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

+ **CS(OS) 2350/1997**

JEEWAN DASS

..... Plaintiff

Through: Mr. Jasmeet Singh & Mr. Srivats
Kaushal, Advocates.

versus

ANIL SHARMA & ANR.

CD+

..... Defendants

Through: Mr. Suresh Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

23.02.2016

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I.A. No. 1829/2016

The submission of learned counsel for the plaintiff is that the suit is liable to be retained in this Court as it raises a commercial dispute and the specified value of the same is Rs.1 Crore, or more. The suit has been filed to seek relief of partition, declaration, rendition of accounts and permanent injunction in respect of the two properties – one residential unit and another shop situated at Shri Hanuman Mandir, Baba Kharag Singh Marg, Connaught Place, New Delhi.

The relief (b) pertains to the shop/ counter at Shri Hanuman Mandir, Baba Kharag Singh Marg, Connaught Place, New Delhi. That relief has been rejected by this Court and the rejection has been affirmed up to the Supreme Court. Consequently, relief (b) does not survive.

The suit is now proceeding only in relation to partition of the residential unit at Shri Hanuman Mandir, Baba Kharag Singh Marg, Connaught Place, New Delhi.

Learned counsel for the plaintiff submits that the present suit raises a commercial dispute inasmuch as at the time of filing of the suit a dispute arose out of an agreement relating to immovable property exclusively used in trade or commerce, namely the aforesaid shop. In this regard reference is made to the averments contained in paragraphs 5 and 17 of the plaint. The gist of the averments is that the parties had notionally and voluntarily partitioned the properties. However, defendant No.1 had taken forcible possession of the shop/ counter and was not allowing the plaintiff to participate in the business even on his turn, which is six months in a year. In paragraph 17, the plaintiff claimed that the plaintiff is also entitled to property of the shop and to sit in the shop for six months in a year.

Having heard the submission of learned counsel for the plaintiff, I do not agree that the present suit raises a commercial dispute. A commercial dispute first & foremost has to be a “dispute”. In the present case, the dispute qua the commercial property does not, admittedly, survive. Even if one were to examine the position as it existed at the time of filing of the suit, I cannot agree that the disputes at the time of filing of the suit arose out of an agreement relating to an immovable property used exclusively in trade or commerce. The rights claimed by the plaintiff arose out of the claim of the plaintiff to have jointly inherited the two properties, including the commercial property along with the defendants. The right does not stem out of any agreement. An arrangement that may have been worked out between the family members to exploit a commercial property, in my view, cannot

change the nature of the right claimed in the suit. Thus, it cannot be said that the dispute arose out of an agreement relating to immovable property used exclusively in trade or commerce.

The next submission of Mr. Singh is with regard to the specified value of the suit. The submission is that the specified value has to be determined as on the date of filing of the suit and mere rejection of prayer (b) will not change the said valuation. He submits that the suit has been valued at Rs.1 Crore. Even if this submission were to be accepted, the fact that the suit does not raise a commercial dispute leads to one conclusion that the suit is liable to be transferred in view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015).

Accordingly, the suit is transferred to the District Judge (New Delhi), Patiala House Courts. The parties shall appear before the District Judge (New Delhi) on 04.04.2016.

It is made clear that as both sides are duly represented today, no fresh notice for appearance shall be issued and the parties shall ensure their presence before the concerned Court on the aforesaid date.

VIPIN SANGHI, J

FEBRUARY 23, 2016

B.S. Rohella