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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TR.P.(C.) 35/2021 & CM APPL.32611/2022 (filed on behalf of the petitioners for urgent hearing)

BHAVNA BHATIA AND ANR

..... Petitioners

Through: Mr. Pardeep Dhingra with Mr. Nikhil Joshi and Mr. Divyam Khera,
Advocates.

versus

SMT. UDAY VIRI & ANR

..... Respondents

Through: Mr. Vijay Kasana, Advocate for respondent No.1
Mr. Brijesh Yadav, Advocate for respondent No.2.

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*Date of Decision: 01st August, 2022.***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)**

1. This is a petition under Section 24 of the CPC seeking transfer of Civil Suit No.609/2018 titled as *Uday Viri vs. Bhavna Bhatia & Ors.*, pending in the Court of learned ADJ, Patiala House Courts, New Delhi to this Court where a civil suit bearing CS (OS) No.314/2021 is pending.

2. Learned counsel for the petitioners submits that the suit pending before the District Court is required to be transferred before this Court as party to the suit are common, the subject matter of both the suits are



identical and identical evidences are required to be considered for adjudication of both the suits. Learned counsel for the petitioners submits in fact the front portion of the joint family property bearing No.L-385-D, Plot measuring 30 Sq. Yards was sold to the petitioner and 256 sq. Yards of L-385-D plot, which was at the back of the above said plot, was leased to the petitioner. Learned counsel for the petitioners submits that it was stipulated in the lease deed dated 18.10.2011 that construction of three floors shall be carried out on joint and common plots. It has been stated that the construction has been raised in such a manner that there is a single slab linters and combined construction of both pieces of land. Learned counsel for the petitioners submits that around Rs.1 crore were spent on construction by the petitioner. It has been submitted that the construction in no manner can be segregated as the linters, construction and walls are common. Learned counsel for the petitioners submits that the respondent No.1, in violation of lease deed, constructed one more floor on the terrace and started residing there.

3. It has been submitted that in an FAO No. 567/2018, arising out of civil suit bearing CS No.609/2018, a consent order was passed. Vide this order, the rent of 50% was allowed to be deposited in this Court and considering the claims and excessive amounts charged, rest 50% was allowed to be released only on subject of securing the petitioner. Learned counsel for the petitioner submits that in CS No.609/2018, the counter-claim was filed by the petitioners and transfer petitions bearing numbers TR.P.(C) 31/2009 and TR.P.(C) 32/2009 were also filed before this Court. The transfer petitions were withdrawn by the petitioners with liberty to approach



the concerned Court seeking return of the counter-claim along with the court fee, in order to file the same as a separate suit before this Court. Learned counsel for the petitioners submits that the petitioner also reserved his right to file a transfer petition once his counter-claim had been instituted. Learned counsel for the petitioners has further submitted that since evidence to be dealt in both the cases are identical, therefore, it would be in the interests of justice, if CS No.609/2018 is withdrawn from the Court of learned ADJ, Patiala House Courts and is transferred to this Court.

4. Learned counsel for the petitioner has submitted that there is a lock-in period of 15 years and the eviction petition could not have been filed before that. Learned counsel for the petitioner has further submitted that he has been made to construct the property. It has also been submitted that in fact after taking the front portion on rent, the same was demolished and the fresh construction was carried out. Learned counsel for the petitioner has submitted that he reserves this right to file appropriate proceedings under Order II Rule 2 CPC *vis-a-vis* the respondent No.2 – Prem Prakash.

5. Learned counsel for respondent No.1 has vehemently opposed this application and has submitted that the suit filed by him before the learned Trial Court is for relief of eviction, recovery of possession, mesne profits and permanent injunction. It has been submitted that the suit is based on the unregistered lease deed dated 18.10.2011 by virtue of which the petitioner No.1 was put in the possession of the suit property. It has been submitted that under the lease agreement, the petitioner was permitted to raise the construction over the property. However, the lease deed nowhere records that the petitioner was permitted to construct the property along with the



property purchased by the petitioner from the respondent No.2, i.e., Prem Prakash. Learned counsel for the respondent No.1 submits that the respondent No.2, i.e., Prem Prakash had sold the constructed property as recorded in the Agreement to Sell and thereafter construction on the property of the respondent No.2 was raised, which is separable. Learned counsel for the respondent No.1 submits that the petitioner has filed suit for permanent and mandatory injunction and for recovery before this Court primarily based on the alleged oral agreement entered by her with the respondent No.2. It has been submitted that as per the alleged oral agreement, the respondent No.2 had agreed to sell the property of the respondent No.1 after expiry of 15 years lease for the amount of Rs.2.45 crore rupees, out of which the respondent No.2 had stated to have received 1.85 crores in cash. Learned counsel for the respondent No.1 has further submitted that the respondent No.2 – Prem Prakash is not a party before the Trial Court. It has further been submitted that the pleadings before the Trial Court are complete and pleadings before this Court are yet to be completed. It has further been submitted that the petitioners before this Court has also filed an application under Order VIII Rule 10 CPC. Learned counsel for respondent No.1 submits that the issues before the Trial Court and this Court are entirely different in nature.

6. Learned counsel for the respondent No.2 has also opposed the transfer petition on the ground that he is not a party in the suit pending before the learned ADJ, Patiala House Court. It has further been submitted that the suit filed by the petitioner before this Court is completely frivolous and based on the alleged oral agreement between the petitioner and the respondent No.2,



which never took place. Learned counsel for respondent No.2 submits that the petitioner herein had purchased a shop No.L-385 measuring 30 sq. yards out of Khasra No.734/2, ground floor and first floor with roof rights for an amount of Rs.70,00,000/- vide Agreement to Sell dated 21.01.2012. It has further been submitted that the shop sold to the petitioner was already constructed at the time of sale till first floor and there is no joint construction done by the petitioner on the shop brought from respondent No.2 and the leased plot from respondent No.1.

7. It is pertinent to mention here that the relief claimed in CS(OS) 609/2018 are as follows:-

- “a. Pass a decree of eviction and possession of property bearing Plot No.L-395-D of land area measuring 256 sq. yard Part of Khasra No.733, 734/2 situated in the area of Village Mahipalpur, Block-L, Near Red Light, New Delhi-110037 in favour of the Plaintiff and against the Defendants.*
- b. Pass a decree of permanent and mandatory injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants, their legal heirs, successors, agents, associates, relatives, representatives, assignee, nominees etc. for creating any third-party interest in respect of the suit property bearing no.Plot No.L-395-D of land area measuring 256 sq. yard, Part of Khasra No.733, 734/2 situated in the area of Village Mahipalpur, Block-L, Near Red Light, New Delhi-110037 which is shown in the site plan.*
- c. Pass a decree of mense profit from the date of non-payment of rent i.e. 1st January 2018 till the passing of an order.*
- d. The cost of the litigation charges may also be awarded in*



favour of the Plaintiff and against the Defendants.

e. Any other relief or remedy which this court may deem fit and proper may also be passed in favour of the Plaintiff and against the Defendants.”

8. The relief claimed in CS(OS) 314/2021 is as follows:-

“A) Grant permanent and mandatory injunction against Defendants thereby restraining them from creating any third party rights.

B) Pass a money decree for a sum of Rs.2,04,59,726/- as referred to in terms of Para 48 supra; OR/In alternate

C) Pass a money decree for a sum of Rs.2,07,21,648/- as referred to in terms of Para 48 supra.”

8. A bare perusal of the relief claimed in both the suits makes it clear that there are no identical issues in both the suits. It is also relevant to refer to para 48 of CS(OS) 314/2021, which makes it clear that the suit filed before this Court is basically for the recovery of certain amounts. Thus, it cannot be said that a suit for eviction filed by the landlord in any case can have the identity of the issues in the recovery of amounts alleged to have been spent by the tenant after taking the premises on rent. The jurisdiction of this Court to transfer a case is to be exercised for the expeditious disposal and to avoid multiplication of proceedings as well as conflicting judgments. In the present case, one suit is for eviction and possession, whereas another suit is for injunction and recovery of money. This Court considers that there is no identical issues nor will there be any scope of conflicting judgment.

9. In view of the discussion made hereinabove, I consider that there is no ground to transfer Civil Suit No.609/2018 to this Court. In my view, there is



no substance in the present petition.

10. Accordingly, the present petition along with pending application stands dismissed.

DINESH KUMAR SHARMA, J

AUGUST 01, 2022
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