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

+ TR.P.(C.) 167/2016

SHAKUNTALA DEVI

..... Petitioner

Through: Mr. Ashish Verma and Ms. Prachi
Johri, Advs.

Versus

VINOD K DAYAL & ORS

..... Respondents

Through: Mr. Amiet Andley and Mr. Arun K.
Sharma, Advs. for R-1 to 3.
Mr. Karan Sharma, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **27.10.2017**

CM No.46157/2016 (for exemption)

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

**TR.P.(C.) 167/2016 & CMs No.46156/2016 (for stay) & 22928/2017 (u/O
XXII R-3 CPC)**

3. Transfer is sought of CS No.14/2016 titled ***Smt. Shakuntala Devi Vs. Mayank Dayal & Ors.*** of the Court of Smt. Navita Kumari Bagha, Additional District Judge (ADJ)-01, (South), Saket Courts, New Delhi to this Court.
4. Notice of the petition was ordered to be issued and the counsel for the respondents No.1 to 3 appears. Respondent No.4 is Delhi Development Authority (DDA).

5. During the pendency of this petition, the petitioner has died and the proceedings for substitution of her legal representatives (LRs) are underway before the Registrar and for which purpose the matter is posted before the Registrar on 4th January, 2018.

6. Being of the view that substitution of LRs of the deceased and which itself is raising an issue, be not decided in this transfer petition and the said controversy be left to be decided in whichever suit the same arises, the counsels have been asked to address on the merits of the Transfer Petition.

7. The counsel for Vinay Dayal claiming to be the heir of the deceased petitioner Shakuntala Devi under a document claimed to be the Will of the deceased petitioner Shakuntala Devi states, (i) that the suit which is sought to be transferred was also earlier pending in this Court as CS(OS) No.3631/2014 and was transferred to the Sub-ordinate Courts on enhancement in the minimum pecuniary jurisdiction of this Court; (ii) that CS(OS) No.1640/2014 and CS(OS) No.2441/2014 are already pending in this Court; (iii) that CS(OS) No.1640/2014 was filed by the deceased petitioner Shakuntala Devi for declaration that she is the owner of property No.C-216, Sarvodaya Enclave, New Delhi and Sudha Dayal, wife of respondent No.1 Vinod Kumar Dayal, being the daughter-in-law of the deceased petitioner Shakuntala Devi was the *benami* owner of the property and seeking to recover possession of the first floor of the property in possession of the respondent No.1 Vinod Kumar Dayal and his children; (iv) that CS(OS) No.2441/2014 has been instituted by respondent No.2 Mayank Dayal being the son of respondent No.1 Vinod Kumar Dayal, for recovery of possession of ground floor of the property from the deceased petitioner

Shakuntala Devi and her son Vinay Dayal and his family members; (v) that the suit which is sought to be transferred was filed by the deceased petitioner Shakuntala Devi for declaration that the documents of conveyance of title of the property in favour of respondent No.2 Mayank Dayal are null and void and the same are liable to be cancelled.

8. The counsel for the respondents No.1 to 3 has contended (a) that the suit which is sought to be transferred is now pending in the Court of Dr. Neera Bharihoke, ADJ (South), Saket Courts, New Delhi; (b) that the respondents are controverting the document claimed by Vinay Dayal to be the Will of the deceased petitioner Shakuntala Devi; and, (c) that the respondents No.1&2 Vinod Kumar Dayal and Mayank Dayal have filed CS(OS) No.575/2017 before this Court *inter alia* for declaration of the said document to be not the Will of the deceased petitioner Shakuntala Devi. Else, the counsel for the respondents No.1 to 3 has no objection to the transfer.

9. A case for consideration of all the suits by one Court only is made out.

10. It is clarified that it will be open to the parties to urge before the Court where the suits are now being ordered to be listed, that in substitution of the LRs of the deceased petitioner Shakuntala Devi, notice should go to all the natural heirs of the deceased petitioner Shakuntala Devi.

11. The suit aforesaid is transferred from the Court of ADJ-01 (South), Saket Courts, New Delhi to this Court to be taken up by the same Bench on the Original Civil Jurisdiction of this Court before which CS(OS) Nos.1640/2014, 2441/2014 and 575/2017 are listed.

12. The counsels state that the three suits aforesaid of this Court are also not before the same Bench.
13. The counsels will have liberty to make the request in this regard before the Judge-in-Charge, Original Side of this Court.
14. The Transferor Court is requested to immediately physically transfer the file of the suit ordered to be transferred.
15. The parties to appear in the transferred suit before the Joint Registrar on 13th December, 2017, on which date CS(OS) No.2441/2014 is stated to be listed before the Joint Registrar.
16. The counsel for the respondents No.1 to 3 has also informed that in terms of order dated 25th May, 2017 in CS(OS) No.2441/2014, all the natural heirs of the deceased petitioner Shakuntala Devi have already been substituted.
17. The petition is disposed of.
18. The date of 4th January, 2018 before the Joint Registrar is cancelled.

RAJIV SAHAI ENDLAW, J.

OCTOBER 27, 2017

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