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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TR.P.(C.) 47/2017 & CM No.10749/2017 (for stay)
ATUL TANWAR & ANR Petitioners

Through: Mr. N.K. Aggarwal, Adv.

Versus

ADVOCATE KEHAR SINGH & ORS Respondents

Through: Mr. Sachit K. Sahijpal, Mr. Prateek
Gautam & Ms. Sudeepti, Advs. for R-1.
Mr. Kawaljit Kaur, Adv. for R-3 to 7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.08.2017

1. This petition seeks transfer of Civil Suit No.106/2016 titled Arti Chaudhary Vs. Atul Tanwar & Ors. and Civil Suit No.5/2017 titled Smt. Rajesh & Ors. Vs. Smt. Mithlesh & Ors., both pending in the Court of Additional District Judge (ADJ), South-West District, Pilot Court, Dwarka Courts, New Delhi to the New Delhi District where Civil Suit No.57155/2016 titled Arti Chaudhary Vs. Atul Tanwar & Ors. is pending before the Court of Additional District Judge (ADJ), New Delhi District, Patiala House Courts, New Delhi.
2. Notice of the petition was ordered to be issued and the recording of evidence in the two suits at Dwarka Courts, New Delhi stayed vide *ex parte* order dated 20th March, 2017 which continues to be in force.
3. The counsel for the respondents no.1 and 2 and the counsel for the respondents no.3 to 7 appear.
4. None appears for the respondents no.10 to 12 though reported to be served. They are proceeded against *ex parte*.

5. The respondents no.8 and 9 are unserved with the report that no person by the said name was found at the address given and that the property had been sold. The counsel for the petitioners on enquiry states that though the respondents no.8 and 9 have filed their written statements in the suits at Dwarka Courts, New Delhi, but have been appearing only intermittently.

6. The counsel for the petitioners and the counsel for the respondents no.3 to 7, from time to time, by mentioning the matter, have sought adjournment thereof. However the counsel for the respondents no.1 and 2 has opposed the adjournment.

7. After hearing, the presence of the respondents no.8 and 9 is not deemed necessary for the present purpose. Accordingly, service of notice on respondents no.8 and 9 is dispensed with.

8. The counsel for the petitioners has argued that the subject matter of the three suits is an immovable property which is situated within New Delhi District and hence the need for transfer of the suits at District Dwarka to New Delhi District. It is informed that while the suit pending in the New Delhi district was instituted in this Court but upon enhancement in the minimum pecuniary jurisdiction of this Court has been transferred to New Delhi District, the two suits at Dwarka Courts, New Delhi were instituted by the respondent no.2 and respondents no.3 to 7 respectively in the Dwarka Courts, New Delhi only.

9. I have enquired from the counsel for the petitioners, whether any of the parties in the suits filed at Dwarka Courts have taken any objection qua territorial jurisdiction or an issue qua territorial jurisdiction of the Dwarka Courts to entertain the suits has been raised.

10. The answer is in the negative.

11. The counsel for the respondents no.1 and 2 contends that the real reason for transfer sought is the attempt of the petitioners to perpetuate their possession of the subject immovable property of which they have taken possession illegally from the respondent no.2. It is yet further argued that the suits in Dwarka Courts are pending before the Pilot Court which is giving short dates of hearing for recording of evidence and the present petition is to derail the recording of evidence in the suits. On further enquiry, it is informed that while one of the suits in the Dwarka Courts is for partition of immovable property, the other is for recovery of possession of immovable property and the suit before the New Delhi District is also for recovery of possession of another portion of the property.

12. The counsel for the respondents no.3 to 7 states that she has been newly engaged and does not know anything about the matter.

13. Section 21 of the Civil Procedure Code, 1908 (CPC) as well as Section 11 of the Suits Valuation Act, 1887 bar the taking of any objection to the territorial jurisdiction of the Court after the framing of issues and no objection having been taken to the territorial jurisdiction, notwithstanding the immovable property subject matter thereof stated to be situated within the territorial jurisdiction of New Delhi District, the same would not come in the way of disposal of those suits.

14. On further enquiry, it is also informed that the suits filed at Dwarka Courts, New Delhi are the previously instituted suits vis-a-vis the New Delhi District suit.

15. The counsel for the petitioners has also drawn attention to the order dated 24th February, 2014 in Transfer Petition (C) No.113/2013 filed by the respondent no.2 herein and which was dismissed as not pressed stating that if all the suits reach a similar stage, at that stage Section 24 of the CPC would be invoked.

16. The same would not also entitle the petitioners to transfer.

17. There is thus no merit in the petition.

Dismissed.

18. Needless to state, the interim order restraining recording of further evidence in the suits filed at Dwarka Courts stands vacated.

RAJIV SAHAI ENDLAW, J

AUGUST 10, 2017

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