

20.05.2022
SL No.21
Court No.8
(gc)

FMA 1380 of 2021

Vasav Narayan Sahgal & Anr.

Vs.

Raja Saha & Ors.

Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee,
...for the Appellants.

The appeal is at the instance of two co-sharers in respect of the property in question. The plaintiffs/appellants entered into a registered development agreement with the defendant No.4 on 9th April, 2008. Thereafter, on 3rd October, 2013 declaration of final allotment was executed in between the plaintiffs and the defendant No.4 by a registered instrument. After the plaintiffs received its entire share in the property in terms of the aforesaid agreement and the declaration, the plaintiffs filed a suit claiming that the agreement for sale dated 31st July, 2018 entered into between the defendant No.4 and the defendant No.5 in respect of two additional floors in the suit premises is null and void and not binding upon the plaintiffs.

The learned Trial Judge relying upon Clause 23.5 of the Development Agreement refused to pass any interim order. Clause 23.5 of the Development Agreement reads:-

“Clause 23.5 of the Development Agreement depicts that “In event Kolkata Municipal Corporation and Other authority concerned permitting in future vertical and horizontal extension or construction in the

new building(s) then in that event the same shall belong exclusively to the Developer at his own costs."

The plaintiffs did not dispute the fact that the said development agreement was initially signed by the predecessor-in-interest and subsequent agreement was signed by the plaintiffs. The grievance of the plaintiffs is that the defendant No.4 could not have sold the said property to the outsiders without the consent and approval of the plaintiffs, as they remained to be the owner of the property in question. Prior to the agreement of 2018 between the defendant No.4 and defendant No.5, the plaintiffs did not allege that Clause 23.5 of the Development Agreement was never agreed upon or it was under duress, coercion or misrepresentation. The plaintiffs although attempted to argue that the concession was by reason of the fact that the defendant No.4 might have to undertake certain works and there were *inter se* disputes between the co-sharers. However, the plaintiffs never intended or agreed to be given any unfettered right to the defendant No.4 to deal with any construction raised vertically and horizontally in the new buildings. The plaintiffs accepted reduction of the areas from what was agreed upon initially without any complaint. *Prima facie*, it cannot be said that when such concession was made, the plaintiffs were not aware of Clause 23.5. In absence of anything to show that the plaintiffs were misled or were under any misconception with regard to the right now

exclusively given to the developer under the development agreement, a view taken by the learned Trial Judge cannot be said to be perverse.

Under such circumstances, the appeal being FMA 1380 of 2021 stands dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)