

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10195 OF 2019

DOMNIC THOMAS NUNIS & ORS.)...PETITIONERS

V/s.

PARASNATH DEVRAJ YADAV)...RESPONDENT

Shri.Vaibhav Singh, Advocate for the Petitioners.

Shri.K.K.Pandey, Advocate for the Respondent.

CORAM : A. M. BADAR, J.

DATE : 4th NOVEMBER 2019

P.C. :

1 This is a petition filed by defendants in S.C.Suit No.6220 of 2007 and S.C.Suit No.4200 OF 2011 pending on the file of the learned Judge of the City Civil Court, Mumbai. Challenge is to the order dated 10th July 2019 passed by the learned Judge rejecting Notice of Motion No.4028 of 2018 whereby the petitioners/defendants prayed for clubbing both the suits. Submissions are to the effect that common questions of fact

and law are involved in both the suits. Also, parties to the suits are same. The Deed involved in both these suits is the same, and therefore, both the suits need to be clubbed together. Support is drawn from judgments of the Hon'ble Apex Court in the matters of (a) Mahalaxmi Co-operative Housing Society Limited and Others vs. Ashabai Atmaram Patel (dead) Through LRs. And Others¹, (b) State Bank of India vs. Ranjan Chemicals Ltd. And Another², (c) Chitivalasa Jute Mills vs. Jaypee Rewa Cement³. With the aid of these judgments, it is argued that as parties to the suit are same and facts as well as evidence in both these suits shall be the same, the learned trial court ought to have exercised his powers under Section 151 of the Code of Civil Procedure (hereinafter referred to as the CPC for the sake of brevity) for clubbing both these suits and he could have followed the procedure enumerated in the matter of Chitivalasa Jute Mills (supra).

1 (2013) 4 Supreme Court Cases 404

2 (2007) 1 Supreme Court Cases 97

3 (2004) 3 Supreme Court Cases 85

2 The claim, so made, is opposed by the respondent/plaintiff by submitting that prayers are different and the suits filed by him should not be clubbed.

3 I have considered the submissions so advanced and also perused the impugned order. Paragraph 8 of the impugned order needs to be quoted and it reads thus :

“8 Suit No.6220/07 is filed U/s.6 of the Specific Relief Act for restoration of possession of suit premises. While Suit No.4200/11 is filed for declaration that Agreement dated 14.07.1993 is valid, subsisting and binding and for specific performance of said agreement. Although cause of action for both the suits is shown to have arisen on 04.11.2007 but proceedings in Suit No.6220/07 is of summary nature as it has been filed U/s.6 of the Specific Relief Act. The parameters for adjudication of claim under Section 6 on the one hand and that for suit for specific performance of agreement in Suit No.4200/11 on the other hand, are totally different. While for adjudication of a Section 6 suit, the trial is summary in nature and the decree is not appealable, in contrast, a detailed trial has to be

conducted in a suit for specific performance of contract and a first appeal and second appeal is provided against a decree therein. It is impossible and impermissible to mix up such divergent types of adjudication. More so in present suit cross examination of PW1 is partly recorded so now it is not just to club both matters.”

4 S.C.Suit No.6220 of 2007 filed by the respondent /original plaintiff is for restoring possession of the suit premises. It is averred in the said suit that the defendants, which includes the present petitioner, forcibly took possession of the suit premises and the plaintiff is dispossessed from the suit premises without following due process of law. In Suit No.4200 of 2011 filed by the respondent/original plaintiff, claim is for declaration that the Agreement dated 14th July 1993 is valid, subsisting and binding on the parties. The subject agreement is stated to be Agreement for Sale dated 14th July 1993 entered into between the plaintiff and the defendants i.e. the petitioners herein, for sale of the suit property.

5 The question which needs to be determined in suit under Section 6 of the Specific Relief Act is a limited question as to whether the plaintiff was in possession of the disputed property and whether he has been illegally dispossessed from the subject property. The another suit is for specific performance. On this backdrop, the learned trial court concluded that it is not possible to mix up divergent types of adjudication. For the sake of convenience, the learned trial court decided to proceed with both the suits separately. No doubt it is permissible to club two suits when evidence is same and parties are also same. However, in the case in hand, one suit is for relief under Section 6 of the Specific Relief Act and as such, the discretion so exercised by the learned trial court in refusing to club both the suits cannot be said to be arbitrary or capricious.

6 The petition, therefore, fails and is dismissed.

(A. M. BADAR, J.)