

21.08.2025

Present: Sh. Kuljeet Rawal, Ld counsel for the petitioner
through VC.

Sh. Shivansh Bansal, Ld proxy counsel for the
petitioner.

None for respondents.

Ld counsel for the petitioner submits that vide order dated 01.04.2025, Local Commissioner has already been appointed for recording the evidence of the petitioners. He further submits that thereafter, petitioner no. 1 expired and his legal heirs has been impleaded vide order dated 25.01.2025. He further submits that the present application under Section 10 CPC is not maintainable and if the said application is dismissed by the court then he may be allowed to file fresh affidavit of the witnesses before Ld. Local Commissioner.

Put up for order during the course of day.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi

At 2.35 PM

Present: None.

1. Vide this order, I shall decide the application filed by the respondent no. 2, under Section 151 CPC r/w Section 10 CPC for staying the present probate petition.

2. The respondent no. 2 has alleged that she has challenged the Will dated 18.08.2021 executed by Late Sh. Ravinder Singh by filing Civil Suit bearing no. CS SCJ/722/2024 titled “Sukrit Kaur Vs Gurpal Kaur”, which is pending in the court of Ms. Neha Pandey, Ld. JSCC-cum-Addl. SCJ-cum-Guardian Judge, West District, Tis Hazari Courts, Delhi and the petitioner has filed the present petition for issuance of LOA on the basis of abovesaid Will dated 18.08.2021.

3. It is further submitted by the respondent no. 2 that the findings of abovesaid suit has direct bearing and impact on the decision of present probate petition. So, the present probate petition be stayed till the disposal of abovesaid suit.

4. Reply of the present application has been filed on behalf of the petitioner.

5. It is contended by the petitioner that the abovesaid Civil Suit has been instituted by the respondent in the year, 2024 whereas the present probate petition has been filed by the petitioner in the year, 2022. So, the abovesaid suit is not previous suit and therefore, the present petition cannot be stayed. It is further contended that the present application is not maintainable and has been filed just to delay the proceedings of the present case.

6. It is further contended that the respondent no. 2 with mala fide intention are attempting to create unnecessary obstacles in the due process of law.

7. Arguments on the abovesaid application has been heard from both sides.

8. **Section 10 of the CPC states as follows:-**

‘Stay of suit: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in having jurisdiction to grant the relief claimed, or in any Court beyond the limits of established or continued by and having like jurisdiction, or before [the supreme court]’.

9. In a case titled Paminder Gujral & Ors vs Kiranjit Gujral & Ors. in IA No. 5138/2018 in CS(OS) 3262/2012, decided on 19.07.2023, the Hon’ble High Court of Delhi has enumerated the essential ingredients for allowing the application and staying the proceedings under Section 10 of the CPC which are as follows:

- i) There must be two suits;*
- ii) The parties to both the suits must be same or are litigating under the same title or claim;*
- iii) The matter in the issue should be in the previous suit, directly and substantially both.*

iv) The previously instituted suit must be pending.

10. For seeking the relief of stay on the proceedings of present petition under Section 10 CPC, it is required for the respondent to establish that the Civil suit was instituted prior to filing of the present probate petition.

11. Admittedly, the abovesaid Civil Suit has been filed in the year, 2024 whereas the present probate petition has been filed on 01.06.2022. So, the present probate petition has been filed prior to filing of civil suit by the respondent. It is clearly established that the abovesaid suit is not previous suit, which is mandatory requirement for staying the present probate petition, as per Section 10 CPC and the said mandatory requirement has not been fulfilled in the present petition.

12. In view of the foregoing discussions, this court does not find any merit in the present application of the respondent no. 2 and the same stands **dismissed** with cost of Rs. 3000/- to be paid to the petitioner. ***Application stands disposed off accordingly.***

13. Matter is fixed for leading evidence before Ld. Local Commissioner, who has been appointed vide order dated 01.04.2024. The petitioner is allowed to file evidence by way of affidavit before the Ld. Local Commissioner with advance copy to Ld counsel for respondent no. 2 to 4. The evidence be recorded expeditiously by deciding the dates of recording of evidence by the

Ld. Local Commissioner with mutual convenience of both parties, preferably within 14 days from today and efforts be made to conclude the evidence on behalf of petitioner within 45 days and no adjournment shall be given without just and reasonable grounds and evidence be recorded in terms of direction given vide order dated 01.04.2024.

Put up for filing of report with evidence on behalf of Ld. Local Commissioner on 28.10.2025.

Copy of this order be sent to Ld. Local Commissioner for intimation, on his whats app number.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
21.08.2025