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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
APPEAL NO.56 OF 2024
IN
INTERIM APPLICATION NO.2994 OF 2023
IN
TESTAMENTARY SUIT NO.24 OF 2023
WITH
INTERIM APPLICATION (L) NO.7412 OF 2024
IN
APPEAL NO.56 OF 2024.**

Neeta Harshkant Mehta : Appellant (Org. Applicant)

V/s.

Nipun Navnit Mehta and Ors. : Respondents

Mr. Simil Purohit a/w Advocate Zain Mookhi, P.V. Satyanarayan, Smita Durue, Parisha Shah, Vishal Raman, Rajesh Shah and Rutwit Bapat i/by Advocate Arshil A Shah for the Appellant/Applicant.

Mr. Vivek Kantawala i/by Advocate Zain A. K. Najam-Es-Sani for Respondent No.1.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 07th MARCH, 2024**

P.C. :

1. The present Appeal impugns an order dated 7th December 2023, by which, Interim Application No. 2994 of 2023

("the Interim Application") filed by the Appellant (Defendant in the captioned Testamentary Suit) came to be dismissed.

2. The Appellant had in the Interim Application sought the following reliefs;

- "a) This Hon'ble Court be pleased to reject the plaint in T.S.No.24 of 2023 for want of jurisdiction.*
- b) Cost of this application be awarded; and*
- c) Such other orders and reliefs be granted as this Hon'ble Court may deem fit and proper."*

3. The primary ground on rejection of the Plaint was sought for was that the Appellant did not have any immovable property within the jurisdiction of this Court. Learned counsel for the Appellant submitted that the deceased had his fixed place of abode at Salem and a bulk of his estate was within the jurisdiction of the appropriate Court in Salem. He invited our attention to the Plaint and pointed out that the immovable property, namely, Flat no.2, 1st floor, Deepak Building, Peddar Road, Bombay – 400026 along with Garage No,3 mentioned

therein was infact partnership property in which partnership, the deceased only had a minor share. Basis he submitted that the deceased infact did not have any immovable property within the jurisdiction of this Court but only had two bank accounts. Placing reliance upon Section 57 and 300 of the Indian Succession Act, 1925 he submitted that for this Court to have jurisdiction, the deceased must have necessarily left immovable property which was within the jurisdiction of this Court.

4. Mr. Purohit then submitted that given the fact that entire bulk of the estate of the deceased was within the jurisdiction of Courts in Salem. The Court in Salem would not only have the requisite jurisdiction but also that it would be expedient that the captioned Suit be heard and disposed of by a Court in Salem, within whose jurisdiction the assets of the deceased were situated instead of this Court. Mr. Purohit then submitted that even as per Section 270 and 271 of the Indian Succession Act the primary factor to be considered by the Court when entertaining a Petition for probate and/or letters of

administration was whether the deceased had a fixed place of abode within the jurisdiction of such Court. He then placed reliance upon a judgement of the Delhi High Court in the case of ***Karan Singh Vs. State and Ors.***¹ to submit that when all immovable property and substantial portion of movable property of the deceased are outside the jurisdiction of except an insignificant portion, it will be inappropriate to continue with such proceedings.

5. Mr. Kantawala, learned counsel appearing on behalf of Respondent No.1 countered the contention of the Appellant and submitted that Section 270 and 271 of the Indian Succession Act made plain that as long as any movable or immovable property of the deceased was located within the jurisdiction of this Court, this Court would have the requisite jurisdiction to entertain, try and dispose of the captioned Suit. He reiterated that the Plaint and schedule appended thereto specifically set out that the deceased had both immovable as also movable property within the jurisdiction of this Court. He submitted that this was enough

1 ILR (2009) I Delhi

to establish that this Court had the requisite jurisdiction to entertain, try and dispose of the Suit.

6. We have heard learned counsel, considered their rival contentions and find that the Appellant's contention that the Plaintiff liable to be rejected for want of jurisdiction under the provisions of Order 7 Rule 10 is plainly untenable. The Suit (Originally Testamentary Petition No. 2599 of 2022) clearly set out that the deceased held immovable property in Mumbai. While the Appellant has denied this on the basis that the said property was partnership property and not that of the Appellant. This is necessarily an issue which would have to be factually determined after both sides have had the opportunity to lead evidence and prove/establish this. It is because of this we find that the Learned Single Judge has correctly framed the following issue, viz.

"(iii-a) Whether this court has jurisdiction to entertain the probate petition from which the instant suit arises?"

In addition to the above, we must note that the list of assets of the deceased as appended to the Plaint (Testamentary Petition) clearly sets out that the deceased held two bank accounts within the jurisdiction of this Court. Section 270 of the Succession Act makes it clear that an application for probate or letters of administration would be maintainable if the deceased had if the deceased "*had fixed place of abode or any property, movable or immovable within the jurisdiction of the Judge*". Thus, basis this, there can be no dispute to the fact that this Court would on the basis of the averments in the Plaint *prima facie* have the jurisdiction to entertain, try and dispose of the captioned Suit. The mere fact that the Appellant have denied this would not by itself denude this Court of jurisdiction. This is an issue, which as correctly held by the Learned Single Judge, would require to be determined after affording both sides an opportunity establishing the same. This is precisely what the Learned Single Judge has done. We find no infirmity with the same. Additionally we must note that the judgment in the case of ***Karan Singh*** (supra) is of no assistance to the Appellant since in the facts of the said case

all immovable properties therein were outside the jurisdiction of Court.

7. In light of the above, we the Learned Single Judge was absolutely correct in holding as follows;

- "7. *Having heard the learned counsel for the rival parties, this Court is of the opinion that even if the position of law, as canvassed on behalf of the applicant, is to be accepted for the sake of arguments, it is based on a factual framework, the basis of which is an assertion that the immovable property at Peddar Road in Mumbai, belongs to the partnership firm and that the deceased could not have claimed 1/3rd ownership share in the said property.*
8. *A perusal of the Will, of which probate is sought in the present proceedings, shows that the deceased has claimed in more places than one that he owned 1/3rd share in the aforesaid immovable property at Peddar Road, within the jurisdiction of this Court. As opposed to this, the applicant has asserted that the said immovable property is a property of the partnership fir registered at Madras, now Chennai. On this basis, it is submitted that the statement made in the schedule to the original probate petition at item No.1, is a false statement, inasmuch as it is claimed that the deceased had 1/3rd ownership share in the said immovable property.*
9. *This Court is of the opinion that only after a finding is rendered on facts in favour of the applicant, can*

come into operation, to indicate that this Court may not have jurisdiction. This is, of course, subject to a finding that the position of law canvassed on behalf of the applicant, is acceptable to this Court."

8. We thus dispose of the Appeal in the following terms,

viz.

- i. The issue of jurisdiction as framed by the Learned Single Judge shall be decided as a preliminary issue.
- ii. Both Parties shall be at liberty to lead evidence in support of their rival contentions on this issue.
- iii. It shall be open to the Appellant to advance submissions on the aspect of forum non connivence and for the Learned Judge to determine as to whether this aspect can be taken into consideration when deciding such preliminary issue.

9. The appeal is disposed of in the aforesaid terms, we make it clear that we have expressed no opinion on the merits of

the matter. The Learned Single Judge shall decide the preliminary issue framed uninfluenced by the observations in this order.

10. In view of disposal of the Appeal, Interim Application (L) No.7412 of 2024 filed therein does not survive and is accordingly disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)