AD-23
Ct No.16
08.10.2026
TN

FMAT 320 of 2025
IA No: CAN 1 of 2025

Monija Bibi and another
Vs.
Sahida Bibi alias Homera Bibi and others

Mr. Sounak Bhattacharya,
Md. Rafiqul Islam
.... for the appellants

1. The present challenge has been preferred against a remand order.

2. The plaintiffs/respondent no.1 to 3 filed the suit, from which the *lis* arises, challenging a hibanama (deed of gift) executed by the appellant no.1 Monija Bibi, in favour of the appellant no.2 and her other sons. As per the plaint case, the predecessor-in-interest of the plaintiffs/respondent nos.1 to 3 (their husband and father respectively) was a verbally and auditorily challenged person. Moreover, the said predecessor-in-interest was also illiterate/semi-literate.

3. In such context, it was alleged in the plaint that the suit property was purchased by a deed in the name of the appellant no.1 Monija, but for the benefit of her said specially-abled son, the predecessor-in-interest of the plaintiffs/respondent nos.1 to 3.

4. In such context, the plaintiffs alleged that the subsequently executed hibanama, depriving the plaintiffs on the demise of their predecessor-in-interest, who was the beneficiary of the transfer, was

fraudulent and, as such, ought to be set aside. The plaint also sought for consequential reliefs.

5. The learned Trial Judge, while dismissing the suit, apparently posed certain questions to himself in the form of "doubts coming to the judicial mind of the Court". However, on a thorough perusal of the said "doubts", we find that those are substantially insubstantial, since they deal with extraneous factors, which do not have any germane bearing on the adjudication at hand. In the learned trial court's judgment, we also find irrelevant references to various propositions and provisions of law.

6. As opposed thereto, the first appellate court, in a very well-written judgment, dealt with the relevant issues and sent back the suit on open remand to the trial court primarily on three considerations.

7. The first of such considerations was that from Exhibits 1 and 4 as well as the oral deposition of P.W.1, it was primarily established that the predecessor-in-interest of the plaintiffs/respondent nos.1 to 3 was an illiterate person. As per the learned first appellate Judge, upon such foundational issue having been established, the onus of proof shifted on the defendants/appellants to rebut the same, which was not properly done by the defendants.

8. Secondly, the learned first appellate Judge proceeded on the premise that although the defendant/appellant no.1 Monija, the donor, and the other defendants (sons of Monija), being the donees, were supposed to

have custody of the impugned hibanama under normal course of transactions, the original of the same was never produced in the trial court by them, even in the teeth of the serious aspersions cast against the same.

9. The third ground on which the matter was remanded was that the appellant no.1 Monija avoided the witness box in the suit on the pretext that she was a Pardanashin lady. However, the learned first appellate court exposed the falsity of such averment by relying on the evidence adduced by appellant no.1 as witness in a different miscellaneous case, which was an off-shoot of the main proceeding, by physically appearing before the court.

10. On such premises, in fact, the first appellate court might also have proceeded to finally dispose of the suit, although then it would necessarily have the chance of turning out in favour of the plaintiffs.

11. However, instead of doing so, the learned first appellate Judge took the right recourse and, for the ends of doing complete justice, remanded the matter to the trial court, thereby granting opportunity to both parties to adduce fresh evidence.

12. On the basis of the above findings, in our opinion, the learned first appellate Judge was perfectly justified in sending back the suit on open remand to the trial court in view of the observations made in the impugned judgment.

13. Before parting with the matter, we would be failing in our duty if we do not appreciate the extremely competent manner in which the learned first appellate Judge dealt with the appeal and adverted to all the germane issues.

14. Be that as it may, in view of the above findings, there is no arguable issue and/or illegality involved in the impugned judgment.

15. Accordingly, FMAT 320 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

16. CAN 1 of 2025 is consequentially dismissed as well.

17. There will be no order as to costs.

18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Sandip Kumar De, J.)