

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7547 of 2012

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1. Bibi Husne Ara Wife Of Harun Rashid (Tressless) Resident Of Village - Sargawan, Tola Chun Chun Bigha, P.S.- Deo, District- Aurngabad, At Present Residing At Mohalla- Purani Munsafi, Nalapar, P.S. - Aurangabad (T), District - Aurangabad
 2. Firdosh Alam Son Of Harun Rashid (Tressless) Resident Of Village - Sargawan, Tola Chun Chun Bigha, P.S.- Deo, District- Aurngabad, At Present Residing At Mohalla- Purani Munsafi, Nalapar, P.S. - Aurangabad (T), District - Aurangabad
 3. Ashif Jamal Son Of Harun Rashid (Tressless) Resident Of Village - Sargawan, Tola Chun Chun Bigha, P.S.- Deo, District- Aurngabad, At Present Residing At Mohalla- Purani Munsafi, Nalapar, P.S. - Aurangabad (T), District - Aurangabad
 4. Jahangir Alam Son Of Harun Rashid(Tressless) Resident Of Village - Sargawan, Tola Chun Chun Bigha, P.S.- Deo, District- Aurngabad, At Present Residing At Mohalla- Purani Munsafi, Nalapar, P.S. - Aurangabad (T), District - Aurangabad

.... Petitioner/s

Versus

Abdul Razzaque Ansari @ Abdul Rajak Ansari Son Of Late Pir Mohammad Ansari Resident Of Village - Sargawan Tole Chunchun Bigha, P.O.- Chatti, P.O. - Deo District - Aurangabad, At Present Residing At Mohalla - Purani Munsafi Nalapar, P.S.- Aurangabad (T) , District - Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. BHANU PRATAP SINGH, Adv.
For the Respondent/s : Mr. Bachan Jee Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

Date: 21-08-2018

This writ application has been filed for quashing the order dated 21.03.2012 passed by the sub-judge-III, Aurangabad in Title Suit No. 277 of 2010 whereby and whereunder, the petition filed by this petitioner (defendant) under Section 10 of CPC has been rejected.

2. Heard both sides.

3. The respondent filed the aforesaid title Suit No. 277 of 2010 on the file of Sub-Judge Aurangabad against the petitioners for



cancellation of registered deed of gift dated 15.01.2010 with respect to 4 decimal land of Plot No. 784. The son of respondent no.1 filed Title Suit No. 114 of 2006 on the file of sub-Judge 1st, Aurangabad against the petitioners and respondent no.1 for declaration of title of plaintiff and defendant no. 5 and also for declaration that the deed of gift dated 15.01.2010 in the name of defendant no 1 and 4 is not binding on the plaintiff. After the death of Abdul Raggaque, his son who is plaintiff of Title Suit No. 114 of 2006 has been substituted in Title Suit No.277 of 2010.

4. On going through the plaint of both the cases, I find that both the suits have been filed for cancellation of deed of gift dated 15.01.2000 executed by Abdul Razzaque in favour of the petitioners. The plaintiff and defendants in both the suits are common and both the suits are pending in the same court. The petitioners filed a petition under Section 10 of CPC praying therein to stay the further proceeding of Title Suit No. 227 of 2010 till the disposal of Title Suit No. 114 of 2006 which was filed much earlier to the present suit. The court below rejected the said petition observing that the reliefs of both the suits are quite different. In Title Suit No. 227 of 2010 the donor has prayed to cancel the gift where as in Title Suit No. 114 of 2006 the son of donor has prayed that the gift deed is not binding on him. The plaintiff of both the suits wants to avoid the effect of gift. After the death of plaintiff of Title Suit No. 277 of 2010, the plaintiff of



Title Suit No. 114 of 2006 has been substituted in his place and so the plaintiff and defendants of both the suits are common. The issues in both the suits and reliefs sought for are also common. The cause of action in both the suits arose to the plaintiffs only after execution of deed of gift. The issues arising from the decision would be substantial common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits. Thus, there will be duplication of recording of evidence if separate trial are held. The two courts could be writing two judgments. The possibility that the two courts may record finding inconsistent with each other and conflicting decree may come to be passed cannot be ruled out.

5. In this regard, I would like to refer the observation of Hon'ble Apex Court in a case of M/s Chitivalasa Jute Mills v. M/s Jaypee Rewa Cement reported in AIR 2004 Supreme Court page 1687. The Hon'ble Apex Court at para-12 in aforesaid case has observed as follows:-

“The two suits ought not to be tried separately. Once the suit at Rewa has reached the Court at Viskhapatnam, 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 powers of the Court flowing from Section 151 of the CPC. Unless specifically prohibited, the Civil Court has 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.”

6. In the case in hand, I find that the parties and matter in dispute in both the cases are the same. The case of plaintiff and defence of defendants in both the suits are substantial the same and so if both the cases are consolidated, both will be disposed of by a common hearing without causing any prejudice to either party to the dispute. The learned counsel for the petitioner was not able to point out as to how consolidation of both the suits would prejudice the petitioner.

7. For the reasons stated above, I hold that the court below has failed to exercise jurisdiction under Section 151 of the CPC in consolidating the two suits between the parties which were pending before the court below. The impugned order is accordingly set aside and both the suits pending before the court below are ordered to be consolidated for trial and disposal. This writ application is accordingly stands disposed of.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
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