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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Misc. Civil Application No. 111 OF 2018

Sharwan Vishwanath Kapur & Ors.

...

Appellant

Vs.

Kulbhushan Kapur (since deceased,  
represented through LRs.) & Ors.

... Respondents

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Mr. P. B. Shah i/b K. P. Shah, for the Applicants.

Mr. Prashant Chand Chande a/w Ms. Mniish Lad & V. S.  
Vengurlekar i/b Nair Vengurlekar & Co. for Respondent Nos. 1A,  
and 1B.

Mr. Naresh Kapur – Respondent No. 4 – in person – present.

Mrs. Smita Mane, for Respondent Nos. 7 & 8.

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CORAM : A. M. DHAVAL, J.

DATE : OCTOBER 6, 2018

PC :-

1. Learned advocate Mr. P. B. Shah for the Applicants submits that defendant No. 4 Naresh Kapur has filed Testamentary Suit No. 131 of 2010 for obtaining probate in respect of the will executed by his grand-father Vishwanath on 16<sup>th</sup> February, 1970 in this Court. B.C.C.C. Suit No. 7488 of 1983 for partition is pending in the City Civil Court for partition,

between the parties, wherein the person claiming rights under the will is defendant No. 4. The common questions of law and facts are involved. The will has been disputed by his father (now deceased), and the mother. Learned advocate Mr. Prashant Chande appearing for Respondent Nos. 1A, 1B and 1C (original plaintiffs) submits that the plaintiffs are not disputing the will, and therefore, there is no necessity to transfer the suit from the City Civil Court to this Court.

2. Learned advocate Mr. Shah disputes the position. He relies on para 74 on page 40 of the evidence filed by Nirmal Kapur, mother of defendant No. 4, wherein the will has been strongly disputed. Learned advocate Mr. Chande brings to my notice para 69 and submits that Nirmal has given no objection for distribution of the property as per the will executed by her father in law. In view of the contradictory stands in the evidence, when the query was made to learned advocate Mr. Chande, on instructions, he submits that the plaintiffs are not disputing the will in the City Civil Court Bombay and he makes a statement and showed willingness to delete para 74 from the deposition as also the similar statements challenging the will from the deposition. The statement is accepted.

3. Learned advocate Mrs. Mane appearing for Respondent Nos. 7 and 8 submits that one of the sisters of

defendant No. 4 is disputing the will in probate proceeding but she has not filed appearance, nor written statement in the suit before the City Civil Court. In view of the statement made at the bar and considering the facts, I find that no common question of facts are involved in the matter, and therefore, the civil application for transfer of suit pending before the City Civil Court deserves to be dismissed and is accordingly dismissed.

4. The applicants are at liberty to take out appropriate proceedings in case parties do not abide by the statement made in this Court.

5. Copy of this order be sent to the City Civil Court, Fort, Bombay.

Sd/-  
[ A. M. DHAVALA, J.]

Vinayak Halemath