

AD -21
Ct No.10
14.07.2025
(SSS)

SAT 35 of 2025
With
CAN 1 of 2025

Smt. Mohuya Goswami
Vs.
Sri Partha Sarathi Ganguly

Mr. Rishad Medora,
Ms. Afreen Begum
....For the appellant.

1. The present appeal has been preferred against a judgment of affirmance, whereby both the courts below have dismissed the suit of the plaintiff/appellant challenging a registered partition deed on the ground that the same was fraudulent, collusive and void *ab initio*.
2. Learned Counsel appearing for the appellant contends that the defendant/respondent is the elder brother of the plaintiff/appellant and as such, was in a dominant position over the appellant. Moreover, the appellant being less educated than the respondent, the said position of dominance is further established.
3. Both the courts below, without framing any issue on the specific question of challenge to the partition deed, dismissed the suit of the plaintiff/appellant.

4. It is further argued that in terms of Section 16(3) of the Contract Act, 1872, in case of undue influence, where a person who is in a position to dominate the will of another, enters into a contract with him and the transaction appears on the face of it or on the evidence adduced to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

5. However, on a perusal of the plaint case, we find no specific pleading as to undue influence as such. The allegations in the plaint are based mostly on collusion and fraud. At best, certain ingredients of misrepresentation might also be read into the same.

6. Hence, *per se*, Section 16 of the Contract Act is not applicable in the present case.

7. Even if, for argument's sake, it was to be taken that Section 16 is applicable, we do not find any specific pleading, let alone proof, that the defendant/elder brother, merely by being an elder brother, was in a "position to dominate the will" of the younger sister/appellant. The mere brother-sister relation between the two cannot be sufficient to be construed as a position to dominate the will of one another.

8. That apart, regarding the appellant being less educated, we do not find any specific pleading in that regard in the plaint as well. Rather, from paragraph

no. 3 of the plaint, we find that admittedly there were various litigations between the two parties previously which were settled between the parties.

9. In such backdrop, the question of one party being in a position to dominate the will of the other cannot arise at all. Hence, the argument on Section 16 of the Contract Act is not tenable in law.

10. Insofar as the allegations of fraud and collusion are concerned, since both the courts below, upon appreciation of the evidence, have come to concurrent findings on the same, this court, sitting in second appeal, cannot and ought not to interfere with the same merely because another view might have been possible on a preponderance of probability.

11. Insofar as non-framing of any specific issue on the partition deed being void on the ground of collusion or fraud is concerned, it is well settled that if both parties go to trial knowing the issues substantially involved and adduce evidence and argue on the said relevant issues, the mere non-framing of issues cannot vitiate the resultant judgment. The same principle applies to the present case, since from the discussions in the judgments of both the courts below, it is amply evident that the parties knew fully about their respective cases and led evidence and argued at length on such relevant issues. Thus, the judgments of neither of the courts can be deemed to

be vitiated merely due to no specific issue as regards the said question being framed.

12. Thus, there arises no question of any interference with such concurrent findings of fact arrived at by both the courts below, more so, since we do not find any substantial question of law involved.

13. Accordingly, SAT 35 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

14. Consequentially, CAN 1 of 2025 stands dismissed as well.

15. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)