

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

WRIT PETITION NO.741 OF 2022

Pramod Vishwanath Somani,
Age; 62 years, Occ; Business,
R/o; Mundada Market, City
Survey No. 2072, Parola Road,
Dhule, District; Dhule.

...PETITIONER
(Orig. Defendant)

VERSUS

1. Ajay Balkisan Mundada,
Age; 54 yers, Occ; Business,
2. Sunil Balkrishna Mundada,
Age; 52 years, Occ; Service

Both R/o; City Survey No. 1606/B,
Lane No. 6, Dhule,
Taluka & District; Dhule.

3. Sanjay Balkisan Mundada,
Age; 56 years, Occ; Business,
R/o; Panchwati, Deopur,
Dhule, District; Dhule.

...RESPONDENTS.
(Orig. Plaintiffs)

WITH

WRIT PETITION NO.934 OF 2022

Vijaykumar Vishwanath Somani,
Age; 72 years, Occ; Business,
R/o; Mundada Market,
City Survey No. 2072,
Parola Road, Dhule,
District; Dhule.

...PETITIONER
(Orig. Defendant)

VERSUS

1. Ajay Balkisan Mundada,
Age; 54 years, Occ; Business,

2. Sunil Balkishan Mundada,
Age; 52 years, Occ; Service,

Both R/o. City Survey No. 1606/B,
Lane No. 6, Dhule,
Taluka & District; Dhule.

3. Sanjay Balkisan Mumdana,
Age; 56 years, Occ. Business,
R/o; Panchwati, Deopur,
Dhule, District; Dhule.

...RESPONDENTS
(Orig. Plaintiffs)

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Advocate for the Petitioner : Mr. Subodh P. Shah
Advocate for the Respondent Nos. 1 to : Mr. Mukul S. Kulkarni
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CORAM : SANDEEP V. MARNE, J.

DATE : 10.10.2022.

ORAL JUDGMENT : (PER SANDEEP V. MARNE, J.)

1. Rule. Rule, made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

2. Respondents herein have instituted two suits. RCS No. 406 of 2012 is instituted against Vijaykumar Vishwanath Somani

seeking eviction from shop No. 5 and Shop No. 2. RCS No. 407 of 2012 is instituted against Pramod Vishwanath Somani seeking his eviction from shop No. 4. Vijaykumar and Pramod are the real brothers. It is undisputed position that one of the common grounds pleaded in both the complaints for seeking eviction is the demolition of Wall between Shop Nos. 4 and 5. Thus, on the same ground of demolition of common wall of shop Nos. 4 and 5 the eviction of Vijay and Pramod from their respective properties is sought by the plaintiffs by filing RCS No. 406 and 407 of 2012. An application filed by defendants for clubbing both the suits has been rejected by the 3rd Jt. Civil Judge, Senior Division, Dhule by order dated 25.08.2021, which is the subject matter of challenge in the present petitions.

3. Mr. Shah, learned Counsel appearing for petitioners would submit that since there is a common ground for seeking eviction of Vijay and Pramod in two suits, it is appropriate that the two suits are to be heard and decided together. He would submit that by doing so the valuable time of the Court would be saved in proving same documents in two suits. Mr. Shah has relied upon the decisions of the Apex Court in **Chitivalasa Jute Mills Vs. Jaypee Rewa Cement 2004 (3) SCC 85** and **State Bank of India Vs. Ranjan Chemicals Ltd. and Another (2007) 1 SCC 97**.

4. Per contra, Mr. Kulkarni, learned Counsel appearing for respondents opposes the petitions. He raises preliminary objection of suppression of facts by petitioners while filing of the present petition. He also submits that the filing and decision of transfer application by the District Judge was not disclosed in the application seeking clubbing of two suits. He relies upon application made by petitioners before the District Court on 11.02.2014 for transfer of two suits, RCS No. 407 of 2012 in the Court which was hearing RCS No. 406 of 2012. He also invited my attention to the orders passed by the District Judge on 03.04.2014 allowing said application.

5. Mr. Kulkarni, would further submits that after passing of the impugned order, "No Cross" order has been passed in both suits on 17.12.2021 and in order to come out of the circumstances arising out of that order, the present petitions have been filed by petitioners on 05.01.2021. Mr.Kulkarni, would further contend that allowing the application for clubbing of two suits would amount to review of order passed by the District Judge on 03.05.2014 which did not direct clubbing of two suits. He would submit that the application was moved by petitioners at belated stage only with a view to delay the decision of the suits.

6. The rival contentions of the parties now fall for my

consideration.

7. I have gone through the order passed by the Lower Court rejecting the application for clubbing of the two suits. I have also gone through the application preferred by the petitioners for clubbing of two suits. In my opinion, petitioners as well as the Trial Court have missed the point that same ground of demolition of common wall between shop Nos. 4 and 5 is pleaded in both suits for seeking eviction of defendants. This aspect is apparently not pleaded in the application while seeking clubbing of two suits. Naturally the trial Court has also ignored this aspect. The trial Court has proceeded to reject the application relying on finding that the defendants in two suits are different and the properties are also different and on this point application for clubbing of two suits has been rejected.

8. In my opinion, the demolition of common wall between the shop No. 4 and 5 which form the subject matter of two suits RCS No. 406 of 2012 and 407 of 2012 respectively is the vital aspect which ought to have been taken into consideration by the trial Court while deciding the application for clubbing of two suits.

9. Since the ground sought for evicting defendants is common, it is appropriate that the two suits be clubbed and decided

together. The decision relied upon by Mr. Shah in this regard is apposite. In **Chitivalasa** (supra), the Apex Court has held in paragraph No. 12 as under :

“12. 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 powers of the Court flowing from Section 151 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. The evidence having been recorded, common arguments need to 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.”

10. In **SBI vs Ranjan** (supra) the Apex Court has held in paragraph No. 11, which reads as under :

“11. A joint trial is ordered when a court finds that the ordering of such a trial, would avoid separate overlapping evidence being taken in the two causes

put in suit and it will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes. This power inheres in the court as an inherent power. It is not possible to accept the argument that every time the court transfers a suit to another court or orders a joint trial, it has to have the consent of the parties. A court has the power in an appropriate case to transfer a suit for being tried with another if the circumstances warranted and justified it. In the light of our conclusion that the claim of the Company in the suit could be considered to be a claim for set-off and a counterclaim within the meaning of Section 19 of the Act, the only question is whether in the interest of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the application filed by the Bank as a cross-suit. Obviously, the proceedings before the Debt Recovery Tribunal could not be transferred to the civil Court since that is a proceeding before a tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that Act. Therefore, the only other alternative would be to transfer the suit to the Tribunal in case that is found warranted or justified.”

11. Coming to the objections raised by Mr. Kulkarni, it is true that petitioners have not disclosed the factum of filing of transfer application and decision thereon by the District Court in the petition. However, this fact was disclosed in application filed for clubbing of the suits. Also, I have already come to conclusion that the common ground for eviction is sought in both the suits and that it is appropriate to club both the suits for decision together and it would therefore be improper to dismiss the present petitions only on

account of non disclosure of filing of transfer application. Even otherwise, the finding and decision of that transfer application did not have any effect on the entitlement of petitioners to club two suits. The transfer application was filed to seek transfer of RCS No. 407 of 2012 to the Court which was hearing RCS No.406 of 2012. Petitioners herein could not have made application before the District Court to club both the suits and hear together unless both were first transferred to same Court. After the stage of transfer of two suits to the same Court was cleared, then the next stage of seeking clubbing of two suits together arrived. No doubt, it is true that petitioners are guilty of delay in seeking clubbing of two suits as the order for transfer of suits in same Court was passed by the District Judge on 03.05.2014. However, this in itself would not be a ground to deny clubbing of two suits which are still pending on the file of the 3rd Joint Civil Judge, Senior Division, Dhule, especially in the light of the fact that the ground sought for eviction of the defendants is common in both the suits.

12. So far as, the objection of “No Cross” order passed on 17.12.2021 is concerned, petitioners will have to avail separate remedy in respect of those orders and no opinion is expressed in that regard. Mr. Kulkarni, fairly agrees that on the date of passing of impugned order there was not any “No Cross” order and therefore,

subsequent passing of “No Cross” order cannot be a reason for determining the correctness of the order passed on 25.08.2021.

13. In the result, the Writ Petitions are allowed. The order dated 25.08.2021 passed by 3rd Joint Civil Judge, Senior Division, Dhule below Exh.86 in RCS No. 407 of 2012 and below Exh. 86 in RCS No. 406 of 2012 are set aside. Both the suits are directed to be clubbed and heard together. Rule is made absolute in above terms. There shall be no order as to costs.

(SANDEEP V. MARNE)
JUDGE

mahajansb/