

**IN THE COURT OF SH. ARUN SUKHIJA,**  
**ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)**  
**TIS HAZARI COURTS, DELHI.**

**CS NO.:- 123/2017**

**UNIQUE CASE ID NO.:- 1211/2017**

**IN THE MATTER OF :-**

**Sarat Chandra Sinha**

**....Plaintiff**

**VERSUS**

**Bidhan Chandra Sinha & Ors.**

**....Defendants**

**-:: O R D E R ::-**

Vide this order this court shall decide an application under Section 10 of CPC for stay of the present suit on the ground that the Will in question is directly and substantially in issue in the earlier suit which was filed by the mother of the parties.

The defendant no. 1 has relied upon the order dated 29.01.2018 passed by the court of Sh. Praveen Kumar, the then ADJ-05, New Delhi District, Patiala House Courts, New Delhi. The Id. Counsel for defendant no. 1 has argued that an application under Order 22 Rule 4 CPC read with Order 1 Rule 1 CPC was filed by defendant no. 1 in that case. It is further submitted in that case, he was defendant no. 2 and sought transposition as plaintiff in the said case on the basis of the Will dated 05.10.2012, whereby, Smt. Sarla Bala Sinha, the mother of parties bequeathed her property and rights including right in defendant no. 3 firm (in that

suit) to defendant no. 1. It is further argued by Id. Counsel for defendant no. 1 that the then Ld. ADJ-05 has come to the conclusion that whether the Will dated 05.10.2012 is forged and fabricated document cannot be decided at the stage of an application under Order 22 Rule 4 CPC read with Order 1 Rule 1 CPC and the then Ld. Additional District Judge-05, New Delhi District, Patiala House Courts, New Delhi has transposed him as plaintiff in place of the mother of the parties namely Smt. Sarla Bala Sinha. The Id. Counsel for defendant no. 1 submits that the issue of the Will dated 05.10.2012 is directly and substantially in issue in that suit and the said Court will adjudicate the Will in question in the said suit. It is further argued that the said suit was previously instituted suit.

The Plaintiff has filed reply to the said application and the Ld. Counsel for the Plaintiff has argued that Civil Suit no. 2409/2014 is pending before the Patiala House Courts raises the claim on the basis of Will executed by Late Sh. Ananda Moy Sinha for the lifetime benefit of Smt. Sarla Bala Sinha and the same was filed mother of the parties, whereas, in the present suit the plaintiff has sought the relief of declaration to declare the Will dated 05.10.2012 as null and void and also for seeking permanent injunction against the defendants for getting any benefit by virtue of the Will dated 05.10.2012. The Id. Counsel for the Plaintiff has further argued that the issues in the said case are not directly and substantially in issue in the present case and moreover, this suit is exhaustive suit based upon detailed facts and separate cause of action. The Id. Counsel for plaintiff seeks dismissal of the application and submits that application is not maintainable.

#### **FINDINGS & CONCLUSION OF THE COURT**

There is no dispute that earlier matter bearing Suit no. 2409/2014 is pending before the court of Ld. ADJ, New Delhi District, Patiala House Courts, New Delhi, whereby, the mother of the parties have claimed the right through the Will

executed by Late Sh. Anand Moy Sinha. The mother of the parties has admittedly expired on 14.08.2015. Thereafter, defendant no. 1 has moved an application under Order 22 Rule 4 CPC read with Order 1 Rule 1 CPC in that suit and the then Ld. ADJ-05 came to the conclusion that the Will dated 05.10.2012 is forged and fabricated cannot be decided at the stage of deciding application under Order 22 Rule 4 CPC read with Order 1 Rule 1 CPC.

In the present case, the plaintiff has raised various grounds declaring the said Will dated 05.10.2012 as null and void. The versions for declaring the said Will as null and void are specifically and exhaustively agitated in paras no. 10 to 18 of the plaint. The present suit is basically for declaration and permanent injunction and this is exhaustive and extensive suit. The defendant no. 1 has failed to show that defendant no. 1 has filed an application for amendment of the plaint of that suit and in the Amended plaint, the Will in question was propounded and agitated by defendant no. 1. Since, the Plaint of the said suit was not amended, the plaintiff of the present suit was not given any opportunity to file the detailed written statement agitating all his grounds in that suit which has been raised by the plaintiff in the present case. If the defendant had got amended the plaint in that suit, the plaintiff of the present case was also able to file detailed written statement as well as counter-claim in the said case but the same had not happened in that suit.

The defendant no.1 has also failed to show to this court that the said court has specifically framed the issue “Whether the Will dated 05.10.2012 executed by Smt. Sarla Bala Sinha was forged and fabricated document”. Although, the order dated 29.01.2018 reveals that said aspect cannot be decided at the stage of the application under Order 22 Rule 4 and Order 1 Rule 1 CPC, however, there is nothing to show that the plaint was amended and thereafter any issue regarding the Will in question was framed. Moreover, plaintiff has a remedy to file full-fledged

suit for declaration and the present remedy is an exhaustive remedy which the plaintiff can seek under the Law.

Although, plaintiff in the present case, vide order dated 13.04.2019 has sought time to file application before the Hon'ble Delhi High Court for transfer of this case either to the court where the said case is pending at Patiala House Court or to transfer the said case to this court as the issue of Will dated 05.10.2012 of Smt. Sarla Bala Sinha is pending for consideration in both cases, however, plaintiff has not filed any such application despite repeated opportunities granted to him. The defendant No.1 was also having the opportunity to file the said transfer application/petition but the same was not filed by him also.

The principles of Section 10 CPC are not squarely applicable to the facts and circumstances of the present case. Although, the issue of the Will dated 05.10.2012 may be also considered in the case which is pending before the Patiala House Court but it cannot be said that the said Will dated 05.10.2012 of the mother of parties is directly and substantially in issue in that suit. At the cost of repetition, plaintiff has a remedy to file full-fledged suit for declaration and the present remedy is an exhaustive remedy which the plaintiff can seek under the Law.

The principles and provision under Section 10 CPC are not applicable to the present case and accordingly, the application is dismissed. However, the parties including defendant no. 1 are at liberty to file the transfer application before the Hon'ble Delhi High Court in accordance with law.

**Announced in the open court on  
this 25<sup>th</sup> day of June, 2020.**

**(ARUN SUKHIJA)  
ADJ-07 (Central)  
Tis Hazari Courts, Delhi**