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

% ***Date of decision' 12th August, 2024***

+ **CM(M) 233/2023 & CM APPL. 6862/2023**

JAGDISH CHANDER TAKKAR (SENIOR CITIZEN)Petitioner

Through: **Mr. M. Hasibuddin with Mr.Bheem
Singh, Advocates.**

versus

HARGOBIND TAKKARRespondent

Through: **Mr. K. Venkatraman, Mr. D.K.
Chawal, Mr. Vishnoo Chandra,
Mr. Akash Tomar, Ms. Vineeta
Bansal, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner and respondent are real brothers and they both are seeking probate by filing respective probate petitions.
2. The petitioner herein i.e. Jagdish Chander Takkar filed probate petition which is registered as Probate Case No.105/2006 and the other brother Sh. Hargobind Takkar (respondent herein) has filed a probate petition which is registered as Probate Case No.42227/2016.
3. In view of one transfer petition filed before this Court, both the aforesaid probate petitions, which were earlier pending before the different Courts, were directed to be taken up by the same Court and there was also a specific direction with respect to the leading of



evidence in such petition.

4. It will be worthwhile to extract para 2 to 9 of such order dated 25.11.2014, passed in TR.P.(C) 119/2013.

“2. Brief facts are that the petitioner and respondent No.2 are the real brothers both Ss/o Asa Ram Takkar. The property in dispute between them is A-167, Kalkaji, New Delhi. Respondent No.2 filed a probate petition titled Jagdish Chander Takkar v. State on the basis of a WILL said to be executed by Sh. Asa Ram Takkar on 10.12.1974. This matter is pending in Tis Hazari Courts and is said to be at the stage of final arguments.

3. The petitioner has filed a probate case titled Hargobind Takkar v. State which is pending in the Saket Courts which is said to pertain to the alleged subsequent WILL dated 04.10.1979 said to be also executed by late Sh. Asa Ram Takkar.

4. Learned counsel appearing for the petitioner submits that the two matters should be heard together in the interest of the parties so that the common questions on fact/law could be dealt with by the same Court. He submits that there is possibility of conflict between the judgments in case separate court tries separate matters. He submits that in the case pending in the Saket Court, PW 1 i.e. petitioner has been cross examined by counsel for respondent No.2 and that in case the two matters are clubbed, he will only rely upon the evidence of the parties already on record in Tis Hazari in the case filed by respondent No.2 to prove his case. He will lead no further evidence in the probate case.

5. Respondent No.2 has objected to the clubbing. He submits that the probate case filed by his client/respondent No.2 before Tis Hazari Courts is now pending at the final stage and final arguments are almost over. He submits that injustice would be caused in case at this belated stage, the matters are transferred and clubbed together as the case filed by the petitioner is at the preliminary state.

6. The matters pertains to two brothers and the same property. Common questions on facts and law are likely to arise in the matter.

7. In view of the submission of learned counsel appearing for petitioner that he will not lead any further evidence in his probate



case, in my view, it would be in the interest of justice, if the two matters are heard together.

8. Accordingly, I direct that the probate petition titled Hargobind Takkar v. State pending now pending in the Court of Sh. Inderjeet Singh, ADJ, Saket Courts, New Delhi be transferred to Tis Hazari Court and be heard along with probate petition titled Jagdish Chander Takkar v. State pending in the court of Sh. Ajay Goel, ADJ, Tis Hazari Courts, Delhi. Respondent No.2 shall complete cross examination of PW1 whose cross examination is continuing in the case filed by the petitioner. Thereafter, the petitioner shall not lead any further evidence in his probate petition. Parties are permitted to rely upon the evidence already in the two cases for adjudicating their respective matters. The trial court will hear the matters together and dispose them of together.

9. The petition is accordingly allowed. Parties to appear on the date already fixed before Tis Hazari i.e. 05.12.2014 when the probate petition being transferred from Saket Courts will also be taken up.”

5. It seems that in view of the aforesaid specific directions, the learned Trial Court has not given any further opportunity to Sh. Jagdish Chander Takkar (petitioner herein) to lead any further evidence.

6. I have seen the impugned order dated 10.01.2023. The learned Trial Court has specifically made reference to the aforesaid observations and, therefore, has come to conclusion that respondent No.2 i.e. Jagdish Chander Takkar cannot be permitted to lead any further evidence and the case was accordingly, fixed for final arguments.

7. Such order is under challenge.

8. In view of the above said specific directions contained in the aforesaid order dated 10.01.2023, the learned Trial Court was justified



in rejecting the applications dated 22.08.2022 and 04.11.2022 and listing the matter for final arguments. If the petitioner herein had any grievance in this regard, ideally, he should have raised it then and there, when the directions were being passed regarding the transfer/clubbing of the cases or he should have moved some application seeking clarification or permission from said learned Bench. It is now too late to agitate in this regard.

9. Finding no merit in the present petition, the same is, hereby, dismissed.

(MANOJ JAIN)
JUDGE

AUGUST 12, 2024
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