

AD -10
Ct No.16
17.11.2025
(SSS)

FMAT No. 449 of 2025
with
CAN 1 of 2025

Ms. Arundhuti Barai
Vs.
Ms. Aditi Barai

Mr. Partha Sarathi Das,
Ms. Sudipa Das,
Ms. Maria Sharwari, Advs.
.....For the petitioner.

Mr. Anirban Tribedi, Adv.
....For the respondent.

1. Affidavit of service filed today be kept on record.

2. The present appeal has been preferred against the refusal of a prayer for temporary injunction made by the plaintiff/appellant in a suit filed by the plaintiff for declaration that a purported gift deed executed by her in favour of the defendants/respondents on April 17, 2019 is vitiated by fraud/misrepresentation/coercion and for ancillary reliefs.

3. Learned counsel for the appellant argues that due to the torture meted out by the respondent to the appellant, which led to the signing of the impugned Deed, the appellant had to lodge a General Diary Entry. That apart, it is submitted

that an arguable case has been made out in the plaint and in the injunction application as to the gift deed being vitiated.

4. Thus, it is contended that the learned Trial Judge erred in law in dismissing the application filed by the plaintiff/appellant under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. It is also added by learned counsel for the appellant that unless injunction is granted, at least in the form of *status quo*, the subject property may be transferred, creating third party interest, and/or may be altered.

5. Learned counsel for the respondent points out that the General Diary Entry has met with failure inasmuch as the same was rejected by the concerned Judicial Magistrate.

6. Be that as it may, we do not want to enter into the veracity of the complaint within the limited conspectus of the present appeal. However, fact remains that since admittedly the appellant signed in the deed of gift dated April 17, 2019, be it under duress or under coercion or misrepresentation, the appellant ought to have brought the suit within a reasonable period thereafter. We take note of the fact, as did the learned Trial Judge, that the suit was filed only in the year 2025, that is, six long years after the execution of the said deed.

7. Moreover, we also find that it is questionable as to whether particulars of fraud/misrepresentation/coercion, as required under Order VI Rule 4 of the Code of Civil Procedure, have been pleaded in the plaint or the injunction application, for entitling the plaintiff to an order of injunction. Moreover, injunction being an equitable relief, delay defeats equity as well.

8. Proceeding from such perspective, we do not find any error in the impugned order of the learned Trial Judge. Accordingly, FMAT 449 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

9. Consequentially, CAN 1 of 2025 is disposed of as well.

10. There will be no order as to costs.

11. Parties shall act on the server copy of this order, duly downloaded from the official website of this court.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)