

29-09-2023
Item no.10
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

FMAT No.371 of 2023
Pijush Mukherjee

-vs-

M/s Joy Baba Lokenath Construction & Ors.
with
CAN No.1 of 2023

Mr. Kaustav Banerjee
Ms. Ria Kundu ...for the appellant

Mr. Syamal Kumar Das
Mr. Pronojit Roy
Ms. Smita Pal ...for the respondents

We are in a position to dispose of this appeal and the connected application dispensing with all formalities.

The appellant claims to be a co-sharer of the subject property. It has been developed by the respondent no.1. The respondent nos.2-5 are the partners of the respondent no.1.

It appears from the submissions made that the respondent no.1 has entered into an agreement with the other co-sharers, not more than 2-3 years ago, for development of the property. No such agreement has been executed between the developer and the appellant. The appellant says that by practising deception in April 2021, the respondent no.1 has obtained conveyance of his undivided share by sale, for a consideration of Rs.14 lakh when the valuation is much more.

On the other hand, it is submitted on behalf of the respondents that from 2011 money was being paid by the respondents to the appellant and received by him. Ultimately, in April 2021, he sold the property to the respondents independent of the said development

agreement.

Now, this vexed question can only be decided at the trial.

Prima facie, it appears from the evidence on record that even if the appellant/plaintiff succeeds, he is likely to receive only monetary compensation. It is hardly likely that the construction work, which is already under way in the subject property, will be nullified, the portion constructed demolished and the respondents directed to hand over vacant land to the appellant. However, at this stage, it is not possible to rule out absolutely such a possibility.

Considering the above prima facie case and the balance of convenience, the impugned judgement and order is modified to the effect that the respondents shall be allowed to proceed with the construction, provided they secure a sum of Rs.10 lakh in such a manner as the learned district judge might direct on an application being made by the appellant on the basis of this order.

Such application is to be made by the appellant by 4th October 2023 and be disposed of by the learned District Judge by 12th October 2023, and that the security is furnished by 16th October 2023 latest.

The security will abide by any decree or order to be passed by the learned court below.

The appeal and the connected application are, thus, disposed of.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

