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

+ **TR.P.(C.) 66/2017**

RAHUL GUPTA

..... Petitioner

Through: Mr.B.L.Wali, Advocate

versus

RAKESH KUMAR GUPTA & ANR

..... Respondents

Through: Mr.Asif Ahmed, Advocate for R-2

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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15.05.2017

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1. This transfer petition has been filed by the petitioner Rahul Gupta with the following prayers:-

(i) To transfer civil suit titled as '*Rahul Gupta & Anr. Vs. Rakesh Gupta & Anr.*', CS No.303 of 2010 (renumbered as CS No.82648 of 2016) pending before the Court of Sh.Vishal Pahuja, Civil Judge-02 (South), Saket Courts, New Delhi to the Court of Ms.Rekha, ADJ-05/NDD/PHC, Patiala House Courts, New Delhi;

(ii) To issue directions for consolidation of suit titled as '*Rahul Gupta & Anr. Vs. Rakesh Gupta & Anr.*', CS No.303 of 2010 (renumbered as CS No.82648 of 2016) with CS No.57724 of 2016 titled as '*Vidyawati (since deceased) & Ors. Vs. Parvesh Kumar Gupta & Ors.*' and CS No.58756 of 2016 titled as '*Ashok Kumar Gupta Vs. Vidyawati & Ors.*' pending before Ms.Rekha, ADJ-05/NDD/PHC, Patiala House Courts, New Delhi.

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2. Learned counsel for the petitioner has submitted that in respect of the same subject matter i.e. property No.A-15/18, Vasant Vihar, New Delhi, litigation is going on between the parties. While two suits bearing CS Nos.57724/2016 and 58756/2016 are pending in the Court of learned ADJ, New Delhi Districts, Patiala House Courts, New Delhi, the third suit bearing CS No.303/2010 was filed by the petitioner herein in District South at Saket, New Delhi. The Civil Suit Nos. 57724/2016 and 58756/2016 have already been ordered to be consolidated by the High Court and are pending adjudication before the same Court. In respect of third suit Civil Suit No. 303/2010 which was filed in South District, Saket Courts, New Delhi, Sh. Ayush Gupta, who is respondent No.2(b) (one of LR's of late Sh.Ashok Kumar Gupta) had filed an application bearing IA No.13202/2013 with an identical prayer but the same could not be allowed for the reasons given in para 7 of the Transfer Petition which reads as under:-

'7. That even otherwise the respondent no.2 had filed an application being IA No.13202 of 2013 in CS(OS) 2552 of 2007, under Section 24 of CPC for transfer to the aforesaid suit pending in Saket courts, New Delhi, however, the said application was tagged with the file and same also got transferred to Patiala House Courts, New Delhi along with CS(OS) 2552 of 2007. The said application, though pending, but cannot be heard due to lack of jurisdiction. A copy of the application being IA No.13202 of 2013 filed by the respondent No.2 under Section 24 of CPC in CS(OS) 2552 of 2007 is annexed hereto and marked as ANNEXURE –P5.'

3. Learned counsel for the respondent has submitted that the transfer petition may be dismissed for the reason that in the written statement an objection has been taken by the petitioner about the territorial jurisdiction of this Court at Saket and if this prayer is allowed then it will foreclose the defence of the respondents.

4. It is surprising that despite admitting the subject matter in all the three suits is the same and that two suits in respect of the same subject matter are pending before learned ADJ at Patiala House Courts, New Delhi, transfer of Civil Suit No. 303/2010 (Renumbered as CS No.82648 of 2016), pending in Saket Courts, Delhi to Patiala House Courts is opposed. If the Court at District South, Saket does not have the territorial jurisdiction, the plaint is to be returned which does not have the effect to foreclose the defence.
5. Since one of the respondent Sh. Ayush Gupta sought transfer of Civil Suit No. 303/2010 (Renumbered as CS No.82648 of 2016), pending in Saket Courts, Delhi to Patiala House Courts, now the objection has been raised just for the sake of objection.
6. It is informed by the learned counsel for the petitioner that the matters in Patiala House Courts are listed for 15th September, 2016 whereas the Civil Suit No. 303/2010 (Renumbered as CS No.82648 of 2016) at Saket Court is listed for 24th May, 2017.
7. To avoid conflicting finding in respect of the same subject matter, Civil Suit No. 303/2010 (Renumbered as CS No.82648 of 2016) is withdrawn from the Court of Mr.Vishal Pahuja, Civil Judge-02, South District, Saket Courts, Delhi and is assigned/transferred to the Court of Ms.Rekha, ADJ-05, New Delhi District, Patiala House Courts, Delhi, where connected case bearing CS Nos.57724/2016 and 58756/2016 are pending, for disposal in accordance with law.
8. The petition is allowed.
9. Parties are directed to appear before the Court of Ms.Rekha, ADJ-05, New Delhi District, Patiala House Courts, Delhi on 15th September, 2017.

10. Case files of Civil Suit No. 303/2010 (Renumbered as CS No.82648 of 2016) be sent to the transferee Court before 15th September, 2017.

11. A copy of this order be sent to the courts concerned through concerned District & Sessions Judges and be also given dasti to learned counsel for the parties.

CM No.14620/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 15, 2017

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