

*** HIGH COURT OF DELHI : NEW DELHI**

Judgment pronounced on: 16.08.2011

+ TR. P. (C) No. 33/2010

LALIT BHATIA & ORS. Petitioners
Through: Mr Sudhir Kumar Sharma, Adv.

Versus

DINA NATH BHATIA & ORS. Respondents
Through: Mr Maninder Singh, Sr. Adv. with
Mr Om Prakash Adv. for D-2.

Coram:
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioners under Section 24 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC), seeking transfer of Probate Case No.260 of 2006 (Old No.185 of 2002) from the court of Shri C. K. Chaturvedi, District Judge-II, (North), Tis Hazari Courts, Delhi to the High Court of Delhi to be

clubbed with the suit for partition, being CS (OS) No.1062 of 2002, filed earlier by the petitioners herein.

2. The parties in this case are members of the same family, the respondent No.2, Shri Kamal Bhatia is the son of respondent No.1. Petitioner Nos. 1 to 3 are the brothers of respondent No.1 and the petitioner Nos. 4 & 5 are the sisters. Respondent No.2 has filed a probate case bearing No.260/2006 (Old No.185 of 2002) before the District Judge, Delhi in respect of a will dated 12.01.1999, which according to him had been executed by his grandmother, Smt. Amrit Devi Bhatia.

3. In the said probate case, the petitioners, i.e. the respondent No.2 herein, has stated that the will dated 12.01.1999 was executed by his grandmother whereby all the properties mentioned in Annexure-B of the said probate case, devolved upon him.

4. In the objections filed to the said probate petition the objectors/petitioners herein, have stated that the alleged will dated 12.01.1999, is a forged document and their mother, Smt. Amrit Devi Bhatia never executed the said will.

5. In the said probate petition the respondent No.2 has claimed that by virtue of the will dated 12.01.1999, the following properties would devolve upon him:-

- (i) House property bearing No.14-A/99, W.E.A., Karol Bagh, Delhi.

(ii) 50% Share in property No.5991-5998 Sadar Bazar, Delhi.

6. It is averred in this petition that the issues in the probate case No.260 of 2006, have been framed and evidence of both the parties has also been recorded. Further, it is stated that prior to the filing of the said probate case the petitioners herein had filed a suit for partition being CS (OS) No.1062 of 2002 on 18.10,2001 in respect of several properties left behind by their mother, Smt. Amrit Devi Bhatia.

7. The suit for partition is still pending before this court. The details of the properties in respect of which the partition was sought are mentioned in para Nos. 2 and 4 of the plaint of the said suit and the properties in respect of which the respondent No.2 herein is seeking probate through probate petition are part of the suit for partition filed by the petitioners herein.

8. It is stated by the petitioners herein that the issues involved in both the cases i.e. the probate case and the suit for partition are same and overlapped to each other. The subject matter of the probate case No.260 of 2006 is also directly and substantially the same as in the suit for partition. And as the outcome of the probate case shall have a direct bearing on the fate of the suit for partition therefore, the probate petition should be clubbed with the suit for partition and in this regard the petitioners are relying upon the following judgments of the Supreme Court:-

- (a) *Nirmala Devi Vs. Arun Kumar Gupta, 2005(12) SCC 505.*
(b) *Balbir Singh Vasu Vs. Lakhbir Singh and Ors; 2005 (12) SCC 503.*

9. In the reply filed on behalf of the respondent No.2, it is stated that the petitioners herein have concealed the fact that in the probate case No.260 of 2006 (Old No.185 of 2002) the petitioners herein had filed an application under section 151 of CPC for stay of the said probate proceedings, which is pending in district court and by order dated 22.01.2007 the said application was dismissed and the same is not challenged by the petitioners. Thus, the petitioners are not entitled to the prayer made in the present application. It is also stated by means of the present petition that the petitioners are trying to circumvent the final orders to be passed in the probate court and delay the final outcome of the probate proceedings which are independent of the suit for partition. The probate case is now fixed for final disposal and no useful purpose would be served even if the two proceedings are clubbed together in view of the present status of proceedings in two matters.

10. As per the respondent No.1 that in the probate case No.260 of 2006 (Old No.185 of 2002) the evidence of the respondent No.2 herein was recorded on 26.07.2005 and was closed on 21.04.2006. The petitioners herein did not cross examine the respondent No.2 herein and thus their right to do so was closed.

11. The power to pass the order for transfer of matters has to be exercised fairly to meet the ends of justice. Such orders are normally passed if it saves the parties from multiplicity of the proceedings and if the issues in the matters are overlapped. No doubt, two proceedings in similar nature can be clubbed together in view of the decisions referred by the petitioner. But at the same time, the court has to examine the conduct of the parties, and the present status of the two proceedings in order to determine the issue so that it may not be misused by a party to meet the ends of justice. Let me now examine the present case under these circumstances.

12. Admittedly, the suit for partition was filed by the petitioner in this court in the year 2002, the Probate Case No. 260/2006 (Old No. 185/2002) was also filed in the year 2002 by the respondents. The respondent No.2 is the main contestant party in whose favour the Will dated 12.01.1999 was executed.

12.1 The case of the petitioners on merit is that the said Will is a forged document and their mother Smt. Amrit Devi Bhatia never executed the said Will in favour of respondent No.2.

12.2 In the probate case the evidence of respondent No.2 was recorded on 26.07.2005 and was closed on 21.04.2006, the petitioner did not cross examine the respondent No.2.

12.3 After completion of evidence the matter was argued from time

to time and even as per the record, the order was reserved in September, 2010 and time was granted to the petitioner to file the written arguments. Since the Presiding Officer was changed now the matter is listed before another Officer in the month of August for final disposal.

13. The present transfer petition was admittedly filed after the expiry of eight years of the filing of the suit for partition by the petitioners as well as the filing of the probate case in the year 2002.

14. It is also a matter of fact that the transfer petition is filed after closing the evidence of the respondent in the year 2006. Further, earlier the petitioner's application under Section 151 Code of Civil Procedure for stay of the said proceedings was dismissed by Order dated 22.01.2007. This Court is of the view that even if the probate proceedings are tagged or considered along with the suit of partition filed by the petitioners, no useful purpose would be served as the evidence in the Probate Case has already been concluded. Rather, it appears that by filing of this petition the petitioner is trying to delay the Probate Case.

15. The purpose of consolidation of two proceedings is to exercise the power to meet the justice, but not to further delay of the matter, otherwise the scheme of passing the order of consolidation would be defeated. This Court is conscious about the fact that normally, the prayer for clubbing the matters is not denied but each case has its own facts. The facts of the present case do not allow the Court to exercise its

discretion in favour of the petitioners.

16. In case the prayer of the petitioner is allowed, no doubt, the proceedings in the Probate Case would be delayed for years together as in the suit filed by the petitioner for partition, the issues are yet to be framed.

17. I feel that the present case is not a fit case to pass the relief claimed in the present transfer petition. Thus, the same is dismissed. No cost.

MANMOHAN SINGH, J.

AUGUST 16, 2011
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