

IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

APO No. 116 of 2021
with
CS No. 540 of 1988
Kaliprasad Malviya
Versus
Smt. Sandhya Basu Mallick & Ors.

APO No. 117 of 2021
with
CS No. 540 of 1988
Smt. Sandhya Basu Mallick & Ors.
Versus
Smt. Roma Basu & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice KAUSIK CHANDA
Date: 7th January 2022
(via Video Conference)

Appearance:
Mr. Siddhartha Mitra, Sr. Advocate
Ms. Prisanka Ganguly, Advocate
Mr. Sounak Bhattacharya, Advocate
Mr. Sounak Mandal, Advocate
Mr. Arkadipta Sengupta, Advocate
Mr. Dhruba Ghosh, Advocate
Mr. Sakya Sen, Advocate
Mr. Lal Ratan Mondal, Advocate
Mr. Subrata Basak, Advocate
Aniruddha Mira, Advocate
Mr. Asok Kr. Mukhopadhyay, Advocate
Mr. Avirup Mondal, Advocate
Mr. Mandeep Kaur, Advocate

The Court: This is an appeal from a judgment and order dated 26th August 2021 made by a learned single judge of this court in an application in a partition and administration suit. By the said order the two earlier orders passed by that court on 23rd June 2021 and 17th August 2021 were “kept in abeyance”. The applicants in that application being Mr. Dhruba Ghosh’s clients, Dr. Swapan Kumar

Mondal and his wife Sangita Mondal, were allowed to intervene in the suit. The application (GA No. 5 of 2018) was directed to be listed on 7th September 2021 to give an opportunity to the said applicants to “match the offer price which has already been received by the Commissioner of Partition”.

The offer price referred to in the said judgment and order referred to the offer of Mr. Kali Prasad Malviya, the client of Mr. Sakya Sen, learned advocate.

Both the plaintiff and Mr. Malviya are aggrieved by this order and have preferred the above appeals, separately.

Mr. Siddhartha Mitra, learned senior advocate appearing for the appellant plaintiff made it absolutely clear today that his client was interested in the best price obtainable on the sale of the property but at the same time was very keen that this suit which is pending from 1988 was not delayed any further. He argued that after observing due procedure the court had confirmed the sale in favour of Mr. Malviya to purchase the subject property for Rs. 90 lakhs. It had become final and unassailable.

The application on which the impugned judgement and order was passed was speculative with a view to delay the suit further and ought not to have been entertained. The court should have declared the sale as concluded.

Mr. Mitra was supported by Mr. Sen.

Mr. Dhruba Ghosh, learned senior advocate appearing for the said applicants/respondents in this appeal submitted that the Commissioner of Partition in the suit by a report dated 21st June 2019 opined that the two subject properties were impartible and that the parties had agreed that they be sold and the proceeds distributed amongst them according to their shares. He also stated as follows :

By an order dated 13th January 2020 this court directed the Commissioner of Partition to obtain the market value of the properties, fix the reserve price and advertise their sale in the newspapers Ananda Bazar Patrika and The Telegraph.

On 7th January 2021 the Commissioner of Partition reported that he had duly carried out the exercise in terms of the order and had received three offers, one for Rs. 80,06,004/- from the said applicants/respondents, one for Rs. 1,35,00,000/- from Santosh Jadia of Madhya Pradesh and the third for Rs. 1,68,00,000/- from Nand Lal Jauhari of Varanasi, Uttar Pradesh. Only the offer of the applicants was accompanied by the required 25% earnest money of Rs. 20,01,501/-.

On 23rd June, 2021 the application (GA 5 of 2018) was mentioned before the court without notice to his clients. It is recorded in the order passed on that day that in March 2021 Mr. Malviya had made an offer of Rs. 90 lakhs. The court directed Mr. Malviya to deposit 25% of his offer as earnest money.

On 17th August, 2021 the offer of the applicants and that of Mr. Malviya came up for consideration before the court. The other offers were not considered because they were not accompanied by the earnest money. Since the offer of Mr. Malviya was the higher of the two, the court accepted this offer and directed the Commissioner of Partition to confirm the sale in his favour.

Mr. Ghosh very emphatically contended that Mr. Malviya had not made his offer within the original time stipulated by the court and had managed to make his offer on obtaining an order from this court after acquiring knowledge of his client's offer. The latter submission is denied by Mr. Sen. Mr. Ghosh also added that the court had only given an opportunity to his clients to

match the offer of Malviya and that it was a very fair order. No appeal lay from such an order. An intending purchaser had no right of appeal.

In those circumstances, he justified the impugned judgment and order dated 26th August, 2021.

Thus this court had the privilege of hearing very erudite submissions on the following points:

This court should not entertain an appeal from the impugned order which simply directed that an intending purchaser should try to match the price offered by another. An intending purchaser the sale in whose favour had been stayed or set aside had no right of appeal. The learned single judge ought not to have entertained an application by an intending purchaser to set aside a sale confirmed by it. Once the sale has been confirmed by the court, it had attained finality and could not be reopened.

But towards the end of the hearing, learned counsel appearing for all the parties were more or less ad idem that it should be the endeavour of this court, fairly assisted by learned counsel, to ensure that subject properties were sold at the best possible price and as quickly as possible.

Taking all submissions and circumstances into account, we are of the view that Mr. Malviya and the applicants should be given an opportunity of submitting a fresh offer, each in a sealed cover accompanied by the required earnest money less earnest money deposited with the Commissioner of Partition, by 21st January 2022.

We make it absolutely clear that no further revision of offer shall be allowed and only the higher of the two offers shall be accepted. Each of the offers should not be less than the offer already made. The sealed offers shall be annexures to a report to be filed by the Commissioner of Partition by 28th January, 2022. It shall be considered by the learned single judge when the application GA No. 5 of 2018 is listed.

The learned single judge is requested to accept the higher of the two offers in terms of this order and dispose of the said application GA No.5 of 2018, confirming the sale, subject to payment of the balance consideration by the successful bidder by the time fixed by the learned single judge. If for any reason the sale does not materialise as contemplated, the learned single judge shall make appropriate orders.

The Commissioner of Partition shall be paid a further remuneration of Rs.40,000/- to be shared by the parties equally according to their shares.

Both the appeals (APO No.116 of 2021 and APO No. 117 of 2021) are disposed of by this judgment and order.

(I. P. MUKERJI, J)

(KAUSIK CHANDA, J.)