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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th April, 2018

+ CM(M) 705/2015 and CM 13744/2015 and 1773/2016

ARCHANA GAUR & ANR Petitioners
Through: Mr. Prem Kumar and Mr. Rakesh
Kumar, Advocates

Versus

SUNNY GUPTA Respondent
Through: Mr. Sidharth Aggarwal, Adv.

+ CM(M) 155/2016 and CM 5700/2016

ARCHANA GAUR & ANR Petitioners
Through: Mr. Prem Kumar and Mr. Rakesh
Kumar, Advocates

Versus

SUNNY GUPTA Respondent
Through: Mr. Sidharth Aggarwal, Adv.

+ TR.P.(C.) 4/2016 and CM 1031/2016

ARCHANA GAUR & ANR Petitioners
Through: Mr. Prem Kumar and Mr. Rakesh
Kumar, Advocates

Versus

SUNNY GUPTA Respondent
Through: Mr. Sidharth Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These petitions arise out of the proceedings relating to civil suit (suit no.967/2014) which was filed by the petitioners against the respondent, it being presently pending in the court of the Civil Judge-05, Central District. The subject matter of the civil suit is property described as S-248, Greater Kailash, Part-1, New Delhi. The property was originally owned by Ram Lal Gakar upon whose death it devolved upon his legal representatives Ram Gakar and Pushpa Gakar who entered into a collaboration agreement with a builder M/s Sai Developers on 08.05.1983. The builder raised a new structure on the said property and, as per the terms and conditions of the collaboration agreement, it (the builder) was entitled to the right, title and interest in the basement and ground floor portion, the first and second floor falling to the share of the owners. The plaintiffs claim to have purchased the right, title and interest in the ground floor portion of the subject property, by sale deed dated 16.09.1999, from Gautam Kaul and Siddharth Kaul who, in turn, had purchased the said portion from the builder by sale deed dated 08.05.1985.

2. On the other hand, the respondent (defendant) is the owner in occupation of the first floor portion, he having purchased it from the owners of the property by sale deed dated 17.11.1994. The controversy surrounds the parking space on the premises of the property, the plaintiffs claiming exclusive rights thereto, the respondent / defendant, on the other hand, asserting his right to a portion of its use.

3. The suit was dismissed by the trial Court by judgment dated 23.01.2012. The petitioners took out appeal (RCA 1/2012) which was allowed by the first appellate Court by judgment dated 19.11.2013. It may be mentioned here that alongwith the said appeal, the petitioners had also moved an application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking liberty to adduce additional evidence. The request of the petitioners for additional evidence was not granted. But, the first appellate court found the judgment dismissing the suit suffering from infirmities and not based on proper appraisal of the evidence which was available. It allowed the appeal setting aside the judgment and decree remanding the matter to the trial court, though with observations that, if required, the trial court could take further evidence as may be necessary at its discretion.

4. Against the above backdrop, the petitioners as the plaintiffs of the suit, moved two applications, one under Order VII Rule 14 (3) of the CPC and the other application under Section 151 CPC. The thrust of both these applications is identical. By the first application, the petitioners wanted to bring on record four additional documents, viz. general power of attorney dated 11.01.1994; memorandum of collaboration dated 30.05.1993; articles of collaboration dated 08.05.1993; and, sanctioned site plan of the subject property as issued by the municipal corporation. The prayer in the second application essentially was for liberty to examine certain witnesses (Harish Mehta, Gautam Kaul and Mukul Gaud and official witness from the

Municipal Corporation) to prove on record that the land described as parking space is an integral and indivisible part of the ground floor which cannot be described as parking space available for all occupants of the different portions and that the said area exclusively belongs to the petitioners. Both the applications were dismissed, first by order dated 08.04.2015 and the second by order dated 23.11.2015.

5. The aforesaid orders are under challenge by CM (M) 705/2015 and CM (M) 155/2016 respectively.

6. The argument on the basis of which the respondent resists these petitions is that the first appellate Court had disallowed the prayer under Order XLI Rule 27 CPC and, therefore, such further evidence cannot be permitted to be brought on record. The submission, to say the least, is wholly devoid of substance. The jurisdiction of the first appellate court to allow additional evidence for adjudication upon the appeal was circumscribed by the provision contained in Order 41 Rule 27 CPC. The reasons which weighed with the first appellate court cannot continue to restrict the field for the plaintiff of the suit after the matter has been remanded to the trial court for further trial. The documents and the evidence referred to above are found by this court to be essential for complete and effectual determination of the controversy between the parties.

7. In the above facts and circumstances, the orders impugned in the above mentioned petitions are set aside. The applications which were decided by the said respective orders stand allowed. The petitioners, as the plaintiffs of the suit, shall be entitled to bring on

record the documents referred to above and also prove them in accordance with law by summoning the aforesaid witnesses additionally. The trial court will give appropriate opportunity for such purposes to the petitioners.

8. The petitioners have also brought transfer petition – Transfer Petition (Civil) 4/2016 - pointing out that the suit had been instituted prior to the bifurcation of Delhi into more than one civil District. It is the submission of the petitioners that the suit property being located in the area of Greater Kailash, Part-I, New Delhi, the territorial jurisdiction would now vest in the courts of South-East District at Saket Courts Complex, New Delhi. It is clear from the facts narrated that the suit when instituted was filed before the appropriate jurisdictional court. The subsequent bifurcation of Delhi into districts would not justify the movement of the case from the court where it has been pending all along. Pertinent to add here that when bifurcation took place, cases were not moved according to the new distribution of jurisdiction, such dispensation having been enforced only qua the future litigation. The request in the transfer petition is, thus, declined.

9. The petitions and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 16, 2018

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