REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) No.970 OF 2016

RAVINDER NATH AGARWAL ... PETITIONER

Versus

YOGENDER NATH AGARWAL & ORS. ... RESPONDENT(S)

WITH

TRANSFER PETITION (CIVIL) No.2779 OF 2019

J U D G M E N T

1. While Transfer Petition (C) No.970 of 2016 is for the transfer of a suit for partition, pending on the file of the Additional District Judge, Saket Court, New Delhi to a Court of competent jurisdiction in the District of Nainital, Uttarakhand, Transfer Petition (C) No.2779 of 2019 is for the transfer of a testamentary case pending on the file of the High Court of Uttarakhand, Nainital to the District

Court at Saket, New Delhi.

2. I have heard the learned counsel for the respective parties.

3. One Shri Badri Nath Agarwal, who was ordinarily a resident of Village Bithoriya No.1, Tehsil Haldwani, District Nainital, Uttarakhand, died on 07.05.2011, at the ripe old age of 91 years, leaving behind him surviving, five sons and a daughter. They were (1) Major Ravinder Nath Agarwal, (2) Surender Nath, (3) Narender Nath, (4) Virender Nath Agarwal, (5) Lily Nath (daughter) and (6) Yogender Nath Agarwal. Out of these six children, Shri Narender Nath is now no more. He died on 06.09.2019 leaving behind his wife Smt. Ira Joshi and two sons by name Nikhil Nath and Aditya Nath.

4. Claiming that his father Late Badri Nath executed his last Will and Testament on 06.04.2011, cancelling and revoking his previous Will dated 26.06.2005 and that under the last Will dated 06.04.2011, a vast extent of agricultural land in Village Bithoriya No.1, Tehsil Haldwani, District Nainital, was bequeathed to him, the eldest son Major Ravinder Nath Agarwal got mutation effected in his favour in the revenue records, but the same became the subject matter of a writ petition filed by Lily Nath on the file of the High

Court of Uttarakhand. Apart from filing a writ petition challenging the mutation effected in favour of her eldest brother, Lily Nath also filed a civil suit in Suit No.57 of 2011 on the file of Civil Judge, Senior Division, Nainital seeking a decree of permanent injunction. As a counter blast, Major Ravinder Nath, who claims to be the legatee under the Will and who got mutation effected in his favour in respect of one property, also filed civil suit in Suit No.72 of 2011 on the file of the Civil Judge, Senior Division seeking a decree of permanent injunction.

5. Thereafter the last son Shri Yogender Nath, filed a suit in C.S No.2745 of 2012 on the file of High Court of Delhi, for a partition of all the properties left behind by Shri Badri Nath. The suit was filed in September-2012. But in the year 2016, presumably after the filing of the written statements, the said suit was transferred to the file of the Additional District Judge, Saket Court, New Delhi and re-numbered as C.S No.126 of 2016.

6. Immediately thereafter, Major Ravinder Nath Agarwal filed the first of these transfer petitions namely T.P (C) No. 970 of 2016, seeking the transfer of the partition suit pending on the file of the

Additional District Judge, Saket, New Delhi to the Court of District Judge at Nainital, Uttarakhand. On 08.07.2016, this Court ordered notice in the transfer petition and also granted stay of further proceedings in the partition suit.

7. But a few days before this Court ordered notice and granted stay, the plaintiff in the partition suit namely Sh. Yogender Nath (last son) abandoned the suit and hence the only daughter Lily Nath got herself transposed as the plaintiff, by moving an application under Order XXIII Rule 1-A. The original plaintiff Yogender Nath was transposed as defendant No.5.

8. On 09.10.2018, this Court passed an order in T.P (C) No. 970 of 2016, vacating the stay of further proceedings in the partition suit earlier granted on 08.07.2016. Thereafter the eldest son Major Ravinder Nath filed a petition in Testamentary Case No.01 of 2019 on the file of the High Court of Uttarakhand at Nainital, seeking the grant of letters of administration with the Will dated 06.04.2011 annexed thereto, under Section 276 read with Sections 250 and 273(b) of the Indian Succession Act, 1925. Upon receipt of summons in the said testamentary case, the daughter Lily Nath

came up with the second transfer petition namely T.P (C) No.2779 of 2019, praying for the transfer of the testamentary case from Uttarakhand High Court to the District Court, Saket, New Delhi where her partition suit is now pending, so that both could be tried together.

9. Thus, I have on hand two transfer petitions, one of the year 2016, filed by the eldest son seeking a transfer of the partition suit from the District Court, Saket, New Delhi to the District Court, Nainital, Uttarakhand and another of the year 2019 filed by the plaintiff in the partition suit seeking the transfer of the testamentary case pending on the file of the High Court of Uttarakhand to the District Court at Saket, to be tried together with her partition suit. Since the eldest son Major Ravinder Nath, is the petitioner in the first transfer petition, he shall hereinafter be referred to as "the petitioner" and Ms. Lily Nath shall be referred to as "the contesting respondent".

10. Before I proceed further, it should be brought on record that the earliest of the civil suits namely C.S No.57 of 2011 filed by the daughter Lily Nath for a decree of permanent injunction, on the file

of the Civil Judge, Senior Division, Nainital was dismissed for non-prosecution on 27.11.2015. However, the second suit in C.S No.72 of 2011 filed by Major Ravinder Nath, seeking a decree of permanent injunction is still pending on the file of the Civil Judge, Senior Division, Nainital. I am not concerned with this civil suit, as it is not the subject matter of any transfer petition.

11. The short question that arises for consideration in these transfer petitions, is as to whether the partition suit pending on the file of the District Court at Saket, New Delhi from the year 2016 (instituted in 2012), should be transferred to the District Court, Nainital, Uttarakhand or whether the testamentary case pending on the file of the High Court of Uttarakhand from 2019, should be transferred to the District Court, Saket, so that it could be tried along with the partition suit already pending there.

12. Before I take up for consideration, the rival contentions, three important aspects have to be borne in mind. They are:-

(i) The High Court of Uttarakhand at Nainital does not have ordinary original civil jurisdiction, though it has jurisdiction to entertain a testamentary case for the grant of probate or letters of

administration. Therefore, the partition suit pending in the District Court, Saket cannot be transferred to the High Court of Uttarakhand, but can be transferred only to a District Court in Nainital. The District court, Nainital will not have jurisdiction to grant probate/letters of administration in respect of a property located outside its territorial limits, if its value exceeds Rs.10,000/-. *Per contra*, both the High Court of Delhi as well as the District Court, Saket, have jurisdiction to entertain an application for the grant of probate/letters of administration subject to certain conditions/restrictions;

(ii) The last Will and Testament dated 06.04.2011 set up by the eldest son Major Ravinder Nath, covers two properties, one of which is a MIG flat promoted by the Delhi Development Authority at Saket, New Delhi. The other property is a bhumidhari land lying in Khata No.741 measuring an extent of 6.8550 hectares in Village Bithoriya No.1, Tehsil Haldwani, District Nainital, Uttarakhand, along with a residential house, service quarters and sheds. Therefore by virtue of Section 264(1) of the Indian Succession Act, 1925, the District Judge, Saket has jurisdiction to entertain a

petition for the grant letters of administration, at least in respect of the property at Delhi; and

(iii) The partition suit was filed in the year 2012 on the file of the High Court of Delhi and was transferred to the District Court, Saket in the year 2016. At the time when the eldest son Major Ravinder Nath came up with T.P (C) No.970 of 2016, no proceeding for the grant of letters of administration was pending in the High Court of Uttarakhand. Actually the petitioner in T.P (C) No.970 of 2016 chose to file a testamentary case in the High Court of Uttarakhand only in January 2019, after the stay of partition suit granted in T.P (C) No.970 of 2016 was vacated on 09.10.2018. Therefore it must be remembered that the petitioner in T.P (C) No.970 of 2016 created a situation that could be taken advantage of by him.

13. Keeping the above background in mind, let me now look at the grounds on which the transfer of the partition suit from Delhi to Nainital is sought. In the transfer petition T.P (C) No.970 of 2016 the petitioner has contended :

(i) that he was 68 years of age (at that time), suffering from many diseases and undergoing cardiac care treatment with implanted pace maker;

(ii) that he had suffered a paralytic stroke on the right side of the body and a blood clot in the brain;

(iii) that the respondents were already contesting the mutation case in Haldwani;

(iv) that three of the respondents are foreign nationals residing out of India;

(v) that the subject matter of the suit includes an immovable property situate within the jurisdiction of the competent Court in Nainital; and

(vi) that there is a bar of jurisdiction of other Courts under Uttar Pradesh Zamindari Abolition and Land Reforms Act.

14. In addition to the grounds indicated in the transfer petition, it is also contended by Sh. Gopal Sankaranarayanan, learned Senior Counsel and Sh. Manish Kumar, learned counsel for the petitioner that in a petition for transfer, the location and convenience of the parties, subject to the territorial jurisdiction of the Courts, should also be taken into account; that in the testamentary case, an application under Section 10 CPC was filed, but before the High Court of Uttarakhand could pass orders on the application under Section 10, the second transfer petition came to be filed; that testamentary proceedings, being proceedings *in rem*, will have

primacy over other proceedings and, hence, the partition suit is liable to be transferred; and that by virtue of Proviso (b) of Section 273 of the Indian Succession Act, any probate/letters of administration granted by the District Court at Saket will not have effect in other States, unless the value of the property and estate affected beyond the limits of the State does not exceed Rs.10,000/-.

15. While Sh. Gopal Sankaranarayanan, learned Senior Counsel cited the decisions of this Court in ***Ishwardeo Narain Singh vs. Smt. Kamta Devi and Others***.[1] ; ***Chiranjilal Shrilal Goenka vs. Jasjit Singh and Others***[2]***; T. Venkata Narayana and Others vs. Venkata Subbamma (Smt.) (dead) & Others***[3]***; Balbir Singh Wasu vs. Lakhbir Singh & Others***[4]**,** Sh. Manish Kumar learned Counsel relied upon ***Smt. Rukmani Devi and Others vs. Narendra Lal Gupta***[5]***.***

16. In response, Ms. Nitya Ramakrishnan and Sh. H.S. Sharma, learned counsel appearing for the respondents contended that the testamentary proceedings were initiated deliberately in Uttarakhand

1 AIR 1954 SC 280
2 (1993) 2 SCC 507
3 (1996) 4 SCC 457
4 (2005) 12 SCC 503
5 (1985) 1 SCC 144

after seven years of the institution of the partition suit in Delhi and that the petitioner in the first transfer petition is guilty of abuse of the process of Court.

17. As can be seen from the rival contentions, most of them are on factual foundation. However, one contention advanced on behalf of the petitioner, is purely legal and deserves a deeper scrutiny. Therefore, I shall take up that contention first.

18. According to the petitioner, who is eldest of the siblings and who has set up a Will, the proceedings in a testamentary case are proceedings *in rem* and that, therefore, they will have primacy and that, irrespective of the fact that the testamentary proceedings were initiated much after the institution of the partition suit, the partition suit and not the testamentary case, is liable to be transferred. In support of these contentions, the learned counsel appearing for the petitioner has relied upon certain decisions. The first of these decisions is that of this Court in ***Ishwardeo Narain Singh*** (supra). This Judgment is relied upon only for the limited purpose of showing that a Court of probate is concerned only with the question whether the document put forward as the last Will and

Testament was duly executed and attested in accordance with law and whether at the time of execution, the testator was in a sound and disposing state of mind. We are not concerned in this case with the question as to the nature of the proceedings for probate or letters of administration. Therefore, the said decision is of no assistance for deciding the question on hand.

19. In ***Chiranjilal Shrilal Goenka*** (supra), the primary question that arose was as to whether an arbitrator appointed by this Court, by consent of parties, would have jurisdiction to deal even with the proceedings for probate. Answering the question in the negative, this Court held that the probate Court alone has been conferred with the exclusive jurisdiction to grant probate or letters of administration and that even by consent, the parties cannot confer jurisdiction upon an arbitrator to adjudicate upon the proof or validity of the Will. Obviously this decision is only on the question of jurisdiction of an arbitral tribunal relating to testamentary proceedings and not about the right of a party to seek transfer of a proceeding, from one Court to another, when both Courts are claimed to have jurisdiction.

20. In ***T. Venkata Narayana*** (supra), the question before this Court was whether secondary evidence could be led, in a suit for injunction, to prove an alleged Will. This Court held that a suit for injunction cannot be converted into a suit for probation of a Will and that if the Will is to be proved according to law, it has to be by way of a probate proceeding in the Court having competency and jurisdiction according to the procedure prescribed in the Indian Succession Act. But this decision does not lay down (and could not have laid down) any proposition that all Wills executed by all classes of persons in all areas throughout the country require probate/letters of administration, as we shall see later.

21. ***Balbir Singh Wasu*** (supra) is the only case where this Court was concerned with the question whether the proceedings for probate initiated later in point of time than a suit for declaration and injunction could proceed further or not. In this case, the party who had first filed a suit for declaration and injunction before the Court of a Civil Judge, sought stay of the probate proceedings initiated by the opposite party in the High Court, later in point of time, on the basis of Section 10 of the Code of Civil Procedure. The

High Court rejected the prayer for stay on the ground that the pendency of the suit for declaration will not bar the High Court from entertaining probate proceedings. Without answering the question revolving around section 10, CPC directly, this Court held in ***Balbir Singh Wasu***: **(i)** that a decision on the appellant's civil suit would not conclude the probate proceedings; **(ii)** that the question whether probate should be granted or not would still be left to be determined by the High Court, though the decision of the civil Court may be relevant even in those proceedings; and **(iii)** that though the requirement of Section 213 of the Indian Succession Act, for an executor to obtain probate, may not apply to all the areas outside the presidency towns (or the notified areas), there is no prohibition for an executor to apply for probate as a matter of prudence or convenience, even in cases where they are not covered by Section 213.

22. There are two interesting aspects to the decision in **Balbir Singh** (supra). They are: **(i)** Without deciding the question whether an application under Section 10 CPC would lie or not, this Court transferred the probate proceedings from the High Court to a

District Court which was competent to entertain probate proceedings and transferred the suit for declaration also to the same Court so that both of them could be clubbed and heard together. Unfortunately, this Court omitted to take note of the fact that in cases where no probate is mandatorily required by law, the Will could be relied upon in any civil action, even without getting it probated. **(ii) *Balbir Singh*** followed another decision of this court in **Nirmala Devi vs. Arun Kumar Gupta[6].** It was a case where probate proceedings were initiated in 1997 with respect to a Will of the year 1984. A civil suit was already pending from 1987, but this Court merely ordered the transfer of the civil suit pending on the file of the sub-Judge to the Court of the District Judge where probate proceedings were pending, so that both could be clubbed together and disposed of.

23. This Court did not consider or did not have an occasion to consider in any of the above decisions, the difference between cases where a party is entitled to rely upon a Will in a judicial proceeding even without getting probate/letters of administration and cases where there is a bar for the production of a Will in a judicial

6 (2005) 12 SCC 505

proceeding without first getting probate/letters of administration. The primacy to be accorded to probate proceedings would depend upon the category to which the case belongs.

24. Having said that, let us now take a closer look at some of the provisions of the Indian Succession Act, 1925.

25. The Indian Succession Act, 1925 is divided into 11 parts, with some of the parts sub-divided into several chapters. Part VI of the Act comprising of 23 Chapters, contains exhaustive provisions relating to *"Testamentary Succession".* Sections 57 to 191 of the Act are included in this Part.

26. Part IX of the Act contains Sections 217 to 369, divided into 13 chapters. Chapter IV of Part IX contains provisions governing *"the practice in granting and revoking probates and letters of administration."* Sections 264 to 302 are found in this Chapter. The procedure for making an application for probate or for letters of administration with the Will annexed, is provided in Section 276.

27. The District Judge is conferred with the jurisdiction to grant and revoke probates and letters of administration in all cases within his District, under Section 264 of the Act. Section 264 reads as

follows:-

> "***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."*

28. It may be seen from Sub-section (2) of Section 264, that it imposes a bar upon the Courts in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, from receiving applications for probate or letters of administration, until the State Government, by a notification in the Official Gazette, authorized them so to do, wherever the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person. But the bar under Sub-section (2) has no application to cases, to which Section 57 applies.

29. Section 57 of the Act reads as follows:

> "***57. Application of certain provisions of Part to a class of Wills made by Hindus, etc.—****The provisions of this Part*

which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; [and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):]

Provided that marriage shall not revoke any such Will or codicil."

30. Schedule III of the Act contains a list of provisions which are applicable, subject to certain restrictions and modifications, to all the Wills described in clauses (a), (b) and (c) of Section 57.

31. The jurisdiction conferred upon the District Judge in Chapter IV of Part IX, is also exercisable by the High Court, by virtue of the concurrent jurisdiction conferred under Section 300. Section 300 reads as follows:

"***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."

The bar under sub-Section (2) of Section 264 is found also in sub-Section (2) of Section 300.

32. Part VIII of the Act which is perhaps the smallest among the several parts of the Act, contains two important provisions in Sections 212 and 213. They read as follows:

*"**212. Right to intestate's property.—**(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.*

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, [Indian Christian or Parsi].

***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 [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], or 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 immoveable property situated within those limits.]"

33. While Section 212 deals with the right to intestate's property, Section 213 deals with the establishment of the right as executor or legatee under a Will. In simple terms these two Rules can be stated as follows: ***(i)*** without first obtaining letters of administration from a Court of competent jurisdiction, no right to any property of a person other than a Hindu, Muhammadan, Buddhist, Sikh, Jaina, Indian Christian or Parsi, who has died intestate, can be established in any court of justice; ***(ii)*** no right as executor or legatee under a Will (other than a Will made by a Muhammadan or Indian Christian) can be established in any Court of justice unless probate of the Will

or letters of administration with the Will annexed, has been granted by a court of competent jurisdiction.

34. But the second Rule stated above which is found in Section 213, is applicable only: ***(i)*** in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina, if those 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 Amendment Act 16 of 1962, if such Wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay and in case such Wills have been made outside those limits, in so far as they relate to immovable property situate within those limits.

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*** (supra) 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***".

37. By virtue of Section 213(2)(i) read with Clauses (a) and (b) of Section 57, the mandatory requirement to seek probate or letters of administration for establishing a right as executor or legatee under

a Will, is applicable only to Wills **made** by a Hindu, Buddhist, Sikh or Jaina **within the local limits of the ordinary original civil jurisdiction of certain High Courts** and to Wills made outside those territories, to the extent they cover immovable property situate within those territories. Therefore, there is no prohibition for a person whose case falls outside the purview of these provisions, from producing, relying upon and claiming a right under a Will, in any proceeding instituted by others including the other legal heirs for partition or other reliefs.

38. In the case on hand, the petitioner Ravinder Nath himself proceeded **(i)** first to have mutation effected in the revenue records and **(ii)** then to file a suit in O.S.No.72 of 2011 on the file of the Civil Judge, Senior Division, Nainital, for a decree of permanent injunction, on the basis of the very same last Will and Testament dated 06.04.2011 of his father, without seeking letters of administration. He did not think that Section 213(1) was a bar for him to establish his right as a legatee under the Will, without obtaining letters of administration.

39. After having done so, the petitioner in T.P (C) No.970 of 2016 chose to file Testamentary Case No.01 of 2019 after 8 years of first shooting a claim under the Will and that too after the vacation of the stay of further proceedings in the partition suit by order dated 09.10.2018. Therefore, I cannot allow the petitioner in T.P (C) No. 970 of 2016 to make this Court a *fait accompli.*

40. The partition suit, which is pending on the file of the District Court, Saket is actually 8 years old, as it was instituted on the file of the High Court of Delhi in September, 2012 and was transferred to the District Court in 2016. The written statement in the said suit was filed by Major Ravinder Nath way back in November, 2012, when the suit was pending in the High Court of Delhi as C.S No.2745 of 2012. In Paragraph 8g of the written statement, the petitioner has pleaded the execution of the disputed Will. The true copy of the Will is stated to have been annexed as D-1/5, to the written statement. Therefore, obviously Major Ravinder Nath was convinced that there was no bar for him to establish his right as a legatee under the will, even without first obtaining letters of administration. Hence, his subsequent act of filing a testamentary

case before the High Court of Uttarakhand, is nothing but a ruse to take advantage of the general proposition of law that probate proceedings are proceedings *in rem* and that they should have primacy. This argument is available only to a person who is disabled by virtue of Section 213(1), from relying upon a Will in any proceeding, without first obtaining probate/letters of administration. Therefore, the legal contention raised on behalf of the petitioner in T.P (C) No.970 of 2016 that the partition suit should follow the testamentary case, is liable to be rejected in the facts and circumstances of this case.

41. In fact, the petitioner in T.P (C) No.970 of 2016 is not even helping himself by resorting to this. After having claimed way back in November, 2012 that there was a Will, he chose to file the testamentary proceedings only in January 2019, overlooking Article 137 of the Limitation Act, 1963 and certain decisions of this Court. I am not going into those details, as it may prejudice his case.

42. Relying upon the decision of this Court in ***Smt. Rukmani Devi and Others*** vs. ***Narendra Lal Gupta***[7] , it was contended by Mr. Manish Kumar, learned counsel for the petitioner, that by

7 (1985) 1 SCC 144

virtue of Proviso (b) of Section 273 of the Indian Succession Act, 1925, any letters of administration granted by the District Court, Saket cannot have effect in other States unless the value of the property affected by the grant and located beyond the limits of the State, does not exceed Rs.10,000/-.

43. But this argument is one of convenience. Nothing prevented the petitioner from filing the testamentary proceedings in the High Court of Delhi by taking advantage of Proviso (a) of Section 273 and seeking the withdrawal of the suit for partition from the District Court, Saket to the High Court to be tried together. Section 273 reads as follows:

> "***273. Conclusiveness of probate or letters of administration.***—*Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:*
> *Provided that probates and letters of administration granted—*
> *(a) by a High Court, or*

> *(b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees,*
> *shall, unless otherwise directed by the grant, have like effect throughout the other States*

Therefore, the petitioner, taking advantage of the pendency of the partition suit from 2012 to 2016, could have filed the testamentary proceeding in the High Court of Delhi itself and relied upon Proviso (a) of section 273, instead of now relying upon Proviso (b) of Section 273.

44. Having dealt with the legal contention, let me now move on to the factual basis on which transfer of the partition suit is sought. It is claimed by the learned senior counsel for the petitioner that the petitioner is a senior citizen suffering from a host of health issues. The attesters are also not residents of Delhi. Therefore, he argued that at least the convenience of the parties may have to be taken into account.

45. But in these days of virtual hearings, the location of the parties is hardly a matter of concern. In fact, an application in

I.A.No.130939 of 2020 has been moved by the petitioner, seeking a direction to examine one of the attesters either through video conferencing or through court appointed commissioner, as he is 74 years of age, having a lot of medical issues and has also tested positive for COVID-19.

46. The very fact that even according to the petitioner, the attester can be examined through video conference or court appointed commissioner would show that the place where the proceedings are pending, is immaterial.

47. The fact that 3 out of the surviving 5 children are citizens of other countries residing out of India and that therefore they cannot have any objection to the proceedings being tried in Uttarakhand, is not acceptable. It would have been open to the petitioner to raise such a contention, had he chosen to make the first strike by filing the testamentary proceedings in 2011 or 2012. He did not do so. Therefore, even on facts, I find no ground to order the transfer of the partition suit to the District Court, Nainital and hence, T.P (C) No. 970 of 2016 is liable to be dismissed.

48. In so far as the second transfer petition is concerned, the relief sought therein is to transfer the testamentary case pending in the High Court of Uttarakhand to the District Court, Saket, Delhi. Since the Will set up by the petitioner covers properties located both in Nainital and Delhi, both these courts have concurrent jurisdiction. But in view of Proviso (b) to Section 273, letters of administration granted by a District Court cannot have validity in respect of a property located outside the State, if its value exceeds Rs. 10,000/-. However, this problem can be resolved by ordering the transfer of the testamentary case to the High Court of Delhi and ordering the transfer of the partition suit from the District Court, Saket back to the High Court of Delhi.

49. Therefore, the Transfer Petitions are disposed of to the following effect:-

(i) T.P (C) No.970 of 2016 is dismissed;

(ii) T.P (C) No.2779 of 2019 is allowed and the Testamentary Case No.01 of 2019 pending on the file of the High Court of Uttarakhand is ordered to be transferred to the file of the High Court of Delhi;

(iii) The partition suit in C.S No. 126 of 2016 pending on the file of the Additional District Court, Saket at Delhi shall stand transferred to the High Court of Delhi and clubbed along with the testamentary proceeding and taken up together for disposal. Considering that the partition suit is about 8 years old, the High Court of Delhi may consider giving priority of listing. The parties are at liberty to move applications for examination of the witnesses including the attesters of the Will, either through Video Conference or through Court appointed Commissioners and applications for such reliefs may be considered by the High Court favourably.

(iv) The parties shall bear their respective costs.

.....J.
(V. RAMASUBRAMANIAN)

New Delhi;
February 12, 2021.