

7th April,
2025
(AK)
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S.A. 68 of 2024

Sikha Bhattacharjee
Vs.
Padma Chakraborty and others

Mr. Anirban Pramanick
Mr. Punarbasu Bath
Ms. Bhagyasree Dey
...for the appellant.

Mr. Dipanjan Datta
Mr. Sayan Datta
Mrs. Reshma Chatterjee
...for the respondents.

1. The present second appeal has been directed against a judgment of reversal.
2. The original plaintiff Kanaklata had filed the suit, which is a genesis of the present *lis, inter alia*, for cancellation of a purported deed of gift executed by her in the year 1991 in favour of the present appellant (a defendant in the suit) as well as for permanent injunction and other reliefs.
3. One of the grounds of challenge to the deed was that the said Kanaklata was an illiterate lady and had put her left thumb impression (LTI) on the deed and that she was under a misconception and the deed was tainted by misrepresentation, undue influence and fraud.
4. The learned trial Judge dismissed the suit primarily on two grounds.

5. First, it was held that since Kanaklata died during pendency of the suit and her heirs, being her sons and daughters, were substituted in her place in the suit, the right to sue did not survive on the said heirs, as it is only the person who executes a particular document who in law has the right to challenge the same and/or seek a cancellation of the same.
6. The second ground attributed to the dismissal of the suit by the learned trial Judge was that there was no pleading in the plaint that the original plaintiff Kanaklata was a “Pardanashin” lady and as such, the evidence led to that effect could not be looked into and was disbelieved.
7. Also, the learned trial Judge came to the conclusion that since it was written in the deed of gift itself and corroborated by one of the defendant’s witnesses, an attesting witness to the purported deed, that the document was read over and explained to Kanaklata, the execution of the same was duly proved and no decree for cancellation could be granted.
8. The First Appellate Court reversed the learned trial Judge’s judgment and decree on several grounds.
9. First, the learned First Appellate Judge held that since the heirs of the deceased alleged donor were impleaded, and the said substituted heirs would have succeeded to the property in the event the gift

deed did not come in the way, the right to sue survived in the said substituted heirs.

10. Inasmuch as the said ground is concerned, we agree with the learned First Appellate Judge, since the right to challenge or seek cancellation of a deed is not restricted to the person who executed the same but anybody claiming interest through the executant of the said deed may also come up and seek a declaration that the same was obtained by fraud and/or misrepresentation and that the said deed is not binding on them and/or should be cancelled.
11. The second ground for reversal attributed by the learned First Appellate Court was that the consistent case of the plaintiff in her plaint as well as evidence was that she was an illiterate lady and was entitled to the cloak of protection available to a “Pardanashin” lady.
12. There is justification in such approach of the First Appellate Court, since the learned Trial Judge misunderstood the arguments of the plaintiff, as reflected from the judgment of the trial court itself, to the effect that the principle applicable in providing the cloak of protection given to a “Pardanashin” lady, in Indian law, is equally applicable to an illiterate person.
13. It was nobody’s case that the original plaintiff was a “Pardanashin” lady but an analogy was sought to

be drawn by the plaintiff between the cloak of protection given to a “Pardanashin” lady and an illiterate person.

14. Thus, the learned trial Judge had proceeded on an entirely erroneous basis on the presumption that an argument of her being a “Pardanashin” lady had been sought to be made by the original plaintiff.
15. Proceeding further on the premise that the original plaintiff Kanaklata was an illiterate rural lady, the learned First Appellate Court considered the proposition laid down in several judgments.
16. The learned First Appellate Court relied on *AIR 1925 PC 204* for the proposition that it is not sufficient in case of an illiterate or “Pardanashin” lady to have an endorsement on the document that it was read over and explained but it should be proved before the court that her attention had been directly drawn to it in the language which she understands.
17. Relying on *AIR 1934 PC 208*, the First Appellate Court further observed that for an illiterate or “Pardanashin” woman, it was not sufficient to show that the document was read out to her but it must further be proved that she understood its nature and effect.
18. Next citing *AIR 1955 (Cal) 17*, the First Appellate Court observed that the question as to whether a deed of sale executed by an illiterate woman

without the benefit of independent advice is subject to the same jealous scrutiny of the court as an instrument executed in similar circumstances by a “Pardanashin” lady was decided in the affirmative.

19. Again, the self-same judgment laid emphasis on the factual understanding of the document in reference by the illiterate lady executing the same.
20. It was also observed that a woman who was illiterate was also entitled to the cloak of protection given to a “Pardanashin” lady.
21. In *AIR 2003 (Cal) 213*, which was also relied on by the First Appellate Court, it was held that the protection which a “Pardanashin” lady is entitled to is also available to an illiterate village woman and onus is on the adversary to prove that the deed-in-question was executed by the plaintiff on her own volition and without any misrepresentation by the defendants.
22. Thus, the approach of the learned First Appellate Court was duly tenable in the eye of law, as opposed to that of the learned trial Judge, to the effect that the burden was shifted to the person relying on the deed executed by an illiterate lady, drawing analogy from the cloak protection given to a “Pardanashin” lady, to prove that the document was duly explained in its full connotation to such illiterate executant of a deed.

23. The First Appellate Court also took into consideration that the DW-1 admitted that the original plaintiff was dependent, *inter alia*, upon one Prabhat Ghosh and it was the said Prabhat Ghosh who got the deed drafted on the desire and intention of the original plaintiff and also read over and explained the contents to her and thereafter the original plaintiff executed the same by putting her LTI.
24. The learned First Appellate Court drew adverse inference against the defendant/appellant for non-production of the best witness Prabhat Ghosh to prove the due execution of the deed of gift and that it was read over and explained, in the teeth of the assertion of the plaintiff that it was not so done.
25. Moreover, the First Appellate Court also observed that as per the evidence of DW-2, the plaintiff had the deed scribed through one Asgar Ali Khan by her elder son, who was the husband of the present appellant.
26. It was observed by the First Appellate Court that admittedly the relation between the present appellant and her husband was bitter and it was not credible that her husband would be asked by his mother to arrange for the execution of a deed of gift in favour of her daughter-in-law.
27. The First Appellate Court, not stopping there, also went on to observe that Exhibit-1, that is, the

original deed of gift of the year 1952 executed by the father-in-law of the appellant in favour of his mother-in-law, the purported donor, did not include the plots-in-question covered by the impugned gift deed and as such doubt was cast as to whether the donor had title to execute the gift deed in respect of the said plots as well.

28. The First Appellate Court further observed that the present appellant admitted in her cross-examination that her name had not been entered in the records of rights, as such creating a doubt as to whether she was in possession of the property by virtue of the deed of gift.
29. We also have to keep in mind that the appellant was already residing in the premises in the capacity of the wife of the elder son of the purported donor, and as such, in the absence of proof that the gift deed was acted upon and she was put in possession in terms of the same, the gift deed might very well have been disbelieved by the Appellate Court, which was the last court of facts.
30. Furthermore, the First Appellate Court elaborately observed that the relationship between the original plaintiff and the present appellant was not at all cordial, which was corroborated from the evidence of all the three plaintiff's witnesses, and most of the time they used to pick a quarrel, in which context the case of the appellant that she was in a position

of 'active confidence' of the purported donor was not believable.

31. The First Appellate Court also took into consideration that in view of such bitterness in relationship between the purported donor and the alleged donee, it was not proper for a person of ordinary prudence like the original plaintiff to execute any deed of gift in favour of the appellant.
32. Thus, we find that the First Appellate Court elaborately entered into the factual premise of the case and upset the decision of the trial court, the premise of which, as discussed earlier, was evidently *de hors* the law.
33. Hence, sitting in second appeal, there is no reason as to why we should substitute our different view, even if the same was possible, for those of the First Appellate Court, which was the last court of facts.
34. As such, we find that no substantial question of law has been made out by the appellant for the purpose of admission of the present second appeal.
35. In view of the above discussions, S.A.68 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
36. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)