

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

+ **IA No.13460/2007 & IA No.4562/2008 in CS (OS) No.1176/2007**

Judgment reserved on: 12th February, 2009

% Judgment decided on : 13th March, 2009

Mrs. Meera DhingraPlaintiff
Through : Mr. Neeraj K. Kaul, Sr. Adv. with
Ms. Ginny Jetley Rautray & Mr. Bhavan
Mishra, Advs.

Versus

Mr. Deepak Kapoor & Ors.Defendants
Through: Mr. S.K. Chaudhary, Adv. with Mr. Amit
Pratap Shaunak, Adv. for D-1
Mr. S.N. Chaudhary, Adv. for D-2
Mr. Manoj Sharma, Adv. for D -3 & 4

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. By this order, I shall dispose of the two applications being IA No.13460/2007 and IA No.4562/2008 under Section 24 read with Section 151 CPC filed by the plaintiff for transfer of probate case No.116/2007 pending in the Court of ADJ, Delhi titled as “Deepak Kapoor Vs. State & Ors.” filed by defendant no. 1 herein and for transfer of succession case No.866/2007 pending in the Court of Administrative Civil Judge, Delhi titled as “Dr. Neelam Amin Vs. State

& Ors.” filed by defendant no. 2 herein.

2. The applicant/plaintiff has filed the present suit for declaration, partition, possession, rendition of accounts and permanent injunction of immovable property bearing No.A-53, Vasant Marg, Vasant Vihar, New Delhi (hereinafter referred to as ‘suit property’).

3. Brief facts are:-

The plaintiff and the defendant Nos.2 to 4 are sisters and defendant no. 1 is the brother and all of the abovesaid are Class-I legal heirs of Lt. Sh. B.S. Ramdas Kapoor and Lt. Smt. Achla Kapoor. Lt. Sh. Ramdas Kapoor died on 17th August, 2005 and Lt. Smt. Achla Kapoor died on 2nd June, 2007.

4. It is alleged that the defendant No.1 is the only son among the heirs who is in control of the immovable properties of the deceased. The plaintiff and defendant Nos. 2 to 4 are married daughters and settled in their respective families. It is submitted that according to their knowledge, there is no Will or any testamentary document left by both the mother and the father of the plaintiff and defendants.

5. It is averred in the plaint that the above said deceased left behind two properties bearing No.A-53 Vasant Marg, Vasant Vihar, New Delhi i.e. the suit property and C-110/A, Super Mart-1, DLF Kutub Enclave, Gurgaon with two parking spaces UB-030 and UB-016. None of the legal heirs were in possession of the said properties since the date of death of above named deceased. The suit properties have been rented out. The plaintiff has allegedly approached the defendant No.1 who is in control of the property for her share in the properties but he in

collusion with other defendants has refused to part with any share. It is alleged that the defendant No.1 is receiving rental from the aforesaid properties without giving any share to the plaintiff and is also not disclosing the amount of rental received. The plaintiff has allegedly learnt that the defendants are trying to sell/dispose of the aforesaid properties and appropriate the entire sale consideration for themselves, depriving the plaintiff of her legitimate share in the same.

6. While issuing summons in the main suit, this court in the interim application, issued notice and by order dated 12th July, 2007 directed the parties to maintain status quo with regard to the title and possession of the suit property. After the filing of the suit and receipt of the summons, defendant no.1 filed a Probate Case No.116/2007 before the District Judge, Delhi on the basis of alleged Will dated 17th June, 1999 executed by late Shri B.S. Ramdas Kapoor in respect of his immovable properties. It is submitted that all rights and interest qua the properties left behind by late Shri B.S. Ramdas Kapoor and his wife late Smt. Achla Kapoor which are to be adjudicated in the probate petition are also the subject matter of the present suit.

7. The defendant No.2 filed the petition for grant of succession certificate under Section 372 of Succession Act, 1925 being No.866/2007 which came to the knowledge of the plaintiff in the month of March, 2008. It is submitted that the said Succession Case is in respect of the movable properties left behind by late Smt. Achla Kapoor and the rent accruing from the aforesaid suit property. A prayer seeking identical substantive relief for rendition of account in respect of the

earnings from the immovable properties by way of rent or otherwise is also made.

8. It is stated that the issues raised in the present Suit and subject matter of Probate Petition filed by the defendant No.1 and the Succession Petition filed by the Defendant No.2 are similar and identical with respect to right, interest and claim among the parties inter se being the class I legal heirs of Late Shri B.S. Ramdas Kapoor and Late Smt. Achla Kapoor. Both the petitions and the present suit has been filed for adjudication of the same interest with regard to movable and immovable properties.

9. It is further stated that the evidence/trial in all the proceedings would be same and common and the parties in all three proceedings are same and involve adjudication of the same right and titles qua the properties. It is also stated that parties to the proceedings are ordinarily residents of U.S.A. and in order to lead the evidence, their presence are required in person in three different proceedings before the three different Courts which may cause inconvenience to the parties.

10. The plaintiff has prayed for transfer of Succession Case No.866/2007 and Probate Case No.116/2007 to this Court to avoid multiplicity of proceedings and conflict of judgment in the interest of justice and for complete adjudication of right and interest of the parties who are similar in all the proceedings and where the issue raised in all the proceedings are similar.

11. In the reply filed by defendant No.1, who has strongly opposed the two applications filed by the plaintiff, it is stated that all

the three cases have different territorial and pecuniary jurisdiction and thus, cannot be tried by this Court. It is submitted that the present suit is for declaration, partition, possession, rendition of accounts and permanent injunction with regard to the residential property No. A-53, Vasant Marg, Vasant Vihar only whereas the Probate Case No.116/2007 filed by the defendant No.1 is for the Probate of Will dated 17.06.1999 duly registered as document No.3839 in additional book No.III Vol. 143 on pages 75 to 79 with the Sub-Registrar VII, New Delhi duly executed by late Shri B.S. Ramdas Kapoor in favour of defendant No.1 in regard to his half shares in both immovable properties i.e. the suit property and property bearing No.C-011/A, Super Mart I, D.L.F. Qutub Enclave, Gurgaon having a super area of 72,697 sq. mtrs. along with two parking spaces bearing Nos. UB-030 and UB-016.

12. It is submitted that the subject matter in all the three cases is different and, therefore, cannot be adjudicated by this Court. The Probate Case is at the advance stage of trial and the examination-in-chief of PW-1 (Defendant No.1) and PW-2 was recorded. It is stated that the present application has been filed by the plaintiff with mala fide intention in order to delay the Probate Proceedings. The defendant No.2 in the written statement has taken the same line of defence as that of defendant No.1.

13. The defendants No.3 and 4 on the other hand have stated that all the defendants in their individual right are entitled to equal 1/5th share in the entire estate of late Shri B.S. Ramdas Kapoor and late Smt. Achla Kapoor. It is claimed that the above said two deceased not only

left the two immovable properties but also left movable properties including jewellery and other valuables which are presently in the control and possession of defendant No.1. Therefore, the plaintiff and defendants are entitled to relief and declaration for 1/5th equal share in the entire estate including movable and immovable assets of the deceased. Defendant No.3 and 4 claimed, to be entitled to the extent of 1/5th equal share in the movable and immovable properties.

14. Learned Senior counsel for the plaintiff has relied upon the judgments of **Chitivalasa Jute Mills v. Jaypee Rewa Cement: (2004) 3 SCC 85** and **Nirmala Devi v. Arun Kumar Gupta and others: (2005) 12 SCC 505** to contend that 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.

15. It is a known fact that transfer of a case from one Court to another is desirable to avoid conflicts of decisions on issues raising same questions of facts and law. The basic and substantial ground that should weigh in the mind of the Court in passing an order for transfer is

to see that conflict of decisions on issues involving same questions of fact by different Courts is avoided.

16. It is also a well settled law that there is no legal bar for transfer of a fit case at any stage of the proceeding and in view of this the technical objection that it is belated is hardly tenable being contrary to the spirit of Section 24. **(974) 40 Cut LT 1096.**

17. I am of the opinion that where prima facie this Court is satisfied on the grounds put forward by the plaintiff in the transfer application that all the suits relates to the same subject matter, the Court should pass an order for transfer without entering into the controversy in the suit. Section 24 CPC confers comprehensive power on the Court to transfer suits, appeals or other proceedings “at any stage” and the Court may not enter into merits of the matter as it may affect the final outcome of the proceeding or cause prejudice to one or the other side.

18. In the case at hand, prima facie, it appears from the facts as averred in the plaint and the written statements filed by the defendants that all the three matters i.e. the present suit, the probate case and the succession case involve the same core issue with regard to the immovable properties and movable properties of the deceased Sh. B.S. Ramdas Kapoor and Smt. Achla Kapoor. No doubt, jurisdiction and prayer made in the three cases are distinct and in the Probate Proceedings initiated by the defendant No.1, examination-in-chief of two witnesses have been recorded, but in totality of the facts and circumstances appearing in the case and looking at the overall view of

the nature of the case and convenience of the parties, it would be just and reasonable to direct transfer of both the matters to this court.

19. Since all the matters refer to the same properties and between the same parties. In the interest of justice and fitness of things, this Court is of the opinion that the application filed by the Plaintiff under Section 24 of Code of Civil Procedure is allowed and Probate Case No.116/07 pending before Additional District Judge, Delhi and Succession Case No. 866/07 pending before Administrative Sub Judge, Delhi, shall now on communication by this court be transferred before this court and all the three matters shall be heard and decided together. The Probate Case would be the lead case in which the examination-in-chief of two witnesses have already been examined. It is also made clear that evidence already recorded will be conducted from the same stage and shall not be recorded de novo.

20. IA No.13460/2007 and IA No.4562/2008 under Section 24 CPC filed by the plaintiff are disposed of in the above terms.

MANMOHAN SINGH, J.

MARCH 13, 2009

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