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

+ **CS(OS) 593/2013**

PANKAJ TOMAR

..... Plaintiff

Through: **Mr. Abhishek Puri, Adv.**

versus

KARTAR SINGH TOMAR & ORS

..... Defendants

Through: **Mr. Pradeep Kumar and Ms. Kiran,**
Advocates for D-1 and 2.

Ms. Zeba Khair, Adv. for D-4.

Mr. Sanjay Agnihotri, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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10.02.2016

1. This suit was transferred to the concerned transferee court having pecuniary jurisdiction as this suit is valued at Rs.1,10,48,700/-. Pursuant to the order of a learned Single Judge of this Court dated 16.12.2015 the matter came up before the District and Sessions Judge who transferred it to a competent court in terms of order dated 14.1.2016. When on 21.1.2016, the matter came up before the concerned ADJ namely Dr. Kamini Lau, ADJ-II (Central) the said court has sent back the matter to this Court by observing that the dispute which is subject matter of the suit is a commercial dispute covered under the Commercial Courts, Commercial Division and

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Commercial Appellate Division of High Courts Act, 2015.

2. I am constrained to observe that if the concerned ADJ who has re-transferred the matter to this Court, and thereby effectively making this suit a movable item being shifted to one place to another, then, the concerned ADJ at least should have referred to as to which sub-Section of Section 2(c) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 applies for the case to be a commercial dispute covered under the said Act.

3. Learned counsel for the parties state that the concerned ADJ was of the opinion, though not recorded in the order of re-transfer dated 21.1.2016, that the suit involves commercial dispute in view of Section 2(1)(c)(vii) read with the Explanation (a) of Section 2(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

4. I have gone through the aforesaid provisions of Section 2(1)(c)(vii) and Explanation (a) thereof, and it is clear that the subject suit does not fall in these provisions as this suit does not concern an agreement for an immovable property used for trade and commerce inasmuch as the subject

suit is a suit between family members whereby the plaintiff claims that the suit property has been wrongly transferred by the family member being the defendant no.1 to the defendant no.2 by various gift deeds which are challenged by the suit and as detailed in the prayer clauses. The subject suit seeks declaration, injunction etc thereby seeking cancellation of the gift deeds and the other related reliefs.

5. Defendant nos. 3 and 4 are tenants-banks in the suit properties, but, merely because there exists tenants in the suit properties will not mean that the suit pertains to an agreement of an immovable property used for trade and commerce. The intendment of Section 2(1)(c)(vii) is only where the immovable property is used only for trade and commerce, and therefore, disputes arise qua the immovable property with respect to trade and commerce issues, and this provision surely cannot apply if the dispute is with respect to ownership of an immovable property between the family members.

6. Also, the concerned ADJ ought not to have re-transferred the suit to this Court by throwing the onus on the advocates by recording their statements of the suit being with respect to a commercial dispute.

7. In view of the above, this suit is again transferred to the District and Sessions Judge (Central) Tis Hazari Courts, Delhi and District and Sessions Judge will mark the suit to the concerned competent court having jurisdiction. Parties to appear before the District and Sessions Judge (Central) Tis Hazari Courts, Delhi on 24th February, 2016.

VALMIKI J. MEHTA, J

FEBRUARY 10, 2016

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