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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21.07.2023

+ **TR.P.(C.) 133/2022**
HARDIT SINGH BATRA & ANR.

..... Petitioners

Through: Mr.S.K. Sharma & Mr.Tejas
Singh, Advs.

versus

JASPREET PAL SINGH BATRA

..... Respondent

Through: Mr. Rajat Aneja & Ms.
Chandrika Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed seeking transfer of the suit, being CS No. 58269/2016 titled as ***Hardit Singh Batra &Anr. V. Jaspreet Pal Singh Batra*** (hereinafter referred to as the 'first suit'), filed by the petitioner herein against *inter alia* the respondent herein and pending before the Court of the learned Additional District Judge-01, New Delhi District, Patiala House Courts (hereinafter referred to as the 'Trial Court'), to this Court to be tried along with CS (COMM) No. 806/2016 titled as ***M/s Arrena Overseas Pvt Ltd v. M/s Batra Art Press*** (hereinafter referred to as the 'second suit').

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2. It is the case of the petitioners that the petitioners, the respondent, and the defendant no.2 in the first suit, are family members, with the petitioners and the respondent herein being cousin brothers, while the defendant no.2 in the first suit being the grandfather of the parties herein, who has since expired. The petitioners further claim that they are the shareholders in a company- M/s Arrena Overseas Pvt Ltd, situated at A-41, Naraina Industrial Area, Phase-II, New Delhi (hereinafter referred to as the 'Subject Property'), in which the full ground floor and the full basement are in the possession of the petitioners. Claiming that they were illegally dispossessed from the cabin nos.1 and 2 situated at the ground floor of the said property, they filed the first suit *inter alia* praying for a decree of possession of the said cabins and for a decree of permanent injunction restraining the defendants in the first suit from creating any third party interest in the said cabins. The prayers in the first suit are reproduced hereinbelow:-

“a) Pass a decree of possession in regard to cabin No. 1 & 2 situated in ground floor of the property bearing No. A-41, Naraina Industrial Area, Phase- II, New Delhi in favour of the Plaintiffs and against the defendants thereby restraining them, their agents, servants, associates, assigns, legal heirs, more specifically shown as Red in the site plan.

b) Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby restraining them, their agents, servants, associates, assigns, legal heirs from transferring share of suit property and disposing off and creating any third party



interest in the cabins No. 1 & 2 situated in A-41, ground floor, Naraina Industrial Area, Phase-II, New Delhi, more specifically shown as Red in the site plan, in the interest of justice.”

3. The petitioners claim that M/s Arrena Overseas Pvt. Ltd, of which they are the shareholders, with a *mala fide* intent filed a false and frivolous suit, being the second suit, before this Court *inter alia* contending therein that M/s Batra Art Press, a partnership firm in which the petitioner no.1 is a partner along with one Mr. Ravinder Pal Singh Batra, are the tenants of the ground floor and first floor of the subject property, except portion excluded under the Lease Deed dated 01.04.2007. The Company, apart from other relief, pray for a decree of possession of the alleged leased premises from the partnership firm. The petitioners in their defence to the second Suit, *inter-alia* dispute the Lease Deed and submit that it was never acted upon and is a sham document.

4. The learned counsel for the petitioners submits that in both the suits, the claim of the petitioners that the suit property belongs to M/s Arrena Overseas Pvt. Ltd. of which the petitioners are the shareholders and have been wrongly excluded from the Management thereof would arise. He further submits that the issues of the family disputes would also arise in both the suits, and pleadings in this regard are identical in the two suits. He therefore, submits that to avoid any conflict of



decisions, it would be appropriate if the first suit is transferred to be tried along with the second suit.

5. On the other hand, the learned counsel for the respondent submits that the two suits relate to different parts of the subject property. While the first suit is confined only to the cabin nos.1 and 2 of the subject property, as is evident from its prayer, the second suit is for the leased property which expressly excludes the cabins and for which no claim has been made in the second Suit. In this regard, he places reliance on the recital of the Lease Deed on basis whereof the second suit has been filed, and which is reproduced hereinbelow:-

"Whereas LESSOR are the absolute and legal owners of whole the Industrial Building No. A-41, NarainaIndl. Area, Phase-2, New Delhi - 110028 and the LESSEE has approached and requested the "LESSOR" for permission to use the whole portion of Ground Floor and Basement of Industrial premises No.: A-41, NarainaIndl. Area, Phase-2, New Delhi - 110028 (excluding portions on Ground Floor marked as:

- 1. One office Room for S. Sanmukh Singh Batra*
- 2. One office Room for S. Jaspal Singh Batra*
- 3. Kitchen, Bathroom for common use.*
- 4. One Room, Identified as Conference Room, which will be used commonly by both Batra Art Press and Welco Overseas (p) Ltd. administrative concerned for Lunch and day rest purposes only."*



6. The learned counsel for the respondent further submits that, in any case, the parties to the second suit have not been made parties to the present petition and, therefore, no order can be passed in their absence directing tagging the two suits together.

7. I have considered the submissions made by the learned counsels for the parties.

8. In the present petition, the plaintiff and the defendant in the second suit have not been made a party. In absence of such parties, clearly the present petition is not maintainable inasmuch as the first suit is sought to be transferred to be tried along with the second suit and, therefore, their rights would be prejudiced by such transfer.

9. It also appears from the recital of the Lease Deed and as contended by the learned counsel for the respondent, the subject matter of the two suits is different; with the first suit confined only to cabin nos. 1 and 2, while the second suit makes a claim on the basis of a Lease Deed with respect to portion of the ground floor and basement of the subject property excluding *inter alia* the said cabins. This could not be disputed by the learned counsel appearing for the petitioners. The issues in the two suits would therefore, be different.

10. As the subject-matter of the two suits is different and the necessary and proper parties are also not present in the present



petition, I find no merit in the present petition. The same is accordingly dismissed.

NAVIN CHAWLA, J

JULY 21, 2023/rv/rp

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