



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

APPEAL AGAINST ORDER NO.42 OF 2023

Appellant : : Sou. Sonibai Manohar Devikar,
(Ori. Plff.) Aged about 69 years,
Occu. Household Work and Business,
R/o Ravidas Nagar, Murtizapur, Tq. Murtizapur,
Dist. Akola.

– Versus –

Respondent : : Hasmukh Shivcharan Devikar,
(Ori. Def.) Aged about 57 years, Occ. Agriculturist,
R/o Ravidas Nagar, Murtizapur,
Tq. Murtizapur, Dist. Akola.

APPEAL AGAINST ORDER NO.44 OF 2023

Appellants : : 1] Papalal Shivcharan Devikar,
(Ori. Defts.) Aged about 73 years,
Occu. Retired from Govt. Service,
R/o Near Sitla Mata Mandir, Opp. Gandhi Square,
Sadar, Nagpur, Tq. and Dist. Nagpur.

2] Sou. Sonibai Manohar Devikar,
Aged about 69 years,
Occu. Household Work and Business,
R/o Ravidas Nagar, Murtizapur, Tq. Murtizapur,
Dist. Akola.

– Versus –

Respondent : : Hasmukh Shivcharan Devikar,
(Ori. Plff.) Aged about 57 years, Occ. Agriculturist,
R/o Ravidas Nagar, Murtizapur,
Tq. Murtizapur, Dist. Akola.

Mr. J.B. Gandhi, Advocate for the Appellant(s).
Mr. C.A. Joshi, Advocate for the Respondent.

CORAM : M.W. CHANDWANI, J.
RESERVED ON : 2nd JULY, 2024.
PRONOUNCED ON: 22nd JULY, 2024.

J U D G M E N T :

Heard the learned Counsel for the parties.

02] **Admit.**

03] These two appeals arise out of the impugned judgments and orders passed by the learned District Judge, Akola in R.C.A. No.14/2020 and R.C.A. No.15/2020, both dated 30/06/2023. The parties to both the appeals are common except Papalal Shivcharan Devikar, appellant No.1 in A.O. No.44/2023 (hereinafter referred to as “Papalal”), who is brother-in-law of appellant-Sonibai. Since the contentions and issues involved in both the appeal are common, they are being disposed of by this common judgment.

04] The facts, which give rise to the present appeals, are stated below.

- I. The respondent herein in both appeals filed R.C.S. No.122/2010 for declaration claiming that the suit shop is a joint family property and for injunction directing Papalal and Sonibai not to

disturb his possession. On the other hand, appellant-Sonibai filed R.C.S. No.7/2015 for possession, damages and permanent injunction claiming that the suit property is self-acquired property of Papalal and his brother Manohar Shivcharan Devikar, from whom she purchased the same. She claimed that the respondent was in permissive possession of the suit property given to him by the previous owners Papalal and Manohar.

- II.** Pending the suit, appellant-Sonibai filed an application for consolidation of both the suits. The trial Court allowed the said application by order dated 27/09/2017. Both the suits were consolidated and common evidence was recorded. The trial Court by the common judgment partly decreed R.C.S. No.122/2010 and dismissed R.C.S. No.7/2015. Papalal and Sonibai filed two appeals before the learned District Judge vide R.C.A. No.14/2020 and R.C.A. No.15/2020 against the common judgment and decree of the trial Court. The learned District Judge by two separate judgments and orders, dated 30/06/2023 partly allowed both the appeals of the appellant(s). The learned District Judge set aside the judgment and decree of the trial Court and remanded the matter to the trial Court with a direction

to stay R.C.S. No.7/2015 till disposal of R.C.S. No.122/2010 is decided on merits. Feeling aggrieved with the impugned judgments and orders passed by the learned District Judge in both the appeals, these two appeals against orders have been filed.

05] Mr. J.B. Gandhi, learned Counsel appearing on behalf of the appellant(s) submits that there was no prayer for remand of the matter to the trial Court, rather the appellant(s) has/have never raised any ground in their appeals for applicability of Section 10 of Code of Civil Procedure (C.P.C.). Even, the respondent did not raise this issue before the appellate Court from the date of passing the order of the trial Court on the application for consolidation of the suits. According to him, both the suits have been disposed of by the trial Court. Section 10 of C.P.C. is applicable to pending suits. Once the suits have been disposed of, there is no question of remanding the matter and directing the trial Court to decide the former suit first with further direction to stay the subsequent suit i.e. R.C.S. No.7/2015. This is nothing, but a futile exercise. According to him, particularly when none of these parties raised this issue, the appellate Court was not right in remanding the matters with aforesaid directions. Therefore, according to him, order of the appellate Court is not sustainable in the eyes of law.

06] *Per contra*, the learned Counsel for the respondent formally objected, but ultimately submitted that the matter be remanded to the appellate Court for deciding the same on merits.

07] Perusal of the impugned judgment goes to show that the learned District Judge is of the view that both the suits are between the same parties and the subject matter in issue in subsequent suit i.e. R.C.S. No.7/2015 is directly and substantially same as in the previous suit and, therefore, the trial Court should have proceeded to decide R.C.S. No.122/2010 first and ought to have stayed R.C.S. No.7/2015 in view of Section 10 of C.P.C.

08] This takes me to Section 10 of C.P.C., which runs as under :

“10. Stay of suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation : The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

09] Section 10 of C.P.C. is based on public policy which prohibits the parties to file two parallel cases on the same subject matter and restricts the

chances of having two contrary judgments by two Courts. The purpose of doctrine to *res sub judice* is to restrict multiplicity of the proceedings and to avoid two conflicting decisions. The words “no Court shall proceed with the trial of any suit” used in Section 10 of C.P.C. were intended to bar separate trial of any suit in which the matter in issue was also directly and substantially in issue in a previously instituted suit between the same parties in the same Court or in any other Court. But, these words do not apply to the simultaneous hearing of a later and an earlier suit after consolidation of the two, if the matter in issue in both is directly and substantially the same. Section 10 was not intended to take away the inherent power of the Court to consolidate, in the interests of justice, in appropriate cases different suits between the same parties in which the matter in issue is substantially the same.

10] In the present case, the learned trial Court consolidated both the suits and heard them simultaneously by recording common evidence, and disposed them of by way of common judgment. It is settled law that the Civil Court under the inherent power as provided under Section 151 of C.P.C. can consolidate two suits and try them simultaneously. In the present case, both the suits, as stated above, have been disposed of, after recording common evidence, by common judgment by the same Court. Therefore, the chances of

passing conflicting decisions is ruled out. That apart, the suits have already been disposed of. Therefore, no question of applicability of Section 10 of C.P.C. will arise in the present case. There is no point in remanding the matter and directing the trial Court to stay subsequent suit and retry the former suit.

11] In view of the above, I find substance in the argument of the learned Counsel appearing for the appellant(s), when the suits have been heard simultaneously by consolidating the same, hardly there will be any scope for attracting Section 10 of C.P.C.. Therefore, for the practical purpose, the findings recorded by the appellate Court do not stand to the reasons and are liable to be set aside.

12] Resultantly, both the appeals succeed. The impugned judgments and orders passed by the learned District Judge-3, Akola in R.C.A. No.14/2020 and R.C.A. 15/2020 are set aside. R.C.A. No.14/2020 and R.C.A. No.15/2020 are restored to file. The learned District Judge, Akola to dispose of the same on merits in accordance with law.

(M.W. CHANDWANI, J.)