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

+ **CS(OS) No.23/2008**

USHA RANI Plaintiff

Through: Mr. Rajesh Malhotra, Adv.

versus

D.D.A. & ORS. Defendants

Through: Mr. G.K. Kaushik, Adv. for D-2 to 5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **09.11.2016**

IA No.9498/2016 (under Section 5 of the Delhi High Court (Amendment) Act, 2015 on behalf of defendants no.2 to 5 for transferring the present case to the District Court in want of pecuniary jurisdiction).

1. CS(OS) No.23/2008 has been filed for declaration/cancellation of the Conveyance Deed dated 10th November, 2004 executed by the defendant no.1 therein in favour of the defendants no.2 to 5 therein of an immoveable property and for partition. The valuation of the said suit for the purpose of jurisdiction for the relief of partition is Rs.1,00,00,000/- and for the purpose of cancellation of Conveyance Deed is Rs.1,15,767/-. Issues have been framed in the said suit and the suit is pending at the stage of evidence.

2. The defendants no.2 to 5 have filed IA No.9498/2016 for transfer of CS(OS) No.23/2008 to the subordinate courts in accordance with the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice in exercise of powers under Section 4 of the Delhi High Court (Amendment) Act, 2015.

3. The counsel for the plaintiff in CS(OS) No.23/2008 opposes the transfer and draws attention to the order dated 15th January, 2016 of the Joint Registrar holding that since the said CS(OS) No.23/2008 is connected to

Probate Case No.243/2005 pending in this court, CS(OS) No.23/2008 is not to be transferred to the subordinate courts.

4. The counsel for the defendants no.2 to 5 in CS(OS) No.23/2008 states that in fact the Probate Case No.243/2005 was filed and pending before the District Judge and was requisitioned in this court on application of the defendants no.2 to 5 for staying proceedings in this suit under Section 10 of the Code of Civil Procedure, 1908 (CPC) owing to pendency of Probate Case No.243/2005.

5. I may record that Probate Case No.243/2005 is not separately listed before this Bench today though the file of Probate Case No.243/2005 is attached to the record of CS(OS) No.23/2008.

6. The counsel for the plaintiff in CS(OS) No.23/2008 draws attention to the order dated 8th July, 2013 in CS(OS) No.23/2008 whereby on the application aforesaid of the defendants no.2 to 5 under Section 10 of the CPC, the District Judge before whom the Probate Case No.243/2005 was pending was directed to complete the recording of evidence therein within three months and to thereafter transfer the record of the Probate Case No.243/2005 to this court to be heard along with CS(OS) No.23/2008.

6. It is thus not as if for seeking probate of the Will subject matter of Probate Case No.243/2005 the jurisdiction of this court was invoked, for probate case to be decided in this court. Probate case was requisitioned to this court owing to pendency of CS(OS) No.23/2008 in this court. Now that it is found that CS(OS) No.23/2008 itself is below the minimum enhanced pecuniary jurisdiction of this court, the objection of the counsel for the plaintiff in CS(OS) No.23/2008 to the transfer of both the proceedings to the

subordinate courts is found to be dilatory and vexatious and merely with an intent to keep the proceedings pending. The disposal of the suit before the learned District Judge/Additional District Judge is expected to be much quicker.

7. Accordingly, IA No.9498/2016 in CS(OS) No.23/2008 is allowed.

8. Both the proceedings are transferred to the subordinate courts.

9. It is informed that Probate Case No.243/2005 was pending before the District Judge (Central), Tis Hazari Courts, Delhi but the property of which partition is sought is situated within the territorial jurisdiction of District Judge (North), Rohini, New Delhi.

10. Both counsels state that the proceedings be transferred to the District Judge (Central), Tis Hazari Courts, Delhi.

11. Also exercising powers including under Section 24 of the CPC to avoid any objections in future, both proceedings also are transferred to the District Judge (Central), Tis Hazari Court, Delhi.

12. The parties to appear before the District Judge/Additional District Judge (Central), Tis Hazari Courts, Delhi on 14th December, 2016.

13. It is clarified that the District Judge/Additional District Judge shall not be bound to decide the two proceedings together and can independently answer the said question if raised.

RAJIV SAHAI ENDLAW, J

NOVEMBER 09, 2016/‘pp’..