



2025:DHC:829



\$~

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

% *Date of Decision: 24th January, 2025*

+ **FAO 379/2024 & CM APPL. 71512/2024 FOR DIRECTIONS**

RADHEY SHYAM

.....Appellant

Through: Ms. Jaspreet Kaur and
Mr. Mukesh Kr. Sharma,
Advs.

versus

**PARMESHWARI DAS (SINCE DECEASED) THROUGH LR
& ANR.**

.....Respondents

Through: Mr. Gaurav, Adv.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (O R A L)

RAVINDER DUDEJA, J.

1. This is an appeal under Order 43 Rule 1 CPC, filed by the appellant against the order dated 12.09.2024, passed by the learned District Judge (North), Rohini Courts, Delhi in Suit bearing No. CS DJ 58442/2016, titled “*Radhey Shyam (Senior Citizen) Vs. Parmeshwari Dass & Anr.*”, whereby, learned trial court allowed the application filed by respondent No. 1 under Order 7 Rule 10 & 10-A of the Code of Civil Procedure [“the Code”], 1908 and returned the plaint filed by the appellant.

Signature Not Verified

Digitally Signed

By: SUNITA KUMAR

Signing Date: 12.02.2025

17:11:54

FAO 379/2024

Page 1 of 9



2025:DHC:829



2. By virtue of the impugned order dated 12.09.2024, learned District Judge observed that the court lacks the subject matter jurisdiction as the subject matter i.e. suit property is situated in North-West District, and therefore, any decree/judgment passed by the Court shall be *non-est*/nullity and thus concluded that the District Judge, North District has no jurisdiction to assume subject matter jurisdiction and passed the order for the return of the plaint to the petitioner for presentation before the court of competent jurisdiction.

3. The undisputed facts are that plaintiff instituted a suit for mandatory injunction, permanent injunction and recovery of damages qua property bearing No. A-18, Saraswati Vihar, Delhi-110034 [hereinafter referred as the “suit property”] before the court of learned District & Sessions Judge, North-West, Rohini Courts. At the time of filing of the suit in the year 2012, there was only one District i.e. North-West, Rohini District in Rohini Courts, and therefore, the appellant had instituted the suit in the court having subject matter jurisdiction i.e. North-West, Rohini.

4. It is also an admitted fact that vide order dated 19.02.2013 bearing No. 05/DHC/Gaz/G-1/V.I.E.2(a)/2013, the High Court was pleased to create another District i.e. North District in Rohini Court Complex and appointed Mr. Chander Shekhar as the District & Sessions Judge of the newly formed District i.e. North District, Rohini Courts. Till such time Mr. Chander Shekhar was serving as ADJ—04 (North-West District) Rohini Court which was abolished vide above mentioned order dated 19.02.2024 and Mr. Chander Shekhar was



2025:DHC:829



assigned the cases pending in the said abolished court presided over by him.

5. Admittedly, as on the date of passing of the said order, the suit instituted by the petitioner was pending in the court of Mr. Chander Shekhar, ADJ-03 (North-West District). The suit was not transferred and continued to be adjudicated by the court of Mr. Chander Shekhar, District & Sessions Judge (North District) Rohini.

6. While the case was listed for final arguments, respondent No. 1 filed an application under Order 7 Rule 10 & 10-A of the Code for the return of the plaint. Learned trial court vide impugned order dated 12.09.2024, returned the plaint to the petitioner for presentation before the court of competent jurisdiction. It is this order, which has been challenged in appeal.

7. Learned counsel for the petitioner has argued that the objections regarding territorial jurisdiction at the final stage is barred under Section 21 of the Code, as such objections should be raised at the earliest possible opportunity and in all cases, where the issues are settled at or before such settlement.

8. It is further submitted that learned trial court failed to appreciate that application under Order 7 Rule 10 & 10-A of the Code is not maintainable as respondent No. 1 himself filed the transfer petition before the High Court for the transfer of the suit but when he failed to show any ground of territorial jurisdiction being taken before the trial court, withdrew the same seeking liberty to raise the issue before the trial court and in a planned manner, filed the application for return of



2025:DHC:829



the suit under Order 7 Rule 10 & 10-A of the Code.

9. It is further submitted that in the year 2012 when the suit was filed by the petitioner, there was only one District i.e. North-West, and therefore, petitioner cannot be faulted for the transfer of the case to North District upon its creation by the High Court.

10. *Per contra*, learned counsel for the respondent No. 1 has submitted that the suit property is situated in North-West District therefore suit cannot continue before the court of North District, and learned trial court has rightly refused to entertain the suit and ordered for its return for presentation before the court of competent jurisdiction.

11. Learned trial court was of the view that in the garb of seeking mandatory injunction, petitioner has sought recovery of physical possession of the suit property and therefore in such circumstances, Section 16 of the Code would govern the institution of the suit. Section 16 of the Code provides that the suit for recovery of immovable property is to be instituted where the subject property is situated.

12. Admittedly, the subject matter of the property in the present case is situated in North-West District, while the case was pending adjudication before the North District. No doubt, the case was originally filed in the North-West District, which had the requisite jurisdiction, but for no fault of the petitioner, the case was transferred to the newly created North District. The transfer of the case to North District by administrative order of the High Court would certainly not



2025:DHC:829



confer jurisdiction over the subject matter of the property.

13. Once it is found that that the Court in the North District does not have the subject matter jurisdiction as per Section 16 of the Code, the question for consideration is what are the options available in such circumstances.

14. Order VII Rule 10 of the Code of Civil Procedure [“CPC”] provides that the plaint, at any stage of the suit, be returned to be presented to the Court in which the suit should have been instituted.

Order VII Rule 10 is reproduced herein below:-

“10. Return of plaint.—(1) [Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted

[Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

(2) **Procedure on returning plaint.** —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

15. Upon return of the plaint under Order VII Rule 10 of the Code, on its presentation before the appropriate court of jurisdiction, the suit would be treated as a fresh suit, and would have to start *de novo* and all proceedings before the earlier suit would be rendered a nullity.

16. In order to avoid such consequences of loss of all proceedings that may have taken place before the earlier court, either of the parties may seek recourse to Section 24 of the Code, which empowers the High Court or the District Court, on its own motion or otherwise, to transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it, or withdraw any suit, appeal



2025:DHC:829



or proceeding pending in any court subordinate to it and inter alia, transfer the same for trial or disposal to any court subordinate to it and competent to try and dispose of the same. Sub Section 5 of Section 24 states that such power of transfer can be exercised to transfer the suit or proceeding from a court which has no jurisdiction to try it.

17. Section 24 of the Code is reproduced below:-

“24. General power of transfer and withdrawal.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]”

18. Learned Single Judge in Namita Gupta Vs. Suraj Holdings Ltd., 2024 DHC 122, succinctly, explained the difference between



2025:DHC:829



Section 24 and Order VII Rule 10 of the CPC in Para No. 58 of the judgment as under:-

“58. The difference between Section 24 and Order VII Rule 10 of the CPC is that in terms of Sub-Section (2) of Section 24, where any Suit or proceeding has been transferred or withdrawn, the Court which is thereafter to try or dispose of such Suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. Therefore, all proceedings that were undertaken before the Court where a Suit was earlier instituted, though it lacked jurisdiction to try the same, can be saved, and the Suit on its transfer can be proceeded from the point at which it was transferred.”

19. Learned Single Judge also referred to the decision of the Division Bench of this Court in **Mahesh Gupta Vs. Ranjit Singh & Ors. 2009 SCC On-Line Del. 1418**, wherein, the Division Bench of this Court was considering the challenge to the order returning the plaint on the ground of lack of pecuniary jurisdiction to be filed before the appropriate court having pecuniary jurisdiction over it. The Court, while upholding the order passed by the learned Single Judge therein, provided that instead of return of the plaint, the Suit be transferred to the competent Court of civil jurisdiction. The court observed as under:-

“11. During the course of hearing of the appeal, the counsel for the appellant/plaintiff contended that the appellant will be caused grave prejudice if the order returning the plaint is sustained in as much as considerable evidence has already been recorded in the suit and, there was also an order of injunction against the respondents/defendants by the consent of the counsel for the parties. Taking into account the considerable time invested by this court in this suit, we have decided to suo moto exercise our powers under Section 24(1) read with Section 24(5) of the Code of Civil Procedure, 1908 and instead of the order returning the plaint as passed by the learned Single Judge, we modify the order of the learned Single Judge and direct that, in the facts of the case, the suit



2025:DHC:829



itself be transferred to the competent court of civil jurisdiction. The effect of exercising of powers under Section 24 CPC would mean that the suit would be taken up by the transferee court from the stage at which it was pending before the impugned order dated 16.2.2009 was passed. The learned counsel for the respondents has stated that the respondents wanted to move an application for vacation of the interim order of injunction, but, which he did not do in as much as the matter was heard on the aspect of the lack of pecuniary jurisdiction of the court. Therefore, while directing the transfer of the suit, we further order that the interim order of injunction operating against the respondent in the suit will continue only till the date when the matter is taken up on the first date by the concerned Civil Judge. The Civil Judge will decide afresh the issue of grant or denial of an ad interim/ex-parte injunction on the first date and he will also decide expeditiously, and preferably within four weeks from the first hearing, the injunction application as filed by the plaintiff in the suit. The learned Single Judge should take up the issue of granting or denying of injunction (ex parte/ad interim or pendent lite) entirely uninfluenced by the any observations of this court or the fact that earlier an injunction order was passed by the consent of the parties.”

20. Therefore, once it is accepted that a Suit has been filed in a Court not having the requisite jurisdiction, the plaint in such cases, under Order VII Rule 10 CPC, shall be returned to the plaintiff to present the same before the competent court having jurisdiction, equally either of the parties may invoke the provisions of Section 24 of the CPC to seek transfer of such a case.

21. Since the petitioner has conceded that plaint was pending in a Court which lacks jurisdiction, this Court has sufficient power under Order 24 of the CPC to transfer the suit to the court of competent jurisdiction. The interest of justice demands that in the exercise of the powers vested in this Court under Section 24 of the CPC, the suit be transferred from the Court of learned District Judge-03, Rohini Courts (North-West District) to the Court of the District & Sessions Judge,



2025:DHC:829



Rohini Courts (North-West District) with directions that the case be tried from the stage it is transferred from the transferor court.

22. The parties shall appear before learned transferee court on 27.02.2025.

23. The petition and the pending applications are disposed of in the above terms.

RAVINDER DUDEJA, J.

JANUARY 24, 2025

RM

Signature Not Verified

Digitally Signed

By: SUNITA KUMAR

Signing Date: 12.02.2025

17:11:54

FAO 379/2024