

HIGH COURT OF DELHI: NEW DELHI

TR.P (C) No. 19/2008

Date of Decision: September 24, 2009

SHRI VIRENDER KUMAR GARG ... Petitioner
Through: Mr. S.C Singhal, Adv

Versus

SMT.MANJU GARG ... Respondent
Through: Mr. Manish Gandhi, Adv

CORAM:
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest or not? Yes

S.L. BHAYANA, J.

The instant petition for transfer under Section 24 of C.P.C has been filed by the petition for transfer of suit no. 329/2007, titled as "Smt Manju Garg Vs Shri Virender Kumar Garg" pending before learned ADJ Court.

2. Petitioner is seeking transfer of suit on the ground that issues in both the suits are similar and if both the suits are tried together it will avoid multiplicity and conflicting decisions.

3. That both the suit no. 329/2007 filed before lower court and suit no. 2066/08 filed in High Court are pertaining to the issues of validity of gift deeds alleged by petitioner to have been forged and about the competence of late Shri Jagdish Naryana Garg (Donor) to execute the

gift deeds being member of HUF and if both the issues are adjudicated by different courts, it would amount to conflict of judgments.

4. On the other hand while opposing present transfer petition Id counsel of the respondent argued that present petition has been filed by the petitioner with ulterior motive to delay the disposal of suit pending before District court and to wriggle out the observation dated 1/10/2008 of this court, wherein the petitioner herein are specifically ordered not to take further adjournments, but despite the order of this court, petitioner has been taking further adjournments, in the said case.

5. I have heard arguments of the Id counsel of both the parties.

6. Bare perusal of the record reveals that suit no. 329/2007 is a suit for possession of the property bearing no. F-83, 2nd floor, Naraina Vihar, New Delhi and suit no 2066/2008 is a suit for declaration ,partition , mandatory injunction and cancellation of documents. Parties to both the suits are different except respondent herein. Issues are also different in both the suits except one issue no.6 in suit no.329/2007 which is related to the authenticity and validity of gift deed dated 30/5/2001.

7. In view of the order dated 1/10/2008 of this court, I find that petitioner has been grossly negligent to peruse the matter in the lower court, he is the one who is guilty of laxity. Extract of the said order reproduced below:

“Counsel for the plaintiff states that the plaintiff for the reasons of the institution of the present suit shall not seek stay of proceedings of the suit instituted by the defendant no.6 against the plaintiff and shall also not take adjournment in that suit on this ground.”

8. This order reveals that while allowing plaint to be registered in suit no.2066/08, it was specifically ordered that plaintiff would not seek any further adjournments and stay of the proceedings of the suit No.329/2007. It is implicit from the above mentioned order that registration of suit no.2066/2008 would not affect the suit no.329/2007, it appears that because they are so stopped they have come up with this transfer petition. If this petition is allowed, it would prejudice the cause of the respondent in the lower court.

9. Suit no. 329/2007 was filed prior in time and is at the stage of cross- examination of PWs, whereas the suit filed by the petitioner is at the stage of pleadings, at very primary stage and if the present petition is allowed it will further delay the matter.

10. It is well settled that provisions of transfer of suit cannot be invoked as a matter of routine. There must exist proper ground for transferring the suit and to prove the same burden lies on the petitioner.

11. Forum hunting cannot be allowed by virtue of this provision of C.P.C., there must be some rational basis of the same. Litigating parties' cannot be allowed to choose the forum as per their whims and choice.

12. As a general rule, the court should not interfere unless the expenses and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purpose of working injustice.

13. The present transfer petition is without any merit and the same is therefore dismissed.

S.L. BHAYANA, J

September 24, 2009