

# RAJASTHAN HIGH COURT

Ganeshdas

Vs.

Ramesh Chandra

S.B. Civil Revision Petition No. 1194 of 2001

(B.S. Chauhan, J.)

18.03.2002

## JUDGMENT

### **B.S. Chauhan, J.**

1. The first three Revisions have been filed against the common order dated 7.9.2001, rejecting the application of the petitioners dated 22.8.2001, to consolidate these three cases and hear them together.

2. The facts and circumstances giving rise to these Revisions are that the three different suits are pending and an application under Section 151 of the Civil Procedure Code (hereinafter referred to as "C.P.C.") for consolidation of all these three cases had been filed which has been rejected by the impugned order dated 22.8.2001 on the grounds that the parties in the cases are not the same as in two suits i.e. Case No. 5/2001 and 12/2001; Ramesh Chandra is the plaintiff wherein Mangidas is the defendant in both the suits but Mangidas is defendant only in one Suit and in Case No. 17/2001 Ganeshdas and Mangidas are the defendants but Vallabhdas and Ramesh Chandra are not parties therein at all; the documents on the basis of which the cases are being fought are of different dates and consolidating them would amount to misjoinder of parties and evidence. Moreso, in both these cases the plaintiff's evidence has been recorded separately; the application has been filed when the defendants have to start recording evidence in their respective case; thus the same was filed at a belated stage.

3. In other four Revisions, application for consolidating the cases has been partly allowed vide impugned order dated 7.9.2001. Wherein Cases Nos. 10/2001 and 11/2001 have been consolidated as it was between the same parties and the documents were of the same nature. Cases Nos. 13/2001 and 14/2001 have also been consolidated

as the parties are the same; however consolidation of all the four cases has been rejected on the ground that in Case No. 10/2001 and 11/2001; Vallabhdas is not a party and in Cases No. 13/2001 and 14/2001; Ramesh Chandra is not a party. Moreso, four different suits had been filed; documents may be of the same dates; the plaintiffs had already concluded their evidence; cause of action is not the same; inconvenience has already been caused to the plaintiffs as their evidence had been recorded separately in all the suits and the application has been filed at a belated stage when the evidence of the defendant is to be recorded.

4. Since in all these seven Revisions common question of law is involved i.e. as to whether in not consolidating the first three suits and last four suits the learned trial court has committed any jurisdictional error or has improperly exercised its jurisdiction; all these Revisions are decided by this common order.

5. The facts are not in dispute in all these cases. Seven different suits are pending; parties are not the same; cause of action is also different; the documents on the basis of which the litigations are being fought are also different; the evidence of the plaintiffs have already been recorded; the application for consolidation has been filed at a belated stage.

6. In *Shew Narayan Singh v. Brahmanand Singh & Ors.*,<sup>1</sup> the Hon'ble Calcutta High Court considered the provisions of Order 1 Rule 3 and Order 2 Rule 3 Civil Procedure Code and held that a suit can be filed jointly if it cannot be held that there was a mis joinder of parties or cause of action only but in that case, the case must strictly fall within the provisions of Order 1 Rule 3 Civil Procedure Code and relief must be against the same cause of action and right to relief must be available against all the defendants jointly/severally or in the alternative and cause of action must be common to all the suits if they were separately filed for the reason that Order 1 Rule 3 Civil Procedure Code is not confined only to joinder of parties but it also embraces all causes of action against different parties and the provisions of Order 2 Rule 3 could not be interpreted so as to override or render nugatory provisions of Order 1 Rule 3 Civil Procedure Code. Therefore, it is permissible to join different causes of action against different defendants in one suit so long as the stipulations set out in Order 1 Rule 3 Civil Procedure Code are complied with.

7. That was the case arising out of breach of same contract by several parties thereto, therefore, the common question of fact had to be proved against all the defendants in the suit.

8. In *Ranjit Kumar Pal Chowdhury v. Murari Mohan Pal Chowdhury & Ors.*<sup>2</sup> the same view has been reiterated.

9. In *Hans Raj v. Firm Hazarimal Dipa*,<sup>3</sup> this Court came across a case where two suits have been consolidated by the trial Court; common issues had been framed and after recording the evidence the trial court passed a decree allowing both the suits. The submission to the effect that the trial court had committed an error in consolidating the suits was rejected by this Court as the trial court had the competence under its inherent jurisdiction to combine two suits. In case where the parties are the same and cause of action is the same, there can be no difficulty in consolidating the suits in exercise of inherent powers of the Court however whether the suits can be consolidated must depend upon facts and circumstances of a particular case and the decision of the two suits must rest mainly on determination of similar question and the contesting party should also be the same. Therefore, this Court held that "there must be sufficient unity or similarity in the matters in issue in two suits to warrant their consolidation".

10. In *Shambhoo Dayal v. Chandra Kali Devi & Ors.*,<sup>4</sup> the Allahabad High Court held that in all, suits can be consolidated provided common question of fact and law are arising and it will not be a case of mis joinder of parties.

11. Similar view has been reiterated in *Mst. Ramdayee v. Dhanraj Kochar v. Ors.*,<sup>5</sup> wherein examining a case where the learned trial court has rejected the application raising the plea of multifariousness at a belated stage contending that instead of two separate suits one suit could have been filed, the court rejected the revision holding that it was not improper exercise of jurisdiction.

12. In *M/s Bokaro & Ramgur Ltd. v. The State of Bihar & Ors.*,<sup>6</sup> and in *Nani Gopal Bandhyopadhyaya & Ors. v. Bhola Nath Bandhyopadhyaya & Ors.*,<sup>7</sup> it has been held that the Court has inherent discretionary power to consolidate the suits in exercise of powers under Section 151 Civil Procedure Code provided there is sufficient uniformity or similarity in the matters in issue in the suits or determination of suits rest mainly on the common question and it is convenient to try them as analogous cases. In the former case, the Hon'ble Patna High Court held as under:-

"The question to be considered should also be as to whether or not the non-consolidation of two or more suits is likely to lead apart from multiplicity of suits, to leaving the door open for conflicting decisions on the same issue which may be common to the two or more suits sought to be consolidated. ... .. the

convenience of the parties and the expenses in the two suits are subsidiary to the more important considerations namely, whether it will avoid multiplicity of suits and eliminate chances of conflicting decisions on the same point."

13. In the *State of Rajasthan v. Motiram*,<sup>8</sup> this Court took the view that the applicant satisfy the Court that in case the order of consolidation is not passed it would prejudice the party and would result in failure of justice and he must show that the how the separate judgments and decree, if passed, would be void or ineffective as the whole object of inherent exercise of power under Section 151 Civil Procedure Code, in absence of any specific provision for consolidation of suits, is only to avoid multiplicity of proceedings and to prevent delay and unnecessary costs and expenses. By consolidation, it cannot be inferred that the Court after consolidation ceases to have jurisdiction to dispose of the consolidated suits separately.

14. In *Harishchandra & Anr. v. Kailashchandra & Anr.*,<sup>9</sup> this Court considered the aspect of Order 2 Rule 2 Civil Procedure Code providing for bar on subsequent suit and held that bar under the said provision does not come into play when two or more suits are filed at the same time, on the same day, in the same court with the entire cause of action, if included in one suit. However, the proper procedure in such eventuality would be to consolidate them in exercise of inherent exercise of powers under Section 151 Civil Procedure Code.

15. In *Dr. Guru Prasad Mohanty & Ors. v. Bijoy Kumar Das*,<sup>10</sup> dealing with the similar provision the Orissa High Court held that the policy of law is to obviate the possibility of two contradictory decisions in respect of the same relief and the object of consolidation of suits is to avoid multiplicity of proceedings and unnecessary delay and protraction of litigation.

16. In *Vishnu Kumar v. Smt. Sohni Devi & Ors.*,<sup>11</sup> this Court examined a case where the trial court has rejected the application to consolidate two separate suits on the ground that though the subject matter involved in both the suits was similar and the parties was also identical but plaintiff had no *locus standi* to bring that suit and that matter is not in the other suit, hence both suits were not identical and no consolidation was permitted. This Court after placing reliance upon its earlier judgment in *Pratap Singh v. Madan Lal & Anr.*,<sup>12</sup> held that for consolidation of suits certain conditions have to be fulfilled including that the parties must be identical and the rights to be determined must also be identical and in case both the conditions are not fulfilled, consolidation is not permissible.

17. If the instant cases are examined in the light of the above settled legal proposition, it is evident that parties therein are not the same, documents on the basis of which suits are to be decided are not the same; they have been executed on different dates; it is not the case where there is a possibility of having conflicting judgments into two identical suits; nor it has been shown how the order of not consolidating all the suits has prejudiced the cause of the applicant; plaintiffs evidence has already stood concluded in all the suits; inconvenience has already been caused to the respective plaintiffs as expenses has already been incurred by them separately; the applicants did not consider it proper to file the applications for consolidation at the initial stage for the reasons best known to them; the applications have been filed at a belated stage only to facilitate him to lead evidence in all the suits simultaneously. Such a course is not permissible. Applicant has no *bona fide* intention as he failed to show any justification in moving the application in the interest of all the parties concerned as the application has been filed at a belated stage.

18. Thus, in the fact-situation I am of the considered opinion that the learned trial Court has not committed any manifest error in exercise of its inherent powers requiring any interference by this Court. The learned trial court has already consolidated some of the suits where the parties are identical. Thus, the order impugned does not suffer from any material irregularity.

All the seven Revision Petitions stand accordingly dismissed. There shall, however, be no order as to costs.

Revisions dismissed.

Cases Referred.

1. AIR 1950 Cal 479
2. AIR 1958 Cal 710
3. 1959 RLW 451
4. AIR 1964 All 350
5. AIR 1972 Cal 313
6. AIR 1973 Pat 340
7. AIR 1973 Pat 437
8. AIR 1973 Raj 223
9. AIR 1975 Raj 14
10. AIR 1984 Ori209

11. 1995 DNJ (Raj) 684

12. 1992(2) CLC 702

13. 1992(2) CLC 702