

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

% Order delivered on: 13th July, 2015

+ **Transfer Petition No. 10/2015**

MD. SWALEHIN & Ors. Petitioners
Through Mr. Varun Goswami, Adv. with
Mr. Rajesh Singh, Adv.

versus

SULTANA BEGUM & ORS. Respondents
Through Mr. Suhail Khan, Adv. for
respondents No.1 to 6.
Mr. Monika Arora, Adv. Standing
Counsel North MCD with
Mr. Harsh Ahuja, Adv. for North
MCD for respondent No.9

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. Md. Swalehein, the petitioner has filed the present petition under Section 24 read with Section 151 CPC on behalf of the petitioner/defendant No.1 seeking transfer of Civil Suit No. 257/2014 titled as "*Mohd. Arshad vs. Mohd. Swalehin & Ors.*" pending before ASCJ (Central District), Tis Hazari Courts, Delhi to this Court and upon transfer to be tried along with C.S. (OS) No.1551/2014 titled as "*Sultana Begum & Ors vs. Mohd. Swalehin & Ors*", pending in this Court.

2. The suit being C.S (OS) No.1551/2014 filed by the respondents No. 1 to 6 is pending before this Court being a suit for

partition and permanent injunction in respect of the partition of the suit property therein being shop No.95, Old Rajender Nagar Market, New Delhi admeasuring 380 sq ft.

3. The pleadings in the above suit pending before this Court have been completed and the said suit was fixed for 5th May, 2015 for framing of issues.

4. During the pendency of the aforesaid suit, on 30th May, 2014, the respondent No.2 herein namely Mohd. Arshad, before the aforesaid Civil Judge, Tis Hazari Delhi filed another civil suit in respect of the same suit property i.e. Shop No.95, Old Rajender Nagar Market being a suit for declaration, permanent and mandatory injunction being Civil Suit No.257/2014 titled as "Mohd. Arshad Vs. Mohd. Swalehin & Ors.".

5. In the said suit the respondent No.2, plaintiff therein i.e. Mohd. Arshad (plaintiff No.2 in C.S. (OS) No. 1551/2014) has raised the similar issue which is directly involved for adjudication in the pending proceedings pertaining to C.S. (OS) No. 1551/2014 and is more specifically mentioned in para 16 of the plaint in C.S. (OS) No.1551/2014 i.e. the alleged forgery of signatures of Late Mohd. Ashqueen, the husband of respondent No.1 and father of other respondents No.2 to 6 including Mohd. Arshad.

6. In the aforesaid civil suit pending before ASCJ, Tis Hazari the petitioner Mohd. Swalehin has been arrayed as defendant No.1 and has also filed his detailed written statement on 9th July, 2014.

7. It is submitted that in the aforesaid civil suit pending before the ASCJ, Tis Hazari, on 22nd January, 2015 issues have also been framed.

8. The controversies and disputes raised in both the Civil Suits i.e. C.S. (OS) No.1551 of 2014 titled as "Sultana Begum & Ors. Vs. Mohd Swalehin & Ors." as also Civil Suit No.257 of 2014 titled as "Mohd. Arshad Vs. Mohd. Swalehin & Ors", can be decided together by the same court. Heard learned counsel for the parties appearing in the matters.

9. A perusal of the pleadings of both matters it would show that the evidence to be led by the parties in support of their respective claims, the contesting parties in both the suits are also same, the suit property involved in both the suits is also the same, the relief claimed in both the suits are also inter-dependent and inseparable from each other, both the suits can be decided and disposed of by a common judgement and in case, both the suits are tried separately, the same may result in passing of conflicting judgments.

10. It would be beneficial and convenient to all the parties to the litigation, in as much as, the trial of both the suits by this Court before which the prior and comprehensive suit for partition being C.S. (OS) No. 1551 of 2014 is pending can be conducted through one set of evidence/ trial and subsequently both the suits can be decided by a common judgment.

11. Under the aforesaid reason, it is a fit case where the prayer sought is liable to be allowed by passing the following orders:-

- (i) The Civil Suit No.257/2014 titled as "Mohd. Arshad Vs. Mohd. Swalehin & Ors." pending in the court of Ms.

Shivali Sharma, ASCJ, Central District, Tis Hazari Delhi be withdrawn from the said court and transfer the said suit, to this Court. Upon such transfer of the aforesaid Civil Suit No.257/2014 from the court of ASCJ, Central District, Tis Hazari, the same be tried and disposed of along with C.S. (OS) No. 1551 of 2014 titled as ""Sultana Begum & Ors. Vs. Mohd.Swalehin & Ors." pending before this Court.

12. The petition is accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 13, 2015