IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A No.121 of 1994

(From the judgment dated 24.3.1994 and the decree in T.A.No.3/1992 confirming the judgment and decree dated 3.4.1994 and 15.4.1994 passed by Addl. Munsif, Bissamcuttack in T.S. No.2/1991)

Bhagirathi Khuntia (Dead)
Sudam Charan Khuntia (Dead)
their legal heirs Nakhyatramala
Mohankudo
and others

... Appellants

-versus-

Golapi Gouduni (Dead)
her legal heirs Jugal Gouda
and others

... Respondents

Advocates appeared in the case through hybrid mode:

For Appellants : Mr. S.S.Rao,
Sr. Advocate

Mr.B.K.Mohanty,
Advocate

For Respondents
: Mr. Ghanashyam Dash,
Advocate.

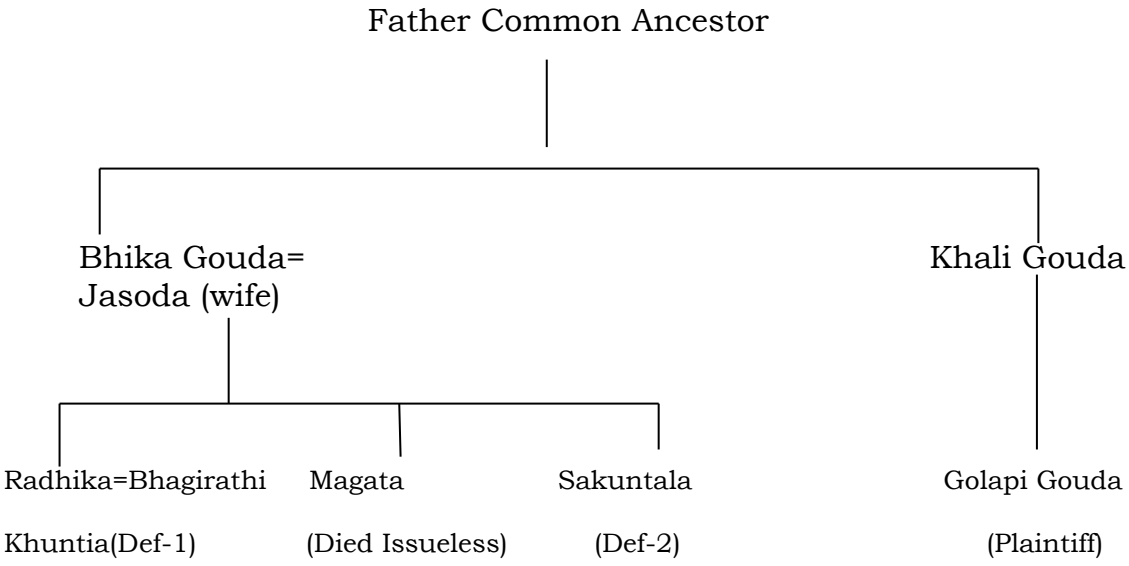
CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT
19.03.2026

Sashikanta Mishra,J. This is a defendant's appeal against a partly reversing judgment. Judgment dated 24.3.1994 followed by decree passed by learned Civil Judge (Sr. Division), Gunupur in T.A. No.3/1992 is under challenge whereby the judgment dtd.03.4.1992 followed by decree passed by learned Addl. Munsif, Bissamcuttack in T.S. No.2/1991 was modified, though the appeal was dismissed.

2. For convenience, the parties are referred to by their respective names to avoid confusion.

3. At the outset, it would be proper to refer to the genealogy showing relationship between the parties.



4. The plaintiff's case, briefly stated, is that Bhika Gouda and Khali Gouda were two brothers and constituted a joint Hindu family. They acquired the suit properties as such. Bhika died somewhere in the year 1951 leaving behind his widow Jasoda, two daughters namely, Radhika and Sakuntala and a son namely, Magata, who died unmarried. Radhika died in 1979 leaving behind her husband Bhagirathi (defendant No.1). Jasoda died in 1988. During her lifetime, Jasoda executed two gift deeds relating to the suit property, one in favour of Golapi (Plaintiff) in respect of 'A' schedule property and the other in favour of Sakuntala (Defendant No.2) in respect of 'B' Schedule property. Subsequently, Sakuntala sold the said property to Golapi in 1986 through a registered sale deed. Thus, the Plaintiff-Golapi claims to be the owner in possession of the suit properties. Bhagirathi filed T.S. No.1/1990 against the Plaintiff in the same Court for recovery of possession of the 'B' schedule property. Said suit was decreed. Defendant No.1, on the strength of the said decree dispossessed the plaintiff from 'B' schedule property on

23.2.1991. Hence, the suit for declaration of right, title, interest and possession and to declare the judgment and decree passed in the aforementioned suit as void.

5. Pursuant to notice, Defendant No.2 appeared and filed written statement supporting the case of the Plaintiff.

6. Defendant No.1 contested the suit by filing written statement denying the plaint averments, inter alia, taking the stand that Bhika and Khali were separated during their lifetime. Khalia died somewhere in 1976 leaving behind his widow Pana Gouda and daughter Golapi (Plaintiff). Pana is also dead. Bhika had no male issue. As such, he brought Defendant No.1 to his house as illatom son-in-law. Defendant No.1 performed the obsequies of Bhika and maintained his widow and daughter Sakuntala. He was also looking after the properties of Bhika and performed the marriage of Sakuntala. He was in possession of the properties to the knowledge of Sakuntala openly and continuously for more than 30 years, for which the plaintiff and defendant No.2 have lost their title by way of adverse possession.

It is further claimed the suit properties are the exclusive self-acquired properties of Bhika Gouda and not jointly acquired with his brother. As such, Khali Gouda has no right over the property. The claim regarding execution of gift deed by Jasoda in favour of Golapi and Sakuntala was specifically denied. It was stated that Jasoda was very old and not in a sound state of body and mind and also lost her eyesight for which she was not competent to execute the deed. As such, no title can be said to have passed through such deeds.

7. Basing on the rival pleadings, the trial Court framed the following issues;

> *1. Whether the suit is maintainable?*
> *2. Whether the suit is under-valued?*
> *3. Whether this Court has pecuniary jurisdiction to try the suit?*
> *4. Whether the plaintiff has a right, title and possession over the suit land?*
> *5. Whether the gift deed nos. 141/80 and 142/80 dt. 07.03.80 executed by Jasoda Gouduni are duly executed?*
> *6. Whether the defendant no.1 has any manner of right, title and possession over the suit property?*
> *7. Whether the defendant no.1 is the illatom son-in-law of Bhika Gouda?*
> *8. Whether the suit is barred by principle of res-judicata?*
> *9. To what other relief the plaintiff is entitled to?*

8. Issue No.5 was taken up for consideration at the first instance. Examining the oral and documentary

evidence adduced by the parties in respect of the gift deeds (Exts.1 and 2) as also the settled position of law, the trial Court held that Jasoda was not only the *Pardanashin* but also illiterate. The Plaintiff did not prove that Jasoda had independent legal advice or shown to have business capacity and strength of will. As such, it was held that the execution of gift deeds by her was not proved.

On Issue Nos.6 and 7, the trial Court on the basis of admission of Golapi in the earlier suit held that the Defendant No.1 was the illatom son-in-law of Bhika. As such, he cannot get any share from the property, but there is evidence to show that he was in possession.

On Issue No.4, the trial Court, held that in the absence of any evidence being laid, it cannot be held that the property was joint. As such, Golapi cannot have any share in the property after death of Khali or Bhika. But as the suit property originally belonged to Bhika Gouda, after his death, her widow Jasoda and two daughters would succeed to the property in equal share. Applying the principles of Hindu Succession Act, the trial Court

held that after death of Jasoda, her share will be divided equally between Radhika and Sakuntala. The main issues being answered as above, the remaining issues were answered accordingly and the suit was decreed in part by declaring the plaintiff's title only over 'B' schedule property.

9. Being aggrieved, Defendant No.1 preferred appeal. The first appellate Court, after independently analysing the oral and documentary evidence on record, held that as there is no specific challenge in the written statement to the gift deeds as being obtained by fraud, the finding of the trial Court to the contrary was held incorrect. It was further held that in the absence of evidence to the contrary, a Hindu family is presumed to be joint. So, when Bhika died in 1951, the properties came to the hands of Khali Gouda by way of survivorship and after 1956, the widow became the absolute owner. As such, she and Khali Gouda each have half share in the property. After death of Khali Gouda in 1976, Golapi became the owner of his half share. So, the gift deed executed by Jasoda in respect of half of the properties

was held to be valid. The first gift deed was held valid whereas the subsequent deed was held invalid. Brushing aside the decree passed in the earlier suit as void, the First Appellate Court further held that the Plaintiff had proved her possession over the suit land. On such findings, the appeal was dismissed, but the trial Court decree was modified only to the extent of declaring the plaintiff's title over the entire suit schedule properties with permanent injunction against Defendant No.1.

10. Being further aggrieved the original Defendant No.1 has preferred the present Second Appeal, which was admitted on the following substantial questions of law:

> *i) Whether in the absence of any appeal by the plaintiff against the judgment and decree of the trial Court holding that Ext.1 is invalid, if it open to the learned lower appellate Court to give a finding that Ext.1 has been righlty proved and binding upon the defendant-appellant.*
> *ii) Whether the learned lower appellate Court is correct in law in holding the gift Ext.1 as valid and genuine particularly when it does not disturb the finding of the trial Court which after scanning the evidence on record come to a finding that there was no conscious execution by Jasoda?*

11. Heard Mr. S.S.Rao, learned Senior counsel with Mr. B.K.Mohanty, learned counsel appearing for the

Defendant No.1-Appellants and Mr.Ghanashyam Dash, learned counsel appearing for the Plaintiff-Respondents.

12. Mr. Rao would argue that the plaintiff, having never challenged the judgment of the trial Court invalidating the gift deed either by filing an independent appeal or a cross-appeal in the appeal preferred by Defendant No.1, it was not open to the first appellate Court to reopen the issue of validity of the gift deeds and give a contrary finding. He further argues that even otherwise, when the trial Court, after analyzing the evidence on record held that the gift deeds were not consciously executed by Jasoda, which was not specifically held to be erroneous, the first appellate Court could not have held the gift deed vide Ext.1 as valid.

13. Per contra, Mr. Dash would argue that as per Order XLI Rule 33 of CPC, the appellate Court possesses ample powers to pass any order which ought to have been passed even in favour of a party who has not filed an appeal or cross-objection, if the circumstances of the case so require. This power, according to Mr. Dash, is provided to the Court to ensure complete justice and to

avoid multiplicity of litigation. Therefore, even if the plaintiff did not file any appeal or cross appeal, once the decree was challenged the entire matter became open for re-examination. Mr. Dash, further argues that unless fraud, coercion or undue influence is specifically pleaded in the written statement as mandatory under Order VI, Rule 4 of C.P.C., a mere challenge to a registered instrument cannot be entertained. Once the execution of a registered document is proved, the burden shifts to the person challenging it. The Defendant No.1 could not produce any credible evidence to rebut the presumption of due execution of the gift deeds.

14. As already stated, the first point urged by the Defendant No.1-appellant is that the First Appellate Court could not have entered into the question of validity of the gift deeds or disturbed the findings of the trial Court in such regard in the absence of any appeal or cross appeal being preferred by the plaintiff. It has been argued that the plaintiff did not question the finding of the trial Court as the decree had substantially granted the relief sought by her with respect to Schedule 'B'

property. This is a plausible explanation for not filing any appeal/cross-appeal. The question is whether, in the absence of appeal/cross-appeal, it is open to the first appellate Court to reopen the issue in question. The answer to this lies in the provision under Order XLI Rule 33 of CPC, which is reproduced below:

> *"33. Power of Court of Appeal.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection 1 [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:*
> *Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."*

15. In the case of ***Bihar Supply Syndicate v. Asiatic Navigation***[1], the Supreme Court examined the power of the Court under Order XLI Rule 33 of CPC and observed as follows:

> "***29.*** *Really speaking the Rule is in three parts. The first part confers on the appellate court very wide powers to pass such orders in appeal as the case may require. The*

[1] (1993) 2 SCC 639

second part contemplates that this wide power will be exercised by the appellate court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. The third part is where there have been decrees in cross-suits or where two or more decrees are passed in one suit, this power is directed to be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees."

16. Similar view was taken in ***Koksingh v. Deokabai***[2]**,** wherein the following was observed:

*"**4.** The second point raised by the appellant was that the respondent did not appeal from the decree of the trial court negativing her claim in the suit for a charge on the property. It was contended that the High Court was wrong in granting a decree for enforcement of the charge as the decree of the trial court became final so far as the respondent was concerned as she did not file any appeal therefrom. We are unable to accept this contention. Under Order 41 Rule 33 of the Civil Procedure Code, the High Court was competent to pass a decree for the enforcement of the charge in favour of the respondent notwithstanding the fact that the respondent did not file any appeal from the decree."*

17. In view of the legal pronouncement as above, this Court holds that even if the Plaintiff had not challenged the findings relating to the validity of the gift deeds, the first appellate Court was not denuded of its powers to re-examine the matter, more so, as the same was necessary for a just decision of the case. It is needless to mention

[2] (1976) 1 SCC 383

that validity of the gift deeds remain central to the dispute between the parties.

18. Though this Court has held that the first appellate Court was well within its power to re-examine the issue even in the absence of appeal, it is still required to be seen whether its finding in such respect can be sustained. As already stated, the trial Court held the gift deeds were not proved to have been validly executed. In this context, the trial Court referred to the evidence of P.W.1, P.W.2 and D.Ws.1, 2, 4 and 5. After going through such evidence, the trial Court held that the donor, Jasoda was old, unable to move and was under treatment at the time of executing the gift deeds. Undisputedly, she was illiterate. The trial Court did not find any evidence that Jasoda had independent legal advice or was shown to have business capacity and strength of will. It is no longer *res-integra* that when an instrument purported to have been executed by an old, ailing and illiterate woman is sought to be proved, the burden is on the propounder of the instrument to prove its valid execution.

19. It is worthwhile to refer to certain relevant statutory provisions:

Section 63 of the Indian Succession Act deals with execution of Wills and reads as follows:

> *"63. Execution of unprivileged wills- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules: (a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction. (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. (c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."*

Section 68 of the Indian Evidence Act relates to proof of execution of document required by law to be attested and reads as follows:

> *"68. Proof of Execution of document required by law to be attested- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*
> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any*

document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

20. Thus on a conjoint reading of the aforequoted provisions, it is manifest that the requirements enshrined under Section 63 of the Succession Act had to be strictly complied with for the execution of the Will, which in turn is to be proved in terms of Section 68 of the Evidence Act. In the case of ***Meena Pradhan and others v. Kamla Pradhan and another***[3], the Supreme Court observed as follows:

*"**9.** A will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testators/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation*

***10.** Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur [Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135] (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam [Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91] (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh [Yumnam Ongbi Tampha Ibema Devi v. Yumnam*

[3] (2023) 9 SCC 734

Joykumar Singh, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and Shivakumar v. Sharanabasappa [Shivakumar v. Sh aranabasappa, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. *The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;*

10.2. *It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*

10.3. *A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:*

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. *For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

10.6. *If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the*

propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;*

10.10. *One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.*

10.11. *Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] ". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.".*

(Emphasis Added)

It was also held in the said judgment that

> *"Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as testator's last Will. In such cases, the initial onus on the propounder becomes heavier."*
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> xxx xxx xxx xxx xxx
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> *The test of judicial conscience has been involved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the*

testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free will.

As to suspicious circumstances, it has been held that they must be real, germane and valid and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance; for example, a shaky signature, a feeble mind an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefits etc.

Thus, the broad parameters for accepting a will as valid have been summarized as follows;

(a) The testator signed the Will out of his own free Will,

(b) At the time of execution he has a sound state of mind;

(c) He was aware of the nature and effect thereof; and

(d) The Will was not executed under any suspicious circumstances."

It is needless to refer to more authorities in this regard as the judgment in **Meena Pradhan (supra)** more or less summarizes the long settled position with regard to execution and proof of Will.

21. Another aspect that needs mention is the law relating to proof of a Will executed by an old, illiterate, ailing or *Pardanashin* lady.

22. In this regard, reference may be had to the oft quoted judgment of the Supreme Court in the case of

Kharbuja Kuer v. Jangbahadur Rai[4],wherein the Supreme Court held as follows;

> *"While affirming the principle that the burden is upon the person who seeks to sustain a document executed by a pardanashin lady that he executed it with a true understanding mind, it has been held that the proof of the fact that it has been explained to her is not the only mode of discharging the said burden, but the fact whether she voluntarily executed the document or not could be ascertained from other evidence and circumstances in the case. The same view was again reiterated by the Judicial Committee, through Sir George Rankin, in Jagadish Chandra v. Debnath A.I.R. 1940 P.C.. Further citation is unnecessary. The legal positionhas been very well settled. Shortly it may be stated thus. The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardanashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by providing that the document was explained to her and that she understood it, but also by other evidence, direct and circumstantial".*

23. This Court in the case of ***Narayan Mishra and others vs. Champa Dibya and others***[5],held as follows;

> *"The disposition made must be substantially understood and must really be the mental act, as its execution is the physical act of the person who makes it. The Court must be satisfied that the deed had been explained to and understood by the party under disability, either before execution or after it under circumstances showing that the deed has been executed with full knowledge and comprehension. Mere execution by such a person, although unaccompanied by duress, protest or obvious signs of misunderstanding or want of comprehension, is, in itself, no real proof of a true understanding mind in the executant. In the case of execution of a deed by a paradnashin or illiterate lady, the law protects her by*

[4] AIR 1963 SC 1203
[5] AIR 1968 Ori 53

demanding that the burden of proof shall in such cases rest not with those who attack, but with those who rely on it. It must be proved affirmatively and conclusively that the deed was not only executed by, but was explained to and really understood by the grantor. Ordinarily, the Courts Insist on proof that the lady had independent legal advice although this may be an absolute and invariable rule and there may be exceptions when the lady is shown to have business capacity and strength of will and the deed is shown to be in the circumstances not an unnatural disposition of her property. But the general rule is that save in such exceptional cases, the Court would demand affirmative proof on the subject of the lady's intelligent understanding and execution of a deed and would not readily hold this onus to have been discharged where it is not shown that the lady had any independent advice."

24. Thus, law demands that the burden of proof in such cases shall be on person who relies upon the Will executed by a *Pardanashin* or illiterate lady.

25. The fact that Jasoda was a *Pardanashin*, old, ailing and illiterate lady is of great significance. Though there is some evidence to show that the gift deeds were read over and explained to her and she apparently consented on her own sweet will, yet there is lack of evidence as to if she had independent legal advice or the capacity to execute the gift deed. The trial Court therefore, rightly held the gift deeds were not proved to have been validly executed. In view of the position of law discussed herein before, this Court fully concurs with such findings.

26. Another issue that requires mention is that the first appellate Court was swayed away by the fact that there was no specific averment in the written statement filed by Defendant No.1 that the gift deed was obtained by fraud. In this regard, this Court has perused the relevant averments of the written statement, which are reproduced below:

> *"The facts in para no.7 of the plaint are not true and correct Jasoda Gouduni did not execute two gift deeds for the suit properties in favour of the plaintiff on 07.03.1980 for Rs 1000.00 and another in favour of Sakuntala Gouda (defendant no. 2) on 07.03.1980 for Rs 1000.00. Jasoda Gouduni has no right, title, interest to execute gift deeds of the properties. She was very old by the year 1980. She was also not in a sound state of mind and body to execute deeds. She lost her eye sight by 1980. She was not competent to execute gift deeds of the properties said to have been conveyed under the deeds. The said deeds are created and void in law. They are not binding on the defendant-1. Under the deeds the donees did not get possession and title to the properties said to have been donated."*
>
> ***(Emphasis Added)***

27. As held in the case of ***Meena Pradhan (Supra),*** even in the absence of allegation of fraud, if there are circumstances giving rise to doubt, then it becomes duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

28. As can be seen, Defendant No.1 raised certain pertinent and relevant issues governing the age, state of mind, eyesight etc. of the executant Jasoda. It is not the mandate of law that the burden of proving valid execution of document shall shift to the propounder only if fraud has been alleged. The reasoning adopted by the first appellate Court is therefore, not tenable.

29. Both substantial questions of law are answered accordingly.

30. Thus, from a conspectus of the analysis of facts, law, the contentions raised and the discussion made, this Court is persuaded to interfere with the impugned judgment of the first appellate Court.

31. Resultantly, the appeal succeeds and is therefore, allowed. The impugned judgment of the1st Appellate Court is set aside.

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Sashikanta Mishra,
Judge