

\$~29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 09th April, 2021

+ **TR.P.(C.) 33/2020 & CM APPL. 13696/2021**
RAKESH SHARMA & ORS Petitioner
Through: Dr. L.S. Chaudhary, Advocate.
versus

BHUVNESHWAR DAYAL Respondent
Through: Mr. F.K. Jha, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, j. (Oral)

1. This hearing has been done through video conferencing.
2. The present transfer petition has been filed seeking transfer of the suit bearing *CS No. 12985/2016*, titled *Sh. Bhuvneshwar Dayal v. Sh. Sri Chand Sharma and Ors.*, pending before the court of Id. ADJ (Central) Tis Hazari Courts, to the court of the Id. District Judge (East), Karkardooma Courts, Delhi.
3. The transfer is sought by the Petitioner on the ground that both the parties to the suit reside in East Delhi and the immovable property in question, is also located in East Delhi.
4. The request for transfer has been objected to by Id. Counsel for the Respondent, on the ground that the suit was filed in 2008, and was amended on 10th March 2017. Since then, the Plaintiff's evidence is stated to have already been closed and only the Defendant's evidence is left to be recorded. This position is not disputed. It is also submitted by Id. Counsel for the Respondent that no issue qua territorial jurisdiction has been framed in the said suit. Thus, the request for transfer is not tenable.

5. Considering the fact that the suit had initially been filed way back in 2008, and that no issue relating to territorial jurisdiction has been framed in the suit, as also the stage of the suit before the ADJ, Tis Hazari Courts, this Court is of the opinion that the transfer ought not to be permitted at this stage.

6. Recently, in **CM(M)175/2021** titled **Gurmeet Singh Sethi v. Harsharan Kaur Batra**, a ld. Single Judge of this court has observed:

“16. In the present case, as noted hereinabove, the only reason for challenge to the Impugned judgment and decree is the order dated 15.02.2021 passed by the learned Executing Court, observing that due to the location of the suit property, the Court at North-West District would have the territorial jurisdiction. The petitioner does not therefore, plead any prejudice having been caused to him by the impugned decree having been passed by the Court at the North District.

17. Be that as it may, it is noted that Delhi has very peculiar problem of its own where the jurisdiction of various districts for criminal and civil cases is dependent on different notifications and these kinds of issues are seen to be arising in numerous cases. Therefore, to set aside a decree only on this ground, may not be proper.”

The court rejected the contention in the said case that the suit property being in a different jurisdiction within Delhi, cannot be a ground to nullify a decree, or a proceeding, where substantial time has been spent by a forum. The peculiarity of Delhi and the division of various districts is highlighted by the court.

7. Even in *TRP (C.) 39/2020* titled *Advance Magazine Publishers Inc. v. Bombay Rayon Fashion Ltd.*, a ld. Single Judge of this Court has observed that the power under Section 24 of the CPC for transfer of the suit is to be exercised by the Court inter alia in the interests of justice, and if considerable judicial time has been spent by a forum hearing the parties, objection of lack of territorial jurisdiction cannot be a ground to bar the exercise of the discretionary power of the court under section 24, in allowing the same forum/ judicial officer to hear the case, in order to prevent wastage of judicial time and to ensure timely conclusion of the suit.

8. In the present case, it is the admitted position that the matter has already reached an advanced stage and recording of evidence is underway. The suit is of 2008 vintage and transfer would further delay the adjudication. The mere fact that the property is in East Delhi, especially when the question of territorial jurisdiction is not even raised as an issue in the suit, would not justify the transfer.

9. The present transfer petition with all pending applications, is accordingly dismissed.

PRATHIBA M. SINGH
JUDGE

APRIL 9, 2021
MR/AK