

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISC. CIVIL APPLICATION NO. 452 OF 2024

Kiran Sumit Pal ...Applicant

Versus

Surit Bhupal Pal ...Respondent

WITH

MISC. CIVIL APPLICATION NO. 29 OF 2025

Kiran Sumit Pal ...Applicant

Versus

Surit Bhupal Pal ...Respondent

Mr. Bhavin Gada, a/w Deepak Shukla, Vinayak Shukla, i/b
Shivprasad Patha, for the Applicant in both MCA.
Mr. Suresh Dubey, for the Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 2nd MAY, 2025

PRONOUNCED ON: 17th JUNE, 2025

ORDER:-

1. These applications are preferred under Article 227 of the Constitution of India and Section 24 of the Code of Civil Procedure, 1908 ("the Code") for transfer of two proceedings pending before two jurisdictional courts, to the High Court.

2. MCA/452/2024 is preferred for transfer of MCA/506/2024 filed by the respondent for grant of Probate with the Will annexed to the property and credits of Alka Bhupal Pal (the deceased) under Section 276 of the Indian

Succession Act, 1925 (“the Act, 1925”), from the Court of Civil Judge, Senior Division, Kalyan to the High Court, in its Testamentary Division.

3. MCA/29/2025 is filed for transfer of SC Suit No.16/2019 from the City Civil Court, Bombay to the High Court, Bombay, with a prayer to consolidate the said suit with MCA/506/2024: for the transfer of which MCA/452/2024 has been filed.

4. The background facts necessary for the determination of these applications can be summarised as under:

4.1 Bhupal Chandra Pal was the husband of Smt. Alka, the deceased. Bhupal and the deceased had two sons, Sumit, the husband of Kiran, applicant No.1, and Pran, applicant No.2, and Surit, the respondent.

4.2 Bhupal acquired a property bearing Room No.348, Building No.21, Worli. Smruti Co-operative Housing Society Ltd. (“the suit property”). Bhupal passed away on 13th March, 2014. Sumit, the predecessor-in-title of the applicants, predeceased Bhupal, in the year 2010. Bhupal thus left behind his widow Alka (the deceased), Surit, the respondent, and the applicants as his legal heirs.

4.3 Surit, the respondent, instituted SC Suit No.16/2019, asserting, *inter alia*, that Alka had executed a Will which was registered with the Sub-Registrar of Assurances on 14th November, 2016 bequeathing her undivided interest in the suit property in favour of Surit and Pran (A2), in equal shares. After the applicants – defendants in the said suit learnt about the said testamentary disposition, the applicants started to exert pressure on the deceased and made her to execute a registered Gift Deed on 27th January, 2017 in favour of applicant No.2. As the respondent protested, another Gift Deed was executed.

4.4 After the demise of Alka, the respondent - plaintiff approached the housing co-operative society, wherein the suit property is situated, for transfer of the suit flat in the name of plaintiff as well. As a dispute arose, respondent was constrained to institute the suit seeking a declaration that the plaintiff is entitled to 50% undivided share in the suit property and, in the alternative, 1/3 share therein, that the alleged Gift Deeds dated 27th January, 2017 and 17th July, 2017 purportedly executed by Alka are null and void and not binding on the plaintiff, and the consequential reliefs.

4.5 The applicants claimed to have appeared and contested the said suit by filing written statement and a counter-claim seeking a declaration that there was an oral agreement between late Sumit and the respondent, under which the respondent had accepted substantial consideration, and, thus, an order against the respondent to specifically perform the said agreement.

4.6 The respondent propounded the Will executed by deceased Alka and registered with the Sub-Registrar of Assurances at Mumbai, and filed Civil MA/506/2024 for grant of Probate claiming that the deceased had bequeathed her 50% interest in the suit property in favour of the respondent, before the Court of Civil Judge, Senior Division, Kalyan. The respondent asserted that at the time of her death Alka had a fixed place of abode at Dombivali and, therefore, the Civil Court at Kalyan had the jurisdiction to grant the Probate.

4.7 The applicants initially preferred MCA/452/2024 seeking transfer of Civil MA/506/2024 for grant of probate from the Civil court at Kalyan to the High Court asserting, *inter alia*, that the Will in question was executed and registered in Mumbai, the deceased was continuously

residing at Worli, Mumbai, prior to her death, and it would be expedient in the interest of justice that the Probate proceeding is tried by the High Court.

4.8 Subsequently, the applicants preferred MCA/29/2025 seeking transfer of SC Suit No.16/2019 from the City Civil Court, Bombay to the High Court at Bombay asserting that having regard to the fact that the subject matter of both the proceedings is same, the transfer of both the proceedings to the High Court would contribute to the judicial economy and efficiency by centralizing the proceedings in a court that has jurisdiction over the property and the parties involved. It would minimize duplication of efforts and potential delay.

5. The respondent has resisted both the applications. The substance of the resistance of the respondent is that, both the proceedings have been instituted by the respondent before the Courts having jurisdiction. The applicants have preferred these applications to harass the respondent, who is 84 years of age and residing at Dombivali. There is no reason to transfer the proceedings from the respective jurisdictional Court. In the alternative, the respondent contended that the SC Suit be transferred from the City Civil Court to the Court of Civil Judge, Senior Division, Kalyan, for trial.

6. I have heard Mr. Bhavin Gada, the learned Counsel for the applicants and Mr. Suresh Dubey, the learned Counsel for the respondent, at some length.

7. Mr. Gada, the learned Counsel for the applicant, would submit that in the peculiar facts of the case, the trial of both the proceedings i.e. the petition for grant of Probate and the suit instituted by the respondent for declaration and partition, by the High Court, would advance the cause of justice. Mr. Gada urged with a degree of vehemence that the respondent has filed the petition for grant of Probate before the Civil Court at Kalyan by taking undue advantage of the fact that at the moment of her death the deceased happened to be within the local limits of the Civil Court at Kalyan, though the deceased has been an ordinary resident of Mumbai. Mr. Gada laid emphasis on the fact that the suit property is situated within the local limits of the ordinary original jurisdiction of the High Court. The Will in question was executed and registered at Mumbai. In such circumstances, the High Court in its Testamentary Division would be the appropriate forum for the determination of the petition for grant of Probate.

8. Mr. Gada would urge that, the issues that arise for the determination in the suit for declaration and partition would directly and substantially arise for the determination in the Probate petition. A decision in one proceeding, especially the Probate proceeding, would have the bearing on another. It would, therefore, be expedient to transfer the suit from City Civil Court to the High Court for trial alongwith the Petition for grant of Probate. To lend support to these submissions, Mr. Gada placed reliance on the judgments of the Supreme Court in the cases of *Ravinder Nath Agarwal vs. Yogender Nath Agarwal and ors.*¹ and *Shamita Singha and another vs. Rashmi Ahluwalia and another*².

9. In order to buttress the submission that in a situation of the present nature, consolidation of the two proceedings would advance the cause of justice, reliance was placed on a decision of the Delhi High Court in the case of *S. C. Jain vs. Bindeshwari Devi*³.

10. In opposition to this, Mr. Dubey, the learned Counsel for the respondent, would submit that no substantial cause is made out for transfer of the proceedings from the Courts of

1 (2021) 3 SCR 881.

2 (2020) 7 SCC 152.

3 1997 (42) DRJ 239.

competent jurisdiction. Mr. Dubey would urge that the respondent is the dominus litis. The respondent has instituted the proceedings before the competent jurisdictional forums. The respondent cannot be compelled to prosecute the proceedings in other forums and thereby suffer inconvenience and enhanced expenses. To buttress the aforesaid submission, reliance was placed by Mr. Dubey on a judgment of the Supreme Court in the case of *Indian Overseas Bank, Madras vs. Chemical Construction Company and others*⁴, wherein it was enunciated that the principle governing the general power of transfer and withdrawal under Section 24 of the Code is that, the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.

4 (1979) 4 Supreme Court Cases 358.

11. I have given careful consideration to the aforesaid submissions. Before adverting to deal with the contentious issue and the rival submissions in the said context, it may be appropriate to note few uncontroverted facts. Relationship between the parties is not in dispute. The applicants are the wife and son of the brother of the respondent. There is also not much controversy over the fact that the suit property was initially acquired by the father and father-in-law of applicant No.1. It is indisputable that the husband of applicant No.1 and father of applicant No.2 predeceased Bhupal, the original holder of the property. The disputes between the parties seem to have escalated after the demise of Bhupal.

12. The respondent claims that Alka, his mother, had executed a Will and bequeathed her undivided interest in the suit property in favour of respondent and applicant No.2, in equal share. The applicants have, on the other hand, claimed that there was an agreement between Surit, the predecessor-in-title of the applicants, and the respondent, whereunder the respondent had agreed to relinquish his share in the suit property for the consideration of Rs.6,00,000/- and received a substantial part thereof. The applicants further assert that Alka had executed gift deed thereby donating her interest in

the suit property in favour of applicant No.2 and those gift deeds are legal and valid. The respondent assails those gift deeds and claims 50% share in the suit property. Thus, the controversy between the parties revolves around the entitlement to succeed to the share of Alka in the suit property, apart from the applicants contention that there was an agreement to release the respondent's share in the suit property for consideration.

13. In the backdrop of the aforesaid facts, at the outset, it is necessary to note the justifiability of institution of the Probate proceeding before the Civil Court at Kalyan. Under Section 270 of the Indian Succession Act, 1925 Probate may be granted by the District Judge if it appears that at the time of his death the testator had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the District Judge. Under Section 2(bb) of the Act, 1925 District Judge means the Judge of a Principal Civil Court of original jurisdiction. A plain reading of Section 270 would indicate that the jurisdiction of the District Judge would hinge upon the question as to whether the deceased had a fixed place of abode within the local limits of his jurisdiction and not a casual or fleeting residence.

14. The aforesaid position in law is required to be appreciated in the light of the fact that in the case at hand, the Will pertains to the property which is situated within the local limits of the ordinary original jurisdiction of the High Court. Secondly, the Will was made in Mumbai and registered at the office of Sub-Registrar at Mumbai.

15. The aforesaid twin factors clearly bring to the fore the applicability of clauses (a) and (b) of Section 57 of the Act, 1925 to the facts of the case. Since the Will has been made by Alka, within the local limits of the ordinary original jurisdiction of this Court, and the Will relates to immovable property situated within the local limits of the ordinary original jurisdiction of this Court, both clauses (a) and (b) are fully attracted.

16. In addition, the provisions contained in Sections 213, 264 and 300 of the Indian Succession Act, 1925 also deserves to be noted. They read as under:

“Section 213. Right as executor or legatee when established.

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in ¹[India] has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans [or Indian Christians], and shall only apply--

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the [ordinary-original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.

.....

Section 264. Jurisdiction of District Judge in granting and revoking probates, etc.

(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do.

.....

Section 300. Concurrent jurisdiction of High Court.

(1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

(2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has by a notification in the Official Gazette, authorised it so to do."

17. A conjoint reading of the provisions contained in Section 213(2)(i) and clauses (a) and (b) of Section 57 of the Act, 1925 would indicate that the mandatory requirement to

seek Probate is applicable only to Wills made by a Hindu, Buddhist, Sikh or Jaina within the local limits of original civil jurisdiction of the Chartered and specified High Courts and to Wills made outside those territory to the extent they cover immovable property situated within those territories. In other cases, the propounder may produce, rely upon and claim any right under a Will without obtaining the Probate.

18. In the case of *Ravinder Nath Agarwal* (supra) on which reliance was placed by Mr. Gada, the Supreme Court culled out the effect of the provisions contained in Sections 57, 213, 264 and 300 of the Succession Act, 1925 as under:

“35. A cumulative reading of Sections 57, 213 and 264 would show:

(i) that a person claiming to be an executor or legatee under a Will cannot rely upon the Will, in any proceeding before a Court of justice, unless he has obtained probate (if an executor has been appointed) or letters of administration with the Will annexed, if such a Will has been executed by certain classes of persons; and

(ii) that the jurisdiction to grant probate or letters of administration vests only in courts located within the towns of Calcutta, Madras or Bombay and the Courts in any local area notified by the State Government in the Official Gazette.

36. Therefore, what follows is that: (i) unless the testator belongs to any of the classes of persons specified in the Act; and (ii) unless the Will is made or some of the properties covered by the Will are located, within the local limits of a notified area, there is no necessity for an executor or a legatee under a Will to seek probate or letters of administration. In fact, the decision in *Balbir Singh Wasu vs. Lakhbir Singh and others* ((2005) 12 SCC 503) did not take note of the bar under Section 264(2) when it opined in general terms in Paragraph 5 of the judgment that “We do not read Section 213 as prohibiting the executor for applying for probate as a matter of prudence or convenience to the courts in other parts of the

country not covered by Section 213”.

19. This Court is of the view that the respondent having already instituted a suit for declaration and partition before the City Civil Court at Mumbai for the reason that the suit property is situated within the local limits of the ordinary original jurisdiction of this Court, ought to have filed the petition for grant of Probate before the High Court as both the conditions, namely, the Will has been made, and the property to which the Will relates is situated, within the local limits of the ordinary original jurisdiction of the High Court, stood satisfied. The death of the deceased within the limits of Civil Court at Kalyan could not have given the respondent the right to institute a petition for Probate in the Court of Civil Judge, Senior Division at Kalyan.

20. I find substance in the submission on behalf of the applicants that in the context of the nature of the controversy between the parties, the trial of both the proceedings before the High Court has the potentiality to advance the cause of justice. As noted above, even if the issue of the purported agreement between the respondent and Surit, the predecessor-in-title of the applicants, is kept aside, the essential dispute between the parties revolves around the

entitlement to succeed to the interest of Alka in the suit property. The respondent has propounded a Will under which he claims 50% legacy, the rest 50% has allegedly been bequeathed to applicant No.2. The applicants, on the other hand, banked upon two registered gift deeds purportedly executed subsequent to the Will. The respondent, thus, seeks declaration that those gift deeds are null and void.

21. Evidently, common question of facts and even law, may arise for the determination in both the proceedings. Nay, a finding in one proceeding may seal the fate of the other proceeding. By and large, the evidence may be similar. There is an imminent possibility of conflicting decisions if both the proceedings are adjudicated by different courts.

22. The submission of Mr. Dubey that the City Civil Court is the Court of competent jurisdiction to adjudicate the suit instituted by the respondent and, therefore, the said suit cannot be transferred to the High Court on the principle that the plaintiff is dominus litis, does not advance the cause of the respondent to the extent desired. Undoubtedly, having regard to the pecuniary limits of the jurisdiction of the City Civil Court, Bombay, the suit can be stated to have been instituted before an appropriate forum. However, it is

necessary to note that the City Civil Court has been established under the Bombay City Civil Court Act, 1948 as an additional Civil Court for Greater Bombay.

23. Section 12 of the Bombay City Civil Court Act, 1948 bars the jurisdiction of the High Court to try suits and proceedings cognizable by the City Civil Court. It reads as under:

“12. High Court jurisdiction barred except in certain cases.—Notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court:

Provided that the High Court may, for any special reason, and at any stage remove for trial by itself any suit or proceeding from the City Court.”

24. Though Section 12 begins with a non-obstante clause and bars the jurisdiction of the High Court to try suits and proceedings cognizable by the City Civil Court, yet, the legislature advisedly reserved the residuary power with the High Court, albeit for a special reason. Under the proviso, the High Court may, for any special reason, and at any stage, remove for trial by itself any suit or proceeding before the City Court.

25. In the case at hand, in my view, having regard to the relations between the parties, the nature of the dispute, rival testamentary and inter-vivos instruments set up by the

parties in relation to the interest of deceased Alka in the suit property, and the pendency of a proceeding for grant of Probate, cumulatively constitute a special reason for transfer of SC Suit No.16/2019 from the City Civil Court to the High Court.

26. I am, therefore, inclined to allow both the applications.

27. Hence, the following order:

: O R D E R :

- (i)** The applications stand allowed.
- (ii)** Civil MA/506/2024 stands transferred from the Court of Civil Judge, Senior Division, Kalyan, to the High Court, in its Testamentary Division.
- (iii)** SC Suit No.16/2019 stands transferred from the City Civil Court, Bombay, to the High Court, Original Side, Bombay.
- (iv)** The learned Civil Judge, Senior Division at Kalyan shall transfer the record and proceedings in Civil MA/506/2024 with such dispatch that it reaches the High Court, Bombay, within a period of three weeks from the date of communication of this order.

- (v) The learned Judge, City Civil Court, Bombay, shall transfer the record and proceedings in SC Suit No.16/2019 with such dispatch that it reaches the High Court, Original Side, Bombay, within a period of three weeks from the date of communication of this order.
- (vi) After the proceedings are transferred, the parties shall be at liberty to file an appropriate application for tagging and/or consolidation of the proceedings.
- (vii) Applications stand disposed.
- (viii) No costs.

[N. J. JAMADAR, J.]