

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 3881 of 2024

Petitioner :- Avadhaesh Kumar And Others

Respondent :- Ghanshyam Mishra

Counsel for Petitioner :- Rama Niwas Pathak

Counsel for Respondent :- Narayan Dutt Mishra

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rama Niwas Pathak, the learned counsel for the petitioners and Sri Amit Kumar Shukla, the learned counsel for the opposite parties.
2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioners have challenged validity of an order dated 20.01.2023 passed by the learned Civil Judge (Senior Division)/F.T.C., Faizabad in Original Suit No. 373/2001, whereby the trial court has allowed the application filed by the opposite parties for consolidation of Original Suits No. 21/2011 and 811/2014 with Original Suit No. 373/2001. The petitioners have also challenged validity of judgment and order dated 11.07.2024 passed by the learned Additional District & Sessions Judge, Court No. 8, Faizabad in Civil Revision No. 08/2023, whereby the revision filed against the order dated 20.01.2023 passed by the Civil Judge has been dismissed.
3. The opposite parties filed an application under Order IV-A C.P.C. for consolidation of the aforesaid three suits stating that all the suits are between the same set of parties regarding the same property in dispute and all the three suits can be consolidated and decided together. The petitioners filed objections against the application stating that Suit No. 373/2001 has been filed for the reliefs of declaration and perpetual injunction, Suit No. 21/2011 has been filed for cancellation of sale deed and Suit No. 811/2014 has been filed for cancellation of will and

the subject matters and causes of action of all the three suits are different.

4. The learned Civil Judge had allowed the application for consolidation of all the three suits by the impugned order dated 20.01.2023 by recording that all the three suits relate to the properties of the same family. During pendency of Suit No. 373/2001, some portion of the property in dispute was transferred to some other members of the family, due to which the subsequent suits have been filed. The subject matters of all the three suits are interlinked and all the suits can be decided together, which will save the judicial time of the Court.
5. Accordingly, the trial court allowed the application for consolidation of the suits. The petitioners filed a revision against the order of consolidation of suits passed by the civil court which has been dismissed by means of the impugned order dated 11.07.2024 on the ground that all the three suits relate to the properties of the same family and they can be consolidated and decided together and that there is no illegality in the order passed by the trial court in consolidation of the suits.
6. While assailing validity of the aforesaid orders, the learned counsel for the petitioners has submitted that as the parties to the suits, cause of action for filing the suits and prayer sought are different, the suits cannot be consolidated. He has placed reliance on two judgments referred by the Rajasthan High Court in **Ramanand v. Civil Judge (S.D.), Merta (Raj.)**: AIR 2017 (NOC) 668 (RAJ.) and **M/s Anurag and Co. & Anr. v. Add. District Judge & Ors.**: AIR 2006 Rajasthan 119 = 2006 SCC OnLine Raj 4.
7. Per contra, the learned counsel for the petitioners has submitted that although some of the parties to the suits are different, all the parties claim to have derived title from the common predecessors in interest. All of them belong to the same family and all the suits have been filed regarding properties belonging to one family. Although the prayers made in the three suits are different, all the suits relate to the same set

of properties and, therefore, the learned trial court has not committed any illegality in consolidating the suits.

8. Order IV-A has been inserted in the Code of Civil Procedure by way of a State amendment made in the State of U.P.. This Order contains only one Rule, which is as follows: -

“R. 1. Consolidation of suits and proceedings.--When two or more suits or proceedings are pending in the same Court, and the Court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the evidence in all or any such suits or proceedings.”

9. The aforesaid Rule merely provides that two or more suits or proceedings pending in the same Court can be consolidated if the Court is of opinion that it is expedient in the interest of justice. If the suits are consolidated and tried jointly, the suits may be decided upon the evidence in all or any such suits. Order IV-A Rule 1 C.P.C. does not require that the suits can be consolidated only if the cause of action and the reliefs sought in all the suits is the same. Where the Court comes to the conclusion that plural suits are pending before it which are between the members of the same family deriving title from common predecessors in interest and the issues involved in the suits are interlinked, the Court can certainly order consolidation of the suits as it will save the time of the Court, avoid a possibility of conflicting decisions in the suit and thereby serve the interests of justice.
10. The aforesaid Rule is not applicable in the State of Rajasthan and it was not in consideration in the cases relied upon by the learned Counsel for the petitioner. However, in **Anurag** (Supra), the Rajasthan High Court formulated the following general principles for consolidation of suits even in absence of a specific statutory provision in this regard:-

“28. The upshot of aforesaid discussion of judgment is that some of the relevant circumstances for consolidating the civil suits are as follows:-

- (i) *The parties are substantially the same.*

- (ii) *Complete or even substantial and sufficient similarity of the issues arising for decision in two suits.*
- (iii) *Common evidence is to be led, if parties are substantially the same, if only one party is common then burden of proof of facts in issue will be on different person and no common evidence can be led.*
- (iv) *The consolidation in the aforesaid circumstances will fulfill the object of consolidation. Any other circumstances may be relevant then also the object of consolidation will be decisive for passing appropriate order.”*

11. In **Ramanand** (Supra), the Rajasthan High Court has decided the case on the basis of peculiar facts of the case and it had noted that ‘it is succinct position of law that precedential verdicts are to be followed where the facts of the case are almost identical in nature or the question of law involved is identical’. In the case decided by the Rajasthan High Court, the trial court had rejected the application for consolidation of suits and the High Court also found that the parties to the suits and the documents forming basis of claims of the parties to the suit, were not the same and there was no possibility of conflicting judgments in separate suits. Keeping in view the aforesaid facts the Rajasthan High Court did not find any illegality in the order declining to consolidate the suits.
12. In the present case, all the three suits relate to the same set of properties belonging to one family. All the parties belong to one family and they claim to have derived title from common predecessors in interest. Therefore, the parties to the suits are substantially the same. There is substantial similarity in issues also. When all the suits will be consolidated and decided together, it will be open for the parties to lead evidence accordingly in support of the issues involved in all the suits, which will obviously save the precious judicial time of the court and prevent wastage of resources of the parties also. Therefore, no prejudice will be caused to the petitioners by consolidation of the suits.
13. In view of the foregoing discussion, I am of the considered view that the consolidation of all the three suits will be expedient in the interests

of justice and the learned Civil Judge (Senior Division)/F.T.C., Faizabad has rightly ordered consolidation of the three suits. There is no illegality or error in the impugned order dated 20.01.2023 passed by the learned Civil Judge (Senior Division)/F.T.C., Faizabad in Original Suit No. 373/2021 and the judgment and order dated 11.07.2024 passed by the learned Additional District & Sessions Judge, Court No. 8, Faizabad in Civil Revision No. 08/2023, warranting interference from this Court.

14. The petition lacks merit and the same is dismissed.

(Subhash Vidyarthi J)

Order Date: 23.08.2024

Pradeep/-