

\$~31.

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

+ **CS(COMM) 515/2016**

INDU KAPOOR & ORS Plaintiffs

Through: Mr Manik Garg, Advocate.

versus

SATISH SETH & ORS Defendants

Through: Mr. S.K. Sharma, Mr. Prayas Aneja &
Mr. Rahul Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

11.05.2016

%

Caveat No. /2016

Since the caveator has appeared, the caveat stands discharged.

CS(COMM) 515/2016

The plaintiffs have filed the present suit to seek a decree of cancellation of the sale deed dated 23.06.2012 and a decree of declaration in respect of the suit property, i.e. property bearing House No.676, Gali Ghanteshwar, Katra Neel, Chandni Chowk, Delhi – 110006 to the effect that the plaintiffs have 1/9th share each in the suit property being the legal heirs of late Mr. Hira Lal Seth and a consequential relief of permanent injunction in favour of the plaintiffs and against the defendants restraining the defendants from transferring, alienating or parting with possession of the suit property.

The plaintiffs have initially filed the same suit in the Court of the District & Sessions Judge (Central), Tis Hazari Courts, Delhi. The same was registered as CS 607/2015. On 22.12.2015, the learned Additional District Judge – 02 Central held that the said Court did not have the pecuniary jurisdiction to deal with the suit on the premise, firstly, that the suit raises a commercial dispute, and secondly, that the valuation of the same was more than Rupees One Crore.

I have heard learned counsel for the plaintiffs, perused the plaint and the documents and the order dated 22.12.2015 and, in my view, the learned ADJ has fallen in gross error. The learned ADJ has erred in concluding that the specified value of the present suit was beyond Rupees One Crore. Since the plaintiffs sought a decree of cancellation of a sale deed dated 23.06.2012 in relation to an immoveable property exclusively used in trade or commerce, it could be said that the dispute raised was a commercial dispute in terms of Section 2(c)(7).

So far as the aspect of calculation of the specified value is concerned, the learned ADJ has clearly erred. A perusal of her order dated 22.12.2015 shows that she has proceeded to calculate the specified value on the basis of the notified circle rate for 'E' category properties at the rate of Rs.90,000/- per square metre. The suit property admeasures 37.62 square metres. The patent error lies in the fact that merely because the suit property consists of four floors, the learned ADJ proceeded to compute the area of the suit property as 150.48 square metres and applied Rs.90,000/- per square metre in respect of the covered area. What has been missed out is that the circle rate was for the area of the open land. At the highest, the cost of construction could have been added and merely because the property has

four floors, the specified value could not be arrived at by multiplying the circle rate by four. Had the specified value been correctly computed, the value would be well beyond Rupees One Crore.

In view of the aforesaid, the dispute arising in the present suit does not fall within the pecuniary jurisdiction of this Court. The suit is, accordingly, transferred to the Court of the learned District Judge (Central), Tis Hazari Courts, Delhi to be tried as a commercial dispute.

List before the learned District Judge (Central) on 23.05.2016. The concerned Court shall compute the Court Fees payable by the plaintiffs on the basis of the specified value ascertained in terms of this order, and either require the plaintiffs to deposit the balance Court Fees, or direct refund of the excess Court Fees, if any, as the case may be.

VIPIN SANGHI, J

MAY 11, 2016

B.S. Rohella