

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO. 149 OF 2016

Chitra Pradeep Chhabra & Ors.

.. Applicants

Vs.

Ritu Rajpal & Anr.

.. Respondents

Mr.M.A.Shah i/b Auroma Law for applicants.

Mr.Ashish Kamath a/w. Mr.Rohan Dakshini i/b M/s. Federal and Rashmikant for respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 27TH JANUARY, 2017

P.C.

1 This application is for transfer of Suit No.6500 of 2004 pending before the Bombay City Civil Court to be tagged along with Testamentary Suit No.38 of 2015 and heard after disposal of the said Testamentary Suit No.38 of 2015.

2 Applicant Nos.2 to 5 are the sons and daughters of applicant no.1. Applicant No.1 was the wife of one Late Pradeep Ram Chhabra. Pradeep Ram Chhabra was the son of one Ramchand K. Chhabra and Gopi Ram Chhabra. The respondents are the two daughters of Ramchand K. Chhabra and Gopi Ram Chhabra. Respondent No.1 had filed the suit No.6500 of

2004 in the Bombay City Civil Court (BCC Suit) for administration of properties and estate left by the deceased Ramchand K. Chhabra, Pradeep Ramchand Chhabra and Gopi Chhabra. The BCC suit came to be amended by deleting the name of Pradeep Ramchand Chhabra since the applicants herein are the only Class-1 heirs of the said Pradeep Ramchand Chhabra.

3 The BCC suit has been filed on the basis that the father Ramchand K. Chhabra and the mother late Gopi Ram Chhabra died intestate whereas Testamentary Suit No.38 of 2015 which is filed by the applicants is on the basis that Gopi Ram Chhabra had left behind a Will and for granting Probate of the said Will. According to the applicants, common issues are involved in both the suits and in the interest of justice and to avoid multiplicity of trial, inconvenience to the parties and to avoid legal costs, it is absolutely necessary that the BCC suit is transferred to this Court, tagged along with Testamentary Suit No.38 of 2015 and heard after the Testamentary Suit No.38 of 2015 is disposed. According to the applicants if the Testamentary Suit is disposed, the BCC suit will also automatically come to an end.

4 I have heard the counsels appearing for the applicants and the respondents and also considered the affidavit and pleadings filed. In ***Deepika Maharana Vs. Prasanna Maharana @ Prasanna Kumar***

Maharana ¹, paragraph 7 reads as under :

7 *The cardinal principle for exercise of the powers under Section 24 as has been held in a number of cases by the Supreme Court, is the convenience and inconvenience of the parties. The question of expediency would depend upon the facts and circumstances of each case, but the paramount consideration for exercise of the power must be to meet the ends of justice. It is true that if more than one court have jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit should be tried in any particular court convenient to him or her. The mere convenience of the parties or any of them may not be enough for exercise of the powers, but it must also be shown that the trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to deprive that party of fair trial. The Code of Civil Procedure has, therefore, vested a discretionary power on the High Court to transfer the case from one court to another, if that is considered expedient to meet the ends of justice. Thus, the paramount consideration while dealing with a petition under Section 24 of the Code of Civil Procedure must be to see that justice according to law is done. If for achieving that objective the transfer of a case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff (see AIR 1990 SC 113; Dr. Subramaniam Swamy Vs. Ramkrishan Hegde).*

5 In addition to the principles expressed therein, the Court would also consider if common issues arise, if evidence could be common and whether deciding one matter would effectively put an end to the other matter.

With this background, let us consider if the application should be allowed.

6 Testamentary Suit No.38 of 2015 is for grant of Probate of a Will executed by late Gopi Ram Chhabra as propounded by the plaintiff. The suit

1 2002 SCC OnLine Ori.91

that is filed before the Bombay City Civil Court by respondent no.1 is for administration of properties and estate left behind by Ramchand Chhabra and Gopi Ram Chhabra. The deceased husband of applicant no.1, Pradeep Ram Chhabra, Gopi Ram Chhabra and the two respondents herein were 4 legal heirs of Ramchand K. Chhabra. Admittedly, Ramchand K. Chhabra, a Hindu, died intestate and therefore $\frac{1}{4}^{\text{th}}$ each of the share would have, in normal circumstances, devolved upon Pradeep Ram Chhabra (son, since deceased), Gopi Ram Chhabra (wife-since deceased) and the two respondents (daughters). Ramchand K. Chhabra died on 10th January 1983. On 22nd January 1999, Pradeep Ram Chhabra, husband of applicant no.1 and father of respondent nos.2 to 5 died. Smt.Gopi Ram Chhabra died on 17th October 2000.

7 The counsel for the applicants stated that the prayer clauses in the BCC suit seek only to declare that the plaintiff as a heir and legal representative of Gopi Ram Chhabra and for a declaration that the plaintiff is entitled to $\frac{1}{3}^{\text{rd}}$ share of all the properties of Gopi Ram Chhabra. But if one considers paragraphs 1, 2, 3 and 16A of the BCC suit plaint, it proceeds on the basis that dispute relates to the estate of both Ramchand K. Chhabra and Gopi Ram Chhabra. The relevant portions are as under :-

1 The Ramchand K. Chhabra died on or about 10/01/1983.

The Pradeep Ram Chhabra died on or about 22/01/1999. The said Gopi Ram Chhabra died on or about 17/10/2000. The Plaintiff states that late Ramchand K. Chhabra and Gopi Ram Chhabra died intestate without making Will.....”

2 The Plaintiff files this suit for administration of the properties and estate left by the deceased Ramchand K. Chhabra and Gopi Ram Chhabra. The Plaintiff is the daughter of the deceased Ramchand K. Chhabra and Gopi Ram Chhabra and sister of Pradeep Ram Chhabra.

3 The Plaintiff states and submit that the Plaintiff and Defendant No.6, as the daughters of Ramchand K. Chhabra and Gopi Ramchand Chhabra and Defendant Nos.1 to 5 as the widow, daughters and son of the pre-deceased son (Pradeep Ram Chhabra) are the only heirs and legal representatives of the deceased Ramchand K. Chhabra and Gopi Ram Chhabra. The deceased have left huge properties and estate behind them. The Plaintiff states and submits that as the deceased have not made any Will and died intestate, the Plaintiff is entitled to 1/3rd share from the deceased estate and property.....”

.....

16A It is submitted that on the death of Late Mr.Ramchand K. Chhabra, his state devolved upon Mrs. Gopi Ramchand Chhabra, Mr.Pradeep R. Chhabra, the Plaintiff and Defendant No.6 equally..... Accordingly, Plaintiff is the owner of joint property of the estate of the deceased Ramchand Chhabra as well as the property of the deceased Mrs.Gopi Chhabra.

Therefore, the plaintiff in BCC suit, respondent no.1 herein, says she was already entitled to 1/4th of the share in estate of Ramchand K. Chhabra and in view of death of Gopi Ram Chhabra should 1/3rd of estate of Ramchand K. Chhabra should go to her. So if the plaintiff in Testamentary Suit No.38 of 2015 succeeds in getting a Probate of the Will of Gopi Ram Chhabra, the result would be the applicants will be entitled only to the 1/4th share Pradeep R. Chhabra and 1/4th share Gopi Ram Chhabra would have got from the

estate of Ramchand K. Chhabra.

8 Moreover, in the BCC suit issues as to whether Ramchand K. Chhabra's assets could have been bequeathed by Gopi Ram Chhabra, assuming her Will gets probated, could be decided. In other words, whether Gopi Ramchand Chhabra had title to bequeath itself is an issue. In probate proceedings, the Court does not decide on question of title in respect of the estate of the deceased, whereas, in an administration suit the circumstances are different. The Court also considers titles, [*Babulal Khandelwal & Ors. Vs. Balkishan D. Sanghvi & Ors.*²].

9 Therefore, since the cause of action in the BCC suit is different from the Testamentary Suit No.38 of 2015 and the BCC suit pertains to a larger estate, in my view, it is not necessary to transfer the BCC suit to this Court to be heard along with Testamentary Suit No.38 of 2015. Moreover, between 2006-2015 this Testamentary Suit No.38 of 2015 was lying in list of 'dismissed suits' and only in 2015, the suit came to be restored. Shri Kamath is justified in expressing an apprehension that if the reliefs, as sought by the applicants, is granted, they would also manage not to prosecute the testamentary suit with diligence and that would also delay the BCC suit

2 (2008) 10 SCC 485

where issues have been settled and matter is listed on 10th February 2017 for further directions on evidence. Shri Kamath assures the Court, on instructions, that the plaintiff in the BCC suit will not do anything to delay that suit and will prosecute the suit diligently.

10 The Miscellaneous Civil Application accordingly dismissed.

(K.R. SHRIRAM, J.)