

06.02.2025
SI No.6
Court No.37
(gc)

**In the High Court at Calcutta
Civil Appellate Jurisdiction
(Commercial Division)**

FMA 321 of 2023

**Rajiv Ranjan Kumar
Vs.
Dr. Rajeshree Ray & Anr.**

Mr. Kushal Chatterjee,
Mr. Tanmay Mukherjee,
Mr. Amal Kumar Saha,
Mr. Iresh Paul
...for the Appellant.
Mr. Sounak Ghosh,
Ms. Parna Mukherjee
...for the Respondent No.1.
Mr. Saurabh Guha Thakurata,
Ms. Tanuka Basu,
Mr. Abhratanu Sarkar,
Mr. Aftab Munshi
...for the Respondent No.2.

1. The appeal is arising out of an order passed by the learned Judge, Commercial Court vacating the order of status quo granted earlier. The siblings are at loggerhead as it appears that the father of the respondent nos.1 and 2 claimed to have executed a Will bequeathing 50% share in the properties in favour of the daughter and the remaining 50% share was given to his wife. This Will is presently under challenge by the respondent no.2. In the meantime, it is contended that the mother had executed a Will bequeathing her share in favour of the respondent no.1

which, subsequently, she revoked and made a fresh bequest in favour of her son. This Will is also under challenge. In the meantime, it appears that the parents of the parties entered into a development agreement with one Trimurti Infrastructure Pvt. Ltd. for development and construction. During the subsistence of the said agreement, the parents died and the respondent no.1 on the basis of the Will claimed to have been executed in her favour by her father, had entered into a fresh agreement with Trimurti Infrastructure Pvt. Ltd. and on the basis of the said agreement, it is claimed that a sum of over Rs.3 crores have been paid to the respondent no.1 and the developer was given possession with a right to induct tenant. The issue became complicated by reason of the fact that the brother objected to the said claim being made by the respondent no.1 as owner of the property in question. However, the property seems to have been dealt with by the respondent no.1 without a probate being obtained from an appropriate Court. In view thereof, until a probate is granted, the respondent no.1 could not have represented the estate and claimed to be the beneficiary under the said Will by entering into an

agreement with the appellant for development of the property in question as no right has crystallized in favour of the respondent no.1 in absence of the probate. Moreover, the said proceeding has been marked as a contentious clause. In that view of the matter so long the probate proceeding is not decided in favour of the respondent no.1, the appellant or the company he is representing, cannot claim any right, title and interest over the property in question. However, they have been put to possession by the respondent no.1 and claimed to have inducted tenant. If it is ultimately found that the entire exercise of the appellant as well as the respondent no.1 is vitiated, it is needless to say that the tenants would not be entitled to any right in respect of the property in question. However, the property is required to be preserved. All the parties are restrained from changing the nature and character of the property in the meantime. The parties are also restrained from alienating and/or encumbering the property.

2. The list of tenants shall be furnished in the first probate proceeding upon prior notice to the parties.

3. All amounts realized from the tenants shall be deposited before the learned probate Court and shall be kept in a fixed deposit. In view of the prevailing circumstances, the probate Court can consider the appointment of an Administrator. Till the first probate proceeding is concluded, the Administrator may not interfere with the present possession of the tenants and the present appellant if found in possession of the property in question but all the tenants should be informed of this order and all future rents shall be paid to the Administrator to be appointed by the probate Court till the disposal of the probate proceeding.
4. Since the appellant has invested a considerable amount, we would request the learned probate Court before whom the respondent no.2 has filed an objection to decide the said proceeding at the earliest without granting any unnecessary adjournment to either of the parties. The outcome of the probate proceedings shall be informed to the appellant.
5. The learned probate Court may direct the Administrator to open an account preferably with a nationalized bank for the purpose of depositing the rents realized month by month

and the amounts so far collected shall be kept in a fixed deposit account with any nationalized banks yielding highest return till the disposal of the probate proceeding.

6. It is needless to mention that in the event the respondent no.1 succeeds in the probate proceeding, the entire amount deposited shall be returned to the appellant by the Administrator or the respondent no.1 as the case may be.
7. All other directions with regard to the Administrator of the estate may be passed by the learned Trial Court.
8. The remuneration of the Administrator shall be fixed by the learned probate Court to be shared by the parties in the probate proceeding in equal measure.
9. The parties are directed to file an appropriate application to bring on record before the learned probate Court of this order and its compliance.
10. In the facts and circumstances of the case, no steps would be taken following issuance of the notice under Section 21 of the Arbitration and Conciliation Act. Moreover, it appears that the appellant and the respondent no.1 are not in disagreement and there is no dispute between the appellant and

the respondent no.1. The respondent no.2 is, however, not a party to the development agreement and he is not willing to refer the disputes to arbitration. Moreover, the Arbitrator cannot decide the probate matter as a judgment in probate matter operates as a judgment in rem.

11. Accordingly, the appeal is disposed of.
12. However, there shall be no order as to costs.
13. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)