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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 23.11.2023**

+ TR.P.(C.) 14/2023
M/S KAUSHALYA PREM BHATIA TRUST THROUGH
ITS TRUSTEE SH K C BHATIA & ORS. Petitioners
Through: Ms.Samvartika Pathak and
Mr.Nitin Kumar, Advs.
versus
SH. RAJINDER MEHTO Respondent
Through: Mr.Prakash Kumar, Mr.Abhay
Kumar and Mr.Raju Chettri,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition seeks transfer of the Suit filed by the petitioner herein, being Civil Suit No. CS 1189/2018, titled ***M/s Kaushalya Prem Bhatia Trust & Ors. v. Sh.Rajinder Mehto***, pending adjudication before the Court of the learned Senior Civil Judge-cum-Additional Rent Controller, South District, Saket Courts, New Delhi to this Court, to be tried along with Probate Petition bearing Test Case No. 90/2016, titled ***Mr.Rajinder Mehto v. State (N.C.T. of Delhi)***, filed by the respondent.

2. The above Suit has been filed by the petitioner praying for the following reliefs:

“i) a decree of declaration in favour of the plaintiff and against the defendants declaring



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the Will dated 4.2.1994 to be the Legal and the Last Will of Late Smt. Kaushalya Bhatia.

ii) a decree of declaration in favour of the plaintiff and against the defendant declaring that the Will dated 18.8.2014 is a forged and fabricated document and the same be consequently cancelled;

iii) a decree of mandatory injunction in favour of the plaintiff and against the defendant and his agents directing the defendants and his agents to vacate the suit property bearing no. H-32, First Floor & above, Green Park Extension, New Delhi-110016 as shown red in the site plan attached;

iv) a decree of permanent injunction in favour of the plaintiff and against the defendant and his agents restraining them alienating , selling the creating any third party interest in the suit property i.e. bearing no. H-32, First Floor & above, Green Park Extension, New Delhi-110016;

v) Orders for appointment of Local Commissioner under Order XX rule 12 CPC be passed for ascertaining mesne profits pendente lite;

vi) a decree of pendalite and Future Mesne profits /damages from the date of institution of the suit till recovery of possession of the disputed rooms in favour of the plaintiffs at the market rate as may be a certain by the local Commissioner or otherwise by way of evidence available on record; and

vii)Cost of the suit be allowed.”

3. The Probate Petition pending before this Court seeks a grant of probate for the alleged Will dated 18.08.2014 of late Ms.Madhu Bhatia, which is also the subject matter and in dispute in the Suit filed by the petitioner.

4. In fact, in the Suit filed by the petitioner, vide Order dated 25.09.2020, *inter alia* the following issues have been framed:



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*“Issue no. 2 Whether the Will dated 18.08.2014 was executed by Madhu Bhatia in favour of defendant? OPD
Issue no. 3 Whether the Will dated 18.08.2014 is forged? OPP”*

5. Both the proceedings are at a preliminary stage, with the evidence yet to begin.

6. The learned counsel for the petitioner places reliance on the judgments of the Supreme Court in ***Nirmala Devi v. Arun Kumar Gupta & Ors.***, 2005 12 SCC 505 and ***Shamita Singha & Anr. v. Rashmi Ahluwalia & Anr.***, 2020 7 SCC 152, to submit that as the issue of the validity of the alleged Will dated 18.08.2014 arises in both the proceedings, therefore, it would be in the interest of justice that they are tried together to avoid multiplicity of litigation and conflicting judgments.

7. On the other hand, the learned counsel for the respondent submits that the transfer of the Suit would only delay the adjudication of the probate petition filed by the respondent. He submits that it would not be in the interest of justice to transfer the Suit to this Court. In support, he places reliance on the judgments of this Court in ***Usha Chowdhary & Anr. v. Veena Chowdhary & Ors.***, 2005 SCC OnLine Del 566; ***Lalit Bhatia & Ors. v. Dina Nath Bhatia***, 2011 SCC OnLine Del 3448; and ***Amiteshwar Singh & Anr. v. Kamal Nain***, 2020 SCC OnLine Del 2509.

8. I have considered the submissions made by the learned counsels for the parties.

9. As it is evident from the above, the issue of the validity of the



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alleged Will dated 18.08.2014 arises both, in the Probate Petition filed by the respondent as also the Suit filed by the petitioner.

10. In ***Shamita Singha*** (Supra), the Supreme Court has observed as under:

“10. I have already observed that the Testamentary proceeding would have direct bearing or impact on the pending suit for partition. If the Letters of Administration is granted to the petitioner in the Testamentary proceeding, then the assets of the deceased may not remain available as the partible estate of Pawan Kumar Singha (deceased). In the plaint of the suit for partition, a copy of which has been annexed to this Transfer Petition, the properties of Pawan Kumar Singha (deceased) have been listed in paragraph 2 thereof, referring these assets as that of the deceased. The character of these assets as joint property of Rashmi Ahluwalia and the deceased, however, has been only hinted in the affidavit taken out in support of the Chamber Summons in the Testamentary petition. The respondents are contesting the petition for grant of Letters of Administration. If the partition suit proceeds independently and plaintiffs therein succeed, then there would be a possibility of inconsistent findings by two High Courts, provided the petitioners succeed in the Testamentary proceeding. In situations of this nature, this Court in the cases of Balbir Singh Wasu vs. Lakhbir Singh And Others (2005) 12 SCC 503, Nirmala Devi (supra) and Chitivalasa Jute Mills (supra), has directed clubbing together of both proceedings for hearing. I am satisfied that certain common issues would arise for adjudication of both these proceedings. In the written statement of the first and second defendants in the partition suit, the point of execution of the Will by Pawan Kumar Singha (deceased) has been raised.



11. Ms. Mishra has argued that the suit for partition having been instituted before the Testamentary Petition, her client's suit must be allowed to proceed first and the Testamentary Petition could be transferred to Delhi High Court, if necessary. It is also her submission that major portion of the assets of the deceased lie in Delhi. A petition for transfer under Section 25 of the Code, however, is decided on consideration of the ends of justice. The "First past the post" is not the principle that can be applied in proceedings of this nature. Thus, the view taken by the Delhi High Court in the case of Praveer Chandra (supra) would not aid the respondents here, as that proceeding was founded on a different principle embodied in Section 10 of the Code. I am of the opinion that the Probate Court having primacy in determining the question of grant of Letters of Administration or Probate, it would be expedient for the ends of justice that the Bombay High Court, which is hearing the Testamentary petition, should decide the suit for partition as well. The plaintiffs in the suit for partition are also contesting the Testamentary Petition and they would not be greatly inconvenienced in prosecuting the suit before the Bombay High Court. The petitioners claim that the Will has been executed in Mumbai and the two attesting witnesses who have affirmed affidavits to support the Will are also from Mumbai. Copies of these affidavits appear at pages 39 and 41 of the paper book filed in connection with the Transfer Petition. These are also factors which I have considered in forming my opinion in favour of transfer of the suit."

(Emphasis supplied)

11. As far as the judgment of this Court in **Usha Chowdhary** (Supra) is concerned, the same was passed in its peculiar facts, wherein by judicial orders, this Court had refused the transfer of the



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Suit to the District Court pursuant to the amendment in the pecuniary jurisdiction of this Court. The Court, therefore, held that in view of the said orders, the prayer of the petitioner to transfer the proceedings had been rightly rejected by the learned Additional District Judge therein as he was bound by the specific order of this Court.

12. In **Lalit Bhatia** (Supra), this Court was confronted with a set of facts, wherein the Suit had been filed at least eight years prior to the filing of the transfer petition. The probate petition was also pending for more than nine years. The evidence in the probate petition had already been concluded. In the facts of the said case, the Court again declined to transfer the probate petition. In fact, in the course of the discussion, the Court held that the orders for the transfer of matters are normally passed if it saves the parties from multiplicity of the proceedings and if the issues in the matters are overlapping. The said test laid down by this Court is satisfied in the facts of the present case.

13. In **Amiteshwar Singh** (Supra), this Court, in the facts of the said case, found that the issue with respect to the validity of the Will had been specifically deleted and, in fact, the execution of the Will had been accepted by the petitioner therein. Therefore, in the peculiar facts of that case, again the transfer was declined.

14. In the present case, as the issue of the validity of the alleged Will dated 18.08.2014 arises in both the proceedings, I deem it appropriate and in the interest of justice to transfer the Suit filed by the petitioner, being Civil Suit No. CS 1189/2018, titled **M/s Kaushalya Prem Bhatia Trust & Ors. v. Sh.Rajinder Mehto**, from the Court of the learned Senior Civil Judge-cum-Additional Rent Controller, South



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District, Saket Courts, New Delhi, to this Court, to be listed along with Probate Petition, bearing Test Case No. 90/2016, titled ***Mr.Rajinder Mehto v. State (N.C.T. of Delhi)***, filed by the respondent. The question of consolidation of the two proceedings shall be considered by the Court after hearing the parties in those proceedings on such transfer.

15. List the Suit on its transfer, on 16.01.2014, when, as informed by the learned counsels for the parties, the above mentioned Probate Petition is listed before this Court.

16. The petition is allowed in the above terms.

NAVIN CHAWLA, J

NOVEMBER 23, 2023/ns/AS

Click here to check corrigendum, if any