?

41. The third issue is, in a sense, the next logical step of the second. Having held that the courts can interpret a document beyond the cases argued by both parties, it is to be considered whether the appellant's argument, that the deed ought to have been interpreted as a Will and consequentially the Trial Court ought to have held its hands to enable the beneficiaries of the document to obtain Letters of Administration from the competent court, is tenable in the eye of law and can be accepted.

42. However, we are unable to appreciate the relevance of the same in the context of the present case.

43. Even if either the Trial Court or this Court were to interpret the Deed of Family Settlement dated December 9,1992 as a Will of the executant, nothing would hinge on the same insofar as the impugned judgment and decree is concerned.

44. It is to be borne in mind that the document-in-question was executed as long back as in the year 1992. More than three decades have passed thereafter. Since the appellant relies on the said document, it cannot be said that the appellant was unaware of the document throughout the said period.

45. Having not applied for Letters of Administration for such an inordinately long time, it is doubtful as to whether the appellant would be entitled to get a Letters of Administration proceeding after such a prolonged delay even from any competent court at this juncture. Even the present suit was filed in the year 2011 and was subsequently renumbered. During the entire pendency of the suit and the present first appeal over a period spanning thirteen years, no steps have been taken for obtaining any Letters of Administration regarding the said document by any of the "beneficiaries" of the same.

46. On the contrary, it has been the consistent case of the appellant no.1 all along that an *inter vivos* transfer *in praesenti* was effected by the deed-in-question. The entire arguments of the appellant in the court below were centred around the attempt to interpret the deed as a deed of gift.

47. Hence, the appellant cannot be permitted to blow hot and cold at the same time by resiling from such consistent position now, for the first time at the hearing of the appeal, and argue that the deed was not a gift but a Will. The argument of immediate transfer *inter vivos* on execution and registration of the deed is, by its very nature, antithetical to the argument of posthumous transfer by a Will. Thus, it would be a travesty of justice if, at this hopelessly belated juncture, the defendant no.1/appellant is permitted to argue that the deed is a Will and not a gift as per their consistent case throughout.

48. We have also carefully gone through each of the grounds taken in the memorandum of the present first appeal. However, we fail to find a single ground where a case of the concerned deed being a Will has been made out by the appellant. The plinth of the arguments in the court below, the pleadings in the court below as well as the grounds of the present appeal at the behest of the defendant no.1/appellant has consistently been that there was a present transfer *inter vivos* by virtue of the deed dated December 9, 1992 and that it was a deed of gift. Hence, it is immaterial as to whether the court interprets the document to be a posthumous transfer or a Will, for that matter, since the appellant cannot now be heard on such issue at all.

49. In any event, such question would also be irrelevant for the purpose of adjudication of the appeal, since fact remains that in the absence of any present transfer having been effected by the said Deed of Family Settlement dated December 9, 1992 and also due to absence of any Probate/Letters of Administration being obtained or even applied for treating the deed-in-question as a Will, the intestate succession of the parties to the suit as heirs of Late Monoranjan Mitra, the original owner, on his demise prevails. Accordingly, the learned Trial Judge was perfectly justified in relying on such intestate succession and holding that no present transfer was effected by the Deed of Family Settlement and consequentially to declare the shares of the parties in the suit property accordingly.

50. The reliance of the appellant on *Kale and others*(*supra)* and *Sahu Madho Das and others(supra)*is irrelevant, since those deal with the ingredients and effect of a family arrangement between the parties. The Deed of Family Settlement with which we are concerned in the present case is not a family arrangement between the parties whereby the different parties agreed to relinquish their interests in respect of specific allocated shares in favour of the others, in which case the question would have arisen as to whether they had antecedent title and as to whether they are bound by it. The deed dated December 9, 1992 is a unilateral document executed by the sole original owner, Late Monoranjan Mitra and as such, the concept of a family arrangement in the sense that the parties relinquished their respective title in respect of each other does not arise at all. Thus, the reliance of the appellant on the said judgments is entirely beside the point and not germane for the present consideration.

51. Going by the proposition as laid down by the Supreme Court in *Dollar Company (supra)*, which has been cited by the plaintiffs/respondents, this Court humbly agrees with the proposition that a court of appeal interferes not when the judgment assailed is “not right” but only when it is shown to be wrong. Also, it is well-settled that an Appellate Court shall not substitute its own views for that of the learned Trial Judge, even if such views were possible, in the event the trial court’s opinion is one of the plausible views on the facts of the case.

52. However, such propositions need not be invoked here at all since, in the present case, we find that the impugned judgment and preliminary decree passed by the learned Trial Judge are fully in accordance with law and justified on the factual matrix of the case.

53. As such, there is no scope of interference with the impugned judgment and preliminary decree. The appeal, thus, fails.

54. Accordingly, F.A.No.83 of 2016 is dismissed on contest, thereby affirming the judgment and preliminary decree dated March 13, 2015passed by the learned Civil Judge (Senior Division), at Kalyani, District-Nadia, in Title Suit No.75 of 2013.

55. There will be no order as to costs.

56. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)