

Item- 27-08-2025
4.

sg Ct. 16

FAT 301 of 2020
CAN 1 of 2023

Ahammad Sk. alias Ahamed Ali
Versus
Anowara Bibi & Ors.

Mr. Baidurya Gohsal
Mr. Sourav Mukherjee
Mr. Saikat Mukherjee

...for the appellant

1. We have the learned Counsel for the plaintiffs. The plaintiffs' case is that the plot nos. 978, 1020, 1036, 1036/1020 and 1036/2021 belonged to Rehan Sk. and by Heba Deed No. 13883 dated 27th November, 1974, which is marked as Exhibit-1, he transferred it to his wife Golenur Bibi and delivered possession. On the death of Golenur Bibi, the property devolved upon her sons i.e. defendant nos. 1 and 2 to the extent of 2/7th share each and daughters i.e. plaintiffs to the extent of 2/7th share each. It is specifically pleaded that the Heba Deed was in custody of Rezzak Sk. but it was lost due to flood of 2000.
2. The defendants, on the other hand, have made out a case to the effect that during his life time, Rehan Sk. transferred the plot no. 978 to the defendants and daughter-in-law Saderful Bibi by Heba Deed No. 11238 dated 24th December, 1985. The said document was marked as Exhibit A. Golenur Bibi expired during the life time of Rehan Sk. on the death of Rehan Sk. the remaining property of Rehan Sk. devolved upon his

sons/defendants and daughters/plaintiffs. The defendants claimed that that the defendants and Saderful Bibi together have 137 decimal land in the suit property. The defendants have also claimed for a declaration that the Exhibit 1 is a void Deed and also stated that the plaintiffs were never in possession over the suit property.

3. Oral and documentary evidence was adduced before the learned Trial Court. During the trial, the Heba Deed of 1974 was exhibited as secondary evidence as it was destroyed from the custody of Rezzak Sk. i.e. PW-1, son-in-law of Golenur Bibi and husband of the plaintiffs no.1. The said document was proved by PW-2, who is the UDC from the District Sub-Registry, Berhampore and the certified copy of the Heba Deed of 1974 was produced from the proper custody and in our view that the learned Trial Court was justified in accepting the said evidence. Moreover, the Exhibit 1 was proved by PW-4, who is the attesting witness and identifier of donor of the Deed. PW-3 is another attesting witness of the Exhibit 1 Deed.
4. Hence, it cannot be disputed that the said Deed was proved in accordance with law. The contention of the defendant/appellant appears to be that the plaintiffs did not produce the original Heba Deed of 1974 and the reason assigned in the plaint for producing the certified copy of the Deed has not been substantiated and in this regard, a decision of the Hon'ble Supreme Court, reported in *(2007) 3 WBLR (SC) at PP 863 (J.Yasoda V*

K. Shobha Rani) was relied upon before the learned Trial Court. In the said decision it has been categorically stated that Section 65 of the Evidence Act permits secondary evidence to be given of the existence, consideration or contents of documents subject to the party being able to prove the existence in execution of original documents.

5. In the instant case, duly certified copy of the document was produced and proved by the two attesting witnesses and in our view, it conforms to the requirement of law of the and the plaintiff was able to establish the genuinity and validity of the said document.
6. The dispute is only with regard to plot no. 978. It was transferred under Deed dated 27th November, 1974. Once the validity of the Heba Deed dated 19th November, 1974 is established in subsequent document, by any person transferring the same property to another person is clearly prohibited as the general rule of law is that no one can transfer a better title than what he himself possessed. In view of such transfer, Rehan Sk. has no transferable interest in the property in question.
7. In view thereof, we do not find any reason to interfere with the order passed by the learned Trial Judge.
8. The appeal fails. However, there shall be no order as to costs.
9. The application for urgent hearing being, CAN 1 of 2023, is, accordingly, disposed of.

10. Urgent Photostat certified copy of this order, if applied for, be supplied to the parteis upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)