

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

% *Order pronounced on: October 21, 2013*

+ **CM(M) No.826/2013 & C.M. No.12875/2013 (for stay)**

ANU SHARMA & ORS Petitioners
Through Dr.R.S.Sasan, Adv.

versus

VINOD PRAKASH SHARMA & ORS Respondents
Through Ms.Meena Chaudhury, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition, the petitioners seek to challenge the impugned order dated 6th July 2013 passed by the learned Addl. District Judge, Saket, New Delhi in probate case No.75/11 whereby the said probate case had been consolidated with Civil Suit No.207/11.

2. The facts leading to the present petition are that the petitioners filed a probate suit for grant of a probate of a will executed by their grandmother Late Smt.Bhagwati Devi Sharma which was duly executed on 29th November 2000. The petitioners also filed a civil suit for declaration and permanent injunction wherein the petitioner sought relief inter-alia to declare the unregistered relinquishment deed dated 17th April 2002 and partition deed dated 7th June 2002 on the basis of former deed, null and void, alleging that both the deeds were executed by the respondents to relinquish the petitioners from the property in dispute bearing No.B-54, South Extension,

Part-II, New Delhi. The respondents No.1 & 2 moved an application under Section 151 CPC for consolidation of the probate case and the civil suit contested by the petitioners. The petitioners duly filed reply to the said application. The learned Trial Court directed consolidation of both the probate case and the civil suit.

3. Learned counsel for the petitioners submits that the probate suit and civil suit contested against the respondents are not similar in cause of action and as there is no proximity between the reliefs in both the matters, they should be dealt separately.

4. Learned counsel for the respondents, on the other hand, submits that the whole subject matter in both the suits is identical and both the suits are primarily between the same parties and therefore, consolidation is necessary in order to reduce the multiplicity of suits and to avoid conflicting and contradictory judgments on the basis of same set of evidence.

5. Learned counsel for the respondents has placed reliance on the Supreme Court judgments in *Chitvalasa Jute Mills vs. Jaypee Rawa Cement*, (2004) 3 SCC 85 and *Nirmala Devi vs. Arun Kumar Gupta*, (2005) 12 SCC 505, wherein it was held as under:

“Where the two suits filed by the two parties before two different Courts are substantially the same and where the decree sought, ground of defence and the issues arising for decision are substantially common and where the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issue of facts and law, the two suits ought not to be tried separately. The Code of Civil Procedure does not specifically speak of consolidation of suit, but the same can be done under the inherent powers of the Court flowing from Section 151 of

CPC on complete or even substantial and sufficient similarity between the suits.”

6. The aforesaid view has been supported in ***Prem Lala Nahata vs. Chandi Prasad Sikaria***, AIR 2007 SC 1247, the relevant para of which reads as under:

“16.... It cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (See Halsbury’s Laws of England, Volume 37, paragraph 69). If there is power in the Court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder of parties or causes of action is something that is barred by law. The power to consolidate recognized in the Court obviously gives rise to the position that mere misjoinder of parties or causes of action is nothing something that creates an obstruction even at the threshold for the entertaining of the suit.”

7. The above decision of the Apex Court has been followed by Kerala High Court in ***Shijo Antony vs. Sebastian Joseph***, 2010 (7) RCR(C) 1312 wherein it was held that it is the convenience of the trial that is relevant and

none of the parties has any absolute right to contend that the consolidation could not be ordered.

8. Reference may also be made to the earlier decision of the same High Court in *Janadhanan Pillai vs. Kochunarayani Amma*, 1976 KLT 279 wherein a Full Bench of the Court observed that there is no provision in the CPC for consolidating suits, nevertheless Courts order joint trial of two or more suits for the sake of convenience, and quite often to avoid conflicting decision. This is done by the Court in the interests of justice in exercise of the inherent powers possessed by it. If a Court, after hearing parties feels that in the interests of justice it is necessary for two or more proceedings to be tried together, it is open for it to order so with a view to avoid repetition of the same evidence in different cases or to avoid the possibility of conflicting decisions in those cases or for other justifying reasons.

9. In view of the facts and circumstances of the case and the aforesaid rulings, it is found that the petitioners have based their claim on the basis of the Will which is the subject matter of the probate suit as well as the civil suit.

10. In view of facts and circumstances of the case as well as the disputes involved in both the matters, i.e. Suit No.207/2011 and the probate matter, in agreement with the findings of the learned Trial Court, this Court feels that in order to curtail the evidence, cost and possibility of conflicting orders and to save the time of the Court, the impugned order has been rightly passed for consolidation of the two matters. Even otherwise, no prejudice would be caused to the petitioners as evidence in both the cases is common, so also the documents, official witnesses, i.e. Sub-Registrar, Notary Public, Stamp Vendor, Banks and witnesses to the alleged Will dated 29th November, 2000. Therefore, this Court is not inclined to interfere with the impugned order

which, even otherwise, does not suffer from any infirmity.

11. The present petition is accordingly dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

OCTOBER 21, 2013