

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

MISCELLANEOUS CIVIL APPLICATION NO.226 OF 2021

Neha Amit Methia .. Applicant
v/s.
Flora Sunil Toradmal and Ors. ..Respondents

...

Mr. Bhalchandra G. Saraf for the Applicant.
Mr. Suhas B. Rohile for Respondent No.1
Ms. Kritika Sethi i/b Aquilaw for Respondent No.4

...

CORAM : KAMAL KHATA, J.

DATED : 5TH JULY, 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant under section 24 of the Civil Procedure Code 1908, for transfer of proceedings of the Miscellaneous Application No.287/2017, pending before the Civil judge, Senior Division, Pune to the Court at Bombay.
2. The applicant is the niece of one Vijay Lallubhai Mehta (the deceased) and the respondent No.1 is the caretaker of the deceased. The respondent No.2 is the only brother of the deceased and also the father of the applicant. It is stated that the deceased had died at Pune on 21st October 2016. The applicant is a sole beneficiary named under the last registered Will and Testament on 20th December 2002. The

◆

applicant has filed for Letters of Administration with the Will annexed before this Court in Petition NO.39 of 2018, which was lodged on 7th November 2017.

3. On the other hand, the first respondent has filed a Civil Miscellaneous Application No.287 of 2017 before the Civil Judge Senior Division Pune, and relied on a registered Will and Last Testament dated 30th August 2016 and Codicil dated 5th September 2016.
4. The applicant submits that the claims in both the legal proceedings relate to and deal with the same property of the deceased. The applicant submits that the majority of assets in respect of which the letters of administration/probate are sought in both the proceedings are common. It is submitted that if the proceedings are allowed to proceed independently, there is a possibility of inconsistent findings between the two Courts. It is submitted that the documents and evidence shall be the same in both the matters. It is submitted that on account of the health problems of the second respondent, it would be extremely difficult for the applicant to travel to Pune.
5. Learned counsel for the respondent in response to the application, has stated that the respondent No.2 has appeared and has filed a written statement. It is stated that

◆

in pursuance of the public notice dated 19th September 2017, the deceased brother (respondent No.2) has appeared and filed written statements to objections against the grant of probate in favour of respondent No.1, herein.

6. It is further submitted that the applicant has not filed a probate by filing the Miscellaneous Civil Application No. 287 of 2017 but only letters of administration; whilst the respondent has sought a probate of the will. It is further submitted that since, the applicant had failed to enter a Caveat and contest the grant of probate before the District Court at Pune, and consequently, is precluded from filing the present application for transfer of the proceedings from Pune to Bombay.

7. It is further submitted that the applicant is the only beneficiary under the previous will, and the medical conditions of her father are of no relevance. It is submitted that virtual hearings could also be availed of. It is further submitted that this application for transfer is only delaying tactics for final adjudication of the matter. It is further submitted that this application for transfer is made after four years of filing the said probate petition at Pune, and after evidence has commenced in the probate proceedings at Pune. It is submitted that the subsequent petition is an

abuse of process of law.

8. The learned counsel for the applicant relied on the judgement in the case of *Shamita Singha and Anr. Vs. Rashmi Ahluwalia and Anr.* reported in (2020) SCC 152, more particularly Paras. 4,5, 8 to 10 and *Balbir Singh Wasu V. Lakhbir Singh*, reported in (2005) 12 SCC 503, and more particularly paragraphs 4 and 6, that directed clubbing together of both proceedings for hearing. Learned counsel for the applicant also relies on the judgment of the Hon'ble Supreme Court in the case of *Nirmala Devi Vs. Arun Kumar Gupta and Ors.* reported in (2005) 12 SCC 505, and more particularly paragraph 4 therein.
9. I have heard both parties and agree with the contentions of the Applicant. Having perused the papers I am of the view that certain common issues would arise for adjudication of both these proceedings. In the written statements of the first and second defendants in the partition suit, the issue of execution of the will by Pawan Kumar Singha (deceased) has been raised. Evidence may also be common. Besides evidence of the applicant's father cannot be considered irrelevant at this stage. I cannot ignore the submission on his medical condition. The decision in one suit may directly

impact the other. It is therefore, in the interest of both the parties, that both are clubbed and heard together.

(i) I am inclined to grant the transfer application. The transfer application is made absolute in terms of prayer clause (a).

(ii) The proceedings and application made in Miscellaneous Application No.287 of 2017 pending before Civil Judge Senior, Division Pune stayed pending transfer; and be transferred to Hon'ble Court at Bombay.

(iii) The transfer may be effected within a period of four weeks and upon receipt of the papers and proceedings the Registry shall give notice to the parties, preferably within three weeks, to proceed with their respective matters.

(iv) However, the respondents shall be paid a sum of Rs. 4,000/- per date of her appearance in the Court at Bombay. The amount should be paid on her attendance in Court into her account directly. The respondent shall give her account details in which the amount shall be deposited.

10. No orders as to cost.

11. The Miscellaneous Civil Application is disposed of.

12. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)