

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

MISC.CIVIL APPLICATION NO.158 OF 2018

Markand Balabhai Desai ...	...Applicant
VS	
Dhimant Balabhai Desai & ors....	...Respondents

Mr.Bhavin Gada with Ms.Vaishali Sharma I.b Harakhchand & Co
for Applicant
Mr.S.R.Raval for Respondent no.1

CORAM : A. M.DHAVAL.E.J

DATED :27TH AUGUST, 2018

P.C. :

Heard learned advocates for the parties.

2. This is an application under section 24 of the Code of Civil Procedure,1908 for transfer of Suit No.4162 of 2008 pending before the City Civil Court,Mumbai to this Court for clubbing it with Testamentary Suit No.10 of 2016. There is no dispute that Suit No.4162 of 2008 is filed by one Dhimant against his mother, brothers and sisters for partition and separate possession of shares in the property left behind by their grand-father and deceased father. His brother Mr.Markand Desai has filed Petition No.681 of 2015 before

this Court on the Original side for claiming that their father Balabhai has executed a will. Both the matters involve same properties. It is not disputed that the decision in Testamentary Suit is going to affect the dispute in the partition Suit. In order to avoid conflicting decisions, it is necessary to bring both the Suits together and in order to avoid further delay, they should be clubbed instead of stay of one suit.

3. Hence, the application is allowed. Bombay City Civil Suit no.4162 of 2008 pending before the Civil Court no.13 is transferred to this Court for trial along with Testamentary Suit no.681 of 2015.

4. Parties are directed to remain present before the Testamentary Court on 24.9.2018. The City Civil Court is directed to send the record at the earliest.

Misc.Civil Application is disposed of accordingly.

{A.M.DHAVAL, J}

