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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.298 OF 2017

Smt. Jayshree Dinesh Toprani & Anr. ..Applicants.

V/s.

Paresh Karsandas Toprani & Ors. ..Respondents.

Mr.Sanjay T. Manek for the applicants.

Mr.Yashpal Jain with Mr.PPandey for respondent Nos.1 to 3.

CORAM: NITIN W.SAMBRE, J.

DATE : JANUARY 11, 2018

PC:-

Heard learned counsel for the parties.

2. On September 7, 2004 Dinesh, husband of applicant No.1 and father of applicant No.2 expired, leaving behind some properties. Respondent Nos.1, 2 and 3 also claim to be legal heirs of deceased Dinesh.

2. The present applicants filed Suit No.677/2006 before

the Original Side of this Court praying therein for a decree for certain declaration *qua* share in the estate of deceased way back 2006. In the said suit, this Court on May 4, 2006 was pleased to grant certain interim relief.

3. Contempt Petition No.61/2009 was filed by the applicants against the respondents for flouting the order dated May 4, 2006 in which this Court had issued notice to the respondents. Similar contempt proceedings are initiated against the respondents being Contempt Petition No.64/2009.

4. The respondents herein have initiated Testimentary Suit No.72/2008 on the Original side of this Court.

5. It is in this backdrop the present application under section 24 of the Code of Civil Procedure is moved seeking transfer of the proceedings in terms of prayer clause (a) of the application.

6. It is the case of the applicants that Civil Suit No.677/2006, in view of amendment to the pecuniary jurisdiction,

was transferred to the City Civil Court and re-numbered as Suit No.6003/2006. It is further claimed that the said Suit needs to be decided along with Contempt Petition Nos.61/2009 and 64/2009 by clubbing the same with the Testimentary Suit No.72 of 2008. By inviting attention of this Court to the pleadings of the respective parties, the prayers made by the respective parties in the proceedings initiated by them, it is sought to be impressed upon this Court to claim that the proceedings pending before the City Civil Court needs to be transferred to this Court on its Original Side.

7. *Per contra*, the learned counsel for the respondents would urge that the proceedings before the City Civil Court will be tried independent of the proceedings in Testimentary Suit No.72 of 2008. According to him, just because it is inconvenient to attend the proceedings before City Civil Court for the applicants, transfer of proceedings as prayed cannot be granted unless a case to that effect is made out. He submits that the present application needs to be rejected.

8. From the pleadings and claims made by the rival parties during the arguments, it is clear that the parties to the present proceedings are claiming to be heirs of deceased Dinesh. The applicants and the respondents are claiming that they have rights in the properties of Dinesh *qua* status as legal heirs of deceased Dinesh. In the backdrop of the said claim, the parties have initiated different proceedings initially on the Original Side of this Court, however, proceedings mentioned in prayer clause (a) were transferred because of amendment to pecuniary jurisdiction, to the City Civil Court.

9. The fact remains that the subject matter of the proceedings between the parties is same and if the proceedings are permitted to be maintained at two different places on the same issue over the rights claimed by either of the parties, there is every likelihood that there may be contradictory verdict on the same issue by different Courts.

10. Apart from that, judicial note is required to be taken that this Court has already issued contempt notice to the

respondents which matter is already pending before the City Civil Court pursuant to the amendment to the pecuniary jurisdiction.

11. In the wake of above and in the interest of justice, a case is made out for exercising jurisdiction under section 24 of the Code of Civil Procedure.

12. In view thereof, the present application stands allowed in terms of prayer clause (a) which reads thus :-

“this Hon'ble Court be pleased to pass an order to withdraw / transfer S.C. Suit No.6003 of 2006 (Original High Court OOCJ, Bombay Suit No.677 of 2006, along with Contempt Petition No.61 of 2009 and Contempt Petition No.64 of 2009] pending before City Civil Court at Bombay, to this Hon'ble Court U/s.24 of the Code of Civil Procedure Code, 1908, and try and dispose of the same along with Testamentary Suit No.72 of 2008, which is between the same parties and relating to the estate left by the deceased late Shri Dinesh Toprani.”

(NITIN W.SAMBRE, J.)