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

+ **CM(M) 744/2016 & CM Nos.27918/2016 & 27919/2016**

MITA DUTTA & ANR Petitioner

Through Mr.Rajesh Mahindru and Mr.Manish
Kumar, Advs.

versus

KRISHNA MATHUR & ORS Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **09.08.2016**

CM No.27918/2016(exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 744/2016 & CM No 27919/2016 (stay)

1. By the present petition the petitioner seeks two reliefs. Firstly, he seeks to impugn the order dated 19.5.2016 passed by the trial court whereby the application of the petitioner under section 151CPC was dismissed declining relief to the petitioner for stay of the suit filed by the respondent. An alternative prayer is sought that if for some reason this court is of the opinion that the suit is not liable to be stayed the suit and the probate petition pending in different courts be heard together for a joint trial as per law.
2. The respondents have filed a suit for a decree of declaration to the effect that the registered Will dated 2.9.2003 allegedly executed by late Shri

S.K.Dutta father of the respondents be declared illegal null and void and further that the respondents have legal right to inherit their shares by way of natural inheritance in the suit property in equal share being co-owners in joint possession. The suit is pending in the court of Ms.Prabh Deep Kaur, Civil Judge, South East, District Court, Saket, New Delhi.

3. The petitioners have filed a petition for probate of the said Will dated 2.9.2003 which is pending before this court.

4. Learned counsel appearing for the petitioner has submitted relying upon judgment of the Supreme Court in ***Chiranjilal Shrilal Goenka vs. Jasjit Singh and Others, (1993) 2 SCC 507*** and ***Amar Deep Singh vs. State & Ors., 125 (2005)DLT 627*** to contend that the suit filed by the respondents is liable to be stayed.

5. The trial court has by the impugned order dated 19.5.2016 held that Section 10 of CPC would not be applicable in the facts of this case. The suit has been filed much prior in time before the probate petition was filed. Suit was filed on 22.5.2014 whereas the present probate petition has been filed on 22.12.2014.

6. Reliance of the petitioner on the judgment of the Supreme Court in the case of ***Chiranjilal Shrilal Goenka vs. Jasjit Singh and Others (supra)*** is misplaced. The Supreme Court in the said judgment stated that the only issue in the probate proceedings relates to genuineness and due execution of the Will. The probate court does not decide any question of title or existence of the property itself. A perusal of the plaint filed by the respondent shows that they have sought the relief apart from declaration of the Will as null and void, a declaration that they have legal right to inherit their share by way of natural inheritance in the suit property in equal share

being co-owner in joint possession. They have sought relief of permanent injunction. These reliefs as sought by the respondent cannot be granted by the probate court.

7. It is an admitted fact that the parties to the present proceedings are the same. The suit property in question is the same. Common oral and documentary evidence is likely to be led. Common questions of fact and law are likely to arise in the two petitions. Hence, keeping in view the judgment of the Supreme Court in *Chitivalasa Jute Mills vs. Jaypee Rewa Cement, 2004 (3) SCC 85* it is appropriate that the two proceedings are heard together.

8. Accordingly, I direct Suit No.209/2014 pending in the court of Civil Judge, South, East District, titled Mrs.Krishna Mathur and Ors. vs. Mita Datta & Ors. to be transferred to this High Court to be heard alongwith Probate Petition No.117/2014 titled Ms.Mita Dutta vs. Mrs.Krishna Mathur & Ors.

9. Parties will lead common evidence in the matter. The probate petition will be the lead case. Petition stands disposed of, as above. All pending applications also stand disposed of accordingly.

JAYANT NATH, J

AUGUST 09, 2016

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