

29.07.2025
rc/ct.no.06
Item No.M/L-890

C.O.No. 2885 of 2024
Smt. Sumita Roy
Versus
Goutam Roy & Ors.

Mr. Asit Kumar Bhattacharjee...for the petitioner

Md. Nure Zaman
Ms. Anima Chakraborty ...for the O.P.

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated July 09, 2024 passed by the learned Civil Judge (Junior Division), 1st Court at Alipore in Title Suit No. 314 of 2008. By the order impugned the application under Order VII Rule 11 of the Code of Civil Procedure stood rejected.

Mr. Asit Kumar Bhattacharjee, learned advocate appearing for the petitioner submits that the opposite party filed a suit for declaration that a deed of gift dated February 19, 1997 is void and for permanent injunction. He submits that the deed executed on February 19, 1997 has been challenged in a suit filed sometimes in the year 2008. He, therefore, submits that in view of Article 58 and 59 of the Limitation Act the suit is ex facie barred by limitation. Mr. Bhattacharjee further submits that the valuation of the property as assessed by the Registration Officer is Rs.12,27,100/- and, therefore, the suit ought to have been valued at such valuation and the plaintiff

should be directed to pay requisite court fees. He further submits that the suit has been under valued and for which the plaint is liable to be rejected under the provisions of Order VII Rule 11 of the Code of Civil Procedure.

Heard the learned advocate for the opposite party on such submission.

Though the plaint has not been annexed in the civil revisional application but in course of hearing of the said application Mr. Bhattacharjee has produced a copy of the plaint.

After going through the averments made in the plaint this Court finds that the opposite party has sought for declaration that the deed of gift dated February 19, 1997 is void and/or voidable and for permanent injunction. No prayer for cancellation of the said deed of gift has been made by the opposite parties herein. It is well settled that a suit for declaration that a gift deed is void and for injunction can be valued according to the reliefs claimed and the plaintiff can put his own valuation in a suit for declaration and permanent injunction. Such a suit need not be valued according to the valuation of the property as assessed by the Registration Authority. In the application under Order VII Rule 11 of the Code of Civil Procedure it has been stated that the plaintiff was aware of the deed of gift in the year 1997. It is well settled that while considering the application under Order VII Rule 11 of the Code of Civil Procedure only averments made in the

plaint are required to be looked into and neither the defence case nor the case made out by the defendant in the application under Order VII Rule 11 can be looked into. The averments made in the plaint should be considered as true and correct while considering an application under Order VII Rule 11 of the Code of Civil Procedure.

Article 58 of the Limitation Act deals with the period of limitation to obtain any other declaration. The period of limitation for such a suit is three years and the period of limitation shall begin when the right to sue first accrues. After going through the averments made in the plaint it cannot be said that the right to sue accrued three years prior to the date of filing of the suit.

Article 59 of the Limitation Act deals with the suits to cancel or setting aside an instrument or decree. In the case on hand the opposite party has neither prayed for cancellation or setting aside the registered instrument and, therefore, this Court is of the view that Article 59 of the Limitation Act cannot be applied to the case on hand.

The learned trial Judge rightly noted that the point of limitation in the case on hand is a mixed question of law and fact as there is no specific admission of the plaintiff in the plaint as to when he came to know about the execution of the said deed. The learned trial Judge assigned cogent reasons for rejecting the application under Order VII Rule

11 of the Code. This Court does not find any reason to interfere with the impugned order.

Accordingly, this civil revisional application being C.O.No. 2885 of 2024 is dismissed.

There shall be, however, no order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya,J)