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IN THE HIGH COURT OF DELHI AT NEW DELHI

TR.P.(C.) 76/2019

SHIV RAJ GUPTA

..... Petitioner

Through: Mr.Jayant Mehta, Ms.Megha Agarwal,
Advs.

versus

RAJENDRA KUMAR GUPTA & ORS Respondents

Through: Mr.Manish Vashisht, Mr.Manashwy Jha,
Ms.Urvi Kapoor, Advs. for R-3.

Mr.P.S.Bindra, Ms.Rishika Arora, Mr.G.S.Patwalia,
Advs. for R-2.

Mr.Rajiv Duggal, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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17.01.2020

This petition has been filed by the petitioner seeking transfer of the suit being CS No.134/2016 titled *Shivraj Gupta & Anr. vs. Raj Gupta Building Construction Pvt. Ltd. & Ors.* pending before the Court of the learned Civil Judge-02 (Central), Tis Hazari Courts to this Court and to be tried along with CS(OS) No.536/2018 titled *M/s Madho Ram Budh Singh & Ors. vs. Desh Raj Gupta & Ors.*

CS No.134/2016 has been filed by the petitioner herein along with the respondent no.1 *inter alia* praying for a decree of dissolution of partnership firm M/s Madho Ram Budh Singh and for consequential order of rendition of accounts.

CS(OS) No.536/2018 has been filed by the partnership firm along with the respondent no.1 herein and respondent no.2 herein, who is defendant no.3 in the earlier suit filed by the petitioner. The said suit prays for a decree of possession and mesne profits with respect to the Ground

Floor along with an open space of property bearing no.43, situated at Plot of land bearing Municipal No.5704-14.

Though, the learned counsel for the petitioner submits that the averments regarding the same property have been made by the petitioner in the first Suit and therefore, one of the issues involved in the suit would be with respect to the occupation of the said property by the respondent no.3 and rendition of accounts regarding the same, in my view, there would be no such overlapping of the issues.

As noted hereinabove, the first suit filed by the petitioner is one for dissolution of the partnership firm. The second suit has been filed in the name of the partnership firm itself and therefore, is for the benefit of the partners.

The suit filed by the petitioner has been pending adjudication since 1986, while the second suit was filed only in the year 2018 and is still at the stage of completion of pleadings.

As held by this Court in *Manjunath Hedge & Ors. (Mr.) vs. Jaypee Brothers Medical Publishers (P) Ltd.* 2010 VIII AD (Delhi) 116, mere averments in the suit in aid of the issue cannot determine commonality of the two suits.

It is also to be noted that there are additional parties in the second suit.

I, therefore, do not find any merit in the present petition and the same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

**JANUARY 17, 2020
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