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

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*Date of decision: 10.01.2017*

+ TRP.(C)127/2016

AJAY KUMAR GUPTA & ANR. ..Petitioner/Appellant

Through : Mr.Jai Sahai Endlaw, Adv.

versus

ROOPA GUPTA

....Respondent

Through: Mr.Rajesh Yadav, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (ORAL)**

1. The present petition is filed under section 24 CPC seeking transfer of Probate Case bearing No.23/2015 (old) [Probate Case No.4/2016 (New)] titled *Roopa Gupta vs. State and Ors* pending before the court of Ms.Veena Rani, ADJ, Patiala House Court, New Delhi to this court to be tried by consolidating the said case with CS(OS) 3625/2014 titled *Arjun Singh Gupta vs. Ajay Gupta* pending before this court.

2. Some of the relevant facts are that the petitioners are the step sons of the respondent. The respondent alongwith her deceased husband (father of the petitioner) filed the suit CS(OS) 3625/2014 seeking a decree of partition declaration, permanent and mandatory injunction. The suit pertains to properties bearing No. 19, Poorvi Marg, First Floor, Vasant Vihar, New Delhi, and D-1/37 First and Second floor, Vasant Vihar, New Delhi.

3. During pendency of the suit the father of the petitioners died on

29.8.2015. The probate petition has been filed on 16.11.2015. The respondent had sought grant of letters of administration of the Will Dated 15.4.2015 of the deceased late Shri Arjun Kumar Gupta (father of petitioner).

4. I have heard learned counsel for the parties.

5. Learned counsel for the respondent has strongly objected to the present petition. He submits that the two petitions need not be consolidated and tried together. He submits that there is no commonality of issues in the two cases. The evidence in both the matters is totally different and the judgment in the two cases will also be passed on different parameters. He also relies upon judgments of the Supreme Court in ***Kanwarjit Singh Dhillon vs. Hardayal Singh Dhillon and Others, (2007) 11 SCC 357*** and judgment of this court in ***S.C.Jain vs. Bindeshwari Devi, 1997 (67) DLT 189*** to contend that in a petition for probate the court has to see that a Will executed by the testator was actually executed by him in a sound disposing state of mind and that is the only issue in the probate petition and the other issues cannot be adjudicated upon. He, hence, submits that on account of consolidation the probate petition would get delayed.

6. Learned counsel for the petitioner has relied upon judgment of the undersigned in ***Dr.(Mrs. Pramila Srivastava vs. Smt.Asha Srivastava & Ors., 2014 (140) DRJ 56*** to support his petition.

7. It is apparent that the suit and the probate petition have facts which are interlinked to each other. The suit seeks partition of the three properties stated above. The alleged Will of late Shri Arjun Singh Gupta which is the subject matter of the probate petition also deals with the same three properties. Some of the relevant portions of the Will reads as follows:-

“That the aforesaid properties are subject matter of adjudication in a suit for partition, declaration, permanent and mandatory injunctions in the Hon’ble High Court of Delhi vide suit bearing No.CS(OS) No.3625/2014 titled as “*Arjun Singh Gupta & Another vs. Ajay Kumar Gupta and Another*.”

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That after adjudication of the matter by the Court if the court declares that the one or more of the aforesaid three immovable properties belong to me individually than the said one or more property or whatever share comes to my share, it shall exclusively vest in my wife Smt.Roopu Gupta by virtue of this Will.”

8. Learned counsel for the respondent is correct to the extent that the bulk of the evidence led by the parties in the two matters would be different. Hence it may not be proper to consolidate the two suits.

9. However, it is also important to note that there are some common facts/issues/subject. The parties are the same. The properties in question are the same. Accordingly, it would be in the interest of justice that the two matters are heard by the same court. This will ensure that the court adjudicating upon the matter has the complete picture before it and would pass orders keeping into account the full facts.

10. Reference may be had to the judgment of this court in ***S.C.Jain vs. Bindeshwari Devi (supra)*** which has been relied upon by learned counsel for the petitioner where this court has stated as follows:-

“20.1 A direction for analogous or simultaneous hearing of the suits requires the court to take up the two suits for hearing on the same date. The identity of the suits remains distinct and independent from each other. It is not merged either wholly or even partially. The hearing takes place separately in each suit though on the same date. Such are the cases where on account of similar or same question of law arising for decision in different

suits or the same material witness being required to be examined in different suits, for the sake of convenience the court directs the suits to be taken up for hearing on one day. There may be cases where in spite of the parties and or the subject matter being different, not attracting applicability of Section 10, Section 151 Cpc, the Court feels that while hearing one suit, it must keep a watch on the progress of or developments in the other suit, and Therefore, directs the two suits to come up for hearing on the same day.”

11. In the present case, in my opinion, this is a fit case for a direction for simultaneous hearing of the two cases. This is on account of the fact that there are some similar questions/identical issues of facts. There is a commonality of the immovable property involved in both the cases. The parties are also common. It would be appropriate that the two matters are heard together by the court.

12. Accordingly, the petition is allowed to that extent. The Probate Case bearing No.23/2015 (old) [Probate Case No.4/2016 (New)] titled *Roopa Gupta vs. State and Ors* pending before the court of Ms.Veena Rani, ADJ, Patiala House Court, New Delhi be transferred to this court to be tried with CS(OS) 3625/2014 titled *Arjun Singh Gupta vs. Ajay Gupta* pending before this court.

13. CS(OS) 3625/2014 is coming up on 20.07.2017. Parties to appear before the court on the said date.

**JAYANT NATH  
(JUDGE)**

**JANUARY 10, 2017**

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