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

MISCELLANEOUS CIVIL APPLICATION NO. 215 OF 2017

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|--|---|-------------|
| 1. Kamaladevi Raghunath Kankani |] | |
| age: 60 years, Indian Inhabitant, |] | |
| residing at Flat No.53A, 5 th floor, |] | |
| Shivam Apartment, J.P. Road, Andheri (W) |] | |
| Mumbai 400 058. |] | Applicants. |
| |] | |
| 2. Sandip Raghunath Kankani |] | |
| age: 42 years, Indian Inhabitant, |] | |
| residing at Flat No.53A, 5 th floor, |] | |
| Shivam Apartment, J.P. Road, Andheri (W) |] | |
| Mumbai 400 058. |] | |
| |] | |
| 3. Ritu Vikas Mundra |] | |
| an adult, Indian inhabitant |] | |
| residing at : 6 th floor, Raju Valika , 11 th road |] | |
| Khar (W), Mumbai 400 052. |] | |

V/s.

- | | | |
|------------------------------------|---|-------------|
| 1. Rachana Lalit Kumar Kankani |] | |
| an adult, Indian inhabitant |] | |
| residing at Modi Bhawan, Main road |] | |
| P.O.Sojat District Pali |] | |
| Rajasthan 306 103 |] | |
| |] | Respondents |
| 2. Yash Lalit Kumar Kankani |] | |
| Indian inhabitant |] | |
| residing at Modi Bhawan, Main road |] | |
| P.O.Sojat District Pali |] | |
| Rajasthan 306 103 |] | |

Mr. Nimay Dave a/w Mr. Yogesh Gaikwad i/by M/s Bilwala and Co., for the applicants.

Mr. Yashpal Jain a/w Mr Ankit Pandey, for the respondent Nos. 1 and 2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J

DATE : 27th JUNE, 2018.

P.C. :

1] This application is filed under Section 24 of the Code of Civil Procedure, for transfer of S.C. Suit Nos. 2521 of 2013 and 2522 of 2013, from the City Civil Court, Dindoshi, Mumbai to this Court, where High Court suit No.371 of 2013 is pending, in it's original jurisdiction.

2] The said suit No.371 of 2013 is filed by the present applicants on 16.10.2012, seeking 1/3rd share in the property, left behind by late Lalit Kumar Kankani. Thereafter, S.C. Suit Nos, 2521 of 2013 and 2522 of 2013, are filed by respondent Nos. 1 & 2, in the City Civil Court, on 20.3.2013 and 26.4.2013, respectively, claiming the property from the assets of late Raghunath Kankani.

3] Applicant No.1 is the wife of late Raghunath. Applicant No.2 is the son of late Raghunath. Applicant No.3 Ritu is his daughter; whereas respondent No.1 Rachana is the wife of Lalit Kumar. Lalitkumar was the son of late Raghunath. Respodnent No.2

is the son of Lalit Kumar.

4] It is common ground between the parties that on the basis of the complaint lodged by respondent No.1 Rachana against the applicants for the offence under Section 498 and 406 r/w 34 of the Indian Penal Code, an application for anticipatory bail was filed by the present applicants. In that application some mutual arrangement was arrived at. As a result thereof, share was given to respondent Nos.1 & 2, in the property of Lalit Kumar, with specific understanding that if there are any other additional properties, respondents would get share in those properties also.

5] It is the case of respondents that Raghunath has died 2 months prior to the death of Lalit Kumar. However, this fact was not disclosed to respondent No.1 and as a result, they did not get share in the property left behind by late Raghunath. Hence to get their share in the said property, respondents had filed those two suits in the City Civil Court, Mumbai.

6] According to respondents, therefore, these two suits had no connection with the suit which is filed by applicants in this Court, relating to their 1/3 rd share in the property left behind by Lalitkumar.

7] Per contra, according to learned counsel for the applicants, ultimately the main question involved in all these three

suits pertains to the share of applicants and respondents in the properties left behind by Raghunath. Hence as the applicants' suit is very much pending in the High Court and it pertains to the administration of estate left behind by Raghunath, it would be in the fitness of things that the two suits filed by respondents and which are pending in the City Civil Court, are also transferred to this Court so that all the three suits can be decided together.

8] It is further submitted by learned counsel for the applicants that the suit filed by the applicants in this Court is earlier in time than the two suits filed by the respondents. However, the stage of the suits more or less is at the same. If at all issues are already framed in the suits pending in the City Civil Court, the applicants are ready to abide by the terms and conditions to be imposed by this Court for expediting their suit also. Moreover, in their suit the respondents have not filed their written statement. Hence, if they file their written statement, that suit can also be ready for final hearing.

9] The submission of learned for respondents, however, is that the issues involved in the two suits filed by them in the City Civil Court and the issues involved in the suit filed by applicants, in High Court are totally different. The suit filed by applicants in this Court is only to get out of the clutches of the order passed by this Court in the

Anticipatory Bail Application, and the said suit is not really in the nature of administration of the estate. By the said suit, the applicants only want to defeat the interests of the respondents, which they have got as per order passed in the Anticipatory Bail Application. It is also submitted that if respondents' suits are brought to this Court, the hearing of those suits will be delayed. Moreover, parties to the suits are also different. It is submitted that applicant No.3 Ritu is not a party to the suit pending in the High Court, and therefore, it would not be proper to transfer the suits pending in the City Civil Court to this Court. It is also urged that the subject matter involved in both the suits filed by applicants and respondents is also different and in such situation, this Court should not exercise its discretion of transferring those suits to this Court.

10] It is undisputed that the main contesting parties to both the suits filed by respondents and to the suit filed by the applicants are one and the same. All of these parties are claiming the share in the properties left behind by Lalit Kumar. Whether it was his own estate or whether he has received the said estate from his late father Raghunath, ultimately the dispute pertains to distribution of the estate of Raghunath. Even in their own suits also respondents have referred to the the order passed in the Anticipatory Bail Application by virtue of which they got share in the property left behind by late

Lalitkumar.

11] As per applicants, the property which the respondents had got as per the order passed in Anticipatory Bail Application, was more than their entitlement and therefore, that issue will have to be considered in the suit which is filed by the applicants, and also in the suits which are filed by respondents. Whether the property or estate which the respondents had received as a result of the order passed in the Anticipatory Bail Application was correct as per their share, will be an issue which will have to be considered in the light of the estate left behind by late Raghunath.

12] Moreover, it is pointed out by learned counsel for the applicants that in some of the properties left behind by late Raghunath, like S.B.I. bonds, respondents are also given some share in the said property, as a result of order passed in the Anticipatory Bail Application.

13] Therefore, the point to be stressed is that the issues involved in all these three suits are more or less one and the same, pertaining to the rights of the parties in the properties left behind by late Raghunth and late Lalit Kumar. Their shares are required to be decided in the light of the order passed in the Anticipatory Bail Application and in such situation, it would be always desirable that all the three suits are tried together so that there should not be any

conflicting decisions.

14] As regards the contention that the suits pending in the City Civil Court are already ripe for hearing, as submitted by learned counsel for the applicants, if respondents file their written statement in the suit pending in this Court, that suit will also be ripe for hearing and all the three suits can be decided together, particularly considering the fact that suit filed by the applicants is prior in time than the suits filed by respondents. Therefore, in the interest of justice, in order to avoid any conflicting decisions, application is allowed.

15] S.C. Suit Nos.2521 of 2013 and 2522 of 2013, pending on the file of City Civil Court, Dindoshi, Mumbai, are transferred to this Court, in its original jurisdiction, where Suit No.371 of 2013 is pending.

16] Application is disposed off in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]