

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No.2649 of 1994

Manash Joarder and others

... Petitioners

-Versus-

Jhari Sundry

... Opposite Party

No one appears for either of the parties

Judgment on 23.3.2011

This Rule at the instance of the defendants in a declaratory suit, was issued on an application under section 115(1) of the Code of Civil Procedure to examine the legality of order dated 26.1.1994 passed by the Additional Assistant Judge, Magura in Title Suit No.3 of 1990 rejecting the prayer for cross examination of a plaintiff witness on genuinity of a gift deed.

The petitioners' case, as it appears from the revisional application, is that the opposite party instituted Title Suit No.15 of 1989 in the Court of Assistant Judge, Magura for a declaration that the deed of gift dated 29.9.1988 purportedly executed by Kali Pada Joarder transferring the suit land in favour of petitioner No.1 is a forged one. Her specific case is that the suit property originally belonged to her father Khudiram Joarder, who by a registered deed of gift dated 27.1.1959 and by a will dated 26.10.1959 transferred the suit property in her favour. Thereafter she obtained probate order of the will in Case No.192 of 1979 and since then she has been possessing the suit land. Petitioner No.1, Manash Joarder is an Indian

national. His father Kali Pada Joarder had migrated to India sometime after 1947. He (Kali Pada Joarder) had left the Country because of his ill feelings to Khudiram Joarder. Her father gave her in marriage and settled them in his own home stead. Petitioner No.1 forged a deed of gift purportedly executed by Kali Pada Joarder on 29.9.1988 in his favour. While petitioner Nos.2 and 3 acted as attesting witnesses in the said gift deed. Petitioner No.1 also filed Title Suit No.88 of 1988 using the name of his father Kali Pada Joarder and he himself was a co-plaintiff in that suit. After the process was served in that suit, the opposite party came to learn about the forged gift deed of petitioner No.1 and was constrained to institute the present suit.

Petitioners Nos.1-3 were contesting the suit by filing a written statement contending *inter alia*, that the deed of gift dated 29.9.1988 is a genuine one. Kali Pada Joarder himself had filed Title Suit No.88 of 1988 on 9.4.1988 against the opposite party challenging the genuinity of gift deed dated 27.1.1959 purportedly executed by Kudiram Joarder in her favour. The said gift deed is a forged one, and on that date Khudiram Joarder was not available in the Country. After his (Khudiram's) death the property was devolved upon his only son, the said Kali Pada Joarder. Petitioner No.1 was added as a party in that suit by filing an application on 1.11.1988. The opposite party appeared in that suit on 24.12.1988 and filed a written statement. Ultimately that suit was dismissed for default.

The trial Court framed issues on the aforesaid pleadings and proceeded with trial. In course of trial, the opposite party examined one Binoy Kumar as P.W.1. During his cross-examination the petitioners filed an application to

cross-examine him on genuinity of the gift deed dated 27.1.1959. The learned Assistant Judge heard the application and rejected the same by his order dated 26.1.1994. The petitioners moved in this Court against the said order, obtained the Rule and an order staying all further proceedings of the suit.

I have carefully examined the impugned order. It appears that the learned Judge applied his judicial mind in rejecting the defendants' (herein petitioners) application for cross examination of P.W.1 on a particular deed, which has reached in finality in another suit. It further appears that the present suit has been brought challenging the genuinity of gift deed dated 29.9.1988. The gift deed dated 27.1.1959 of the plaintiff is not the subject matter here. Moreover, the said Kali Pada Joarder, predecessor in-interest to the petitioners instituted Title Suit No.88 of 1988 before the Assistant Judge, Magura challenging the said gift deed dated 27.1.1959. The opposite party was made a defendant there. Subsequently petitioner No.1 was made a co-plaintiff in that suit. Ultimately the suit was dismissed by order dated 3.8.1989, which gave rise to Miscellaneous Appeal No.38 of 1989 preferred by petitioner No.1. The said appeal was ultimately dismissed on contest by a judgment and order dated 30.5.1991. The present petitioners or their predecessor Kali Pada Joarder did not prefer any civil revision against the said judgment. Thus the dismissal order dated 3.8.1989 passed in Title Suit No.88 of 1988 reached in finality and the opposite party's right and title over the suit land was established against the petitioners on the basis of gift deed dated 27.1.1959. There is no more scope to ascertain its genuinity indirectly in a different suit. For the same reason, cross-examination of P.W.1 on its genuinity is fruitless and unnecessary.

In view of the above, I do not find any error of law resulting in an error in the impugned decision occasioning failure of justice. Thus the impugned order does not call for any interference from this Court.

In the result, the Rule is discharged, however, without any order as to costs. The trial Court is directed to dispose of Title Suit No.3 of 1990 as early as possible.

Let a copy of the judgment be communicated to the Court concerned.