

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

F.A.T. No.230 of 2021

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CAN 2 of 2024

**Shrimati Sumati Pahari and Others
Vs.
Umapada Pahari and Others**

For the appellants : Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

For the
respondent nos.1 and 2 : Mr. Debasish Roy, Sr. Adv.,
Mr. Sukanta Das

For the
respondent nos.3 to 6 : Ms. Reshma Chatterjee,
Ms. Tanusree Bag

Heard on : 01.05.2025 & 08.05.2025

Hearing concluded on : 08.05.2025

Judgment on : 14.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The plaintiffs/appellants filed a suit for declaration of title, partition and declaration that the plaintiffs/appellants are not bound by the B/1 and D/1 Schedule gift deeds and that the said gift deeds may be set aside. Ancillary reliefs were also prayed.
2. The learned Trial Judge dismissed the suit, against which the present appeal has been preferred.

3. The appellants assail the impugned judgment and decree primarily on two grounds-that the Scheduled D/1 gift deed was not acted upon by the parties and that the same was obtained by fraud/misrepresentation.
4. Although in the suit, both B/1 and D/1 Schedule gift deeds were challenged, learned counsel for the appellants confines his arguments to the challenge only in respect of Schedule D/1 gift deed, and does not press the challenge to the B/1 Schedule deed.
5. One Akshay Narayan Pahari was the original owner of the properties. On his demise, he left behind Shyamapada and Abhinash, two sons. Abhinash and his wife Bimala died issueless. Shyamapada died in the year 1990 and his wife Monimoyee died in the year 2006, leaving behind three sons – Umapada (defendant no.1), Ramapada (who died in 1994 leaving behind his wife Sumati, who is the plaintiff/appellant no.1, and three daughters, being plaintiff nos.2, 3 and 4) and Bishnupada (defendant no. 6) as well as three daughters, namely Gauri, Parvati and Durga, defendant nos.3, 4, and 5 respectively.
6. By the impugned deed, described as D/1, Ramapada gifted his property to Umapada.
7. Learned counsel for the appellants argues that the gift deed (described in D/1 Schedule of the plaint), which was exhibited as Exhibit-6 in the suit, was not acted upon during the lifetime of the donor Ramapada, the predecessor of the plaintiffs. Although the deed was allegedly executed and registered in the year 1988, mutation was first applied for by the donee, Umapada, in the year 2005 and subsequently a mutation

certificate obtained (Exhibit-C). The tax receipts (Exhibit-A collectively) produced by the plaintiffs in respect of the subject-property relate to the year 2016. As such, during the long period of 17 years after the execution of the deed, the same was not acted upon.

8. It is argued that the learned Trial Judge proceeded to justify the distribution of the property by the impugned D/1 Schedule deed in terms of several other gift deeds executed on the same day by the other co-sharers in the ancestral property in respect of their respective sharers therein. By virtue of the said gift deeds, the different co-owners distributed their respective shares of the property amongst each other. According to the learned Trial Judge, such distribution was otherwise equitable between the plaintiffs and defendants and, as such, does not cast any shadow of doubt on the D/1 deed. However, learned counsel appearing for the appellants contends that the subject-matter of the D/1 deed pertained to a separate property individually purchased by Ramapada from his own funds, which was not a part of the joint hotchpot of ancestral properties. Thus, there could not have been any justification for Ramapada executing the said gift deed, thereby depriving his heirs, the present plaintiffs/appellants, by throwing Ramapada's self-acquired property into the hotchpot of the ancestral property.
9. Learned counsel next contends that since several deeds were executed on the same date, there was every chance of misrepresentation in respect of the subject-properties of the gift deeds, which were drafted under the control of Umapada, the defendant/respondent no. 1.

10. It is argued that defendant no.6, as D.W.4, adduced evidence as an independent and disinterested witness, since he did not acquire or lose any right by the impugned deed. D.W.4 categorically stated in his evidence that the said deed was not acted upon or executed.
11. Thus, it is clear that the said deed was obtained by misrepresentation along with the several other deeds executed on the same day.
12. Learned counsel appearing for the appellants argues that in the absence of any contemporaneous evidence to show that the gift deed was acted upon during the lifetime of the donor or during the long period between its execution in the year 1988 and the year 2005, when Umapada first applied for mutation certificate in respect thereof, the gift deed was *void* and invalid in the eye of law.
13. Learned senior counsel appearing for the respondents contends that the necessary particulars of pleadings regarding fraud/misrepresentation do not find place in the plaint. Moreover, there was no proof of misrepresentation adduced by the plaintiffs.
14. It is argued that Ramapada did not only execute the impugned D/1 deed but also signed other gift deeds, including the B/1 Schedule deed executed by Bimala to defendant no.2(which, though challenged in the suit, has not been assailed in the present appeal) in the capacity of identifier. Thus, it is clear that all such deeds, including the impugned B/1 deed, were executed by Ramapada, who was educated and fully aware of what he was doing.

15. It is next argued that Ramapada's signature appears as attesting witness in Exhibit-K/1, which is the B/2 Schedule deed executed by Bimala in favour of defendant no.2, the wife of Umapada.
16. Learned senior counsel appearing for the respondents next submits that Exhibit-6, the D/1 deed, is a registered deed and was duly produced from the custody of the donee, i.e. defendant/respondent no.1, thus raising a presumption that it was accepted during the lifetime of the donee.
17. In the impugned gift deed itself, it was recorded that possession was being handed over in terms thereof to the donee.
18. Learned senior counsel for the appellants submits that D.W.1, in his examination-in-chief, proved the acceptance of the said deed. In his cross-examination, D.W.1 denied that possession was retained by the donor Ramapada till his death in respect of the subject-property. No specific question was put to him in his cross-examination regarding non-acceptance of the gift deed; only general suggestions on the falsity and in respect of possession were put forward to D.W.1 in his cross-examination.
19. P.W.1 (the plaintiff no.1), in her cross-examination, admitted that she had not paid *khajna* in respect of the D/1 schedule property since 1988, the year of execution of the impugned gift deed, and also that the defendant/respondent no.1 Umapada used to pay Government rent for the said property.
20. D.W.2, a relative of the parties who did not have direct connection with the property gifted by the D/1 deed, adduced evidence as an

independent and disinterested witness. He categorically stated that possession of the subject-property was handed over by the donor Ramapada to the donee Umapada from the date of execution of the impugned D/1 Schedule deed. In his cross-examination, he denied suggestions put to the contrary.

- 21.** Learned senior counsel points out that Ramapada, the donor, after executing the impugned deed on March 18, 1988, lived for a further period of six years and died in the year 1994. Throughout his lifetime, the donor Ramapada did not challenge the gift deed. Thus, it can very well be presumed that the said deed was validly executed.
- 22.** Accordingly, counsel prays for dismissal of the appeal.
- 23.** Upon hearing learned counsel for the parties, we find that two broad issues are involved in the appeal, which are as follows:

i- Whether the impugned D/1 Schedule gift deed (Exhibit-6) was acted upon and duly accepted by the donee during the lifetime of the donor.

ii- Whether the impugned D/1 Schedule deed is tainted by fraud/misrepresentation.

- 24.** We deal with the said issues as follows:

*i- **Whether the impugned D/1 Schedule gift deed (Exhibit-6) was acted upon and duly accepted by the donee during the lifetime of the donor***

- 25.** Unlike other transfers contemplated under the Transfer of Property Act 1882, a gift in respect of an immovable property is not only required to be registered under Section 123 of the said Act but also to be accepted by or on behalf of the donee during the lifetime of the donor and while the donor is still capable of giving. Section 122 of the said Act provides that unless such acceptance happens, and if the donee dies before acceptance, the gift is *void*.
- 26.** We have to remember, while deciding both the issues, that we are acting as the appellate court and it is trite law that the appellate court cannot substitute its own views for that of the learned Trial Judge, unless the learned Trial Judge committed an “error” of law or fact, as opposed to the impugned judgment being “not right”.
- 27.** Proceeding from such perspective, the gift deed itself (Exhibit-6), is seen to be a registered document, raising a presumption of correctness. In the deed itself, it is recorded that the donor hands over possession of the subject-property to the donee. Thus, even without being required to consider any extrinsic aid of interpretation, it is evident from the plain language of the impugned document itself that the same was acted upon simultaneously with its execution and registration, that is, during the lifetime of the donor, by handing over of possession in furtherance thereof to the donee.

- 28.** The appellants have argued much on the mutation certificate being applied for only in the year 2005 and tax receipts of the year 2016 having been produced. However, by themselves, the said facts cannot vitiate the valid execution of the deed and its acceptance during the lifetime of the donor.
- 29.** We also cannot overlook the fact that the deed (Exhibit-6) came from the custody of the donee, respondent no.1, from whose custody it should be produced under normal circumstances, which also raises the presumption that it was duly executed and accepted during the lifetime of the donor.
- 30.** That apart, D.W.1, in his examination-in-chief, categorically stated that the gift deed was duly accepted and acted upon, to which no specific counter suggestion was put in his cross-examination. The D.W.1, in his cross-examination, further denied that possession was retained by the donor Ramapada in respect of the subject-matter of the D/1 Schedule deed till the donor's death. General suggestions on the gift deed being manufactured and regarding possession, in the cross-examination of D.W.1, could not substantially shake his examination-in-chief.
- 31.** The admission of the plaintiff/appellant no. 1, as P.W.1, in her cross-examination is also crucial in this context. She admitted categorically that she did not pay *khajna* for the property covered by the D/1 schedule gift deed since 1988, which was the year of execution of the deed. Nothing has been produced by the plaintiffs/ appellants to show that either Ramapada, the donor, or his heirs, the present plaintiffs, continued in possession of the gifted property covered by D/1 schedule

deed or asserted their ownership by paying taxes or otherwise after execution of the said deed in the year 1988.

- 32.** Rather, P.W.1, the plaintiffs/appellant no.1, admitted in her cross-examination further that the donee Umapada (defendant/appellant no.1), used to pay Government rent for the subject-property covered by the impugned deed.
- 33.** D.W.2, a relative of the parties, did not have any interest in the said property and, thus, can safely be termed as an independent and disinterested witness, since he was not a direct member of the family of the parties. D.W.2 stated in his examination-in-chief that possession regarding the subject-property was handed over by Ramapada (donor) to Umapada (donee) from the date of execution of the impugned deed. In his cross-examination, the said witness denied a contrary suggestion, thereby sticking to his stand in his examination-in-chief.
- 34.** A very important aspect in the matter is that Ramapada, the donor, executed the impugned gift deed in the year 1988 and died six years thereafter in 1994, but did not challenge the said registered gift deed (Exhibit-6) throughout his remaining lifetime.
- 35.** The deed is a registered one and the signature of Ramapada, the donor, in other deeds executed on the same day, in several capacities - identifier, attesting witness, etc. - was never challenged by the plaintiffs/appellants. Thus, it is evident that Ramapada consciously signed several documents on the same day and there is no reason to unnecessarily impute confusion in the mind of the donor Ramapada while executing only the particular challenged deed, that is Exhibit-6.

- 36.** Moreover, the signature of Ramapada has not been proved to be manufactured, by the plaintiffs/appellant calling for an expert to examine the same or otherwise.
- 37.** The impugned D/1 Schedule deed was duly registered and signed by Ramapada himself. Hence, it was well within the knowledge of Ramapada from the very date of its execution and registration. Therefore, the fact, that Ramapada did not challenge the same in the six years of his remaining lifetime after its execution, is palpable proof that he acted upon the same and it was accepted during his lifetime.
- 38.** The mere fact that mutation was applied for in 2005 and tax receipts were produced for a later period, does not *per se* vitiate the execution of the deed. There may be several reasons for applying for mutation later, including that there might have arisen some dispute at a later point of time. A consideration of the reason for such delay is unnecessary, in view of the above facts unerringly showing that it was acted upon during its lifetime and never challenged by the donor. Such an exercise would take us into the realm of conjecture and surmise, which is uncalled-for.
- 39.** Insofar as the evidence of D.W.4, being the defendant no.6 in the suit, is concerned, he was a party to the suit, being one of the defendants, and was affected by the outcome of the suit.
- 40.** Thus, although he was not affected directly or adversely by the deeds challenged in the suit, being the D/1 and B/1 Schedule deeds, he cannot, as such, called a “disinterested” witness. More importantly, apart from the bald statements made in his evidence to the effect that

Exhibit-6 was not acted upon, we do not find any further proof being adduced by him or, for that matter, by the plaintiffs, to displace the presumption of correctness of the registered gift deed (Exhibit-6).

- 41.** Thus, we hold this issue in favour of the defendants/respondents to the effect that the impugned gift deed, (Exhibit-6), being the D/1 Schedule deed, was acted upon and accepted during the lifetime of the donee.

ii- Whether the impugned D/1 Schedule deed is tainted by fraud/misrepresentation

- 42.** Order VI Rule 4 of the Code of Civil Procedure provides that if fraud, misrepresentation or similar allegations are made, the particulars of such act of fraud, misrepresentation, etc., are to be pleaded, which we do not find in the present plaint as such. Even proceeding on the basis of the plaint pleadings, not an *iota* of proof has been adduced by the plaintiffs/appellant, apart from making bald allegations, that the impugned deed was obtained by misrepresentation. There is no specific corroborative evidence to justify the conclusion that the impugned deed was obtained by fraud and/or misrepresentation.
- 43.** Rather, we find from the contemporaneous execution of several deeds on the same day that the donor Ramapada put his signature in different capacities, be it attesting witness, identifier or otherwise, in most of the said deeds. None of those deeds have been challenged; hence the execution of those passes muster. This itself shows that he was fully conscious and aware of what he was doing, more so in view of

the other deeds not being challenged by the appellants, thereby virtually admitting the veracity and truth of the signatures of Ramapada in the other deeds. There is no particular reason why we should impute confusion to the mind of the donor Ramapada in respect of the particular impugned deed, being Exhibit-6, just because the plaintiffs/ appellants are not happy with the said deed.

- 44.** It is nobody's case that Ramapada was an illiterate person or that he was mentally unsound on the date of execution of the deed, and as such, we do not find a whisper of any material in the records to hold that the impugned D/1 Schedule deed was obtained by fraud or misrepresentation. Merely because the subject-property of the said deed was not a part of the joint ancestral property of the parties, but a self-acquired property of the donor does not necessarily mean that we should go behind the registered deed and try to probe into the mind of the donor in order to find fault in the deed, by seeking justification for execution of the same. Since the execution of the deed has been validly proved in law, we cannot look behind the deed.
- 45.** Unlike a Will, which takes effect posthumously, a gift deed is executed during the lifetime of the donor and comes into operation immediately, to effect a transfer *inter vivos*. In case of a Will, the court acts as a “court of conscience” and might be required to probe into the intention of the testator if suspicious circumstances are made out, since the deceased cannot speak. However, in case of an *inter vivos* transfer, the executant of the document is still in the world of the living and, thus,

can very well stand by or refute the transaction, whether expressly or in an implied manner.

- 46.** In the present case, the donor Ramapada was alive for six years after the execution and registration of the impugned deed and did not throw any challenge thereto. Since the existence of the impugned gift deed was obviously within the knowledge of Ramapada, as he signed it and had it registered, such absence of challenge is a tell-tale proof of its valid execution. As discussed above, it has come out from the evidence of D.W.1 herself that she did not pay *khajna* for the subject-property of the impugned deed after its execution in 1988 and the plaintiffs' witnesses have corroborated that it was acted upon immediately, the acceptance of the gift by the donee during the lifetime of the donor is clearly proved. Thus, the requirements of both Sections 122 and 123 of the Transfer Property Act are satisfied.
- 47.** We cannot also lose sight of the fact that the impugned gift deed (Exhibit-6) was produced from the custody of the donee (defendant/respondent no-1) namely Ramapada. Since the donee is the person with whom, under normal circumstances, the gift deed should lie, such production itself raises a presumption of validity of the deed and its existence.
- 48.** From the evidence, we find that the plaintiffs have duly proved the execution of the impugned deed. Its registration has also not been rebutted by cogent evidence. Thus, in the absence of any iota of proof of misrepresentation or fraud, we are unable to agree with the appellant's challenge to the deed.

- 49.** Thus, this issue is also decided in favour of the respondents, holding that the impugned D/1 schedule deed was validly executed without any misrepresentation or fraud being practiced upon the donor.
- 50.** In view of the above findings, we are of the opinion that the learned Trial Judge was justified in passing the impugned judgment decree and dismissing the suit of the appellants.
- 51.** Accordingly, F.A.T. No.230 of 2021 is dismissed on contest, thereby affirming the judgment and decree dated August 4, 2021 passed by the learned Civil Judge (Senior Division), First Court at Midnapore, District: Paschim Medinipur in Title Suit No. 141 of 2012.
- 52.** There will be no order as to costs.
- 53.** A formal decree be drawn up accordingly.
- 54.** Consequentially, CAN 2 of 2024 is disposed of in the light of the above observations.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)