

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 8855 of 2016

1. Ramhari S/o Sarjerao Jogdand,
age 46 years occupation agriculture
R/o Hingni (Bk) Taluka and Dist. Beed.
2. Devidas S/o Sarjerao Jogdand,
age 38 years occupation and R/o as above.

...PETITIONERS

VERSUS

1. Jeevan S/o Dnyanoba Jogdand,
age 41 years occupation agriculture
R/o Hingni (Bk) Taluka and Dist. Beed.
2. Sakharam S/o Sadguru Ajgaonkar,
age 36 years occupation Agri. & service
R/o as above, at present Keshavnagari, Shahanurwadi,
Aurangabad Taluka and Dist. Aurangabad.

...RESPONDENTS

Mr H.V. Tungar, Advocate for petitioners
Mr A.B. Hawale, Advocate for respondents

CORAM : NITIN W. SAMBRE, J.

DATE : 27th November, 2017

ORAL ORDER :

In Regular Civil Suit No. 786 of 2012, the present petitioners are plaintiffs, whereas, in Regular Civil Suit No. 401 of 2012, the present respondents are plaintiffs.

2. Both these suits are filed in relation to land Gat No. 353 at village Hingani Taluka and Dist. Beed.

3. Considering the nature of claim made in both these suits, the least that was expected from the Trial Court was to order clubbing of both the suits by granting Exh. 40. The fact remains that both the suits are pending before the same Court. Having regard to the position of law, as reflected in the Apex Court's judgment in the matter of **Chitivalasa Jute Mills Vs. Jaypee Rewa Cement**, decided on 4th February 2004, particularly, part of paragraph No.6, wherein following observations are made:

“ The two suits ought not to be tried separately. Once the suit at Rewa has reached the Court at Visakhapatnam, the two suits shall be consolidated for the purpose of trial and decision. The Trial Court may frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the

same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded, common arguments need be addressed followed by one common judgment. However, as the suits are two, the Court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits. This is how the Trial Court at Visakhapatnam shall proceed consequent upon this order of transfer of suit from Rewa to the Court at Visakhapatnam.”..... ;

present application, in my opinion, needs to be allowed.

4. The order impugned dated April 15, 2016 passed by the III Joint Civil Judge (Junior Division), Beed, below Exh. 40 is hereby set aside and application Exh. 40 stands allowed, by ordering clubbing of Regular Civil Suit No. 786 of 2012 with Regular Civil Suit No. 401 of 2012.

5. The writ petition stands allowed with above observations.

(NITIN W. SAMBRE, J.)

pjm