

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

% Judgment reserved on : 1st September, 2014
Judgment pronounced on: 31st October, 2014

+ Transfer Petition (C) No.4/2013

PAMINDER GUJRAL & ORS Petitioners
Through Mr.Y.P. Narula, Sr. Adv. with
Mr.Aniruddha Choudhury and
Mr.Abhay Narula, Adv.

Versus

VIJAY KUMAR PAUL & ORS Respondents
Through Ms.Sumedha Dua, Adv. for R-1.
Mr.Manoj Khanna, Adv. for R-2

+ Transfer Petition (C) No.5/2013

PAMINDER GUJRAL & ORS Petitioners
Through Mr.Y.P. Narula, Sr. Adv. with
Mr.Aniruddha Choudhury and
Mr.Abhay Narula, Adv.

Versus

KIRANJIT GUJRAL Respondent
Through Mr.Manoj Khanna, Adv. with
Mr.Abhimanyu Kalsy, Adv.

+ Transfer Petition (C) No.6/2013

PAMINDER GUJRAL & ORS Petitioners
Through Mr.Y.P. Narula, Sr. Adv. with
Mr.Aniruddha Choudhury and
Mr.Abhay Narula, Adv.

Versus

VIJAY KUMAR PAUL & ORS

..... Respondents

Through Ms.Sumedha Dua, Adv. for R-1.

Mr.Manoj Khanna, Adv. with

Mr. Abhimanyu Kalsy, Adv. R-2.

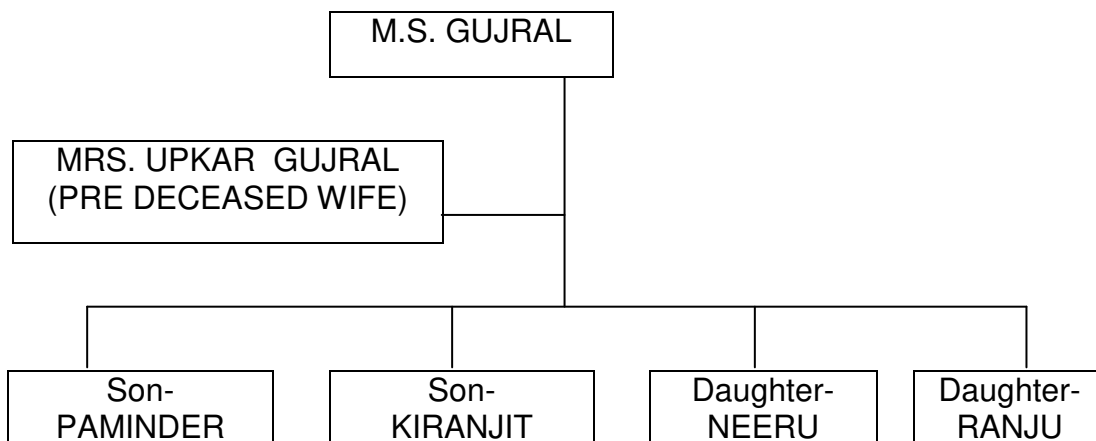
CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this order, I proposed to decide three transfer petitions filed by petitioners under Section 24 read with Section 151 of the Code of Civil Procedure for the transfer of – (i) Probate Case No.109/2012 pending in the Court of ADJ, Saket Court, New Delhi. (ii) Probate Case No.69/2012, pending before Additional District Judge, Saket Court, New Delhi, & (iii) Revocation Petition No.30/2012 filed in Probate Petition No.234/2006 pending before Additional District Judge, Tis Hazari Courts, Delhi to this Court.

2. For the purpose of deciding these petitions, it is pertinent to discuss the family tree which is as under :



GUJRAL	GUJRAL	CHAWLA	SAYALL
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3. Property bearing No.A-6, New Friends Colony, New Delhi was a self-acquired property of the deceased Mr.M.S. Gujaral who gifted 50% of the same to his wife, Mrs.Upkar Gujaral. The gift deed was duly registered and the title was mutated in the name of Smt. Upkar Gujaral, in the revenue record.

4. Smt. Upkar Gujaral, mother of parties made her Will dated 21st July, 1995 bequeathing all her properties to her husband, Sh. M.S. Gujaral.

5. Smt. Upkar Gujaral expired on 8th October, 2004 and predeceased her husband, Mr.M.S. Gujaral.

6. Subsequent to her death, the Will of Mrs.Upkar Gujaral, which bequeathed all her assets to her husband was probated. Probate was granted on 15th May, 2007. All the children of Mrs. Upkar Gujaral, admittedly filed written and attested affidavits and No Objection in the said probate petition.

7. Sh.M.S. Gujaral allegedly expired on 4th May, 2012 leaving behind two registered Wills of the same date. By Will dated 9th May, 2008, Sh. M.S. Gujaral bequeathed property bearing No. A-6, New Friends Colony, New Delhi to two sons of Sh. Kiranjit Gujaral, namely, Rohan and Rahil Gujaral. By another Will dated 9th May, 2008, Sh. M.S. Gujaral bequeathed property bearing No.802, Vishal Bhawan, 95,

Nehru Place, New Delhi-110019 to Smt. Neelu Chawla (one of his daughters).

8. Shri Vijay Kumar Paul, the executor of the Wills of Sh. M.S. Gujral applied for probate of the said Wills in May, 2012. In respect thereof, Probate Case No.69/2012 and 109/2012 are pending in the District Courts, Saket, New Delhi.

9. The petitioners and respondent No.2 are the legal heirs of their deceased parents Sh. Mohinder Singh Gujral and Mrs. Upkar Gujral, father and mother respectively.

10. Probate Case No.69/2012 titled as Vijay Kumar Paul vs. State of NCT of Delhi and Ors. pending before the Court of ADJ, Saket, District Court, New Delhi, which is filed much prior to the suits. Petitioners herein filed their objections in the probate proceedings on 3rd October, 2012. The probate petition is at the stage of cross-examination of petitioner's witnesses. The executor has filed the list of witnesses and affirmative affidavits therein.

11. Petitioners have also filed a Revocation Petition, being No.30/2012, in decided Probate Case No.234/2006, after the expiry of five years seeking revocation of probate of Will of their mother Smt. Upkar Gujral in October, 2012.

12. In November, 2012 petitioners herein filed a suit being CS(OS) No.3262/2012 for partition and possession and for rendition of accounts and for perpetual and mandatory injunction. In para 15, the statement was made that they are filing alongwith the suit an

application under Section 24 CPC for the transfer of the probate proceedings and revocation petition to this Court to be tried alongwith the present suit.

13. The abovementioned suit is listed for admission/denial and also for disposal of several IAs including I.A. No.14097/2013 for return of plaint under Order 7 Rule 11 CPC and another I.A. No.14099/2013 under Section 10 of the CPC by Kiranjit Gujral. It is averred in the plaint that the respondent No.1 herein, i.e. Vijay Kumar Paul who is acting as executor of an alleged Will dated 9th May, 2008, of the deceased father of the petitioners, has filed probate proceedings in Probate case No. 109/2012 in the Court of ADJ, Saket Court, New Delhi. The said proceedings relate to property No.802, Vishal Bhawan, 95, Nehru Place, New Delhi-110019. The same is one of the properties for which the petitioners are seeking partition in the partition suit mentioned above. The executor Sh.V.K.Paul has propounded two Wills of Late Sh.Mohinder Singh Gujral both dated 9th May, 2008, one for the property at A-6, New Friends Colony, New Delhi and the other for property at 802- Vishal Bhawan, 95, Nehru Place, New Delhi-110019. In the said proceedings, the petitioners herein have entered appearance and have filed their objections to the grant of Probate. It is alleged that the executor Sh. Vijay Kumar Paul is acting malafide and is the front man for respondent No.2 and is trying to help respondent No.2 herein denying the share of the petitioners in the estate of their deceased parents.

14. The respondent No.2 herein i.e. Kiranjit Singh Gujral filed suit for declaration and permanent injunction being CS(OS) No.21/2013.

15. Sh.Y.P.Narula, learned Senior counsel appearing on behalf of the petitioners submits that the issues arising in the partition suit and in the probate proceedings are common and can be disposed of by recording common evidence by this Court. It is argued that the parties in both the proceedings are same except the alleged executor Sh.V.K.Paul (who has no personal interest in the estate of the deceased Sh.Mohinder Singh Gujral or in the estate of the deceased mother of the parties). Therefore, an order be passed that probate case No.109/2012 pending in the Court of ADJ, Saket Court, New Delhi be transferred to this Court to be tried and disposed of with the present suit as well as probate case No. 69/2012 and Revocation Petition no. 30/2012 in Probate case no. 234/2006 pending in the Court of ADJ, Tis Hazari Court, Delhi in order to curtail multiplicity of litigation, costs and time of the parties. He has referred the following decisions :

- i) ***Pawan Kumar Chadha vs. Anil Kumar Chadha and Anr.***, MANU/DE/1840/2009.
- ii) ***Nirmala Devi vs. Arun Kumar Gupta***, (2005) 12 SCC 505.
- iii) ***Virender Gupta vs. Nitender Gupta & Ors.***, 31 (1987) DLT 406.
- iv) ***Balbir Singh Wasu vs. Lakhbir Singh***, (2005) 12 SCC 503.

v) ***Dr.(Mrs.) Pramila Srivastava vs. Smt. Asha Srivastava & Ors.***, 2014 (140) DRJ 56.

16. It was observed by Courts in the decisions referred by Mr. Narula that decision in the probate proceedings on the question of proof of the Will have a direct impact on the suit and no prejudice would be caused to the other side and in fact it would curtail the time of Court, costs of the parties as well as to avoid multiplicity of proceedings and the other disputes between the parties and even there is no legal bar to pass such orders.

17. The prayer of transfer petitions and revocation of probate proceedings are strongly opposed by the executor as well as Shri Kiranjit Gujral, father of the beneficiaries i.e. Rohan Gujral and Rahil Gujral of one of the Wills pertaining to the property No.A-6, New Friends Colony, New Delhi.

18. It is alleged on their behalf that in one of the suits (CS(OS) No.3262/2012) Mrs. Ranju Sayall is claiming right to Goa property (which falls within the jurisdiction of High Court of Judicature at Bombay) via another Will, whereas Mr. Kiranjit Gujral is seeking partition of same on basis of succession. This claim (right to Goa property via another Will) in this suit cannot proceed till such time the respective Will concerning Goa property is duly probated as held by the Apex Court in ***Hem Nolini Judah vs. Isolyne Sarojbashini Bose***, AIR 1962 SC 1471 and as held by this Court in ***Winifred Nora Theophilus vs. Lila Deane & Ors.***, AIR 2002 Delhi 6 :

“On interpretation of Section 213 of Indian Succession Act, 1925 read with Section 57(a) and (b), the Courts have opined that where the Will is made by Hindu, Buddhist, Sikh and Jaina and were subject to Lt. Governor of Bengal or within the local limits of ordinary original civil jurisdiction of High Courts of Judicature at Madras and Bombay or even made outside but relating to immoveable property within the aforesaid territories that embargo contained in Section 213 shall apply.”

19. It is also submitted by them that the suits involve complicated issues of facts and law, which is not the case before the probate court, which is a court of limited jurisdiction, and the probate petitions cannot be clubbed, as they will be endlessly delayed on account of the complicated legal nature of claims and counter claims of the siblings. It is therefore, not in the interest of justice to club all the matters.

20. It cannot be disputed by either party that the functions of a probate court are to see that the Will execution by the testator was actually executed by him in a sound disposing state of mind without coercion or undue influence and the same was duly attested by the witnesses. Executor is the '*Dominus Litus*' qua the probate proceedings, and has thus filed the same before a competent court of jurisdiction. In the probate petitions, the executor is required to offer evidence regarding proof of Wills only. The executor cannot be compelled to participate in litigations pending between the legal heirs of the deceased who are claiming their rights otherwise.

21. In ***Chiranjilal Shrilal Goenka v. Jasjit Singh and Ors.***, (1993) 2 SCC 507, the Supreme Court while upholding the above views and

following the earlier decisions of this Court as well as of other High Courts observed in paragraph 15 which runs as under :

“In Ishwardeo Narain Singh v. Smt. Kamta Devi this Court held that the Court of probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate court. Therefore, the only issue in a probate proceeding relates to the genuineness and due execution of the Will and the court itself is under duty to determine it and preserve the original Will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the Will. Thus, it does no more than establish the factum of the Will and the legal character of the executor.”

22. 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 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 petitioners. But at the same time, the court has to examine the conduct of the parties, and the stage 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.

23. In many cases such prayer of transfer of probate proceedings is allowed where the parties are also litigating in civil proceedings where some of the issues are common. The said orders are being passed in the interest of justice and in order to avoid the multiplicity of litigation and to reduce the costs and time of the parties. But in the present transfer petitions, the facts and circumstances are different. Thus, this Court finds difficulty to grant the prayer made in the three transfer petitions. The reasons of the same are given as under :

- i) With regard to TRP(C) No.5 of 2013 (that seeks transfer of revocation petition and clubbing of same with all other litigation between the siblings and the two probate petitions) as after probate granted has been duly/fully administered including by granting the beneficiary the share in terms of the probated Will and which beneficiary was a Class I legal heir of the deceased lady. The estate of the deceased Mrs. Upkar Gujral has been fully administered and the estate inherited by the beneficiary of the deceased's Will dated 21st July, 1995 has been further fully consumed and administered and utilized and further bequeathed by the beneficiary Mr. Mohinder Singh Gujral, who is also since deceased. As was similarly held in ***Siri Kishan Gupta vs. State & Ors.***, (2012) 132 DRJ 785 by this Court and in AIR 1964 Kant 187, ***P.H. Alphonso vs. C.F. De Costa and Ors.***

The revocation petition is filed after more than 5 years after the grant of probate in the earlier petition No.234/2006. Earlier, no objections were filed by the sibling and now the petitioners are challenging the validity of the judgment granting probate in the year 2007.

- ii) There is no cogent reason provided by the petitioners which would show any merit in the transfer petition due to which this right of the executor petitioner be interfered with or he is favouring respondent No.2 as alleged by the petitioners. The petition of Executor cannot be tied up with the suits for partition and title etc.
- iii) Two beneficiaries i.e. Rohan Gujral and Rahil Gujral sons of Kiranjit Singh (son of M.S. Gujral) are not made parties to the transfer petitions. There is no consent on their behalf. Their father Kiranjit Gujral is opposing the prayer.
- iv) One of the probate proceedings is at the stage of cross-examination though the suits are at the initial stage. Issues are yet to be framed.
- v) Even otherwise, the executor of the Wills cannot be dragged in the litigation wherein he has no interest the suit properties.

24. Thus, above mentioned are distinguishing facts in the present case. In view of the peculiar facts and circumstances involved in the present transfer petitions, this Court is not inclined to allow the prayer made in the transfer petitions.

25. The petitions are accordingly dismissed as they are devoid of any merit.

(MANMOHAN SINGH)
JUDGE

OCTOBER 31, 2014