

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 29th June, 2015

+ **TR.P.(C.) 11/2012**

AARTI AGGARWAL & ANR Petitioners

Through: Mr. Prabhjit Jauhar, Adv. with
Ms. Anupama Kaul, Adv.

versus

MUNISH KAPILA & ORS Respondents

Through: Mr. Suryakant Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. There are two suits pending between the parties. The first suit is Civil Suit No.466/2008, titled *Mohinder Kumar Kapila & Ors. v. Vinod Kumar Aggarwal*, which is pending in the Court of Civil Judge, Tis Hazari Court, Delhi filed by Late Mohinder Kumar Kapila and Munish Kapila (Respondent no.1 herein) wherein initially Vinod Kumar Aggarwal (Respondent no.4) was impleaded as the sole Defendant.

2. Said Vinod Kumar Aggarwal filed a written statement stating that the property, subject matter of the suit, *i.e.* Flat No.1050, Category III, Ground Floor, Pocket I, Sector-D, Vasant Kunj, New Delhi was purchased by Smt. Aarti Aggarwal and her husband Sanjay Aggarwal (present Petitioner) jointly.
3. On an application under Order VI Rule 17, Code of Civil Procedure, 1908 (CPC) moved by Respondent no.1 and Late Mohinder Kumar Kapila, the present Petitioners were impleaded as parties in the said suit.
4. The other suit is CS(OS) No.295 of 2009 titled *Aarti Agarwal & Anr. v. Mohinder Kumar Kapila & Ors.* preferred by the present Petitioners in the Delhi High Court for declaration and for cancellation of Sale Deed dated 14.03.2005 registered in the office of Sub-Registrar-IX, New Delhi in favour of Mohinder Kumar Kapila (now deceased), Munish Kapila, Mannu Kapila and Sat Prakash. The subject matter of both the suits is Flat No.1050, Category III, Ground Floor, Pocket I, Sector-D, Vasant Kunj, New Delhi.
5. It is the case of the Petitioners that one Pearey Lal Wazir was the owner of this flat. He sold the said flat to the Petitioners by an

Agreement to Sell dated 16.05.1995 for a valuable consideration of ₹ 6 lacs. Said Pearey Lal Wazir also executed registered Power of Attorney, registered Will, receipt, *etc. etc.* Petitioner no.2's brother on his visit to the property on 06.07.2008 found some labourers in the property carrying out renovations. He reported the matter to the police and it was discovered that Respondent no.2 claimed that Respondent no.3 had purchased the property from Pearey Lal Wazir in 1992 and acquired possession thereof. In the year 2005, Respondent no.3 also got converted the earlier said flat from leasehold to freehold and then sold the same to Late Mohinder Kapila and his two sons Respondents no.1 and 2.

6. It is the case of the Petitioners that the documents produced by Respondents no.1 and 2 have been found to be forged. A police complaint with regard to forgery was made with the DDA, Respondent no.5. FIR No.386 of 2008 was also registered. During investigation by the police, Pearey Lal Wazir, as per the Petitioners, denied any transaction being done with Respondent no.3.
7. Initially, a suit for injunction simplicitor was filed against Vinod Aggarwal and then later on the Petitioners were impleaded seeking

restraint order against the Petitioners from dispossessing Defendants no.2 and 3 from the suit property or from creating any obstacle or hindrance therein. It is urged that subsequently, by amendment of the plaint, a decree of declaration in respect of the flat in question is also being sought by Mohinder Kapila and Munish Kapila.

8. It is urged by the learned counsel for the Petitioners that subject matter of both the suits is the same. The issues framed under the two suits are also same. Same evidence is to be led by the parties to decide as to which of the party is entitled to the flat in question. Thus, both the suits have to be tried together in order to avoid conflicting judgments, particularly, when an application under Section 10 CPC for stay of the subsequent suit has been dismissed by the High Court by order dated 10.01.2013.
9. The prayer for transfer of the suit pending before the learned Single Judge is opposed by Respondents no.1 and 2. It is urged that the two suits are different. The parties are also different. If the suit is allowed to be transferred, it will curtail right of one appeal of the Respondents.
10. I have heard the learned counsel for the parties and have perused the record.

11. In support of the contention that the right of appeal will be curtailed, Respondents place reliance on the judgment in *Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corporation*, AIR 2009 SC (Supp) 2474.
12. It may be noted that the parties in the suit pending before the Civil Judge were Late Mohinder Kapila and his son Munish Kapila. The other son of Mohinder Kapila, Respondent no.2 herein has also been impleaded as a party. Vinod Kumar Aggarwal was initially a Defendant in that civil suit filed by Respondents no.1 and 2 and their predecessor. Thus, apart from said Vinod Kumar Aggarwal and the DDA, the parties are the same. DDA, admittedly is only a proforma party. The question to be gone into the two suits is as to who is the valid transferee of Flat No.1050, Category III, Ground Floor, Pocket I, Sector-D, Vasant Kunj, New Delhi and who has got title to the same.
13. In *Gupte Cardiac Care Centre and Hospital v. Olympic Pharma Care (P) Ltd.*, (2004) 6 SCC 756, it was held that where there is substantial identity of the parties in the two suits and the issues arising for decision are also primarily same, only one of the suits can be decreed. In such circumstances, it was held that in order to avoid duplication of

evidence and to save energy, it would be appropriate to try the two suits together in one Court. In Paras 4 and 5, the Supreme Court held as under:-

“4. It has not been disputed at the Bar that the two suits arise out of the same transaction. Cause of action of one party arrayed as a plaintiff would be its defence in the suit where it is arrayed as a defendant. Though there are two plaintiffs and two defendants in the suit at Nashik while there is only one plaintiff and one defendant in the suit at Delhi but there is substantial identity of the parties in the two suits. The issues arising for decision would necessarily be the same. Only one of the two suits can be decreed. The decree in one suit in favour of the plaintiff in that suit would entail the dismissal of the other suit. It cannot, therefore, be denied that the two suits deserve to be heard and tried in one court. That would avoid the possibility of any conflicting decrees coming into existence. And certainly the duplication of evidence, oral and documentary both, would be avoided. The parties and the courts would save their time and energy which would needlessly be wasted twice over.

5. The suit at Nashik has been instituted first in point of time. By reference to Section 10 CPC, the trial of the suit at Delhi, being the latter suit, shall be liable to be stayed. For the exercise of its discretionary jurisdiction under Section 25 of the Code of Civil Procedure, 1908 the only consideration which is relevant is “expediency for ends of justice”. The court will have regard to and respect for the rule enacted in Section 10 of the Code. Of course, the considerations such as which is the place where most of the evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in an appropriate case persuade this Court to direct a transfer of case in

departure from the rule underlying Section 10 of the Code. All would depend on the facts and circumstances of a given case. So far as the present cases are concerned, we deem it proper to transfer the suit at Delhi to the court at Nashik for the purpose of hearing and decision thereat. In doing so we are following the ordinary rule as we do not find any factor or consideration relevant for making a departure therefrom.”

14. Similarly, in *Chitivalasa Jute Mills v. Jaypee Rewa Cement*, (2004) 3 SCC 85, one suit was filed in the Court of Ist Additional Subordinate Judge at Visakhapatnam in the year 1997 for a decree of ₹48,00,630/- towards price of the goods supplied and not paid. In the year 1998 Jaypee Rewa filed 2nd suit against Chitivalasa Jute Mills (a division of Willard India Limited) claiming a decree of ₹45,25,514/- on the ground that the jute bags supplied by Chitivalasa Jute Mills were defective. It was held that in the two suits, parties were substantially the same and hence, they must be decided by one common judgment.
15. The judgment in *Nahar Industrial Enterprises Ltd. (supra)* relied upon by the learned counsel for Respondents no.1 and 2 is not attracted to the facts of the instant case and is clearly distinguishable as in the said case, a civil suit pending before the Civil Court was sought to be transferred to the Debts Recovery Tribunal. There was no remedy of

appeal. It was in that context that the Supreme Court observed that the transfer of the civil suit to the Debts Recovery Tribunal would deprive the Plaintiff of his right in relation to the procedural mechanism as contained in the Code of Civil Procedure and his right of appeal. In

Para 151, the Supreme Court held thus:-

“151. In the event, however, if a civil suit is transferred to the Debts Recovery Tribunal, the plaintiff would be deprived of his right in relation to the procedural mechanism as contained in the Code as also the Evidence Act. His right of appeal would also stand curtailed. While exercising the power of transfer, the High Court and this Court would thus be curtailing the right of a suitor indirectly which could not be done directly. It clearly establishes the Parliamentary intent that only civil suits are subject-matter of inter-State transfer from one civil court to another civil court. If such a power is exercised, all the rights of the plaintiff remain intact, no right is taken away and no right is diluted.”

16. *Nahar Industrial Enterprises Ltd. (supra)*, to my mind, is not attracted to the facts of the present case.
17. The question of curtailment of right to appeal came up directly before the Delhi High Court in *Shriram Pistons & Rings Ltd. v. Manju Awasthy*, (1997) 68 DLT 112 (SB), wherein a learned Single Judge of this Court held that taking away right to an appeal to the Court of District Judge will not affect the validity of the order of transfer.

Referring to the judgment in *Sarjudi v. Rampati Kunwari*, AIR 1962 All. 503, the learned Single Judge of this Court held that so far as provisions of Section 24 of the CPC are constitutional, the argument that it takes away the vested right to appeal cannot be entertained by the Court.

18. In my view, in the present case it is expedient and in the interest of justice to have both the suits tried together. Consequently, Civil Suit No.466/2008, titled *Mohinder Kumar Kapila & Ors. v. Vinod Kumar Aggarwal*, pending in the Court of Civil Judge, Tis Hazari Court, Delhi is withdrawn from the said Court and stands transferred to the Delhi High Court to be tried with CS(OS) No.295 of 2009 titled *Aarti Agarwal & Anr. v. Mohinder Kumar Kapila & Ors.*
19. The petition is allowed in above terms.
20. A copy of the order be transmitted to the Court of concerned learned Civil Judge for transmitting the file to this Court.

G.P. MITTAL
(JUDGE)

JUNE 29, 2015
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