



2024 : DHC : 3404



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

+ **TR.P.(C.) 96/2022**

ALOK MEHTA & ANR.

..... Petitioners

Through: Mr. J.C. Mahindru, Ms. Cherry
Singh and Mr. Abhishek Kumar, Advocates

versus

KUSUM MEHTA & ORS

..... Respondents

Through: Mr. Yashvardhan Singh
Rathore, Advocate for R1

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

29.04.2024

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1. Despite service of Respondent 2 by publication, Respondent 2 has not chosen to appear.

2. Mr. Mahindru, learned counsel for the petitioners, submits that the property forming subject matter of CS SCJ 563/2021 presently pending before the learned Civil Judge, West District, Tis Hazari Courts, is also part of the subject matter of Test Case 7/2021, pending before this Court.

3. Mr. Yashvardhan Singh Rathore, learned counsel for the Respondent 1, opposes the petition. He submits that the prayer in the civil suit, of which transfer is being sought, is fully covered by the prayer in the Testamentary case pending before this Court.



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4. That is a matter which has to be argued in the civil suit. It cannot constitute a justifiable consideration for this Court to bear in mind while dealing with the prayer for transfer.
5. The principle that I apply to consider whether the suit should be transferred is whether the prayers in both the proceedings can simultaneously be granted. If that is not possible, it would be appropriate that both are heard by one Court so as to avoid conflict of decisions.
6. The contention that the property forming subject matter of CS SCJ 563/2021 is covered by Test Case 7/2021 is not disputed by Mr Rathore.
7. In that view of the above, there is no reason not to allow the Transfer Petition. Allowing the transfer petition would also be in the interest of avoiding any conflict of decisions.
8. For all these reasons, the prayer for transfer of CS SCJ 563/2021 to this Court is granted. CS SCJ 563/2021 accordingly stands transferred to this Court. No order of consolidation is being passed, as that would be a matter for the parties to take up before the concerned Court.
9. List CS SCJ 563/2021, after renumbering, before the learned Joint Registrar on 13 May 2024.



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10. The Transfer Petition is allowed accordingly.

C.HARI SHANKAR, J

APRIL 29, 2024/yg

Click here to check corrigendum, if any