

42.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 378/2010

RAMWATI @ BHATERI

..... Petitioner

Through: Mr. Bhopal Singh with
Mr. Mohit Sharan, Adv.

versus

SARLA & ORS

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

ORDER

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03.12.2010

CM No.21739/2010 (for restoration)

I have considered the application. The respondents have not been appearing in the matter despite being served.

In view of the reasoning stated in the application, the order dated 18.11.2010 is set aside and the petition is restored to its original number.

The application stands disposed of.

CM(M) 378/2010

Learned counsel for the petitioner submits that due to bona fide mistake he has filed the present CM(M). It is submitted that there is an alternative prayer also in the petition for transfer of the suit pending in East District

petition may be treated as a transfer petition under section 24 of the CPC.

In view of above submissions made, the present petition is treated as a transfer petition. The Registry to number the same as a transfer petition.

TR.P.(C) No. 75 /2010

By way of present petition under section 24 of CPC, petitioner has prayed for transfer of civil suit bearing no.30/09 for declaration and injunction titled Ramwati @ Bhateri vs Omwati & Ors pending in the court of Sh.Anil Kumar, Civil Judge cum ARC, North East District, Karkardooma, Delhi to the court of Sh.Suresh Kumar, Ld. ADJ, East District, Karkardooma, Delhi where suit no.21/08 titled Ramwati @ Bhateri vs Sarla & ors for partition and permanent injunction is pending.

It is stated that petitioner i.e plaintiff before the trial court has filed a suit no.21/08 for partition and permanent injunction titled Ramwati @ Bhateri vs Sarla & Ors in respect of suit property situated in Khasra no.171 at Karawal Nagar, Delhi which is pending adjudication in the court of Sh.Suresh Kumar Gupta, ADJ, East District, Karkardooma, Delhi. It is stated that in the said suit, respondent no.3 herein i.e defendant no.3 before the trial court had filed written

statement wherein it is disclosed that one Asha Ram and Daya Ram i.e respondent nos.5 & 6 herein had executed the sale deed on 20.7.1982 in respect of property measuring 625 sq.yards out of khasra no.171 in Karawal Nagar, Delhi in favour of respondent no.4 herein i.e. Smt. Omvati which is registered before the Sub Registrar, Delhi. On coming to know of the said stand, petitioner filed another suit no.30/09 against respondents 5 & 6 herein i.e defendants 3 & 4 in the aforesaid suit as well as against Ram Pal i.e respondent no.3 herein who is defendant no.2 in the above suit seeking a suit for declaration and permanent injunction thereby declaring sale deed dated 20th July, 1982 in respect of the aforesaid plot as null and void. It is stated that the aforesaid suit is pending in the court of Sh.Anil Kumar, Civil Judge cum ARC, North-East District, Karkardooma, Delhi.

It is further stated that petitioner had earlier filed an application under Section 24 CPC in the court of Smt.Sunita Gupta, District Judge VII cum Addl. Sessions Judge I/C, Karkardooma Courts, Delhi for transfer of aforesaid two cases pending in two different courts to one court. However the said application was dismissed on the ground that court has no power to transfer inter district. As such, the petition under section 24 CPC is filed before this court.

Notice of this petition was send to the respondents. Though respondents have been served but they did not put in their appearance. It appears that they are not interested in opposing the present petition.

Learned counsel for the petitioner has submitted that pleadings in both the cases are complete and evidence is yet to start.

I have considered the submissions made as well as gone through certified copies of plaints of both the suits.

The property involved in the two suits is same i.e Khasra no.171 at Karawal Nagar, Delhi. In suit no.21/08, petitioner has sought a decree for partition and permanent injunction in respect of suit property, whereas in suit no.30/09, a declaration is sought that sale deed dated 20.7.1982 in respect of built up property ad measuring 625 sq.yards out of khasra no.171 situated in the area of Village Karawal Nagar be declared as null and void.

Since suit property is common in both the cases and parties are also almost common, to avoid conflicting judgments, suit no.30/09 titled Ramwati @ Bhateri vs Omwati & ors pending before the court of Sh.Anil Kumar, Civil Judge cum ARC, North-East District, Karkardooma, Delhi is hereby withdrawn and is transferred to the court of Sh.Suresh Kumar

Gupta, ADJ, East District, Karkardooma, Delhi where civil suit no.21/08 titled Ramwati @ Bhateri vs Sarla & Ors for partition and permanent injunction is pending adjudication. Both these suits are directed to be heard and disposed of simultaneously by the court of Shri Suresh Kumar Gupta, ADJ, East District, Karkardooma, Delhi.

Petition stands disposed of accordingly.

Copy of the order be sent to the concerned courts.



VEENA BIRBAL,J

DECEMBER 03, 2010
srb/ssb