

\$~26.

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

+ TR.P.(C) 19/2016

SH GURDEV SINGH & ORS Petitioners

Through: Mr. Jagjit Singh, Advocate.

versus

DAMAN PAL KAUR ANAND & ORS Respondents

Through: Ms. Gurmeet Bindra, Advocate for
defendants No.1 to 3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

25.04.2016

%

1. Issue notice. Learned counsel for the respondents accepts notice and made her submissions.
2. The present petition has been preferred by the petitioners to seek transfer to this Court of Suit No.377/2016, which was earlier filed as Suit No.2954/2012 before this Court. The said suit has been transferred to the Court of the learned District & Sessions Judge, Dwarka, New Delhi on account of the raise in the pecuniary jurisdiction of this Court and is now pending as Suit No.377/2016 in the Court of Mohd. Farukh, ADJ, titled "*Gurdev Singh & Others Vs. Daman Pal Kaur Anand & Others*".
3. The background in which the present petition has been preferred is that there are two partition suits pending in this Court – one filed by the petitioners being CS(OS) No.1677/2010 and the other filed by the respondents being CS(OS) No.966/2008. In the said suits, issues have been

framed on 25.07.2013 and the suits are pending at the stage of trial.

4. So far as the earlier filed Suit No.2954/2012 is concerned, the same has been filed by the petitioners herein to assail the sale deed executed in respect of the property situated in Iran. The petitioners/ plaintiffs in the said suit are seeking declaration that the said sale deed executed in respect of the property situated at 137, Amir Kabir Street, Tehran (Iran) be declared null & void, as according to the plaintiffs, the said property was also joint property and was liable to be partitioned.

5. The submission of learned counsel for the petitioners is that in CS(OS) No.2954/2012, on 12.11.2014, the prayer of the plaintiffs to seek consolidation of the said suit with CS(OS) No.1677/2010 & CS(OS) No.966/2008 was turned down by the Court on the ground that the two partition suits had already reached the stage of evidence and that the application for consolidation could be considered at the appropriate stage. It is submitted that the appropriate stage has now been reached inasmuch as the evidence has not yet commenced in the partition suits.

6. On the other hand, learned counsel for the respondents points out that in the transferred suit, i.e. CS(OS) No.377/2016, one of the primary issues framed by the Court is: Whether this Court has territorial jurisdiction to declare the Bill of Sale with respect to the suit property situated in Iran (Shop No. 137, Amir Kabir Street, Tehran, Iran) executed by defendant Nos. 1 to 3 in favour of defendant No. 4 as illegal, unenforceable, void and non-est? Learned counsel submits that, therefore, there is no occasion to move the present petition.

7. To this, the submission of learned counsel for the petitioners is that one of the issues framed by the Court in the two partition suits on 25.07.2013 is: Whether this Court has territorial jurisdiction to adjudicate the properties situated in Iran.

8. Having heard learned counsel, I am of the view that there is no merit in this petition. The issue – Whether this Court has territorial jurisdiction to adjudicate upon the properties situated in Iran, cannot be said to be the same as the preliminary issue framed in CS(OS) No.377/2016, taken note of hereinabove. The said issue specifically pertains to a declaration of a bill of sale as illegal, unenforceable, void and non-est, which Bill of sale was executed in Iran in respect of the property situated in Iran. In case the petitioners succeed in establishing that the said property situated in Iran was liable to partition, wherein the petitioners also have a share, the other co-sharers, who may have pocketed the sale proceeds, would be liable to render account. However, the issue as to whether the bill of sale executed in respect of the suit property at Iran is illegal, unenforceable, void and non-est, which primarily concerns defendant No.4 purchaser in that suit, does not arise for consideration in the partition suits.

9. Accordingly, the present petition is dismissed.

VIPIN SANGHI, J

APRIL 25, 2016

B.S. Rohella