

National Judicial Academy, Bhopal
Workshop on the Use of Alternative Dispute Resolution
Session 4 : Resolution of property conflict
21 September 2015
Mediation Exercise
In the matter of : C Versus B, D, E

### General Information

1. In a prior litigation, the High Court held that Property X belongs equally to A and his daughter, B. A died leaving a will bequeathing his 50 % share in the undivided property to his wife and after her death, to C (to the exclusion of B).

2. During the lifetime of the wife of A (that is, the mother of B), B entered into an unregistered agreement with the building contractor, D, for the specific purpose of construction of a multi-storeyed residential building on the property. As per the agreement, D (the contractor) was not to be given any title in the property but 50% of the sale proceeds of the flats which were to be constructed upon the entire property within a period of 20 months of the date of the sanction of the building plans. B executed the registered power of attorney in favour of D (the contractor) to raise the construction, to accept bookings for the proposed flats, to sell the said flats and receive the sale consideration. The wife of A was, at that time, aged 80 years and bedridden with illness.

3. Under the agreement with B, D (the contractor) entered into physical possession of the entire undivided property, including 50 % share of the late A.

4. D (the contractor), however, started violating the building bye laws by raising construction in excess of the sanctioned 60 % covered area. Due to breach of contract, the agreement with D (the contractor) was terminated by B and the power of attorney revoked before D (the contractor) could sell any part of the building it had by then constructed. D (the contractor) filed a suit in the High Court against B challenging the termination of its agreement and revocation of power of attorney, which was eventually dismissed in default. Before such dismissal, the High Court had ordered status quo of title and possession.

5. D (the contractor) owed Rs 5 crores to a private bank, E, for many of its projects not connected to this property. During the operation of the status quo order, D (the contractor) inducted E (the bank) through an unregistered perpetual licence deed, into the entire residential property to operate a bank branch there. D (the contractor) also executed the registered power of attorney in favour of E (the bank)

to deal with the property in any manner it wishes to. D (the contractor) thus sought to service its debt to E (the bank) through the property.

6. That throughout this period, the wife of A was alive, though bedridden.

7. The wife of A died, and the legacy which had vested in C on the death of A now devolved upon him. Thereafter, the management of D (the contractor) changed.

8. C wants to develop atleast his 50 % share of the property after demolishing the existing superstructure since the current building bye-laws permit enhanced covered area. C filed a suit for delivery of legacy of his 50 % share in the property, partition and rendition of accounts against B, D (the contractor) and E (the bank).

9. In the suit,

- (i) B pleaded that she herself was divested of the entire property by D (the contractor) who, instead of restoring the physical possession of the property to her after dismissal of the suit of D (the contractor) by the High Court, inducted E (the bank) in possession of the property in violation of the status quo order. B supported C and was treated as a formal defendant.
- (ii) The present management of D (the contractor) pleaded that it had entered into the suit property under a valid agreement between its previous management and B, and had, prior to the termination of the contract, invested huge sums of money in raising the construction and received booking amounts from prospective buyers of the flats. D (the contractor) pleaded that it had interest in the property and could not be asked to deliver any part of it to C. In any case, D (the contractor) has no privity of contract with A or with his successor in title, C.
- (iii) E (the bank) pleaded that it had received the property from D (the contractor) through registered power of attorney against consideration, though ostensibly termed as licence fee. Hence, E (the bank) too had an irrevocable interest in the property, and asserted title to the entire property through a power of attorney sale. In any case, E (the bank) also has no privity of contract with A or with his successor in title, C.

10. Upon completion of pleadings, the Court has referred the parties to mediation. B is a formal defendant and agrees to be bound by the settlement, if any, C arrives at with D and E with respect to the entire property.

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### **Confidential Information of C**

1. C is confident of his title to 50 % of the property in question; it being based on the decree of the High Court in previous litigation.
2. C is of the view that since D (the contractor) had no title, it could transfer no title to E (the bank). Further, as the building is still incomplete and the agreement between B and D (the contractor) being duly terminated, the question of sale of the flats does not arise. The rights of D (the contractor) under its agreement with B therefore do not mature
3. C, in any case, has no privity of contract with D (the contractor) or with E (the bank) who is, however, in possession of even his 50 % share of the property.
4. C is, however, aware that since D (the contractor) did raise the superstructure in the entire property after investing money and accepting booking amounts from prospective buyers, and as E (the bank) has entered possession after paying consideration, the matter will require adjudication of rights or interest, if any, of the respective parties in the property which will take time.
5. C has just learnt that the land authority has cancelled, without notice to C, the perpetual lease of the property which was in the name of A on ground of misuse of residential premises for commercial purpose of having bank branch operating in the premises. C would need to get the lease restored after paying heavy charges to the land authority, and does not want to incur that expense unless he is certain to recover the possession of his 50 % share in the property.
6. C is also suddenly faced with urgent need of money. C had invested in the purchase of a farmhouse project and had agreed to make substantial construction-linked payments as per schedule. C's friend, who had promised to give him an interest-free loan to make such payments, has now suddenly resiled from his promise. If C fails to make the payments as per schedule, he would not only have to pay penal interest but risk the prospects of his booking in that project being cancelled at considerable financial loss.
7. C wants to settle this matter at the earliest on terms which would address these issues.

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**Confidential Information of D (the contractor)**

1. D is of the view that it had entered into the suit property under a valid agreement between its previous management and B, and had, prior to the termination of the contract, invested huge sums of money in raising the construction and received booking amounts from prospective buyers of the flats.
2. D believes it has interest in the property and could not be asked to deliver any part of it to C. In any case, D has no privity of contract with A or with his successor in title, C, and is not a necessary party to the suit.
3. The present management of D, however, has no idea as to why its previous management C took possession of the entire property when its contract with B necessarily had to be confined to 50 % share of B in the property. Similarly, the present management of D has no idea why monies were spent in raising the superstructure in the entire property.
4. D was at the verge of being declared sick. The present management has just taken over and simply has no funds at its disposal. D cannot even take the risk of the Court finding it, or E, to be liable to deliver to C the legacy and pay C for use of his 50 % share of the property over the years, and hence wants to delay the trial so as to get time to find it feet.
5. D prefers to settle the matter only with a view to limit its financial liability to the minimum.

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**Confidential Information of E (the bank)**

1. E is aware that as D (the contractor) had no title, it could convey not title to E. However, E has been using the entire property to service the debt of D due to E. If the Court now finds C to be the true owner of 50 % of the property, E will have to pay occupation and use charges to C as well. That could run into lakhs, if not crores, of rupees. As a result, several senior officers of E who had finalised the transaction between E and D years ago would be subject to inquiry and possible disciplinary proceedings. The banking supervision and licencing division of the RBI may also step in.

2. E is not only running a bank branch in the property but is also using the basement for its lockers. E is apprehensive that should E not claim title to the property through a power of attorney sale, it will result in a scare amongst the customers of E that their valuables are in lockers situated illegally on someone else's property. This will adversely affect E's reputation and credibility.

3. However, the footfall in E's branch in the property is substantial and E intends to stay put in the property to exploit it for its commercial purpose.

4. E, therefore, prefers a settlement only if these issues are somehow addressed to its satisfaction.