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

+ **TR.P.(C.) 143/2016**

CHANDER LEKHA TULI

..... Petitioner

Through: Mr. Achal Gupta & Ms. Annie Rais,
Advs.

Versus

SURESH NAYYAR AND ORS

..... Respondents

Through: Mr. Nishant Datta & Mr. Pradeep
Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.11.2017

CM No.41944/2016 (for exemptions)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. Transfer is sought of Suit No.612010/2016 titled "Chander Lekha Tuli Vs. Suresh Nayyar & Ors." of the Court of Civil Judge, West District, Tis Hazari Courts, Delhi to this Court to be taken up along with CS(OS) No.1134/2015 titled "Chander Lekha Tuli Vs. Suresh Nayyar & Ors.".
4. Notice of the petition was ordered to be issued and the counsel for all the four respondents / defendants appears.
5. The counsel for the petitioner/plaintiff has argued i) that the petitioner/plaintiff had instituted the suit aforesaid before this Court for partition of a property inherited by the parties from common ancestor; ii) that the respondents / defendants in the written statement to the said suit disclosed a document claimed to be the Will of the common ancestor and a

partition carried out by the respondents / defendants amongst themselves in accordance with the said Will; iii) that the petitioner / plaintiff filed the suit, of which transfer is sought, challenging the Will and the partition carried out by the respondents / defendants *inter se*; and, iv) that it is expedient that both the suits are tried by this Court.

6. I have enquired from the counsel for the petitioner / plaintiff the need for filing the second suit.

7. It has further been enquired from the counsel for the petitioner / plaintiff that the issues must have been framed in the suit before this Court on the defence aforesaid of the respondents / defendants.

8. The counsel for the respondents / defendants invites attention to page 42 of the paper book being the order dated 20th November, 2015 in the suit pending in this Court framing the issues therein and which shows that issues qua the Will set up by the respondents and the partition claimed by the respondents have been framed in the suit.

9. It is quite obvious that the suit before the Civil Judge was filed without there being any need therefor. Needless to state that if the issues aforesaid in the suit pending before this Court are decided in favour of the petitioner / plaintiff, the Will as well as the partition would not be considered while granting the relief sought by the petitioner/plaintiff in the suit before this Court.

10. In this view of the matter, need for transfer is not felt.

11. The counsel for the petitioner then states that the respondents / defendants, on the basis of the Will and the partition, have also obtained mutation from Municipal Corporation of Delhi in their names.

12. I have enquired from the counsel for the respondents / defendants, whether not the mutation carried out will have to be changed in the event of the issues aforesaid in the suit in this Court being decided in favour of the petitioner / plaintiff.

13. The counsel for the respondents / defendants agrees.

14. Clarifying that in the event of the petitioner / plaintiff succeeding in the suit pending before this Court, the respondents / defendants shall also be liable to effect change in the mutation carried out with respect to property No.14/3, Punjabi Bagh Extension, New Delhi, the petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 01, 2017

‘gsr’..