

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Chaitali Chatterjee (Das)

SAT 23 of 2025

with

IA No. CAN 1 of 2026

Sri Priyashankar Sengupta

Vs.

Smt. Sova Sengupta & Anr.

For the appellant/petitioner : Mr. Amales Ray, Sr. Adv.,
Mr. Nigam Mittal, Adv.

For the Respondent(s) :

Heard & Judgment on : January 09, 2026.

DEBANGSU BASAK, J.:-

1. The appellant seeks to prefer a second appeal against a judgment of affirmation dated September 04, 2025 passed by the learned Additional District Judge, 2nd Court, Cooch Behar, in Title Appeal No.08 of 2024 affirming the judgment dated March 05, 2024 and decree dated March 07, 2024 passed by the learned Civil Judge (Junior Division), Additional Court, Sadar, Cooch Behar, in Title Suit No.38 of 2006.
2. Learned Senior Advocate, appearing for the appellant, submits that, a suit assailing a registered deed of gift was filed by the appellant. Learned trial Judge, dismissed the suit. Appeal court upheld the judgment and decree of dismissal.

3. Learned Senior Advocate, appearing for the appellant, refers to the relationship between the parties to the suit. He submits that, the appellant is the nephew of the deceased donor. The respondent no.1 is the wife of the other nephew of the deceased donor. He points out that, the donor died issueless. The donor was with the appellant at the time of her death. Prior thereto, the donor was with the family of the other nephew when, the alleged deed of gift was allegedly executed.
4. Learned Senior Advocate, appearing for the appellant, refers to Section 111 of the Evidence Act. He submits that, since the donor was residing with the donee and her husband, at the material point of time, the donee possessed substantial influence over the decision making process of the donor in order to make the donor execute the deed of gift. According to him, the deed of gift is not a product of free will and volition of the donor.
5. Learned Senior Advocate, appearing for the appellant, submits that, this aspect of the donee being capable of influencing the decision of the donor and the donee failing to discharge her obligations enshrined under Section 111 of the Evidence Act, 1872 was not taken into consideration and decided upon by any of the two previous courts. Therefore, according to him, a substantial question of law arises for decision in the second appeal. Consequently, the second appeal should be admitted purely on such basis.
6. Learned Senior Advocate, appearing for the appellant, relies upon **(2019) 8 Supreme Court Cases 637 (State of Rajasthan and Ors. Vs. Shiv Dayal & Anr.)** on the issue as to what would constitute perversity even

if, there is a judgment of affirmation where there are concurrent findings of two previous courts. According to him, in the facts and circumstances of the present case, a question of law remains unanswered. Therefore, the impugned judgment and decree, is visited by the vice of perversity requiring an admission of the second appeal.

7. On the aspect of consideration of Section 111 of the Evidence Act, 1872, learned Senior Advocate, appearing for the appellant, relies upon **(2004) 9 Supreme Court Cases 468 (Krishna Mohan Kul alias Nani Charan Kul & Anr. Vs. Pratima Maity & Ors.)**.
8. Learned Senior Advocate, appearing for the appellant, submits that, the donor, during her lifetime, executed a registered will bequeathing her immovable properties including the immovable property being the subject matter of the alleged deed of gift, in favour of the appellant. The original registered will was kept by the donor with the husband of the respondent. Neither the respondent nor her husband made over the original registered will to the appellant. The appellant derived knowledge of the registered will from one of the advocates and after obtaining certified copy of the registered will, applied for grant of probate. Probate proceedings are pending.
9. One Rekha Rani Sen, since deceased, became owner of an immovable property by virtue of registered deed of purchase dated April 24, 1977. She mutated her name in the Record of Rights in respect of such property.

10. Rekha Rani Sen executed a registered deed of gift dated August 12, 2015 in respect of such immovable property in favour of the respondents. This deed of gift was subsequently produced before the appellant. The appellant thereafter filed Title Suit No.38 of 2006 seeking cancellation of such deed of gift.
11. In such suit, parties adduced evidence both oral and documentary. Suit was dismissed by a judgment dated March 05, 2024. Subsequently, the decree of dismissal was passed on March 07, 2024.
12. The judgment and decree of the learned trial Judge were assailed by way of an appeal by the appellant, which was registered as Title Appeal No.08 of 2024. By the impugned judgment and order, learned appeal court, concurred with the findings returned by the learned trial Judge and dismissed the appeal.
13. One of the grounds canvassed at the time of trial by the appellant is lack of mental capacity of the donor to execute the deed of gift. Both the learned trial Judge as also the learned appeal court considered the evidence adduced by the appellant in this regard.
14. Of the four relevant witnesses of the appellant examined at the trial, the first witness did not produce any oral or documentary evidence showing that Rekha Rani Sen, since, deceased, was suffering from any physical or mental incapacity on the date of execution of the deed of gift. A co-villager was examined by the appellant as the second witness, who did not say that his testimonies were based on personal knowledge. In fact, in cross-examination, lack of personal knowledge was admitted with

regard to the execution of the deed of gift. Similarly, the third witness of the appellant did not speak about alleged physical and mental incapacity of Rekha Rani Sen as also the fourth witness.

15. Both the two courts, prior to us, are of the unanimous view that, to prove the mental and physical incapability of Rekha Rani Sen, medical evidence is of utmost importance. No piece of medical prescription was produced to establish that, the donor was suffering from any illness, which incapacitated her to understand the worldly affairs as well as material things relating to life and property.
16. Section 111 of the Act of 1872 can be pressed into service where, a person is standing in a fiduciary relationship with the other and is obligated to protect the interest given to his care. A case with regard thereto also needs to be made out and established at the trial. In this case, the appellant neither pleaded nor let evidence on the ingredients of Section 111 of the Act of 1872, at the trial or the Appeal Court.
17. Section 111 of the Act of 1972 was considered in ***Krishan Mohan Kul*** (supra). In the facts of that case, a deed of settlement executed by the executant was held to be void as, the executant was found to be more than 100 years of age at the time of alleged execution of such deed of settlement. The executant was found to be a paralytic with his mental and physical condition not being in order. Such medical condition of the donor is not established in the facts and circumstances of the present case.

18. ***Shiv Dayal & Anr.*** (supra) is of the view that, concurrent finding of fact is usually binding on the High Court. It, however, notices that, such rule is subject to certain exceptions such as, where, the concurrent finding of fact is recorded dehors the pleadings, or is based on no evidence on misreading of material documentary evidence or is recorded against any provision of law or the decision is one which no judge acting judicially could reasonably reach.
19. Applying such principles to the facts of the present case, we are not in a position to return a finding that, the concurrent findings recorded by two previous courts, are dehors the pleadings or is based on no evidence or misreading of material documentary evidence or recorded against any provision of law or that the decision is not plausible.
20. In view of the discussions above, we do not find any substantial question of law to arise in the second appeal warranting its admission.
21. SAT 23 of 2025 and CAN 1 of 2026 are dismissed under Order XLI Rule 11 of the Code of Civil Procedure, without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

[Chaitali Chatterjee(Das), J]