

(Non-Reportable)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. 1531 OF 2018

SHAMITA SINGHA & ANR.

..PETITIONERS

VERSUS

RASHMI AHLUWALIA & ANR.

..RESPONDENTS

J U D G M E N T

ANIRUDDHA BOSE, J.

The petitioners in this proceeding are both daughters of Late Pawan Kumar Singha(deceased). They seek transfer of a suit for partition and certain other ancillary reliefs instituted in the Delhi High Court. The said suit has been

registered as CS(OS)No.2888 of 2014. The plaintiff in that suit is Rashmi Ahluwalia, who is the widow of the deceased. She was the second wife of the deceased. The petitioners in this proceeding, Shamita Singha and Masoom Singha are daughters of Pawan Kumar Singha, deceased, from his first marriage, which was later dissolved. Both of them have been impleaded as defendants in that suit for partition. The third defendant in that suit is Ms.Sanjana, who is the daughter of Rashmi Ahluwalia, from her first marriage. It has been pleaded in the plaint that after her marriage to the deceased, Sanjana was "accepted/adopted" by the deceased Pawan Kumar Singha as his own daughter. Sanjana is the second respondent in this petition. The first petitioner, Shamita Singha has applied for grant of Letters of Administrations to the estate of the deceased Pawan Kumar Singha on the basis of his Will

dated 15th January, 2014. A petition to that effect has been filed in the Testamentary and Intestate jurisdiction of the Bombay High Court. That petition, filed on 22nd April 2016, has been registered as "T. Petition No. 821 of 2016". Rashmi Ahluwalia and said Ms. Sanjana Ahluwalia, have put in appearance in the Testamentary Petition. They question, inter-alia, the legality of the Will and contend that it is forged.

2. So far as the suit in the Delhi High Court is concerned, this has been instituted prior in time, on 18th September, 2014. In the CS(OS) No. 2888 of 2014, Rashmi Ahluwalia has claimed partition of the estate of the deceased and has sought declaration to the effect that she is entitled to 1/4th share of the estate. The schedule of assets forming part of the petition for Letters of Administration and the table of

assets given in the suit for partition have several common movable and immovable properties. Thus, the assets which the petitioners claim to have been bequeathed to them by the testator also forms subject-matter of the suit for partition.

3. The petitioners' case argued by Ms. Arora, learned counsel, is that the Probate Court has exclusive jurisdiction in matters relating to legality of a will and for that reason, her plea is that it would be expedient that the suit instituted in the Delhi High Court should be transferred to the Probate Court. Ms. Arora has relied on a decision of this Court in the case of **Nirmala Devi vs. Arun Kumar Gupta and Others (2005) 12 SCC 505** in support of her submission that the suit for partition can be clubbed together with a Testamentary proceeding. This argument is founded on the

reasoning that the decision in the Testamentary proceeding on the question of validity of the Will shall have direct impact on the partition suit. Ms. Mishra, learned counsel for the respondents, on the other hand has pressed for continuance of the suit in the Delhi High Court. It is her submission that both the proceedings can simultaneously run in the respective fora in which they have been instituted. Her alternative plea is that the Suit for partition having been instituted before the Probate Proceeding, the latter ought to be transferred to the Delhi High Court, if clubbing together of the two proceedings is at all warranted. She has drawn my attention to Section 270 of the Indian Succession Act, 1925 to contend that the Delhi High Court also has jurisdiction to try the Probate Proceeding.

4. This Court has laid down in the case of **Chiranjilal Shrilal Goenka vs. Jasjit Singh and Others (1993) 2 SCC 507** the primacy of the Probate Court on the question of validity of a Will. On behalf of the respondents, a decision of this court in the case of **Kanwarjit Singh Dhillon vs. Hardyal Singh Dhillon & Others (2007) 11 SCC 357** has been cited. This case is an authority on the point that the Probate Court is not competent to determine the question of title of the properties forming subject-matter of a Will. In another decision, **Binapani Kar Chowdhury vs. Sri Satyabrata Basu and Another (2006) 10 SCC 442** the question involved was as to whether a legal representative could prosecute a civil suit filed by the Testator during his lifetime for recovery of possession against third party. The legal representative in that case wanted to be substituted as plaintiff in the civil suit in

the capacity of executor and legatee of the will of the Testator, who was plaintiff in the suit. Such a course was found to be permissible. This opinion of the Court was qualified with the direction that if the suit was ultimately decreed, the Trial Court should make it clear that the judgment and decree would come into effect only on such legal representative obtaining and producing the probate of the Will. Till such time the decree was to be kept provisional and not to be given effect. But ratio of this judgment does not apply in the facts of this case. The Delhi High Court, in the case of **Praveer Chandra vs. Aprajita & Others (2019 SCC Online Delhi 10820)** has followed the course directed in the case of **Binapani Kar Chowdhury (supra)** and has held that a partition suit and Probate Proceeding could proceed simultaneously, but if the Partition suit was decreed, the decree would

come into effect after the decision in the Probate proceeding. This view was taken, however, in an application filed under Section 10 of the Code of Civil Procedure, 1908, in which the partition suit was sought to be stayed.

5. In **Chitivalasa Jute Mills vs. Jaypee Rewa Cement [(2004) 3 SCC 85]**, this Court has broadly laid down the guideline to be followed while dealing with the question of transfer of suit under Section 25 of the Code. In that case, parties were substantially the same in two suits. The disputes arose out of same set of transactions. The cause of action of the suit alleged by one party was its ground of defence in the other suit. This Court found that the same set of evidence would be needed in both the suits. In such circumstances, this

Court opined that the two suits ought not to be tried separately.

6. In the facts of this case, the outcome of the Probate proceeding in my opinion would have impact on the suit for partition pending before the Delhi High Court. Majority of the assets in respect of which Letters of Administration has been sought for are common to those in respect of which partition is asked for. Of course, grant of Letters of Administration, if ordered, per se would not determine the title of the testator in the assets scheduled to the Testamentary Petition. I find from the joint affidavit of the respondents herein filed in support of the Chamber Summons taken out by them in the aforesaid Testamentary Petition that they are contending the Will to be a forged one. In the same affidavit, the deponent of which is Rashmi Ahluwalia, it has also been pleaded that during the period of her marriage with the

deceased, they had purchased various properties together.

7. I have already observed that the Testamentary proceeding would have direct bearing or impact on the pending suit for partition. If the Letters of Administration is granted to the petitioner in the Testamentary proceeding, then the assets of the deceased may not remain available as the partible estate of Pawan Kumar Singha (deceased). In the plaint of the suit for partition, a copy of which has been annexed to this Transfer Petition, the properties of Pawan Kumar Singha (deceased) have been listed in paragraph 2 thereof, referring these assets as that of the deceased. The character of these assets as joint property of Rashmi Ahluwalia and the deceased, however, has been only hinted in the affidavit taken out in support of the Chamber Summons in the

Testamentary petition. The respondents are contesting the petition for grant of Letters of Administration. If the partition suit proceeds independently and plaintiffs therein succeed, then there would be a possibility of inconsistent findings by two High Courts, provided the petitioners succeed in the Testamentary proceeding. In situations of this nature, this Court in the cases of **Balbir Singh Wasu vs. Lakhbir Singh And Others [(2005) 12 SCC 503]**, **Nirmala Devi (supra)** and **Chitivalasa Jute Mills (supra)**, has directed clubbing together of both proceedings for hearing. I am satisfied that certain common issues would arise for adjudication of both these proceedings. In the written statement of the first and second defendants in the partition suit, the point of execution of the Will by Pawan Kumar Singha (deceased) has been raised.

8. Ms. Mishra has argued that the suit for partition having been instituted before the Testamentary Petition, her client's suit must be allowed to proceed first and the Testamentary Petition could be transferred to Delhi High Court, if necessary. It is also her submission that major portion of the assets of the deceased lie in Delhi. A petition for transfer under Section 25 of the Code, however, is decided on consideration of the ends of justice. The "First past the post" is not the principle that can be applied in proceedings of this nature. Thus, the view taken by the Delhi High Court in the case of **Praveer Chandra (supra)** would not aid the respondents here, as that proceeding was founded on a different principle embodied in Section 10 of the Code. I am of the opinion that the Probate Court having primacy in determining the question of grant of Letters of Administration or Probate, it would

be expedient for the ends of justice that the Bombay High Court, which is hearing the Testamentary petition, should decide the suit for partition as well. The plaintiffs in the suit for partition are also contesting the Testamentary Petition and they would not be greatly inconvenienced in prosecuting the suit before the Bombay High Court. The petitioners claim that the Will has been executed in Mumbai and the two attesting witnesses who have affirmed affidavits to support the Will are also from Mumbai. Copies of these affidavits appear at pages 39 and 41 of the paper book filed in connection with the Transfer Petition. These are also factors which I have considered in forming my opinion in favour of transfer of the suit.

9. I accordingly direct that the suit filed in the Delhi High Court by Rashmi Ahluwalia

registered as C.S.(O.S.) No.2888 of 2014 be transferred from the said High Court to the Bombay High Court. On transfer, the said suit is to be listed before the Hon'ble Judge before whom Testamentary Petition No.821 of 2016 is pending adjudication. The Hon'ble Judge may hear both the proceedings simultaneously, clubbing them together, if necessary. In the event the Hon'ble Judge before whom the said Testamentary Petition is listed or pending listing does not have the determination to hear the suit for partition as per the roster of the Bombay High Court, then the file may be placed before the Hon'ble Chief Justice, Bombay High Court, for appropriate order of assignment so that both the Suit and the Testamentary petition can be heard together.

10. The Transfer Petition is allowed in the above terms. Interim order, if any, shall stand dissolved.

11. There shall be no order as to costs.

.....J.
(Aniruddha Bose)

New Delhi
Dated: 18th June, 2020