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

+ TR.P.(C.) 87/2016

ASHOK KUMAR

..... Petitioner

Through: Ms.Parul Sharma, Advocate

versus

ATAM PRAKASH & ORS

..... Respondents

Through: Mr.Pankaj Bagga, Adv. for R-2 & 3

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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04.05.2017

1. This transfer petition has been filed by the petitioner (plaintiff in Civil Suit No.237/14) with a prayer that the aforesaid civil suit be transferred from the Court of learned Civil Judge, South West, Saket District Court to learned Civil Judge, New Delhi District, Patiala House.

2. The ground on which transfer has been sought are as under:-

(i) The civil suit was filed by the petitioner praying for a decree of declaration that the Agreement to Sell, Power of Attorney dated 13th September, 2000, Sale Deed dated 15th February, 2002 and the Conveyance Deed dated 8th April, 2005 are not binding and not effective on the plaintiff as well as null and void qua the back portion of shop No.58, Sarojini Nagar Market. Delhi.

(ii) The decree for permanent injunction was also prayed against the respondent.

3. The civil suit was filed at District Court, Saket pleading jurisdiction in para Nos.34 of the plaint which reads as under:-

“that since the defendant No.2 and 3 reside at South Extension, this Hon'ble Court has jurisdiction to entertain the present suit.”

4. After the pleadings were complete the learned Civil Judge settled the following preliminary issues:-

- (i) Whether the suit is maintainable in its present form?
- (ii) Whether this Court has territorial jurisdiction to decide the present suit?

5. Thereafter, the case was listed for arguments on above two issues.

6. Instead of arguing on the preliminary issues, the petitioner/plaintiff filed following two applications before the learned Civil Judge:-

- (i) Under Order VI Rule 17 CPC for amending the para No.34 of the plaint which is as under:-

“34.That since the property in question (back portion of shop No.58, Sarojini Nagar Market, New Delhi) is situated at Sarojini Nagar Market, this Hon'ble Court will have jurisdiction to entertain the present suit.”

- (ii) Another application was filed under Section 24 CPC for transfer of the matter from the Court of learned Civil Judge, South West, Saket District Court to learned Civil Judge, New Delhi District, Patiala House.

7. Though the learned Trial Court has allowed the application seeking amendment under Order VI Rule 17 CPC, subject to cost of ₹4,000/- but the application under Section 24 CPC was dismissed as the Court had no jurisdiction to transfer the matter as prayed in the application. Thereafter this transfer petition has been filed before this Court.

8. The learned Trial Court has already settled the preliminary issues which include the issue of territorial jurisdiction to decide the present suit. It is for the learned Civil Judge to hear the parties and return a finding on the issue of jurisdiction. Transfer petition cannot be the remedy available to the petitioner in the given facts and circumstances.

9. The transfer petition is dismissed.

PRATIBHA RANI, J.

MAY 04, 2017

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