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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 17.01.2017

FAO(OS) 171/2016 & CM 21315/2016

SUMER SINGH & ANR

... Appellants

versus

OM PRAKASH GUPTA & ORS

... Respondents

Advocate who appeared in this case:

For the Appellants

: Mr Anand Yadav

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The present appeal is filed against the order dated 27.04.2016 passed by a learned Single Judge of this court. The present appellants who were defendant nos. 7&8 had contended before the learned Single Judge that the suit was a commercial dispute falling under Section 2(1)(c)(vii) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This contention was rejected by the learned Single Judge and as such the suit was transferred to the District Court in view of the valuation of the suit being less than Rs. 2 Crore.

2. The learned counsel for the appellants contended before us that the dispute arises out of sale deeds and that sale deeds are agreements. He submits that the property in question is used for trade and commerce.

3. The appellants' contention cannot be accepted, particularly, in view of our decision in the case of **Hindpal Singh Jabbal & Ors v. Jasbir Singh & Ors: FAO(OS) 50/2016** decided on 22.08.2016 where the very issue was raised. In that case one of the contentions was that sale deeds were covered under the definition of commercial dispute and particularly under Section 2(1)(c)(vii). The said provision stipulates that a commercial dispute means, inter alia, a dispute arising out of an agreement relating to immovable property used exclusively in trade and commerce. It is because of this that the learned counsel for the appellant attempted to bring a 'sale deed' within the expression 'agreement' relating to immovable property. This aspect has been considered by us in the aforesaid decision in **Hindpal Singh Jabbal & Ors** (*supra*) in the following manner:-

“13. After having heard the learned counsel for the parties, although we have sympathy for the appellant because of the twists and turns this case has taken consequent upon amendments to the Delhi High Court Act, 1966, in law, we do not find any infirmity with the impugned order dated 14.12.2015. The reason being that the present suit is essentially one seeking cancellation of General Powers of Attorney, Sale Deeds and a decree for possession. Neither General Powers of Attorney nor sale deeds can be regarded as “agreements relating to immovable property”. A sale deed brings about a conveyance of property and cannot, by any stretch of imagination, be construed as an “agreement relating to immovable property”. The distinction between a sale and a contract for sale of immovable property has been brought out in Section 54 of the Transfer of Property Act, 1882 itself in the following manner:-

54. “Sale” defined.- “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale How made. – Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

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16. We may also notice that the definition of commercial dispute in Section 2(1)(c) indicates 21 different types of transactions all of which pertain to contracts/agreements of commercial transactions and none of which relate to any conveyance of immovable property. Therefore, in our view the subject matter of the present suit does not fall within the ambit of “commercial dispute” as specified in Section 2(1)(c) of the Commercial Courts Act. That being the case, Commercial Courts Act would not apply and amendment brought to the Section 5(2) of Delhi High Court Act, 1966 whereby the pecuniary jurisdiction has been raised to in excess of rupees two crores would clearly apply.”

4. Consequently, the contention of the learned counsel for the appellants cannot be accepted. A sale deed does not fall within the expression ‘agreement relating to immovable property’. That being the case, the dispute involved in the present matter would not qualify as a commercial dispute within the meaning of 2(1)(c)(vii) of the said Act.

5. The appeal is dismissed. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

JANUARY 17, 2017

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