

Item No. 24
06.07.2023
Court. No. 19
GB

C.O. 2029 of 2022

Knondekar Asrof Hossain & Anr.
Vs.
Khondekar Mohammad Hossain & Anr.

Ms. Rita Patra,
Ms. Pusmita Das

...for the Petitioners.

Mr. Soumik Ganguli,
Mr. Dilip Kr. Sadhu,
Mr. Sayan Ray,
Ms. Chandana Chakraborty

...for the Opposite Parties.

The plaintiffs in Title Suit No.32 of 2022, which is pending before the learned Civil Judge (Junior Division), 4th Court at Burdwan as also Title Suit No.95 of 2020 which is pending before the learned Civil Judge (Senior Division) at Burdwan, are aggrieved by the order dated March 31, 2022 by which the learned Civil Judge (Junior Division), 4th Court at Burdwan was pleased to stay all further proceedings in Title Suit No.32 of 2022 in exercise of power vested under Section 10 of the Code of Civil Procedure.

Ms. Patra, learned advocate for the plaintiffs in both the suits submits that the later suit, i.e., Title Suit No.32 of 2022 was substantially different from the reliefs claimed in Title Suit No.95 of 2020. Hence, the order of stay was unwarranted. It is submitted that although the parties are the same, but in the later suit, additional reliefs have been claimed in respect of certain plots of land which were not covered by Title Suit No.95 of 2020.

Mr. Ganguli, learned advocate for the defendants/opposite parties submits that the learned court below rightly passed the order impugned, as the law provides that the subsequent suit should be stayed when the matter in issue are directly, substantially in issue between the same parties in an earlier suit.

The learned court below held that the difference was only in the reliefs and not in the pleadings. It was observed that unless the properties were divided by meets and bounds, the reliefs in the subsequent suit may not be available. On such, prima facie, finding the subsequent suit was stayed.

In the opinion of this Court, apart from the reliefs and some additional pleading, there is not much substantial difference between the two suits. To prevent wastage of court's time and to reduce pendency of litigation and litigation costs, both Title Suit No.95 of 2020 and Title Suit No.32 of 2022 must be heard analogously.

Court has inherent power to consolidate suits for the ends of justice and to avoid needless expense and inconvenience to parties. In deciding whether two or more suits should be consolidated or not, the whole question is whether or not, in the long run it will be expeditious and advantageous to all concerned to have the two suits tried together as analogous cases. Where it appears that there is sufficient unity or similarity in the matter in issue in the suits or that the determination of the suits rests mainly on a common question, it is convenient to have them tried as analogous cases.

In the matter *of Chitivalasa Jute Mills v. Jaypee Rewa Cement*, reported in **(2004) 3 SCC 85** the Hon'ble Apex Court held as follows:-

“**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.”

The learned District Judge, Purba Bardhaman shall withdrawn Title Suit No.32 of 2022 pending before the learned Civil Judge (Junior Division), 4th Court at Burdwan and transfer the same to the Court of the learned Civil Judge (Senior Division), Purba Bardhaman, within two weeks from the date of communication of this order. Thereafter, the suit shall be tried together and be disposed of expeditiously, preferably within a year.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)