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HIGH COURT OF DELHI : NEW DELHI

TR.P.(C) 31/2010

% Judgment reserved on: 1st September, 2010

Judgment delivered on: 7th September, 2010

Om Prakash
S/o Late Sh. Mani Ram
Resident of 3/5144, Krishna Nagar,
Karol Bagh,
Model Basti,
New Delhi- 110 005

....Petitioner

Through: Mr.B.K.Sood & Mr.Vipul Sharda,
Adv.

Versus

1. Sh. G.P.Tiwari
S/o. late Shri J.P.Tiwari,
Resident of 68/5373, Regharpura,
Karol Bagh,
New Delhi

2. Shri Subhash Kumar Tiwari,
S/o.Late Shri J.P.Tiwari,
R/o.68/5373, Regharpura,
Karol Bagh,
New Delhi.

....Respondent

Through: Mr. Madan Lal Sharma & Mr.Varun
Nischal, Adv. for respondent No.1.
Mr.M.P.Singh, Adv. for respondent
No.2.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

Yes

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V.B.Gupta, J.

Present petition has been filed under Article 227 of the Constitution of India read with Section 24 of the Code of Civil Procedure (for short as "Code") for transfer of suit No.278 of 2008 pending before Shri Sidharth Sharma, Civil Judge, (Central) Delhi, to the Court of Shri Pankaj Gupta, Additional District Judge (North District) Delhi, where suit No.53 of 2010 filed by petitioner against respondents is pending.

2. In this petition, it is stated that petitioner entered into an Agreement to Sell dated 28th July, 1990, for purchase of property No.325, Deepali, Pitampura, Delhi with respondent no.2 on the basis of representations made by him that respondent no.1 and he (respondent No.2) are the joint owners of suit property and respondent no.1 has relinquished his rights/title in the said property in his favour. Thus respondent no.2 is the sole owner and therefore competent to sell the aforesaid property.

3. Since, respondent no.2 did not perform his obligation under the Agreement to Sell, petitioner filed a suit for specific performance which is pending in the Court of Shri Pankaj Gupta, Additional District Judge (North District) Delhi. Respondent no.1 got himself impleaded in that suit and is one of the party therein. In that suit, talks for compromise were going on between the parties. During the course of proceedings, respondent no.2 revealed the pendency of a suit stated to have been filed by respondent no.1 against respondent no.2. That suit was instituted in 2008 by respondent No.1 against respondent No.2,

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seeking declaration that Relinquishment Deed dated 28th May, 1990 was forged and cancellation of the same was sought.

4. It is further stated that institution of subsequent suit for decree of declaration and cancellation of Relinquishment Deed, is nothing but a mischievous device to defeat the valuable rights of the petitioner in respect of the suit property. Since both the suits involve the same and identical question of validity of execution and registration of Relinquishment Deed, these suits as such are required to be taken up together and disposed of simultaneously by one Court.

5. Notice of this petition was issued to the respondents. In reply, respondent No.1 has stated that petitioner is not a party in suit No.278 of 2008 which is sought to be transferred by way of the petition, therefore, petitioner has no *locus standi* to file this petition.

6. The cause of action, issues involved, subject matter and question of law and facts involved in above mentioned two suits are altogether distinct and separate. Respondent No.1 is not a party to the alleged agreement to sell, i.e. the subject matter of suit No.53 of 2010 and there is no privity of contract between petitioner and respondent no.1. Transfer of suit No.278 of 2008 will cause an irreparable loss of a legal remedy to respondent no.1, inasmuch as the vital right of second appeal would be taken away in case the transfer is allowed.

7. No reply was filed by respondent No.2.

8. However, arguments have been advanced by learned counsel for all the parties.

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9. In suit no.53 of 2010, Petitioner has sought following relief:-

"a) pass a decree for specific performance in respect of Agreement to Sell dated the 18th June, 1990, directing the defendant to execute the sale deed in favour of the plaintiff in respect of Plot No.325 admeasuring 356.33 sq. yds. at Deepali, Pitam Pura, Delhi, and to hand over vacant and peaceful possession of the plot to the plaintiff.

b) if the court come to the conclusion for any reason that the agreement to sell cannot be specific enforced, then this Hon'ble Court should pass a decree under Section 21 of Specific Relief Act, 1963 for Rs.10,95,000/- (Rs.Ten Lakh Ninety Five Thousand) towards refund of the amount paid by the plaintiff to the defendant and damages suffered/assessed by the plaintiff."

10. On the other hand, in suit no. 278 of 2008 filed by respondent no.1, following relief has been sought:-

*"a. Decree of declaration may be passed in favour of plaintiff and against defendant, thereby relinquishment deed dated 28.05.1990 got registered as **Document No.5418 in book No.I Volume No.6398 on Pages 172 dated 07.06.1990** in the office of Sub-Registrar-VI, Kashmiri Gate, Delhi in respect of suit property i.e. property No.325 admeasuring 356.33 Sq. Yds., lying and situated at Deepali, Pitampura, Delhi may be declared as forged, fabricated, manufactured and void document having been not executed or got registered by plaintiff and not binding upon plaintiff and further plaintiff may be declared joint owner having equal ½ share in the suit property. It is further prayed that office of Sub-Registrar-VI, Kashmiri Gate be intimated with regard to above decree of declaration with the direction to make appropriate entry in its records"*

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11. Bare reading of the prayer made in above two suits shows, that property involved in these two suits is same, that is, 325, Deepali, Pitampura, Delhi. While petitioner has sought a decree for specific performance in respect of agreement to sell dated 18th June, 1990 in respect of property No.325, Deepali, Pitampura, Delhi, whereas in suit No.275 of 2008, a declaration is sought that Relinquishment Deed dated 28th May, 1990 registered in respect of the property No. 325, Deepali, Pitampura, Delhi, be declared as forged.

12. It is well settled that to avoid multiplicity and conflicting orders by different Courts, the High Court under Section 24 of the Code can transfer cases in a Court where the proceedings can be taken after consolidating the suits. Also where the defence in all the suits is practically one and the same and common questions of fact and law arise for decision, to secure the ends of justice and to prevent multiplicity of proceedings and also the possibility of conflicting judgments, Courts have generally held that it is better to have all such suits tried at one place only by the same Court. Ultimately the question depends on the interest of justice and not the convenience of one party or the other.

13. Since, validity of Relinquishment Deed dated 28th May, 1990 and Agreement to Sell dated 18th June, 1990, in respect of same property, that is, No.325, Deepali, Pitampura, Delhi are involved, it would be in the fitness of things and also in the interest of both parties, that these two suits should be tried together by one Court only.

14. Under these circumstances, it is ordered that suit no.278 of 2008 titled as "G.P.Tiwari vs. Subhash Kumar Tiwari" pending before Shri Sidartha Sharma,

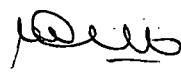
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Civil Judge (Central District) Delhi, is transferred to the Court of Shri Pankaj Gupta, Additional District Judge (North District) Delhi, where suit no.53 of 2010 titled as "Om Prakash vs. Subhash Kumar Tiwari and Anr." is pending. Both these suits are directed to be heard and disposed of simultaneously by the Court of Shri Pankaj Gupta, Additional District Judge (North District), Delhi.

15. Present petition stands disposed of accordingly.
16. Copy of this judgment be sent to the concerned Courts.

7th September, 2010

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V.B.GUPTA, J.