

D/L30
13.05.2025
Rohit
ct.no.16

**SAT 156 of 2017
With
CAN 1 of 2018 (Old No:CAN 1772 of 2018)**

**Ashok Sarkar
Versus
Pasupati Sarkar since deceased rep by heirs**

Mr. SaumyenDatta
Mr. Subrata Bhattacharyya
...for the Appellant

1. The present second appeal has been filed against a judgment of affirmance by the plaintiff in a suit, inter alia for declaration that a gift deed allegedly executed by the original plaintiff was not binding on her due to misrepresentation and for consequential reliefs.
2. Learned Counsel for the appellant argues that both the courts below failed to take into account the oral evidence of P.W. 1 where it was stated that the alleged donor/ original plaintiff resided in the suit premises during her lifetime.
3. It is submitted that in view of such evidence, it is crystal clear that the gift deed was never acted upon in terms of Section 122 of the Transfer of Property Act, 1882.

4. Learned Counsel further argues that the learned First Appellate Judge, despite observing that undeniably the original plaintiff had lived in the suit property till her last breath, affirmed the findings of the learned Trial Judge dismissing the challenge to the gift deed.
5. It is next contended by learned counsel for the appellants that the First Appellate Court erred in law in holding the issue of limitation against the plaintiff, inasmuch as the knowledge of misrepresentation in executing the gift deed was discovered first in the year 1991, within the limitation period from which the suit was filed. It is contended that the original plaintiff/donor was given the impression that she was executing and having registered a power of attorney, and not a gift deed.
6. However, we are unable to agree with the submissions of learned counsel for the appellant.
7. Insofar as the question of limitation is concerned, we find from the judgment of the court of first instance that the learned Judge proceeded to hold the issue of limitation in favour of the plaintiff by taking the averments of cause title in the plaint as gospel truth.

8. The evidence in that regard was not considered at all by the learned trial Judge, which the first appellate court did at length. The learned first appellate Judge, while considering P.W.1's oral evidence as well as the other averments made in the deposition, came to a concrete factual finding that the lapse of 14 years from execution of the deed and the filing of the suit was never explained.
9. Also, since the original plaintiff was herself the executant of the deed, which execution was not denied, it was for the plaintiff to explain as to what prevented her from filing the suit within the limitation period from execution of the same. Having failed to do so, we are not inclined to tinker with the factual findings of the learned First Appellate Judge on such count.
10. Insofar as the gift deed being acted upon is concerned, the learned Trial Judge took into consideration the evidence on record, including Exhibit 'A', being the LR Records-of-Rights, and Exhibit 'B'-series, being rent receipts, produced by the defendant to show that the defendant had asserted the defendant's title in respect of the suit property after the execution of the gift deed, on the strength of the said deed. Such factual finding has

been corroborated by the learned first appellate court.

11. The learned first appellate court, in a stray sentence, observed that “Undeniably the original plaintiff has lived in the suit property till her last breath”. However, there is nothing in the first appellate court’s judgment, either before or after the said stray comment, to justify the same.

12. Hence, we find that for all practical purposes the courts below arrived at a concurrent finding of fact to the effect that the gift deed-in-question was acted upon, thus complying with the requirements of Section 122 of the Transfer of Property Act.

13. In such view of the matter, we find that no substantial question of law is involved in the appeal. Accordingly, SAT 156 of 2017 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

14. CAN 1 of 2018 (Old No: CAN 1772 of 2018) is consequentially dismissed as well.

15. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)