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

+ TR.P.(C.) 123/2016

USHA KOHLI

..... Petitioner

Through: Mr.Pramod Kumar Sharma &
Mr.Manish Kumar Sharma, Advs.

versus

ROSHAN LAL VIG & ORS

..... Respondents

Through: Mr.Santanu Kanungo, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

04.05.2017

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1. By way of this transfer petition, the petitioner is seeking transfer of Probate case No.159/2011 titled as "*Roshan Lal Vig & Others Vs. State*" pending before the Court of learned ADJ, Saket Courts, New Delhi to the High Court as the Civil Suit No.928/2014 filed by her with a prayer for decree of declaration, possession, damages, partition and permanent injunction involving the same Will, is pending.

2. In the transfer petition, the petitioner has averred that Smt.Ram Piari was the mother of the parties. The petitioner is Smt.Usha Kohli, daughter of late Smt.Ram Piari and late Sh.Bodh Raj Vig. Respondent Nos.1 to 3 are brothers and respondent Nos.4 to 6 are sisters of the petitioner.

3. On the basis of an unregistered Will dated 25th January, 2001 claimed to be executed by Smt.Ram Piari, the respondents herein filed Probate case No.159/11 which is pending before the Court of learned ADJ, South District, Saket Courts, New Delhi.

4. When the petitioner got the knowledge about the alleged Will dated 25th January, 2001, she filed the Civil Suit No.928/2014 in the High Court as the value of the property is more than rupees two crores.

5. The ground on which the petitioner is seeking transfer is that the subject matter before the learned ADJ in the probate petition as well in the Civil Suit before the High Court is relating to the alleged Will dated 25th January, 2001 executed by late Smt.Ram Piari. The application filed by the petitioner under Section 10 CPC before the learned ADJ is pending disposal. In the Civil Suit the issues are yet to be settled due to pendency of the transfer petition. The prayer made in this petition is that in the interest of justice the Probate case No.159/2011 be transferred to the High Court to avoid recording of conflicting findings on issues which are directly or substantially in issue in the civil suit and probate petition.

6. In support of his submissions, learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court reported as ***“Nirmala Devi Vs. Arun Kumar Gupta”, JT 229, 2000; “Balbir Singh Wasu Vs. Lakhbir Singh”, 2005 (12) SCC 503*** and decision of Delhi High Court reported as ***“Virender Gupta Vs. Nitender Gupta” 1987 (31) DLT 406.***

7. Heard.

8. Learned counsel for the petitioner has placed on record the copy of the proceedings dated 12th July, 2016 and 17th October, 2016 in Civil Suit No. 928/2014 wherein the issues have not been settled due to pendency of transfer petition.

9. Learned counsel for the petitioner submits that since the Civil Suit No.928/2014 also pertains to the said Will and valuation of the property

being more than rupees two crores, it is desirable that the probate case along with the civil suit, is also tried by the High Court.

10. Learned counsel for the respondents has strongly objected to the transfer of the probate case No.159/2011 so as to be tried along with Civil Suit No.928/2014 submitting that the probate case is at advance stage. The petitioner, who is respondent No.5 in the probate case, is not leading the evidence on one pretext or the other despite ample opportunities being given. It has also been contended by the learned counsel for the respondent that the probate case was filed in the year 2011 whereas the civil suit was filed in the year 2014 by the petitioner with the sole motive to delay the disposal of the probate case which is evident from the proceedings recorded by the learned ADJ in the probate case.

11. After considering the rival contentions, it appears that by getting the probate case transferred to the High Court, the petitioner wants the two cases to be consolidated for trial and disposal. Consolidation of the two cases is a matter of procedure. No doubt, the execution of the unregistered Will dated 25th January, 2001 by late Smt.Ram Piari, mother of the parties may be common in both the cases, but that itself is no ground to transfer the probate case to High Court. In spite of the issue of Will being common, cases should not be consolidated when the case earlier instituted is at a much advance stage than the latter case. If consolidation is allowed in such situation, it will cause delay in disposal of the earlier case which is already listed for objector's evidence but the petitioner/defendant has not led so far.

12. The probate case which was instituted earlier i.e. in 2011 is at much advance stage whereas the Civil Suit No.928/2014 was filed in the year 2014 wherein issues are yet to be settled. If prayer made in the transfer petition is

granted, the progress in the probate case would be halted. So far as valuation of the property is concerned, it is not for this Court to go into this issue.

13. In the case of ***Ravi Khanna Vs. Pankaj Khanna & Ors, 152 (2008) DLT 484*** it was held that mere pendency of a suit for partition puts no bar for grant of probate or letter of administration under the provisions of the Succession Act. It is settled law that probate Court has jurisdiction to determine about the genuineness of the Will and whether the petitioner who applied for the probate was entitled to grant of probate of the Will or not.

14. A judgment in a probate case is a judgment *in rem* whereas a judgment in a civil suit is a judgment *in personam*. Therefore, prima facie the civil suit filed by the petitioner herein in the year 2014, after about three years of filing of the probate case, can await the outcome of probate case and can be decided on the basis of decision in probate case in respect of the Will claimed to have been executed by late Smt.Ram Piari.

15. The transfer petition does not appear to be bonafide and if allowed, it will cause delay in the disposal of the probate case which is listed for objector's evidence.

16. The transfer petition is dismissed.

PRATIBHA RANI, J.

MAY 04, 2017

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