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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25.08.2023

+ **TR.P.(C.) 32/2022 & CM APPL. 22201/2022**

SAROJ BAHL

..... Petitioner

Through: Mr.Bhavneet Singh, Adv.

versus

SUSHMA BAATRA & ORS.

..... Respondents

Through: Mr.Ashish Aggarwal, Adv. for R-1-2.

Mr.Anshul Gupta, Mr.Shubam Kaushik, Adv. for R-3.

Mr.Preetpal Singh, Adv. for R-4-5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner seeking transfer of the Civil Suit bearing No.SCJ/538091/2016 titled ***Saroj Behl v. Sushma Baatra & Ors.*** pending adjudication before the Court of the learned Senior Civil Judge (North), Rohini Courts, to this Court, to be tried along with CS(OS) No.1099 of 2013 titled ***Mr.Chaman Kumar Mehra & Ors. v. Mrs.Gian Devi Mehta & Ors.***

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2. The learned counsel for the petitioner submits that the issues framed in the suit pending before the High Court are also on whether the registered release deed dated 23.10.1982 allegedly executed by the petitioner herein, and the Will dated 03.02.1977, allegedly executed by Late Sh.Laxman Das Mehta, and the Will dated 16.01.2014 executed by Late Smt.Gian Devi Mehta are valid and enforceable.
The learned counsel for the petitioner submits that same documents are in challenge in the suit filed by the petitioner and pending adjudication before the learned Senior Civil Judge (North), Rohini Courts, of which transfer is prayed for. He submits that, therefore, it would be in the interest of justice that the two suits are tried together.
3. On the other hand, the learned counsel for the respondent nos.1 and 2 submits that the said respondents have filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') seeking dismissal of the suit filed by the petitioner. He submits that the present petition has been filed only to scuttle the adjudication of the said application and, therefore, is an abuse of the process of law. He submits that the suit before this Court was filed in the year 2013, while the suit filed by the petitioner before the learned District Court was filed in the year 2016. The petitioner has not shown any cause to explain the delay in filing of the present petition.
4. The learned counsel for the respondent no.3 submits that all the parties to the suit pending before this Court, have not been made



parties in the present petition. He submits that the plaintiff no.1 in the suit pending before this Court, namely Sh.Chaman Kumar Mehta, is not a party to the present petition. He further submits that the suit filed by the petitioner, pending adjudication before the learned District Court, is not maintainable and, therefore, the present petition should not be allowed.

5. He further submits that the suit filed by the petitioner before the learned District Court had been dismissed earlier for non-prosecution. It was restored, subject to payment of cost of Rs.8,000/- . He submits that the cost has not been paid by the petitioner and, therefore, the suit is still not restored.
6. The learned counsel for the petitioner in rejoinder disputes the above statement and submits that the cost has been duly paid.
7. I have considered the submissions made by the learned counsels for the parties.
8. This Court, vide its order dated 03.08.2022, passed in CS(OS) no.1099/2017, has framed *inter alia* the following issues:

“ xxxx

*(iv) Whether the registered Release Deed dated 23.10.1982 executed by Smt. Reshma Mehra and Mrs. Saroj Behl along with Shashi Kumar Mehta and Sushma Batra in favour of Smt. Gian Devi Mehta deceased Defendant No.1 is null and void?
OPP*



(v) *Whether Late Shri Laxman Dass Mehta bequeathed his entire movable and immovable assets in favour of Late Smt. Gian Devi Mehta deceased defendant No.1 vide registered Will dated 03rd February, 1977?*

OPD 3 & 4

xxxx

(ix) *Whether the Will dated 16.01.2014 of Late Smt. Gian Devi Mehta is valid and enforceable?*

OPD 3 & 4.”

9. The Civil Suit filed by the petitioner before the learned District Court prays for the following reliefs:

“(a) *A decree of declaration whereby declaring the Release Deed dated 23.10.1982 and the alleged General Power of Attorney as stated in aforesaid Release Deed; and Will dated 16.1.2014 and Will dated 3.2.1977, in respect of property bearing No.K-1/41, Model Town, Delhi, to be null and void and be not binding on the plaintiff.*

(b) *A decree of permanent and mandatory injunction restraining the defendants from creating third party interest in the suit property No.K-1/41, Model Town, Delhi, and also restrain them from mis-using those documents in any manner.*

(c) *An order for costs in the present suit.”*

10. In my view, as the same documents are the subject matter of the two

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suits, it would be in the interest of justice that the suit filed by the petitioner is transferred to this Court so as to avoid any conflict in the findings of two courts.

11. As the present Suit seeks transfer of the Suit filed by the petitioner to this Court, Sh.Chaman Kumar Mehta, who is not a party to that Suit, is neither a necessary or a proper party to this petition.
12. Needless to state that this transfer shall have no effect on the application filed by the respondent nos.1 and 2 under Order VII Rule 11 of the CPC, which is pending adjudication before the learned District Court. The same shall be decided by this Court on its own merit.
13. Similarly, this Court, on transfer of the Suit, will also satisfy itself on whether the cost imposed upon the petitioner has been duly paid, and if not, shall determine the consequence thereof.
14. It is further made clear that this Court has not consolidated the two suits. This question shall be determined by the Court on the transfer of the suit. All contentions of the respondents/defendants in the suit filed and pending before the learned District Court shall remain open to them.
15. Accordingly, Civil Suit no.SCJ/538091/2016, titled ***Dr. Saroj Bahl v. Smt. Sushma Baatra & Ors.***, is transferred from the Court of the learned Senior Civil Judge (North), Rohini Courts, to this Court, to be listed on 13th September, 2023 along with CS(OS) no. No.1099 of 2013, titled ***Mr.Chaman Kumar Mehra & Ors. v. Mrs.Gian Devi Mehta & Ors.***



16. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 25, 2023
RN/am

