

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13226 OF 2017

RAJENDRA RAMBHAU GORE
VERSUS
SUMAN RAMCHANDRA BORUDE AND OTHERS

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Advocate for Petitioner : Mr. N.C. Garud
AGP for Respondents 2 to 4: Mr. N.T. Bhagat

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CORAM : V. K. JADHAV, J.
DATED : 28th NOVEMBER, 2017

PER COURT:-

1. Heard.

2. The respondent-original plaintiff in R.C.S. No.55 of 2011 has filed an application Exh.49 for joint trial of R.C.S. No. 55 of 2011 and R.C.S. No. 49 of 2011. The respondent, by instituting the R.C.S. No. 55 of 2011 has challenged the sub division of survey No. 223/1/B and creation of survey No. 223/3. In R.C.S. No. 49 of 2011 the present petitioner is claiming decree of perpetual injunction in respect of the land survey No. 223/3. Thus, the dispute between the parties is with regard to the land Survey Nos. 223/1/B and 223/3. The learned Joint C.J.S.D. Ahmednagar has allowed the said application Exh.49 and directed that both the suits shall be heard and tried together and common evidence shall be recorded in the suits. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner has instituted R.C.S. No.49 of 2011 which is earlier in time and as such, the suit instituted by the respondent is required to be stayed in view of provisions of Section 10 of C.P.C. Learned counsel submits that there is no provision for passing such order of consolidation of suits, however, further conceded that in view of inherent powers as provided under section 151 of C.P.C. the trial court may pass an appropriate order for consolidation of suits.

4. In the case of ***M/s. Chitivalasa Jute Mills vs. M/s. Jaypee Rewa Cement, reported in AIR 2004 SC 1687*** the Supreme Court held that inherent powers under Section 151 of C.P.C. can be exercised for consolidation of suits.

5. In such cases, court may instead of staying the suit, order for consolidation of the case, where it is in the ends of justice to do so to avoid needless expenses and inconvenience to the parties or where it appears that there is sufficient unity or similarity in the matter in issue in the two suits and the determination of the suits, rest mainly on common questions. In the instant case, there is sufficient similarity in the matter in issue in two suits and the determination of the suits rests mainly on the common question.

6. Learned counsel has placed reliance on the judgment of this Court in the case of ***Lucky Hastimal Chandak vs. Govardhandas Ramgopal Chandak, reported in 2011 (4) Mh.L.J. 744***, wherein this court considering the facts of the case, held that considering the scope of both the suits, reliefs overlap and therefore, application under Section 10 filed by the petitioner is allowed.

7. In the case in hand, in the given set of facts and considering common question involved in both the suits, the trial court has rightly passed the order of consolidation of both the suits. I do not find any fault in the impugned order. Hence, the following order:-

O R D E R

Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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