

\$~18.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TR.P.(C) No.149/2016 & CM No.42940/2016 (for stay).
RAVINDER SINGH BAGGA Petitioner
Through: Mr. Varun Singh, Adv.

versus

VIRENDER MOHAN SINGH Respondent
Through: Mr. Rakesh K. Sharma, Mr. Deepak
Chauhan and Mr. Rahul Rajpal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.11.2017**

1. Transfer, invoking Section 24 of the Code of Civil Procedure, 1908 (CPC), is sought of Suit No.233/2015 titled *Virender Mohan Singh Vs. Ravinder Singh Bagga* of the Court of Civil Judge, Tis Hazari Courts, Delhi to the Court of Additional District Judge, Tis Hazari Courts, Delhi where Suit No.609932/2016 titled *Ravinder Singh Bagga Vs. Virender Mohan Singh* is pending.
2. The petition was entertained and notice thereof ordered to be issued. The respondent Virender Mohan Singh has filed a reply opposing the petition.
3. The counsels have been heard.
4. The suit, of which transfer is sought, has been filed by the respondent Virender Mohan Singh against the petitioner Ravinder Singh Bagga (i) for specific performance of an Agreement of Sale of a portion of property no.34/1, Double Storey, Ashok Nagar, New Delhi – 110018; and, (ii) for permanent injunction restraining the petitioner Ravinder Singh Bagga from creating any third party interest in the said portion of the property.

5. The suit in the Court of Additional District Judge, owing to pendency whereof transfer aforesaid is sought, has been filed by the petitioner Ravinder Singh Bagga against the respondent Virender Mohan Singh (i) for declaration that the Agreement to Sell dated 15th November, 1977 is a nullity; (ii) for recovery of possession of the portion of the property in possession of the respondent Virender Mohan Singh with *mesne* profits; and, (iii) for permanent injunction restraining the respondent Virender Mohan Singh from inducting any other person into said portion of the property.

6. The respondent Virender Mohan Singh opposes transfer contending (i) that the suit for specific performance in the Court of the Civil Judge, of which transfer is sought, is the previously instituted suit; (ii) that the proceedings in the subsequent suit filed by the petitioner Ravinder Singh Bagga for the relief of declaration and recovery of possession etc. are liable to be stayed under Section 10 of the CPC; (iii) that the nature of the two suits is different and the reliefs claimed therein are also different; (iv) that since both suits are pending in the same District, the District Judge ought to have been approached for the transfer sought; (v) that the intent in filing the Transfer Petition is to have the suits consolidated for trial; and, (vi) that, a suit, which as per its valuation is pending in the Court of appropriate pecuniary jurisdiction, cannot be ordered to be transferred to a Court of higher pecuniary jurisdiction.

7. The counsel for the petitioner Ravinder Singh Bagga has relied on (i) ***P.P. Gupta Vs. East Asiatic Co., Bombay*** AIR 1960 All 184; (ii) ***Motilal Chunilal Rathor Vs. Pani Bai*** AIR 1992 Ori 155; and, (iii) ***Chitivalasa Jute Mills Vs. Jaypee Rewa Cement*** (2004) 3 SCC 85.

8. Per contra, the counsel for the respondent Virender Mohan Singh has relied on ***Kanwal Kant Chagti Vs. Hotel Queen Road Private Limited*** (2016) 231 DLT (CN) 1.

9. I may at the outset state that the jurisdiction of this Court under Section 24 of the CPC is only of transfer and not of consolidation of suits which is the domain of the Suit Court. Thus, even if this Court were to allow this petition, the suit pending in the Court of Civil Judge will stand transferred to the Court of the Additional District Judge where the other suit is pending but it will be up to the learned Additional District Judge to decide, whether the two suits are to be consolidated or not.

10. I may further clarify that the jurisdiction under Section 24 of the CPC being concurrent, it matters not that the remedy of approaching the District Judge for the same relief was also available to the petitioner Ravinder Singh Bagga.

11. No merit is found also in the contention that the power of transfer is not exercisable to transfer a suit from the Court of minimum pecuniary jurisdiction to a Court of higher pecuniary jurisdiction. The question is no longer *res integra*. Reference can be made to ***Shriram Pistons & Rings Ltd. Vs. Manju Awasthy*** 68 (1997) DLT 112 followed in (i) ***Dharamvir Nanda Vs. Ranbir Nanda*** MANU/DE/2370/2008; (ii) ***Jitendra Kumar Gupta Vs. Bal Kishan Saini*** MANU/DE/0252/2010; and, (iii) ***R.B. Enterprises Vs. Jai Deep Goel*** 2017 SCC OnLine Del 11803.

12. As far as the opposition of the respondent Virender Mohan Singh on the ground of the proceedings in the suit before the Additional District Judge being liable to be stayed having been subsequently instituted is concerned,

the same can again not be an impediment to exercising the power of transfer under Section 24 of the CPC. Moreover, if the transfer is allowed, the said aspect also is to be considered by the Suit Court.

13. The defence of the petitioner Ravinder Singh Bagga to the suit filed by the respondent Virender Mohan Singh for specific performance is *inter alia* the same as the claim of the petitioner Ravinder Singh Bagga in his own suit. Thus it cannot be said that outcome of one suit will not have any effect on the other suit. The possibility of conflicting outcomes cannot thus be ruled out. This alone is reason enough for transfer, leaving it open to the Transferee Court to deal with the questions of consolidation and / or stay of proceedings under Section 10 of the CPC.

14. The petition thus succeeds.

15. Suit No.233/2015 titled ***Virender Mohan Singh Vs. Ravinder Singh Bagga*** of the Court of Civil Judge, Tis Hazari Courts, Delhi is ordered to be transferred to the Court of Additional District Judge, Tis Hazari Courts, Delhi where Suit No.609932/2016 titled ***Ravinder Singh Bagga Vs. Virender Mohan Singh*** is pending.

16. The parties to appear in the transferred suit in the Court of Additional District Judge on 30th January, 2018.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 21, 2017

‘pp’

(Corrected and released on 15th January, 2018).