

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

IA No: GA 1 of 2023
APO No. 33 of 2023
with
CS No. 283 of 2001
Chandra Prakash Agarwal
Versus
Bhagirath Agarwal & Anr.

IA No: GA 1 of 2023
APO No. 32 of 2023
with
CS No. 283 of 2001
Chandra Prakash Agarwal
Versus
Bhagirath Agarwal & Anr.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 18th April 2024

Appearance:

Mr. Rajarshi Dutta Advocate
Mr. Sarbajit Mukherjee, Advocate
Mr. Sayantan Bose, Advocate
for the appellant

Mr. Anubhav Sinha, Advocate
Mr. A. Saha, Advocate
Mr. Rittick Choudhury, Advocate
for the respondent no. 1

Ms. Debanjana De, Advocate
for respondent 2

Mrs. Manali Ali, Advocate
Mr. Shounak Mitra, Advocate
Mr. Zulfiqat Ali Al-Quaderi, Advocate
for the intervenor

The Court: These appeals are from a status quo order in relation to immovable properties passed by the learned court of first instance. These immovable properties are the subject matter of a partition and administration suit.

In an interim application in that suit, on 8th April 2019, the learned court of the first instance on a joint prayer by the three parties

of that suit allowed them to sell certain properties which were the subject matter of that suit and divide the consideration amongst themselves according to the agreed share of 1/3rd each.

After about two years one Shyam Agarwal and one Rajesh Agarwal, sons of the respondent no.1 in the appeal APO 33/2023 made an application before the learned trial judge. They claimed right, title and interest over the properties and resisted their sale.

In those circumstances, the order of status quo was passed by the learned single judge.

We are told that the application upon exchange of affidavits is awaiting consideration by the learned judge on 7th May 2024.

Mr. Anubhav Sinha appearing for the respondent no.1 supported by Mr. Rajarshi Dutta, learned advocate appearing for the appellant and Ms. Debanjana De for the respondent no.2 submit that without adjudging even prima facie the right of the intervenors the learned trial court was in error in passing the order of injunction restraining disposition of the properties. The intervenors are speculators and interlopers and have no right, title and interest, it is submitted.

On the other hand, Mrs. Manali Ali, learned advocate appearing for the intervenors maintains that her clients have right, title and interest over the properties and that pending adjudication of those rights, the properties ought not to be sold.

Since the interim application is ready for hearing before the learned trial court, instead of our deciding the point it would be better decided by the court of the first instance.

Even if Mrs. Ali's clients succeed, Mr. Sinha's client would be entitled to 1/12th of the sale proceeds. The clients of Mr. Dutta and Ms. De would also receive consideration proportionate to their respective share.

The question learned single judge has to decide, prima facie, whether the sale of the properties should be allowed or withheld.

Considering the prima facie case of the parties that on a joint petition the court had ordered sale of a part of the properties by its order dated 8th April 2019, the suit is of 2001 and the application of the intervenors was filed only in 2021, we are minded to permit the clients of Mr. Sinha, Mr. Dutta and Ms. De to invite prospective purchasers for sale of the said properties, agree to a consideration to be received, subject to the final decision of the interlocutory court as to whether those properties should be sold or not .

With these observations and directions, both the appeals and the applications (APO 33 of 2023 with IA No: GA 1 of 2023 and APO No. 32 of 2023 with IA No: GA 1 of 2023) are disposed of.

All incidental questions are kept open before the learned single judge.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)