

Shrayans Jain and ors. Vs. Saraf Infra Projects Ltd. and ors.

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Court : Kolkata

Decided On : May-15-2014

Judge : I. P. Mukerji

Appellant : Shrayans Jain and ors.

Respondent : Saraf Infra Projects Ltd. and ors.

Judgement :

TA No.80 of 2014 T No.169 of 2014 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction ORIGINAL SIDE SHRAYANS JAIN &
ORS.Versus SARAF INFRA PROJECTS LTD.& ORS.BEFORE: The Hon'ble
JUSTICE I.P.MUKERJ.Date : 15th May, 2014.

Appearance: Mr.S.N.Mookerji, Sr.Advocate Mr.Ratnanko Banerjee, Advocate
Mr.Lokenath Chatterjee, Advocate Mr.Saubhik Chowdhury, Advocate Mr.Debanjan
Ghosh, Advocate for the petitioners Mr.Pratap Chatterjee, Sr.Advocate Mr.Jayjit
Ganguly, Advocatre Mr.Tarique Quasimuddin, Advocate Ms.Sanchita Chaudhuri,
Advocate for the defendant Nos.1 & 10 The Court: An affidavit of service is taken
on record.

Mr.S.N.Mookerji, learned Senior Advocate for the plaintiffs, submits that there is
due service.

There is a dispute with regard to two properties.

One is located in the Hastings area of Kolkata, where a luxury hotel Radisson Blu is proposed to be set up.

The other is in Tangra, in the same city.

Several companies are involved which are arrayed as plaintiffs and defendants.

There is a substantial dispute amongst them with regard to control of the fiRs.defendant.

This Company has shareholdeRs.inter alia, consisting of the second to seventh defendants holding about 30% shares and the tenth defendant and his group having 56.33% shares.

The second to ninth defendants are land owning companies.

The plaintiffs case is this.

They were requested by the defendants to help them to provide funds for joint development of these two properties.

Mr.S.N.Mookerji, learned Senior Advocate appearing for the plaintiffs, submits that they have paid Rs.3 crores as a result of which they are entitled to 15% shares in the fiRs.defendant.

Furthermore, his clients have bought up 50% shares in the second to ninth defendants, which gives them substantial shareholding rights in the fiRs.defendant.

They would ultimately be entitled to 75% shares in the fiRs.defendant.

They are aggrieved by a communication dated 7th May, 2014 being Annexure R at page 199 of the petition of one Rishav Chaudhury, an estate broker, suggesting that the proposed hotel was being offered for sale.

This necessitated this application to be moved on an urgent basis.

Mr.Mookerji also submits that Rs.16.5 crores was advanced by his clients as security.

Mr.Mookerji also says that the defendants are trying to alter the shareholding of the fiRs.defendant to dilute the plaintiffs shareholding.

Mr.Pratap Chatterjee, learned Senior Advocate appearing for the fiRs.and tenth defendants, denies each and every submission made by Mr.Mookerji.

But before I enumerate the denials, I would record that there is no contradiction with regard to the holding of 50% shares by the plaintiff in the second to seventh defendants and their right in the development of the Tangra property.

Mr.Chatterjee submits that there is no evidence to support payment of rupees three crores by the plaintiffs.

He attacks the bills annexed to the petition and says that they are only bills and not receipts.

They are not signed by Raja Ram Saraf but are signed on his behalf.

No sale of shares could be effected in the manner disclosed in the said bills.

They had to be sold through the Stock Exchange unless there was spot delivery and payment.

He cites the case of East Indian Produce LTD.-versus Naresh Acharya Bhaduri And ORS.reported in 1988 64 CompCas 259 Cal.

Mr.Chatterjee also submits that the involvement of the Hastings property is by virtue of an alleged oral agreement.

He says that the authenticity of this transaction should not be believed by this court.

He took me to the term sheets dated 18th and 19th August 2011 and other documents relating to the Tangra property.

He submits that all the dealings with regard to the Tangra property had been reduced to writing.

It is very strange how the dealings with regard to the Hastings property had not been so reduced.

He also submits that there is no evidence of any payment, whatsoever.

To this Mr.Mookerji replies that there is a specific averment in the plaint and petition that Rs.3 crores had been paid by cheque.

Now, my prima facie findings: There does not appear to be any contradiction at this stage, of the case of the plaintiffs with regard to the Tangra property.

Hence, I do pass an order of injunction restraining the defendants from selling or otherwise transferring, dealing with or parting with possession of the Tangra property.

As far as the control of the fiRs.defendant and the Hastings property is concerned, there does not appear to be much dispute that the plaintiffs have acquired 50% of the shareholding of the second to ninth defendants which have 30% shares in the fiRs.defendant.

At the moment, the averments made in the petition have to be taken to be true that Rs.3 crores were paid for purchase of 15% shares of the fiRs.defendant, by the plaintiffs.

But the plaintiffs are not as yet the registered owners of the said shares and their claim to the same is very seriously disputed by the appearing defendants.

Hence, there is not sufficient evidence before me to suggest that the plaintiffs have acquired a controlling interest in the fiRs.defendant, although they might be able to demonstrate the same, after filing of affidavits.

Hence, I refuse to pass an order of injunction with regard to the Hastings property.

But a substantial case is made out regarding the claim of the plaintiffs pertaining to the shares of the fiRs.defendant, which has to be tried.

Tll disposal of this application, there will be no alteration in the shareholding of the fiRs.defendant without the leave of this court.

Affidavit in opposition is to be filed by 16th June, 2014.

List this application on 30th June, 2014.

Affidavit in reply may be filed in the meantime.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

G/ (I.P.MUKERJI, J.)

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