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

+ **TR.P.(C.) 97/2024 & CM APPL 31865/2024**

UMA VIRMANI

.....Petitioner

Through: Mr. Abhishek Paruthi, Adv.

versus

YASHPAL VIRMANI & ORS.

.....Respondents

Through: Mr. B.K. Sood, Mr. Harish Gaur and
Mr. Manik Sood, Advs. for R-1 to 3

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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08.10.2024

1. Heard learned counsel appearing on behalf of the petitioner.
2. The petitioner, by way of the instant petition, under Section 24 of the Code of Civil Procedure, 1908 seeks transfer of probate case (PC) No. 50408/2016 titled as **Sh. Ashok Kumar Virmani & Ors. v. State & Ors.** pending before ADJ-02, North West Rohini Courts, Delhi to tried alongwith CS(OS) 1041/2010 tiled as **Uma Virmani v. Yashpal Virmani** before the Original side of this Court.
3. Learned counsel who appears on behalf of the petitioner while drawing the attention of this Court to the issues framed in both the cases, submits that there are overlapping issues and in the interest of justice, both the matters can be tried together. The same would be in the better interest of



appearing parties and would avoid any conflict of decision.

4. Learned counsel has also placed reliance on the decisions of the Supreme Court in the case of **Balbir Singh Wasu v. Lakhbir Singh and Others**¹ and **Nirmala Devi v. Arun Kumar Gupta and Others**² to support his contentions.

5. The aforesaid submissions made by learned counsel for the petitioner are strongly opposed by learned counsel for the respondent who submits that the stage of the civil suit pending before this Court is of final hearing, where the evidence was completed in the year 2018 and, therefore, at this stage, no useful purpose would be served if the probate petition is transferred and tagged with the civil suit pending before this Court.

6. I have considered the submissions made by learned counsel appearing on behalf of the parties and have perused the record.

7. Section 24 of Code of Civil Procedure, 1908 states as under:-

Section 24. General power of transfer and withdrawal.*Previous*

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which 1[is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was

¹ (2005) 12 SCC 503

² (2005) 12 SCC 505



transferred or withdrawn.

2[(3) For the purposes of this section, (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court; (b) proceeding includes a proceeding for the execution of a decree or order].

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes. 3[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

8. The Supreme Court in the case of ***Indian Overseas Bank v. Chemical Construction Co³***, the Court ruled that the Court should weigh the overall convenience and fairness for all parties concerned when making decisions regarding the transfer of a suit. The invocation of power under Section 24 of the Code of Civil Procedure, 1908 would require keeping in mind various facts and circumstances including the stages of the proceedings of the respective cases sought to be transferred.

9. In the instant case, evidentially, the proceedings of civil suit pending before this Court are at an advanced stage of final arguments as has been rightly pointed out by learned counsel for the respondent. It is, thus, seen that at this stage, no useful purpose would be served in transferring the probate petition to be tried alongwith pending civil suit before this Court.

10. With the aforesaid observations, the petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

OCTOBER 8, 2024

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³ AIR 1979 SC 1514