

D/L36
13.05.2025
Rohit
ct.no.16

SAT 76 of 2022

**Gautam Das
Versus
Nirupam Das**

Mr. Suprabhat Bhattacharyya
Mr. Basudev Bag

...for the Appellant

1. The present second appeal has been preferred by the substituted plaintiff in a suit filed by the original plaintiff (father of the parties) for cancellation of a deed of gift executed by the father, on the ground of misrepresentation, for declaration of the original plaintiff/father's 16 annas share in the suit property and for consequential reliefs.
2. During pendency of the suit, the original plaintiff/father met his demise and his other son apart from the defendant was impleaded/substituted in his place as the plaintiff. In such view of the matter, the learned Trial Judge refused to pass the decree of declaration of 16 annas share since, by then, the original plaintiff/absolute owner had died and his sons, who were co-sharers in the property on his

demise, became the parties to the suit, none of them having 16 annas share in any event.

3. However, the learned Trial Judge granted the decree of cancellation of the deed of gift as claimed by the plaintiff/appellant.
4. Being aggrieved, an appeal was preferred. The learned First Appellate Court allowed the appeal, thereby reversing the trial court's decision and declaring that the impugned deed of gift dated April 30, 2002 was valid and operative in law.
5. Learned counsel appearing for the substituted plaintiff/appellant submits that the learned First Appellate Court did not take into consideration the evidence on record and/or the findings of the trial court while reversing the same. It is contended that since two different views were taken by both the courts below, and the appeal has been preferred against a judgment of reversal, the first appellate court's judgment ought to be tested on grounds of law.
6. Learned Counsel for the appellant further submits that this is a fit case where the matter should be remanded under Order XLI Rule 23 of the Code of Civil Procedure.
7. However, upon a perusal of the judgment of the first appellate Court, we find that the first appellate

court undertook an elaborate exercise of advertizing to the entire evidence on record, unlike the learned Trial Judge.

8. The learned First Appellate Judge, inter alia, took into consideration the plaint allegation that after the gift deed was executed and registered, the registration slip in that regard was handed over to the donor/original plaintiff by the donee, defendant/respondent.
9. The learned First Appellate Judge observed that it goes beyond logic that a person who will commit fraud and misrepresentation and thereby procure a deed of gift from another will again hand over the registration slip to that person or executor of the document and thereby take the risk of exposing himself of his misdeeds.
10. That apart, the learned Appellate Judge took into consideration the statements of D.W. 2 in cross-examination as well as other evidence on record and, by a well-reasoned judgment, reversed the findings of the trial court.
11. On the contrary, we find certain observations of the trial court, in support of the partial decree granted in favour of the plaintiff, which border on the absurd.

12. It is well-settled that the burden and the initial onus is on the plaintiff in a suit for cancellation of a deed on the ground of misrepresentation, not only to plead the particulars of his case as contemplated under Order VI Rule 4 of the Code of Civil Procedure but also to prove his own case. The learned trial Judge reversed the burden of proof against established law by observing that although the defendant appeared in the suit when the original plaintiff was alive, the defendant, despite having sufficient opportunity to ask the original plaintiff for adducing his evidence to the effect that the impugned deed was executed voluntarily, did not do so.

13. Apart from such reversal of the burden of proof contrary to law, the learned Trial Judge disbelieved the impugned deed on a peculiar ground. D.W. 2, one of the attesting witnesses in the impugned deed, adduced evidence and proved the due execution of the deed. However, his evidence was disbelieved by the learned trial Judge on the ground that he resided at a distance of half a kilometer away from the residence of the original plaintiff and was not a relative or a neighbour of the donor. It was also held by the trial court that the defendant had miserably failed to prove that the said attesting witness had

good relation with D.W. 2 and why the donor left behind his friends, neighbours and relative by choosing D.W. 2 to be an attesting witness.

14. The said case was a third case made out by the learned Trial Judge and was an invalid ground of disbelieving the otherwise sound evidence of D.W. 2. Thus, even the conclusion of the learned Appellate Judge, apart from the rationale of the learned Appellate Judge, are sound and in accordance with law.

15. Thus, we are of the opinion that the learned First Appellate Court was perfectly justified in reversing the judgment of the court of first instance.

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

17. Accordingly, SAT 76 of 2022 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

18. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)