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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 61/2019 & CM APPL. 1727-1728/2019**
RAJIV KAPOOR Petitioner
Through: Mr. Pramod Kr. Ahuja, Adv.

versus

JANAK KAPOOR & ORS Respondent
Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **16.01.2019**
CM APPL. 1728/2019(Exemption)

Exemption allowed, subject to just exceptions.

CM(M) 61/2019 & CM APPL. 1727/2019

Along with the petition which assails the impugned order dated 28.08.2018 of the District and Sessions Judge (Headquarters) in Transfer Petition (C)-37/2018 is CM 1727/2019, an application filed under Section 151 of the CPC seeking the stay of the operation of the impugned order dated 28.08.2018 as well as the proceedings before the learned trial Court in relation to the suit bearing CS No.1515/2017 from one Court to the Court where the proceedings in relation to CS No.1400/2017 are pending.

It has been submitted on behalf of the petitioner that there are erroneous observations in the impugned order dated 28.08.2018 of the District & Sessions Judge (Headquarters) observing to the effect that

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both the suits are in favour of the same parties in as much as both the suits are not in relation to the same parties and it has been submitted that whereas the suit i.e. bearing CS No. 1400/2017 has been filed by Shri Amit Kapoor arrayed as the respondent no.3 to the present petition against the defendants arrayed therein Smt. Janak Kapoor, Smt. Roma Malhotra and Shri Rajiv Kapoor, i.e. Smt. Janak Kapoor being arrayed as the respondent no.1, Smt. Roma Malhotra being arrayed as the respondent no.2 and Shri Rajiv Kapoor being the petitioner in the present petition, in Suit No.1515/2017, the said suit was filed for permanent and mandatory injunction and damages by Smt. Janak Kapoor arrayed as the defendant no.1 to Suit No.1400/2017 and had been filed only against Shri Rajiv Kapoor, the present petitioner and Shri Amit Kapoor, the brother of the present petitioner who is the plaintiff of Suit No.1400/2017 and that Smt. Roma Malhotra is not arrayed as a party to Suit No.1515/20017 and thus there ought not to have been the transfer of the two suits to a single Court as had been prayed by the applicant of Transfer Petition (C)-37/2018 with erroneous submission to the effect that the parties are similar.

A further submission has been made on behalf of the petitioner that the reliefs sought in the suits are also different.

A perusal of the impugned order indicates that it has been observed to the effect:

“Keeping in view the facts and circumstances and the fact that both the suits involve the same parties and property, it would be in the interest of justice, that both the suits are heard

by one court. This would also be helpful in avoiding any conflict of decision given by the respective presiding officer based on the same set of facts. Accordingly, CS No.1515/2017 pending in the court of Shri J.P. Nahar, Ld. ADJ (Central) is withdrawn from the said court and transferred to the Court of Sh. Chandra Base, Ld. ADJ (Central). Application stands disposed off accordingly.”

Undoubtedly, Smt. Roma Malhotra is not a party to the suit bearing no.1515/2017 that has been filed by Smt. Janak Kapoor who is the mother of the plaintiff of Suit No.1400/2017, Shri Amit Kapoor and is the mother of the defendant no.3 arrayed therein Shri Rajiv Kapoor i.e. the present petitioner. In Suit No.1515/2017 which is the suit that has been filed by Smt. Janak Kapoor against the defendant nos.1 & 2 therein i.e. the present petitioner and his brother respectively, Smt. Roma Malhotra, daughter of Smt. Janak Kapoor and sister of the present petitioner herein and sister of the respondent no.3 to the present petition, is not arrayed as a party.

It is essential to observe that a perusal of the plaint in relation to Suit No.1515/2017 in para-4 thereof which reads to the effect

“That there are four floor with strilt packaging and terrace in the above said property and our of the above said four floor, the Plaintiff is the absolute owner of the entire property except the second floor. The plaintiff had also gifted the third floor of the aforesaid property to the daughter Roma Malhotra wife of Shri Rakesh Malhotra R/o 8A/97, W.E.A. Karol Bagh, Delhi out of love and affection vide registration No.8463 in Book No.I, Volume No.16222 on Page 128 on 04.11.2015 before the Sub-Registrar-III, Delhi.”

A perusal of the averments in the plaint in Suit No.1400/2017

placed as Annexure P-3 to the present petition as filed by Shri Amit Kapoor against Smt. Janak Kapoor and Smt. Roma Malhotra and the present petitioner in relation to which it has been submitted by learned counsel for the petitioner herein that the present petitioner arrayed as defendant no.3 to Suit No.1400/2017 is supporting the prayer made by the plaintiff thereof i.e. by Shri Amit Kapoor in a suit for declaration, cancellation and permanent injunction in which a prayer has been made seeking a cancellation of the gift deed dated 04.11.2015 executed by defendant no.1 i.e. Smt. Janak Kapoor in respect of 3rd Floor of the suit property bearing no.8A/140, WEA, Karol Bagh in favour of the defendant no.2 i.e. Smt. Roma Malhotra and registered vide registration no No.8463 in Book No.I, Volume No.16222 on Page 1 to 8 before the Sub-Registrar-III apart from seeking a money decree in favour of the plaintiff i.e. Shri Amit Kapoor against the defendant nos.1 & 2 i.e. his mother and sister and seeking also a decree of permanent injunction in favour of the plaintiff Shri Amit Kapoor and against the defendant nos.1 & 2 i.e. his mother and his sister from alienating the suit property in relation to which further it is submitted by learned counsel for the petitioner now that an interim restraint a prayed in the suit No.1400/2017 against the alienation of the suit property has already been granted. It is also essential to advert to averments in para-11, 12 & 13 in Suit No.1400/2017 which read to the effect:

“11. That immediately after the shifting of defendant no.1

to the third floor, the defendant no.2 started frequently visiting her. The defendant no.2 i.e. sister of the plaintiff and daughter of defendant no.1 was married long back and was living in the next lane in the same block at her in laws house. Prior to it, she never bothered to even enquire about the health of her mother (defendant no.1) but all of a sudden, due to greed in her mind she started frequently visiting her and poisoned her mind against the plaintiff and Rajeev Kapoor.

12. That thereafter the attitude of defendant no.1 was found totally changed and she started unnecessarily shouting and quarrelling with the plaintiff and the defendant no.3 and their families without any rhymes and reasons whereas earlier to it all of them were living very cordially.

Similarly, at the instance of defendant no.2, defendant no.1 filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act 2005, against Plaintiff, his wife, defendant no.3 and his wife and in said complaint they received summons in the month of September 2016 from the Court of Ms. Neha Paliwal, Metropolitan Magistrate (Central District), Tis Hazari Courts, Delhi. After getting the summons of the aforesaid complaint, the plaintiff tried to enquire from his mother the reasons for levelling baseless allegation against the plaintiff and other family members which are false even to her knowledge and contrary to records, but she did not reply. Immediately after going through the complaint, the plaintiff could realize that the same was filed by defendant no.1 after being mis-guided and misrepresented by the defendant no.2, who on account of her greed have spoiled cordial relations of the mother with her sons and daughters-in-laws and grand children.

13. That the plaintiff was further surprised to know from the complaint about the Gift Deed having been executed by Defendant No.1 in favour of the Defendant No.2 on 4.11.2015 and registered vide Registration No.8463 in Book No.1 volume No.16222 on pages 1 to 8 before the sub-Registrar-III, Delhi. Defendant No.1 has disclosed the aforesaid fact under Para 1 sub-Para (d) which reads as under:-

“That there are four floors with stilt parking and terrace in

the above said property and out of the above said four floor, the Complainant is the absolute owner of the entire property except the second floor. The Complainant had also gifted the third floor of the aforesaid property to her daughter namely Roma Malhotra W/o Sh. Rakesh Malhotra, R/o 8A/97, W.E.A. Karol Bagh, Delhi, out of love and affection vide registration No.16222 on page 1 to 8 on 4.11.2015 before the Sub-Registrar-III, Delhi.”

However, no copy of the Gift Deed was filed with the complaint and plaintiff is trying to obtain a certified copy of the same from the office of Sub-Registrar.”

and relate them back to the averments made in para-4 of the Suit No.1515/2017 filed by Smt. Janak Kapoor already adverted to elsewhere hereinabove which relate to the same aspect of the execution of the gift deed in relation to the 3rd Floor of the property bearing No.8A/97, WEA, Karol Bagh by Smt. Janak Kapoor in favour of Smt. Roma Malhotra her daughter arrayed as the defendant no.2 to suit No.1400/2017 filed by Shri Amit Kapoor and taking the said aspect into account the observations of the District & Sessions Judge (Headquarters) observing to the effect that it would be in the interest of justice that both the suits are heard by one Court and this would also be helpful in avoiding any conflict of decision given by respective Presiding Officers based on the same set of facts, cannot be faulted.

It is essential to observe that vide the Transfer Petition (C) - 37/2018, the prayer that had been made apart from seeking assignment of the two suits to one Court was also a consolidation of the two suits to avoid any conflict of orders and judgments, which had

carefully not been granted by the District & Sessions Judge (Headquarters) making it apparent that there has been an application of mind in disposing off the application. Though the two suits bearing CS No.1515/2017 & CS No.1400/2017 referred to in the impugned order do not relate to exactly the same parties nevertheless relate to the same family and also relate to the same property and are also in relation to the aspect of apparent acrimony generated between them after the gift deed executed by Smt. Janak Kapoor in favour of Smt. Roma Malhotra as reflected on a bare perusal of the both the plaints in Suit No.1400/2017 and Suit No.1515/2017.

The petition and accompanying application are thus declined.

Copy of this order be sent to the learned trial Court concerned where the two suits are pending.

However, nothing stated hereinabove shall amount to any expression on the merits or demerits of both the suits.

ANU MALHOTRA, J

JANUARY 16, 2019

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