

**KUNAL BHATTACHARYA ALIAS DIP
BHATTACHARYA VS. LARICA ESTAETS LTD. & ORS.**

Mr. Kunal Bhattacharya
Mr. A. Rahaman
..for the petitioner
Mr. Manish Paul
..for the opposite parties

This revisional application has been directed against an order dated September 5, 2019 passed by the learned Civil Judge(Senior Division), Barasat, District North 24 Parganas in Title Suit No. 1153 of 2015.

By the order impugned, the learned Court below directed the petitioner to file the original agreement for sale entered into between the father of the petitioner and Larica Estates Limited. It is the contention of the petitioner that neither the agreement for sale nor the final deed of conveyance was ever made available to the petitioner. Records also reveal that the queries to that effect were made by the petitioner under the Right to Information Act.

The petitioner was informed that the deed of conveyance had not been executed between the parties, that is, late father of the petitioner and Larica Estates Limited. Records reveal that the possession of the flat

had been handed over to the father of the petitioner. Records also reveal that Larica Estates Limited had informed the petitioner that the formal deed of conveyance was not executed as the buyer, that is, late father of the petitioner had not completed the formalities for initiation of the such execution.

It is further submitted on behalf of Larica Estates Limited that the entire payment for the flat had been received by them and the same is not in dispute. The only question which now arises is whether the learned Court below was right in directing the petitioner to file the original agreement when for sale it has been the petitioner's case all through that the petitioner was not in possession and the agreement for sale was not handed over to the petitioner. The petitioner was interested in taking possession of the flat as the sole legal heir and representative of the deceased Tarit Bhattacharya upon execution of the deed of conveyance. It is submitted by Larica Estates Limited that the only problem faced by the said Company is that without a proper heirship certificate showing that the petitioner is the sole heir of the deceased deed of conveyance cannot be executed by the company in the name of the petitioner as the sole heir of the deceased. In such a backdrop, when the contentions of the respective parties are clear, this Court does not find any reason as to why the learned

Court below directed the petitioner to produce the original agreement for sale when admittedly it has been his consistent case that the petitioner is not in possession of the deed. Several letters and communications between the parties also support such contention of the petitioner.

The learned Court below shall decide the suit on its own merits and the evidence adduced on behalf of the parties so far.

The petitioner is granted leave to file additional evidences in the form of heirship certificate to be obtained from the District Magistrate and also file an affidavit affirmed before the Judicial Magistrate of the First Class bearing testimony to the fact that the petitioner is the sole heir of late Tarit Bhattacharya.

The order impugned is quashed and set aside.

The learned Court below shall proceed with the suit in accordance with law. Pendency of the suit shall not debar the parties to settle the dispute.

This Court has not gone into the merits of the case and the learned Court below will decide the suit on the basis of the documents, which have already been produced and which will be filed as additional evidence.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

