

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+ C.R.P.Nos.2644, 2645, 2648 & 2900 of 2015

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% 21-08-2015

Between:

CRP.2644/2015

Arka Lakshmi Manohari W/o Babu Rao,
Aged about 53 years, Occ: Landlady,
R/o D.No.2-167/2, Vikasa Vidyavanam Road,
Poranki, Penamaluru Mandal, Krishna District.

CRP.2644/2015

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Y.Aruna Kumari, w/o Rupesh Babu,
Hindu, aged about 37 yeas,
R/o. D.No.2-169, Poranki Village,
Penamaluru Mandal, Krishna District.

CRP.2648/2015

Tadi Lakshmi Prasanna W/o Subramanyeswara Rao,
Hindu, aged about 33 years, R/o. D.No.2-153,
Poranki Village, Penamaluru mandal, Krishna District.

CRP.2900/2015

Kona Krishna Kumari w/o Venkateswara Rao,
Hindu, aged 51 years, R/o D.No.2-153,
Poranki Village, Penamaluru Mandal,
Krishna District, represnted by her next friend,
Kona Nagamani Babu and two others.

...
Petitioners

and

\$ Pillamogolla Ranga Rao s/o. Somaiah,
Hindu, aged about 66 years,
R/o D.No.7B-11-4, Paladugu Rama Rao Street,
East Street, Eluru.

... Respondent

! Counsel for the Petitioners : Sri Sri CH.Dhanunjaya

Counsel for the Respondent : Sri Laxmi Kumaran

< Gist:

> Head Note:

? Cases referred:

¹ 2007 (2) SCC 551

² 2007 (1) SCC 97

³ AIR 2006 RAJ 119

⁴ 1993 (1) ALT 26

⁵ 2003 (1) APLJ 69 (SN)

⁶ (2001) 8 SCC 97

⁷ (2002) 1 SCC 319

⁸ (2003) 6 SCC 675

THE HON'BLE SRI JUSTICE A.V.SESHA SAI
C.R.P.Nos.2644, 2645, 2648 & 2900 of 2015

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COMMON ORDER:

Since the issue involved in these revisions is common, this Court deems it appropriate to dispose of these revisions by way of this common order.

2. The defendants in O.S.Nos.58, 60, 59 and 61 of 2014, on the file of the Court of the First Additional District Judge at Ongole, are the petitioners in these revisions filed under Article 227 of the Constitution of India.

3. CRP.No.2644 of 2015 assails the order dated 01.06.2015 passed by the said Court, dismissing I.A.104/2015 in OS.No.58 of 2014 filed by the petitioner herein under Section 151 of the Code of Civil Procedure.

4. CRP.No.2645 of 2015 assails the order dated 01.06.2015 passed by the said Court, dismissing I.A.106 of 2015 in O.S.No.60 of 2014 filed by the petitioner herein under Section 151 of the Code of Civil Procedure.

5. CRP.No.2648 of 2015 assails the order dated 01.06.2015 passed by the said Court, dismissing I.A.105 of 2015 in O.S.No.59 of 2014 filed by the petitioner herein under Section 151 of the Code of Civil Procedure.

6. CRP.No.2900 of 2015 assails the order dated 01.06.2015 passed by the said Court, dismissing I.A.107 of 2015 in O.S.No.61 of 2014 filed by the petitioners herein under Section 151 of the Code of Civil

Procedure.

7. The plaintiff/respondent herein instituted the above mentioned suits OS.Nos.58, 60, 59 and 61 of 2014, seeking specific performance of contracts of sale said to have executed by the defendants/petitioners herein. The defendants/petitioners herein filed written statements, denying the plaint averments. In the said suits, defendants/petitioners herein filed the instant IA.Nos.104, 106, 105 and 107 of 2015, respectively, under Section 151 of the Code of Civil Procedure to club all the four suits and to record evidence in any one of the suit.

8. Resisting the said interlocutory applications, the plaintiff/respondent herein in all the revisions filed counters. The learned First Additional District Judge, Ongole, dismissed the said IA.Nos.104, 106, 105 and 107 of 2015 filed in OS.Nos.58, 60, 59 and 61 of 2014, respectively.

9. Calling in question, the validity and the legal sustainability of the said orders passed by the learned First Additional District Judge, Ongole, the present revisions have been filed under Article 227 of the Constitution of India.

10. Heard Sri CH.Dhanunjaya, learned counsel for the petitioners and Sri Laxmi Kumaran, learned counsel for the respondent/plaintiff apart from perusing the material available before the Court.

11. It is contended by the learned counsel for the petitioners that the orders passed by the learned First Additional District Judge are erroneous, contrary to law and are opposed to the very spirit and object of the provisions of the Code of Civil Procedure. It is further contended by the learned counsel that the learned Judge grossly erred in not taking into consideration the averments in the affidavits filed in support of the applications and had the same been considered from proper perspective, the questioned orders would not have emanated. It is also the submission of the learned counsel that the subject matter in all the four suits is one and the same and the plaintiff is also the same, as such, the

learned Judge ought not to have dismissed the applications. It is further submitted that the relief sought in all the four suits is identical and the contentions are also similar and all the four agreements of sale are of the same date and the witnesses are also the same except one, as such, the Court below ought to have allowed the applications. It is also the submission of the learned counsel that in the event of allowing the applications, no prejudice would be caused to the other side. It is further submitted that if a joint trial is ordered, the same would be convenient to all the parties. Learned counsel for the petitioners rely on the judgments of the Hon'ble Supreme Court in the case of ***PREM LALA NAHATA AND ANR. v. CHANDI PRASAD SIKARIA***^[1] and ***STATE BANK OF INDIA v. RANJAN CHEMICALS LTD. AND ANR***^[2].

12. Per contra, reiterating the contents of the counters filed before the Court below, it is contended by the learned counsel for the respondent that the learned First Additional District Judge is perfectly justified in dismissing the applications filed by the petitioners herein and there is no illegality nor there is any procedural infirmity in the impugned orders, as such, the present revisions are liable to be dismissed. It is also the emphatic submission of the learned counsel for the respondent that in the absence of any perversity and patent infirmity in the impugned orders, the questioned orders are not amenable for any judicial review under article 227 of the Constitution of India. It is the further submission of the learned counsel that except commonness of the plaintiff/respondent herein, the causes of action in all the four suits are distinct and separate and covered by independent contracts. It is further submitted that the four suits are not similar and the defendants are separate and the subject matter of the suits are also different. It is also submitted that the suit schedule properties of the four suits are separate with specific boundaries and the evidence to be let in respect of various transactions is different, such as, payment of consideration and subsequent payments after entering into agreements.

It is further submitted that the defendants in each suit are in possession

and enjoyment of the separate and individual go-down and enjoying rents by way of letting out the same individually.

13. In support of his submissions and contentions, the learned counsel for the respondent placed reliance on the judgments of the Hon'ble Apex Court in ***M/S. ANURAG & CO. & ANR v. ADDL. DIST. JUDGE & ORS***^[3] and the Judgments of this Court in the case of ***NALAMATI LATCHANNA v. MASINA SRIRAMULU***^[4] and ***P.SIVARAMAIAH v. P.SURESH BABU***^[5].

14. In the above background, now the issue which this Court is called upon to answer in these revisions is whether the orders passed by the learned First Additional District Judge, dismissing the applications filed by the petitioners herein under Section 151 of the Code of Civil Procedure for clubbing of the suits are sustainable and tenable?

15. The information available before this Court reveals that the respondent herein, who is common in all these revisions instituted the above mentioned original suits, seeking specific performance of contracts of sale said to have been executed by the defendants/petitioners herein.

16. In the affidavits filed in support of the present applications before the Court below, the defendants/petitioners herein stated that since the plaintiff in all these four suits is one and the same and since the contentions and the issues to be answered are also the same, no prejudice would be caused to the other side and the common trial is convenient to the parties.

17. The plaintiff/respondent herein resisted the applications by filing counter contending, *inter alia*, that the foundation for the four suits is distinct, different and independent and the evidence to be let in is also different. The plaintiff also stated in the counters that the suit schedule properties of the four suits are distinct and separate with specific boundaries and eventually opposed the clubbing of the four suits.

18. A perusal of the orders under challenge vividly discloses that the learned First Additional District Judge, after elaborately and meticulously

considering the subject matters of the suits and particulars of the properties and after recording the cogent and convincing reasons, dismissed the applications filed by the defendants/petitioners herein. The learned Judge in the impugned orders categorically held that as the defendants are different and the subject matter in all the four suits is also different and in the event of the same being clubbed, the same would lead to unnecessary complications and it would not be possible to dispose of the suits obviously by recording common evidence.

19. In this connection, it may be appropriate to refer to the judgments of the Hon'ble Apex Court cited by the learned counsel for the petitioners in ***PREM LALA NAHATA AND ANR.*** (*supra* 1) and ***STATE BANK OF INDIA*** (*supra* 2) and the learned counsel for the respondent in ***M/S. ANURAG & CO. & ANR*** (*supra* 3), ***NALAMATI LATCHANNA*** (*supra* 4) and ***P.SIVARAMAIAH*** (*supra* 5).

20. In ***PREM LALA NAHATA AND ANOTHER*** (*supra* 1), the Hon'ble Apex Court at paragraph 18, held as follows:

“18. It cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (See Halsbury's Laws of England, Volume 37, paragraph 69). If there is power in the court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder of parties or causes of action is something that is barred by law. The power to consolidate recognised in the court obviously gives rise to the

position that mere misjoinder of parties or causes of action is not something that creates an obstruction even at the threshold for the entertaining of the suit.

19. It is recognised that the court has wide discretionary power to control the conduct of proceedings where there has been a joinder of causes of action or of parties which may embarrass or delay the trial or is otherwise inconvenient. In that situation, the court may exercise the power either by ordering separate trials of the claims in respect of two or more causes of action included in the same action or by confining the action to some of the causes of action and excluding the others or by ordering the plaintiff or plaintiffs to elect which cause of action is to be proceeded with or which plaintiff should proceed and which should not or by making such other order as may be expedient. (See Halsbury's Laws of England, Vol. 37, paragraph 73). Surely, when the matter rests with the discretion of the court, it could not be postulated that a suit suffering from such a defect is something that is barred by law. After all, it is the convenience of the trial that is relevant and as the Privy Council has observed in the decision noted earlier, the defendant may not even have an absolute right to contend that such a suit should not be proceeded with.

22. In the case on hand, we have also to reckon with the fact that the suits filed by the respondent against the respective appellants based on the transactions combined together by the appellants, have already been withdrawn for a joint trial with the present suit, C.S. No. 29 of 2003. In those two suits, the nature of the transaction the respective appellants had with the respondent have to be decided after trial. In the present suit, the appellants are claiming the payments which also form the basis of the claim of the respondent against the respective appellants in his two suits. In the present suit, C.S. No. 29 of 2003, all that the appellants have done is to combine their respective claims which are in the nature of counter claims or cross suits to the suits filed by the respondent. The ultimate question for decision in all the suits is the nature of the transactions that was entered into by the respondent with each of the appellants and the evidence that has to be led, in both the suits, is regarding the nature of the respective transactions entered into by the respondent with each of the appellants. To a great extent, the evidence would be common and there will be no embarrassment if the causes of action put forward by the appellants in the present suit are tried together especially in the context of the two suits filed by the respondent against them and withdrawn for a joint trial. In the case on hand, therefore, even assuming that there was a defect of misjoinder of causes of action in the plaint filed by the appellants, it is not a case where convenience of trial warrants

separating of the causes of action by trying them separately. The three suits have to be jointly tried and since the evidence, according to us, would be common in any event, the Division Bench was in error in directing the appellants to elect to proceed with one of the plaintiffs and one of the claims. We do not think that on the facts and in the circumstances of the case one of the appellants should be asked to file a fresh plaint so as to put forward her claim. Even if such a plaint were to be filed, it will be a clear case for a joint trial of that plaint with the present suit and the two suits filed by the respondent. In any event, therefore, the Division Bench was not correct in interfering with the decision of the learned single judge. The effect of withdrawal of the two suits filed by the respondent against the appellants for a joint trial has not been properly appreciated by the Division Bench. So, on the facts of this case, the decision of the Division Bench is found to be unsustainable and the course adopted by it unwarranted.”

21. In **STATE BANK OF INDIA** (*supra* 2), the Hon’ble Apex Court at paragraph 10, held as follows:

“10. A joint trial can be ordered by the court if it appears to it that some common question of law or fact arises in both proceedings or that the right to relief claimed in them are in respect of or arise out of the same transaction or series of transactions or that for some other reason it is desirable to make an order for joint trial. Where the plaintiff in one action is the same person as the defendant in another action, if one action can be ordered to stand as a counter claim in the consolidated action, a joint trial can be ordered. An order for joint trial is considered to be useful in that, it will save the expenses of two attendance by counsel and witnesses and the trial judge will be enabled to try the two actions at the same time and take common evidence in respect of both the claims. If therefore the claim made by the Company can be tried as a counter claim by the Debt Recovery Tribunal, the Court can order joint trial on the basis of the above considerations. It does not appear to be necessary that all the questions or issues that arise should be common to both actions before a joint trial can be ordered. It will be sufficient if some of the issues are common and some of the evidence to be let in is also common, especially when the two actions arise out of the same transaction or series of transactions.”

22. In **M/S. ANURAG & CO. & ANR** (*supra* 3), the Hon’ble Apex Court at paragraph 18, held as follows:

“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.”

23. In **NALAMATI LATCHANNA** (*supra* 4), this Court at paragraphs 5, 7, 8 and 9, held as follows:

“5. No doubt, in cases where parties are common and matter is absolutely similar, to avoid multiplicity of suits and to eliminate chances of conflicting decisions on the same point, consolidation of two or more suits can be ordered. Where, however, suits brought by the same plaintiff are *prima facie* based on different and independent transactions, the consolidation cannot be ordered, as there cannot be conflicting decisions.

7. Relying upon the decision of the Delhi High Court in *Bharat Nidhi Ltd., v. Shital Prasad*, AIR 1981 Delhi 251 Sri Subba Rao contended that there will not be any conflicting decisions as far as these cases are concerned and as is observed by the trial Court, the issues are different and, therefore, the suits cannot be clubbed together. As observed by the Delhi High Court in the above decision, no doubt, in order to avoid multiplicity of suits, the clubbing of suits together is welcome. But the question is whether the chances of conflicting decisions would arise in the event of the suit not clubbed together. In the present case, I do not find that there would be conflicting decisions if the suits are not tried together, as the first suit is for declaration of rights and the second suit is for recovery of damages and when the issues are not similar, I am afraid, there can be conflicting decisions if these suits are not clubbed and tried together.

8. In yet another decision in *Bokaro & Ramgur Ltd. v. State the Patna High Court* : AIR1973Pat340 held that it has to be seen whether or not the non-consolidation of two or mere 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. It also held that the convenience of the parties and the expenses in the suits are subsidiary to the more important consideration viz., whether it would lead to rendering conflicting decisions on the same point if the suits are not clubbed together. As observed by the Patna High Court, it is to be seen that the convenience of the parties and the expenses involved are to be subsidiary factors to avoid multiplicity of suits where the chances of avoiding conflicting decisions on the same point are to be taken into consideration. In the context of the decision of the Patna High Court, it is to be seen whether there could be conflicting decisions if the suits are not clubbed and tried together.

9. As discussed by me above, when the issues and nature of the suits are different, I am unable to accept the contention of Sri Venkataraman Sarma, learned Counsel for the respondent-plaintiff that if the suits are not clubbed and tried together, it would lead to rendering of conflicting decisions. In the present case, the first suit is for declaration of fishing rights and the second suit is for recovery of damages and the question of rendering conflicting decisions, in my opinion, would not arise at all, as the issues are different and some of the defendants figured are also different in the two suits. Under these circumstances, I set aside the order dated 14-2-90 in I.A.No. 3341/89 in O.S.No. 464/83 on the file of the Principal Subordinate Judge, Kakinada.”

24. In the case of ***P.SIVARAMAIAH*** (*supra* 5), this Court held as follows:

“However, in the instant case the Court below on consideration of the material on record found that the plaintiffs and some of the defendants in the earlier suit are not parties to the present suit. The learned trial Judge also recorded a finding that the subject matter and the properties involved in both the suits are not one and the same and the facts and cause of action are also different. In the circumstances the learned trial Judge observed that the suits cannot be clubbed and at the most the petitioners can ask for simultaneous disposal of both the suits, however, they have to adduce evidence separately.

While exercising revisional jurisdiction there is no justifiable reason to take a view contrary to the conclusion reached by the Court below on factual aspects.

That apart, the order impugned is merely procedural and does not affect the rights or liabilities of the parties. Further, there is absolutely no error of jurisdiction and it cannot be said that the learned trial Judge has committed any error of procedure in refusing to allow clubbing of suits for joint trial.

It is also pertinent to note that the order under challenge is purely interlocutory in nature and does not have the effect of disposal of the suit even if the said order had been made in favour of the petitioners. Therefore it cannot be interfered with in exercise of revisional jurisdiction under Section 115 of Civil Procedure Code as amended by Act 46 of 1999 which came into force with effect from 1.7.2002.”

25. It is evident from the above decisions that the suits brought in by the plaintiffs based on different and independent transactions cannot be ordered to be consolidated. In the instant case, since the causes of action for filing these present suits are distinct and separate and as the agreements of sale are also different and distinct and the properties covered by the same are also different with distinct boundaries and as the defendants are also different, the learned First Additional District Judge is perfectly justified in dismissing the applications filed by the petitioners herein. In this context, it may be appropriate to refer to the judgments of the Hon’ble Apex Court in ***M/S.ESTRALLA RUBBER v. DASS ESTATE (PVT.) LIMITED***^[6], ***OUSEPH MATHAI AND OTHERS v. M.ABDUL KHADIR***^[7] and ***SURYA DEV RAI v. RAMCHANDER RAI AND OTHERS***^[8] wherein the Hon’ble Apex Court held that unless the orders impugned are patently perverse and vitiated by fundamental infirmities, the invocation of the jurisdiction of this Court under Article 227 of the Constitution of India is impermissible. In the instant revisions, the said contingency is conspicuously absent.

26. In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that there are no merits in the present revisions and the revisions are liable to be dismissed.

27. For the aforesaid reasons and having regard to the principles laid down in the judgments referred to *supra*, the Civil Revision Petitions are dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: .8.2015
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THE HON’BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.Nos.2644, 2645, 2648 and 2900 of 2015

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Date : .08.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI
C.R.P.Nos.2644, 2645, 2648 and 2900 of 2015

Date :21st August, 2015

Between:

CRP.2644/2015

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CRP.2648/2015

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CRP.2900/2015

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... Respondent

DATE OF JUDGMENT PRONOUNCED: 21st August, 2015

SUBMITTED FOR APPROVAL: 21st August, 2015

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

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| 1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Lordship wish to see the
Fair copy of the judgment? | Yes/No |

[1] 2007 (2) SCC 551
[2] 2007 (1) SCC 97
[3] AIR 2006 RAJ 119
[4] 1993 (1) ALT 26
[5] 2003 (1) APLJ 69 (SN)
[6] (2001) 8 SCC 97
[7] (2002) 1 SCC 319
[8] (2003) 6 SCC 675