

12.8.2021

ASR 1.

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)**

**FMAT 458 of 2021
With
CAN 1 of 2021**

(Via Video Conference)

**ATK Manor Developers LLP
Vs.
Rajib Bhattacharjee**

**Mr. Abharjit Mitra, Sr. Adv.
Mr. Suddhasatya Bannerjee
Mr. Shashwat Nayak
Ms. Rituparna Chatterjee
.....for the appellant**

**Mr. Sabyasachi Chowdhury
Mr. Sayantan Bose
Mr. Shounak Mukhopadhyay
Ms. Madhurima Das
.....for the respondent**

**Mr. Kartik Kumar Ray
.....for the intervenors**

**Mr. Soumen Dutta
Mr. Arindam Paul
....for the widow of deceased**

This is an appeal from a judgement and order dated 19th July, 2021, made ex parte granting an order of injunction restraining the appellant ***“from alienating and on creating any 3rd party right or interest in respect of the scheduled property as mentioned in Section 9 application till 05.08.2021”*** in an application by the respondent under Section 9 of the Arbitration and Conciliation Act, 1996.

As the point involved is very short, we proposed to hear out the appeal, dispensing with all formalities.

The appellant is a developer. They entered into a development agreement with the father of the respondent, late Biswanath Bhattacharjee. The father died leaving a last will and testament. In that will the respondent was appointed as the executor.

There is a serious dispute between the heirs of Biswanath Bhattacharjee namely the respondent, his brothers and their mother.

There is a proceeding pending before this Court for grant of probate to the said Will (PLA no. 128 of 2020).

The other heirs are before this Court. The sum and substance of their submissions made through various learned counsel is that the Will is invalid and that the executor has got no authority to represent the estate. Furthermore, it is said that Biswanath had no title to the subject property.

Whether the Will is valid or invalid or whether the executor has or does not have authority would be decided by the Court considering the application for grant of probate. In our opinion, the question about Biswanath's ownership of the subject property also has to be decided by a civil forum.

Today what is before this Court on appeal is a Section 9 application arising out of a development

agreement in which the deceased Biswanath Bhattacharjee was a party. As long as the Will is not declared invalid, in our opinion, the executor has the ostensible authority to represent the estate.

Furthermore, this determination, in our opinion, is not necessary, at this point of time.

We are concerned with proper execution of the development agreement, in the interest of the legatee or the heirs of the deceased on intestacy even if the will fails.

This is so because the developer, the appellant has to know at this point of time which part of the property is to be retained for the heirs of Biswanath, as the owners' share and which part he is at liberty to dispose of as the developers' share.

Before us, the developer and the executor have arrived at the arrangement described below for such allocation. Only when this allocation is agreed upon further implementation of the development agreement can take place.

Mr. Abhrajit Mitra, learned senior Advocate appearing for the appellant proposed the following allocation for the executor representing the estate of the said deceased.

- a) The entire 8th Floor of block I.
- b) The entire 8th and 9th floors of block III.

c) Flats 2 E and 2 F on the 10th and 11th floors of block II.

Mr, Mitra, learned senior Advocate for the appellant further submits that this allocation may be around 300 sq. feet short of the agreed owners' allocation. In that event at the time of final conveyance necessary adjustment may be made by transfer or by monetary compensation to the heirs. This was accepted by Mr. Chowdhury, learned counsel for the respondent executor.

Subject to the above conditions the other part of the subject property may be disposed of by the appellant in terms of the development agreement.

As far as the above owners' allocation is concerned, if any of the parties intend to exert any right with regard to the said Will, title to the property or its possession, they have to establish the same in a civil court.

Any observation or finding made by us in this order should not be taken to be touching those areas of dispute between the parties.

The impugned judgement and order is set aside and substituted by this order.

The application under section 9 of the Arbitration and Conciliation Act, 1996 before the learned Court below is also disposed of.

The parties are to take appropriate steps in that Court to record its disposal.

The appeal and the connected application (CAN 1 of 2021) are disposed of.

(I. P. Mukerji,J.)

(Aniruddha Roy,J)