



2023:DHC:9036



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 13.12.2023***+ **TR.P.(C.) 53/2023 & CM APPL. 15586/2023****PREM DUTT SHARMA**

..... Petitioner

Through: Mr.Rohit Kumar, Adv.

versus

SHRI BRAHAM DUTT SHARMA & ORS. RespondentsThrough: Mr.M.K. Sharma, Mr.Abhinav
Sharma and Ms.Vishakha
Sharma, Advs. for R-1 to R-3.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed seeking transfer of the Suit filed by the respondent nos. 1 to 3 herein, being Civil Suit No. 15186/2018, titled as ***Braham Dutt Sharma & Ors. v. Prem Dutt Sharma***, pending adjudication before the Court of the learned Additional District Judge-05 (South-West District), Dwarka Courts, New Delhi, to the Court of the learned Additional District Judge, (West-District), Tis Hazari Courts, where a Probate Petition, being Test. Case No. 76/2022, titled as ***Sh.Yogesh Kumar @ Sonu v. State & Ors.***, filed by the respondent no.4 herein, is pending adjudication.

2. At the outset, I must note that the respondent no.4 has been impleaded in the present petition as a proforma respondent. He is the son of the petitioner herein, who is the defendant in the abovementioned Suit.

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3. I must also note that on 29.03.2023, the learned counsel for the petitioner, after some arguments, had stated that he would be satisfied in case the Probate Petition mentioned hereinabove 'preferred by the petitioner' is transferred to the Court which is trying the Suit.

4. The above Suit has been filed by the respondent nos. 1 to 3 herein against the petitioner herein, in the year 2011, seeking partition of the property left behind by their parents. In the said Suit, a preliminary decree was passed on 15.05.2014. The same has been challenged before this Court by the petitioner in form of an appeal, being RFA No. 279/2014, titled as ***Prem Dutt Sharma vs. Braham Dutt Sharma & Ors.*** It is stated that the Suit is now at the stage of final disposal.

5. While the above Suit was pending adjudication, the respondent no.4 herein, filed the above-mentioned Probate Petition, on 26.09.2022, that is, more than 11 years after the filing of the Suit.

6. The respondent no.4 also filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908, seeking to become a party to the Suit. The said application was, however, dismissed by the learned Additional District Judge-05 (South-West District), Dwarka Courts, New Delhi, vide its Order dated 24.07.2019, observing as under:

"7. It is pertinent to mention here that defendant Sh. Prem Dutt Sharma in the present suit is none other than but the father of the present applicant. The defendant in the suit has propounded the Will dated 09.01.1997 claiming that the same was executed by late Smt. Imarati Devi, the mother of the parties in favour of his son and in this regard a specific

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issue was framed which is as follows: -

Whether Smt Imarati Devi had executed a Will bequeathing her share in the suit property to her grandson Sh. Yogesh Kumar?

8. *The onus was on the defendant to prove the said issue. But the defendant has miserably failed to prove the execution of Will dated 09.01.1997 and ultimately the preliminary decree was passed.*

9. *The applicant is raking up the issue of Will and is basing his claim in the suit property on the strength of the will dated 09.01.1997 which could not be proved by the defendant who is father of the applicant and a judicial finding has been returned in this regard. It is not the case of the applicant that the defendant has not contested the suit properly or his interest was adverse and in conflict with the interest of the applicant. It is also not the case of the applicant that the defendant has acted prejudicial to the interest of the applicant. It is also noteworthy that the applicant has sought to be impleaded as a party in the present suit when after a full fledged trial, his father lost the case which was initiated in the year 2011 and decided after three years in May 2014. The applicant did not take any steps for his impleadment and kept watching the proceedings and now when the preliminary decree has been passed, he has approached the Court claiming Will in his favour. The contention of the applicant that he came to know only 08.12.2018 about the suit and judgment is not plausible because the applicant has been residing in the same property with his father and it is not believable that the applicant was not aware of pendency of the suit. It is also not the case of the applicant that he was not on good terms with his father who was the defendant and contesting the suit.*

10. *In view of aforesaid discussion, in my considered opinion, the application is malafide and has been moved to protract the litigation*



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when his father lost the litigation and the Court passed the preliminary decree determining the share of the parties to the suit and the Will propounded by the defendant in favour of his son could not be proved. Hence, the application is hereby dismissed being devoid of any merit.”

7. The above Order has not been challenged by the respondent no.4 or by the petitioner, and has now gained finality.

8. Therefore, the respondent no.4 is not a party in the Suit; in the Suit a preliminary decree already stands passed; and the Suit has been pending adjudication since the year 2011, and is now at the stage of the final hearing. Clearly, the above facts would show that the present petition has been filed with the *mala fide* intent of further delaying the adjudication of the Suit.

9. The respondent no.4, who has filed the Probate Petition, is not seeking the transfer of either his Probate Petition or of the Suit. He is not a party in the Suit. It is the petitioner, who is the defendant in the Suit and the father of the respondent no. 4, who has filed this petition seeking transfer of the Suit.

10. I, therefore, find no merit in the present petition. The same is dismissed. The pending application also stands disposed of.

11. The petitioner shall pay cost of Rs.25,000/- to the respondent nos. 1 to 3 for the present petition, within the period of four weeks from today.

NAVIN CHAWLA, J

DECEMBER 13, 2023/ns/ss

[Click here to check corrigendum, if any](#)

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