



2024:DHC:7568



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

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Reserved on: 04.07.2024
Pronounced on: 01.10.2024+ **TR.P.(C.) 52/2024 & CM APPL. 19312/2024****ARUN KUMAR JAIN**

.....Petitioner

Through: Mr. Rajat Aneja, Ms. Alka
Dwivedi and Ms. Tanya
Kumari, Advocates.

versus

PADAM CHAND JAIN

.....Respondent

Through: Mr. Ravi Gupta, Senior
Advocate with Mr. Naresh
Gupta, Ms. Reema K., Ms.
Muskaan Mehra And Ms. S.
Sharma, Advocates.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant transfer petition under Section 24 read with Section 151 of the Code of Civil Procedure, 1908 ['CPC'] has been filed on behalf of petitioner seeking transfer of the civil suit bearing CS No. 872/2023, titled as 'Padam Chand Jain v. Arun Kumar Jain', pending before the Court of learned Additional District Judge-01 (Central), Tis Hazari Courts, Delhi, ['learned ADJ'] to the original side of this Court and for consolidation of the said suit with a civil suit for



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partition etc., bearing CS (OS) No. 635/2019, titled as ‘Arun Kumar Jain v. Padam Chand Jain & Ors’ pending before this Court, pertaining to one common property in both the suits, being a Shop and a godown situated at the Ground Floor of the property bearing Municipal No. 1976, Katra Kaushal Rai, Kinari Bazar, Chandni Chowk, Delhi-110006 [‘*subject property*’].

2. It is the case of the petitioner that on 21.01.2020, in the prior instituted suit i.e. CS (OS) No. 635/2019, this Court had granted an order of *status quo*, in favour of the petitioner herein, pertaining to the subject property. The order passed by this Court, reads as under:

“Learned Senior Counsel appearing for the defendant no. 1 states that properties at serial no. (iii) & (iv) have been sold by the mother of the parties during her lifetime. **As far as properties at serial no. (i) and (ii) are concerned, Mr. Gupta states that defendant no. 1 does not propose to interfere with the status quo regarding the nature, and character, title and possession of the suit property.** However this is without prejudice to the rights and contentions of the defendant no. 1 to file legal proceedings against the plaintiff for eviction from a portion of the property at serial no. (i). The said proceedings, if instituted, will be adjudicated on their own merits. As far as the property at serial no. (v) is concerned, Mr. Gupta states that it is tenanted property in the possession of defendant no. 1. **Although there is some dispute as to the name in which the tenancy stands, Mr. Gupta undertakes that the possession of the said premises will not be parted with.**”

(Emphasis supplied)

3. It is further the case of the petitioner that in the first suit, i.e. CS (OS) No. 635/2019 pending before this Court, the petitioner herein had *inter-alia* challenged the ownership of the respondent herein/defendant no. 1 therein, *qua* the subject property, by seeking a



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Decree of Declaration with respect to a Gift Deed dated 05.09.2005, executed by Smt. Seva Devi in his favour, as null and void, on the ground that the said document was wholly illegal. It is stated that in the subsequently instituted suit, i.e. C.S. No. 872/2023 before the learned ADJ, the respondent herein/plaintiff therein has *inter-alia*, sought a decree of possession in his favour, pertaining to the subject property on the strength of the said Gift Deed.

4. It is therefore prayed that the subsequently instituted suit, bearing CS No. 872/2023, be transferred and consolidated with the prior instituted suit bearing CS (OS) No. 635/2019, to ensure that there is no conflict of judicial decisions, and the same would also pave the way for effective adjudication of the common controversy, having arisen between the parties.

5. Learned counsel appearing for the petitioner submits that the parties to the two suits are closely related family members, and though there are several defendants to the suit pending before this Court, the only contesting defendant therein is defendant no. 1 i.e. the respondent herein, thereby making the parties to the two suits identical. It is argued that pleadings in both the suits are identical, and the written statement of the petitioner herein in the subsequent suit before the learned ADJ is identical in averments, to that of the first suit pending before this Court. It is further argued that since a larger issue is involved in the first suit, which pertains to adjudication of the title and the legality/validity of the Gift Deed dated 05.09.2005, which has been challenged, the subsequent suit filed by



the respondent should not only be stayed, but for the purpose of effective adjudication, both the suits *qua* the same subject property should be tried together, lest it may result in conflict of decisions.

6. Learned counsel for the petitioner further argues that since the parties and the issues in question are identical in both the cases, there can be a likelihood of conflict of decisions and decision of one suit will have a direct bearing on decision of another. Further, common evidence in both the suits and comprehensive reliefs of declaration and partition etc. have already been sought in the first suit, therefore, the relief of possession in the second suit should be decided with the first suit, as grant of decree of possession is contingent upon adjudication of issues involved in first suit.

7. On the other hand, learned counsel for the respondent argues that the parties to the two suits are different and in the suit pending before this Court, there are 12 parties i.e. one plaintiff and eleven defendants, whereas in the suit pending before learned ADJ, there are only two parties i.e. the parties in the present transfer petition. It is further argued that the properties in both the suits are different and it is incorrect to even suggest that the subject properties are the same. In this regard, the learned counsel for the respondent states that the properties in question, in the suit pending before this Court, which form the subject matter of the suit, are as under:

- Entire property bearing municipal No.1976-77, Katra Kaushal Rai, Kinari Bazaar, Chandni Chowk, Delhi - 06 including Ground Floor, First Floor and Second Floor.
- Property No.2, Todarmal Road, Bengali Market, New Delhi.



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- Property No.49, Ward No.4, Katra Masru, Dariba Kalan, Delhi - 06.
- Property No.11748, Plot No.688/2, Block - U, Sant Nagar, Basti Regharpura, Karol Bagh, New Delhi.
- Property No.442, Esplanada Road, Cycle Market, Chandni Chowk, Delhi - 06.

8. It is stated that conversely, the subject matter of CS No. 872/2023, is only a shop at the ground floor (front side), measuring 23' X 14'8'', and a Godown measuring 7'6''x 6'' situated at the ground floor (back side) of property no. 1976, Katra Kaushal Rai, Kinari Bazaar, Delhi-06. Therefore, the suit property in CS No. 872/2023 is only a small portion of the building, whereas the entire building along with four other properties is the subject matter of the suit pending before this Court.

9. It is further argued on behalf of the respondent that the stages of the two suits are different. While the suit pending before this Court is at its initial stage of completion of pleadings, the suit pending before learned ADJ is listed for further cross-examination of the plaintiff witness, and the evidence has substantially been recorded. It is also stated that the prayers/reliefs sought in the two suits are entirely different. In this regard, this Court's attention has been invited to the prayers made in CS (OS) No. 635/2019, which read as under:

“A. To pass a DECREE OF DECLARATION in favour of the Plaintiff thereby declaring the Gift Deed dated 05.09.2005 executed by Smt. Seva Devi in favour of the Defendant No.1 herein with respect to the immoveable property bearing No.1976-77, Katra Kaushal Rai, Kinari Bazaar, Chandni Chowk, Delhi - 110006 as illegal, null and void ab initio



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having no force in the eyes of law; and further to declare the tenancy rights qua the property bearing No.442, Esplanade Road, Cycle Market, Delhi - 110006 to be vested amongst all the legal heirs of late Shri Kundan Lal Jain in equal.

B. To pass a PRELIMINARY DECREE OF PARTITION in favour of the Plaintiff thereby ascertaining the respective shares of the parties in the suit properties, viz. 1) Property no.1976-1977, Katra Kaushal Rai, Kinari Bazar, Chandni Chowk, Delhi - 110006; 2) Property No.205-C/59, 2, Todar Mal Road, Bengali Market, New Delhi - 110001; 3) Property No.49, Ward No.4, Katra Masru, Dariba Kalan, Delhi - 110006; and 4) Property No.11748, Plot No.688/2, Block- U, Sant Nagar, Basti Regharpura, Karol Bagh, New Delhi as shown in Red Colour in the respective Site Plans annexed herewith; and to thereafter pass the FINAL DECREE OF PARTITION by metes and bounds, and for the said purpose, if need be, a Local Commissioner be appointed by this Hon'ble Court to suggest the mode of Partition by metes and bounds and to thereafter put the parties hereto in possession of their respective portions; or in the event of partition of allany of the suit properties being not possible by metes and bounds, to direct the sale of such properties by way of Public Auction in accordance with law and to direct the distribution of the sale proceeds thereof in the ratio as determined under the Preliminary Decree.

C. To pass a DECREE OF PERMANENT INJUNCTION in favour of the Plaintiff and against the Defendants, their servants, agents, attorneys, assignees, nominees, representatives or anybody acting on their behalf; from transferring, selling, alienating, creating any third party interest, parting with possession or encumbering any of the suit properties mentioned above in any manner whatsoever, as shown in Red Colour in the respective Site Plans annexed herewith.”

10. Whereas in CS No.872/2023 pending before learned ADJ, the prayers read as under:

“(a) Pass a decree of possession in favour of the plaintiff and against the defendant in respect of the suit property being a shop at the ground floor measuring 23' x 14'8" (front side) and a godown measuring 7'6" x 6' situated at the ground floor



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(backside) of the property bearing Municipal No.1976, Katra Kaushal Rai, Kinari Bazar, Chandni Chowk, Delhi - 110006.

(b) Pass a decree of recovery of Rs.687/- (Rupees Six Hundred Eighty Seven Only) being the arrears of rents in favour of the plaintiff and against the defendant along with interest due thereupon calculated @ 15% p.a.

(c) Hold an inquiry under Order 20 Rule 12 CPC thereby determining the amounts of mesne profits payable by the defendant to the plaintiff.

(d) Award mesne profits for the period 18.12.2020 onwards to the plaintiff in terms of the inquiry to be made by this Hon'ble Court.

(e) Grant interest on the amount of damages calculated @15% p.a.”

11. In addition, it is stated that the relationship of the parties in the two suits are different. While the suit pending before this Court is based upon the relationship of co-owners of the properties, the suit pending before learned ADJ is based upon the termination/ forfeiture of tenancy under Section 111(g) of the Transfer of Property Act and the dispute is between landlord and tenant and not between co-owners. Insofar as prejudice to the respondent is concerned, it is argued that the petitioner herein, who is admittedly a tenant, is sitting over the subject property without payment of rent and is unauthorizedly occupying the property since 2013. It is stated that the tenancy commenced in the year 1982 and the rents have been paid by the petitioner and his father since 1982, till 2013, and the tenancy was never in dispute. It is stated that only after the commencement of litigation by the respondent *vide* notice dated 03.08.2019, the petitioner has set up a false defense and is trying to perpetuate his illegal possession. Thus, it is stated that the transfer of suit for



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possession to this Court will cause serious prejudice to the respondent herein.

12. It is further argued that the issues in both the suits are entirely different. It is stated that in CS (OS) No. 635/2019, the issues have not yet been framed, however, from the pleadings of the parties, it is evidence that the issues pertain to whether the registered gift deed dated 05.09.2005, executed by Smt. Sewa Devi Jain, in favour of Sh. Padam Chand Jain is illegal or not; whether the plaintiff in the suit has got any locus to challenge the registered gift deed dated 05.09.2005; whether the declaration *qua* registered gift deed 05.09.2005 is within limitation; whether the properties were not fairly partitioned in the year 1982, as claimed by the plaintiff; whether the father of the plaintiff was compelled/coerced to sign the memorandum of partition dated 18.08.1982; whether the plaintiff can challenge the memorandum of partition dated 18.08.1982, on the ground of coercion when the same was never challenged by his father during his lifetime for three decades; whether the plaintiff has any locus to challenge the memorandum of partition dated 18.08.1982; and whether the challenge to memorandum of partition dated 18.08.1982 is within limitation. It is, however, stated that the issues already stand framed in CS No. 872/2023, which are as follows:

“1. Whether the plaintiff is entitled to a decree of possession with respect to suit property (shop) in property bearing Municipal No.1976, Katra Kaushal Rai, Kinari Bazar, Chandni Chowk, Delhi- 06, and as shown in red colour in the site plan? OPP

2. Whether the plaintiff is entitled to the arrears of rent along with interest? If so, at what rate and for what period? OPP



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3. Whether the plaintiff is entitled to a decree of mesne profits?
If so, at what rate and for what period? OPP

4. Relief.”

13. Learned counsel for the respondent further submits that the evidence to be led in both the suits is different. In CS (OS) No. 635/2019, the petitioner herein is only required to lead evidence regarding the unfairness of the partition of 1982, limitation, his knowledge and his locus to challenge the partition of 1982 and his entitlement for relief of declaration *qua* the gift deed dated 05.09.2005, whereas in CS No. 872/2023, the relationship of landlord and tenant is the only issue. The payments of rents by account payee cheque from 1982 till 2013 are admitted, and the petitioner herein would be estopped from challenging the title of the landlord under Section 116 of Indian Evidence Act and the evidence to be led by the respondent is regarding termination/ forfeiture of tenancy and quantum of *mesne* profits. It is, therefore, prayed that the transfer petition be dismissed as it has been filed by the petitioner with *mala fide* intention to perpetuate his illegal intention and to delay the disposal of the suit for possession.

14. This Court has heard arguments addressed on behalf of the petitioner as well as the respondent, and has gone through the case file. Written submissions filed by the learned counsel for the parties have also been perused.

15. Before appreciating the rival contentions, it will be useful to briefly encapsulate the facts of the present case.



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16. The petitioner's family dispute traces back to the ownership of certain immovable properties, including the subject property. These properties originally belonged to the petitioner's grandfather, Late Sh. Kundan Lal Jain, who had passed away on 24.04.1979. His properties were distributed amongst his heirs, but disputes arose following a Memorandum of Partition dated 18.08.1982, which awarded three properties to the petitioner's step-grandmother, Smt. Seva Devi, which the petitioner states, was under the condition that after her death, the properties would be equally divided among the three sons of Late Sh. Kundan Lal Jain, i.e. the petitioner's father Sh. Prem Chand Jain, the respondent Sh. Padam Chand Jain, and one Sh. Naresh Chand Jain. On 05.09.2005, an alleged Gift Deed was executed by Smt. Seva Devi in favor of the respondent, Sh. Padam Chand Jain, in respect of the subject property, giving rise to further disputes. Following her death, and later the death of the petitioner's father on 16.02.2014, the petitioner herein had filed the civil suit in December 2019 seeking Declaration, Partition, and Permanent Injunction concerning the properties, particularly the one at Kinari Bazar i.e the subject property. In the course of these proceedings, the respondent herein filed a fresh suit for possession in August 2023, claiming ownership of the subject property.

17. The relevant facts, as outlined by the respondent in his reply, are that the petitioner herein and his father had executed a rent receipt-cum-tenancy agreement on 02.08.1982, in favor of the mother of respondent Smt. Sewa Devi Jain. It is stated that rent was



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continuously paid *via* account payee cheques from 1982 to 2004. On 05.09.2005, Smt. Sewa Devi Jain had gifted the property to the respondent, who then became the petitioner's landlord. Rent payments continued until March 2013, but the petitioner defaulted from 2013 to 2019, especially after his father's death in 2014. Thereafter, the respondent had issued a legal notice for arrears on 03.08.2019 and had filed a suit for perpetual injunction on 26.08.2019. The petitioner had filed a written statement on 18.11.2019. Thereafter, the petitioner herein filed the suit i.e. CS (OS) No. 635/2019 before this Court on 26.11.2019. This Court's interim order dated 21.01.2020 noted that any eviction suit filed by the respondent would be decided on merits. On 01.12.2020, the respondent issued a notice under Section 111(g) of the Transfer of Property Act, 1881, terminating the tenancy, and later sought permission under the Slum (Improvement and Clearance) Act to file a possession suit. Permission was granted on 19.07.2023, and the respondent filed the suit for possession and mesne profits on 08.08.2023 before the learned ADJ. Issues were framed in this suit on 14.12.2023, and the plaintiff's evidence has since been recorded.

18. In this Court's opinion, the subject matter of the suit filed subsequently before the learned ADJ, which is sought to be transferred to this Court, is not the same as suggested by the present petitioner, since, admittedly, the subject matter in the suit pending before this Court, is not one property alone, but the following properties: property bearing municipal No.1976-77, Katra Kaushal



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Rai, Kinari Bazaar, Chandni Chowk, Delhi - 06 including Ground, First and Second Floor; Property No.205-C/59, 2, Todarmal Road, Bengali Market, New Delhi; Property No. 49, Ward No. 4, Katra Masru, Dariba Kalan, Delhi-06; Property No.11748, Plot No.688/2, Block-U, Sant Nagar, Basti Regharpura, Karol Bagh, New Delhi and Property No.442, Esplanada Road, Cycle Market, Chandni Chowk, Delhi-06. The property that is being referred to by the petitioner herein, which is the subject matter in the suit pending before the learned ADJ, is only a tenanted shop, which is a small portion of one of the properties which is subject matter of adjudication in the suit pending before this Court, but in a different context. It is also not disputed that the contesting defendants in the suit filed before this Court are eleven, including the respondent herein, whereas in the suit pending before the learned ADJ, only the petitioner and the respondent herein are contesting parties.

19. This Court further is of the opinion that the issue-in-question, in the suit pending before the learned ADJ, pertains to partition of the suit properties, the forfeiture of tenancy and quantum of *mesne* profits, whereas in the suit pending before this Court, the issue pertains to whether the plaintiff/petitioner herein can challenge the memorandum of partition dated 18.08.1982, and whether the said challenge would be within limitation, and the issue of declaration of Gift Deed dated 05.09.2005 as null and void.

20. This Court also notes that in order dated 21.01.2020, passed in CS (OS) No. 635/2019, the statement of learned counsel for



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defendant no. 1 therein/respondent herein was recorded that, though the defendant would maintain *status quo* in respect of the subject property, the same would be without prejudice to his rights and contentions to initiate legal proceedings against the plaintiff/petitioner herein for eviction from the subject property. This Court had observed that such proceedings, if instituted, would be adjudicated on its own merits.

21. This Court is further of the opinion that there is merit in the contention of learned counsel for the respondent, that even in case the suit for possession i.e. CS No. 872/2023 is decreed and the respondent comes in possession of the suit property, being the landlord, the same will not affect the rights of the petitioner herein, in the suit for partition pending before this Court, and if the petitioner succeeds in the said suit for partition, the subject property will become a subject matter of division. Further, in case the suit for partition *qua* the said property, pending before this Court, is dismissed, then the decree passed in suit for possession, pending before learned ADJ would prevail.

22. It is also important to consider that the suit pending before this Court is at the stage of completion of pleadings, whereas in the subsequent suit filed before learned ADJ, the issues have already been framed and the suit is at the stage of recording of plaintiff evidence. In this background, learned counsel for the respondent also invited this Court's attention to the decision of the Coordinate Bench



in *S.C. Jain v. Bindeshwari Devi*, 67 (1999) DLT 189, on the issue of consolidation of suits, wherein it was observed as under:

“8.2.2. It is difficult to lay down any straight jacket formula by application of which the Court may distinguish between the cases liable to be stayed under Section 10 or 151 of the CPC or which may expediently be consolidated. It will all depend on the wisdom of the Judge faced with the problem to take a decision guided by judicial experience. Broadly speaking, if consolidation is likely to create complications at the trial or may prejudice rights of the parties either because the issues are not all common or because the parties are not common, the Court may not consolidate the suits. Consolidation may be preferred to stay if the Court may deem it expeditious advantageous to do so.

16. The two suits if ordered to be consolidated in entirety, the court may frame consolidated issues before commencing the trial.

17. Of necessity the order for consolidation has to be made before the commencement of trial i.e. before the recording of the evidence has commenced in any of the two suits. If evidence in one suit has been recorded fully, consolidation would be redundant. If evidence has been recorded partly in one suit and then a consolidation is ordered obviously difficulty would arise whether the evidence already recorded in one suit is available to be read in the other suit. This will not be permissible if recording of the evidence has substantially progressed even in part. In such a fact situation a better exercise of discretion would be not to yield to the prayer for consolidation; the only exception being the consent of the parties whereby they may agree to have the evidence already recorded in one suit to be read as evidence in the other suit as well.

19. ...On the other hand, there may be circumstances which may make it undesirable or even impossible, or at least impracticable, to make an order for consolidation. Thus, two actions cannot be consolidated where the plaintiff in one action is the same person as the defendant in another action unless one action can be ordered to stand as a counter claim in the consolidated action...”



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23. Therefore, in view of the reasons recorded in the preceding paragraphs, this Court is of the opinion that there are no grounds to allow the present transfer petition. The same is accordingly dismissed. Pending applications, if any, also stands disposed of as infructuous.

24. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 01, 2024/at