

D.C. Raizada Vs. the State

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Court : Delhi

Decided On : Mar-12-2003

Reported in : 2003VAD(Delhi)589; AIR2003Delhi200; 105(2003)DLT737; 2003(69)DRJ26

Judge : Manmohan Sarin, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24

Appeal No. : I.A. Nos. 2390 and 5613 of 1998 and 9769 of 2002 in Pr. 60 of 1996

Appellant : D.C. Raizada

Respondent : The State

Advocate for Def. : N. Dass Gupta, Adv.

Advocate for Pet/Ap. : Rishikesh, Adv

Judgement :

ORDER

Manmohan Sarin, J.

1. By this common judgment, I would be deciding is 2390/98, being an application under Section 24 of the Code of Civil Procedure, filed by the petitioner in this case, seeking a transfer of Suit No. 389/97, titled Mahesh Kumar Raizada v. State and

others, pending before the District Judge. The second application to be decided by this common judgment is is 5613/98, filed by the respondent in the present case, seeking transfer of the present probate petition No. 60/96 to the District Court to be tried along with Section No. 389/97. Respondent has also moved another application bearing No. 9769/2002 for an early decision of IA. 5613/ 98.

2. The facts giving rise to these applications may be briefly noted ;--

Petitioner, D. C. Raizada, filed the present probate petition No. 60/96, seeking a probate in respect of registered Will dated 13-12-1995, said to be executed by testator late Sh. L. P.Raizada. Service is complete and as per Mr. Rishikesh, advocate for the petitioner, the valuation report from the Chief Revenue Controlling Authority has also been received. Suit No. 389/97 was filed by the respondent on 1-12-1997 in the District Courts, seeking a probate in respect of unregistered Will dated 27-1-1996, said to be executed by testator, late Sh. L.P. Raizada.

3. The position which emerges is that the petitioner, by the present petition seeks a probate in respect of registered Will dated 13-12-1995, instituted on 16-12-1996, while the respondent instituted the Suit No. 389/ 97 in the District Courts in December, 1997, seeking a probate in respect of Will by testator dated 27-1-1996, propounded as the last Will. Petitioner in the present case seeks transfer of Suit No. 389/97, pending in the District Courts while the respondent seeks transfer of the present probate petition to the District Courts.

4. Mr. N. Dass Gupta, counsel for the respondent very candidly recognizes that he present petition has been filed earlier. However, he submits that the probate petition filed by him before the lower Court having concurrent jurisdiction is filed before the Court of first instance, be given preference. He also submits that he would lose one right of appeal. He further submits that the feasibility of an expeditious disposal of the case in the District Courts is far higher. Hence the present petition should be transferred to District Courts. Mr. Rishikesh in opposition submits that he has no objection for an expeditious trial. He has placed reliance on Shakti Zarda Factory (I) Pvt. Ltd. v. Kathil. Tobacco Bhandar : (2002)6SCC151 , wherein the Supreme Court, while dealing with a case of infringement of copyright was confronted with the similar situation where a suit had

been instituted in the High Court and another suit had been instituted between the same parties before the Additional District Judge. The Supreme Court in the said case directed that the suit pending in the High Court should be disposed of expeditiously and had stayed the disposal of the suit in the trial Court.

In my view, the respondent losing a right of appeal cannot be a determinative factor specially when the petition in the High Court is previously instituted and in a Court of competent jurisdiction.

5. Considering that the parties are the same and the petition and suit in question are concerning the Wills, said to have been executed by the same testator, coupled with the fact that the petition in the High Court had been instituted earlier in time in a Court of competent jurisdiction, the ends of justice would be met by directing the transfer of the suit No. 389/97, pending before the District Judge to this Court and directing an expeditious trial of the same along with the present petition. Ordered accordingly.

IA. 2390/98 is allowed. IA. 5613/98 is dismissed. IA.9769/2002 is dismissed as having become infructuous.

Probate No. 60/96

Both the counsel have no objection to the two petitions being consolidated for the purpose of trial. Let the case file of Suit No. 389/ 97, pending before the District Judge, Delhi be called for the next date.

List the matter before the Joint Registrar on 7-5-2003.

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