

14
26.9.2025
Ct. No. 1
SB

FMAT 418 of 2025
CAN 1 of 2025 (stay)
ATK Realtors LLP & Ors.
Vs.
Margaret Annete Gardiner & Ors.

Mr. Rupak Ghosh
Mr. Anujit Mookerji
Mr. Anirudhya Dutta ...for the appellants

Mr. Siddhartha Banerjee
Mr. Shaunak Ghosh
Mr. Rajib Mallick
Ms. Divya Agarwal ... for respondent nos. 1 & 2

1. Mr. Rupak Ghosh, learned counsel appearing on behalf of the appellants has submitted that the impugned order has been snatched from the Trial Court in suppression of material facts. It is submitted that the learned Trial Judge has overlooked the fact that there is a development agreement in which it has been clearly stated in the recital that Neville William Earle breathed his last on 18.7.1958 after executing a Will which was in the custody of his elder brother R.P.M. Earle and the said Will was probated. A copy of the order passed by the learned District Judge, Alipore in Original Suit No. 5 of 81 for granting probate of the last Will in favour of the executor on 05.2.2002 is the source of right and authority to enter into such development agreement.
2. *Prima facie* it appears that the learned Trial Court while recording the facts has overlooked the recitals of the agreement in which aforesaid facts have been clearly

stated. Moreover, the document produced before this Court would show that probate was granted in respect of the said Will.

3. In view thereof, the owners have a better right under the Will to deal with the properties exclusively so long the probate remains. However, the grant of probate on 05.2.02 was not brought to the notice of the learned Trial Judge.
4. On such consideration, we dispose of this appeal by giving liberty to the appellant to move before the learned Judge for recalling and / or vacating of the interim order by disclosing all material facts. We find the substance in the argument of the appellant for recalling of the impugned order.
5. The order dated 05.2.02 is relevant for the purpose of considering the prayer of the appellant for vacating the interim order.
6. In the event the learned Trial Court comes to a finding that there is a clear suppression in material fact the application should be dismissed *in limine* with exemplary costs. The interim order shall not be extended beyond 14.11.2025 unless the application for vacating of the interim order is decided in the meantime.
7. The appellant shall file an application on or before 27.10.2025 for recalling of the *ex parte* order upon prior service to the learned advocate on record for the plaintiffs.

8. We make it clear that we have not gone into the merits of the case. The learned Trial Court shall decide the application for vacating the interim order without being influenced by any observation made in this order.
9. Since no affidavit is called for, all allegations are deemed to have been denied.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J)