

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 4709 OF 2003
AND
WRIT PETITION NO. 4711 OF 2003

WRIT PETITION NO. 4709 OF 2003

Sitaram Deorao Pawar

... PETITIONER

Versus

Rupabai Wd/o Gundulal Khatri
& Ors.

... RESPONDENTS

WRIT PETITION NO. 4711 OF 2003

Totaram Deorao Pawar

... PETITIONER

Versus

Rupabai Wd/o Gundulal Khatri
& Ors.

... RESPONDENTS

Shri A.S. Kilor, Advocate for the petitioner.

Shri R.L. Khapre, Advocate for the respondents.

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CORAM : B.P. DHARMADHIKARI, J.
DATE OF RESERVING THE JUDGMENT : DECEMBER 09, 2005.
DATE OF PRONOUNCING THE JUDGEMENT: DECEMBER 12, 2005.

JUDGMENT :

1. Both these Writ Petitions challenge identical order passed on 6/11/2003 by Joint Civic Judge (JD) , Buldhana, in Regular Civic Suit Nos. 4 of 1986 and 6 of 1986. The respondents in both these writ petitions moved applications under Order 1 Rule 10 of Civil Procedure Code, for adding them as parties in these suits. Respond No.12 Brijlal in both matters moved separate application while respondents No. 1 to 8 moved combined application. In both civil suits by identical order, these applications have been allowed. The Petitioners, who are plaintiffs, have approached this Court challenging these orders.

2. I have heard Advocate Shri Kilor for the Petitioners and Advocate Shri Khapre for respondents. Both of them suggested for final decision at admission stage itself. On 21/12/2003 this court while issuing notice made it clear that matters may be disposed of finally at admission stage only. Accordingly both the sides also placed their written notes of argument along with Xerox copies of citations for consideration of this court. After going through said written notes of arguments, it was found that Advocate Khapre for respondents made statement in his written notes that all the suits between various parties in relation to suit property are consolidated. There are total 5 suits in relation to very same property. In view of this, the issue was placed

before petitioner and his Counsel Shri Kilor took time to verify the position. Advocate Shri Khapre for respondents also took time to ascertain factual position. On 9/12/2005 both the Advocates stated that suits are consolidated and evidence is being recorded only in one matter.

3. Civil Suit No. 4 of 1986 is filed by petitioner Totaram while Civic Suit No. 6 of 1986 is filed by petitioner Sitaram against Rupabai for specific performance of contract. In Civic Suit No. 4 of 1986 petitioner claims to have entered into an agreement for sale on 6/1/1983 with her for purchase of 1H 01R out of survey No. 23/3 while the other petitioner claims to have entered into similar transaction for remaining 1H 01R

from same survey number on same date with Rupabai. Amrut Khatri & Yamunabai Khatri are stated to be relatives of said Rupabai and they are defendants No. 2 and 3 in both the suits. It is contended that they deliberately in collusion with Rupabai obtained sale deed of this land on 21/2/1983 despite knowledge of their earlier contract with them. It is further stated that the defendants in both the suits have set up their relations who have commenced various litigation in Civil as also revenue courts. The Petitioners have stated that they were also placed the possession of Suit fields and application for appointment of receiver was pending before Sessions Judge Buldhana. It is to be noted that copies of plaints in all 5 suits are not produced on record by parties. Predecessors-in-title of added parties namely

Ramlal & Sheshlal appears to have filed two suits vide RCS Nos. 167 of 1983 and 236 of 1986. After death of Ramlal, the added parties are prosecuting those suits as plaintiffs. Last respondent Brijlal in both these petitions claims to have purchased half of suit property from Amrut Khatri and to be in possession thereof. It appears that present Petitioners are party defendants in RCS Nos. 167 of 1983 and 236 of 1986. Special Civil Suit No. 16 of 1984 is filed by Rupabai, Amrutrao & Yamunabai together against Sitaram, Totaram, Ramlal, Sheshlal & Talathi in person for declaration that alleged agreement dated 6/1/1983 is obtained by present Petitioners by fraud and is not binding upon them. The added parties claim that in 1980 Rupabai inducted Ramlal & Sheshlal as tenants in said field property and when their

possession was obstructed, Ramlal & Sheshlal filed RCS No. 167 of 1983. It is thus apparent that facts giving rise to this litigation are intermingled and decision in any Suit is likely to affect the other Suit. The landowner Rupabai with Amrutrao & Yamunabai appear to be party in all cases. The order of consolidation passed by court below therefore is just and proper and nobody has made any grievance against it. Accordingly all the suits are now before the same court.

4. In AIR 2004 S.C.1687 Chitivalasa Jute Mills., M/s. v. M/s. Jaypee Rewa Cement, the Hon'ble Apex Court has observed about consolidation 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 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. The evidence having been recorded, common arguments need 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."

5. In AIR 2002 Raj. 341 between Ganeshdas v. Ramesh Chandra, learned Single Judge of Rajasthan High Court has made following observations in paragraph 9, 10 and 12: --

"9. In Hans Raj v. Firm Hazarimal Dipa 1959 Raj LW 451, this Court came across a case

where the two suits have been consolidated by the trial Court; common issues had been framed and after recording the evidence the trial Court passed a decree allowing both the suits. The submission to the effect that the trial Court had committed an error in consolidating the suits was rejected by this Court as the trial Court had the competence under its inherent jurisdiction to combine two suits. In case where the parties are the same and cause of action is the same, there can be no difficulty in consolidating the suits in exercise of inherent powers of the Court however, whether the suits can be consolidated must depend upon facts and circumstances of a particular case and the decision of the two suits must rest mainly on determination of similar question and the contesting party should also be the same. Therefore, this Court held that "there must be

sufficient unity or similarity in the matters in issue in two suits to warrant their consolidation".

10. In *Shambhoo Dayal v. Chandra Kali Devi*, AIR 1964 All 350, the Allahabad High Court held that in all, suits can be consolidated provided common question of fact and law are arising and it will not be a case of misjoinder of parties.

12. In *M/s. Bokaro and Ramgur Ltd. v. The State of Bihar*, AIR 1973 Pat 340 and in *Nani Gopal Bandhyopadhyaya v. Bhola Nath Bandhopadhyaya*, AIR 1973 Pat 437, it has been held that the Court has inherent discretionary power to consolidate the suits in exercise of powers under S. 151, CPC provided there is sufficient uniformity or similarity in the matters in issue in the suits or determination of suits rest mainly on the common question and it is convenient to try

them as analogous cases. In the former case, the Hon'ble Patna High Court held as under:-
"The question to be considered should also be as to whether or not the non-consolidation of two or more suits is likely to lead apart from multiplicity of suits, to leaving the door open for conflicting decisions on the same issue which may be common to the two or more suits sought to be consolidated..... the convenience of the parties and the expenses in the two suits are subsidiary to the more important considerations namely, whether it will avoid multiplicity of suits and eliminate chances of conflicting decisions on the same point."

6. This Court also has in 1999 (1) LJ 433 between Sheela Sohanlal Ghai & Ors. Vs. Snehlata Sohanlal Ghai & Ors. held as under on the point of consolidation "It

thus becomes apparent that the object of Section 10 is to prevent multiplicity of proceedings with regard to the same subject matter and to avoid contradictory judgments being given by the same court. In circumstances such as this, it would be open to the court to exercise its inherent powers under Section 151 of Civil Procedure Code to pass appropriate orders to do justice between the parties. The object of consolidation of suit is to avoid multiplicity of proceedings and unnecessary delay and protraction of litigation. The two suits which are the subject matter of this litigation are between the members of the same family. Each part of the family in each suit is claiming to be sole heir and legal representative of the deceased. The evidence in both the suits would, in all probability, be common. The witnesses would also be by and large

common. Therefore, I am of the considered opinion that the two suits ought to be directed to be consolidated and tried together." (Para 7).

7. Adv. Kilor has relied upon Anil Kumar Singh vs. Shivnath Mishra reported at 1995 (3) SCC 147 to contend that provisions of Order 22 Rule 10 of CPC are not applicable in the matter. Perusal of paragraph 3 of said judgment reveals that the respondent therein obtained interest in the suit property not by assignment or creation but by a decree of Court. Hence it has been held that said provision has no application. In relation to Order 1 rule 10 (2), in paragraph 7, Hon'ble Apex Court has stated that condition precedent in the exercise of said power is satisfaction of the Court that presence of party to be

added is necessary to enable it to effectually and completely adjudicate upon and settle all questions involved in the suit. It is observed that object of said rule is to bring on record all the persons who are parties to the dispute relating to the subject matter so that the dispute may be determined in their presence and at the same time without any protraction, inconvenience and avoid multiplicity of proceedings. In paragraph 10, Hon'ble Apex Court has held that the person may be added as a party defendant to the suit though no relief may be claimed against him provided his presence is necessary for complete and final decision on the question involved in the suit. It has been held that as respondent sought to be added was not party to the agreement of sale, dispute as to specific performance could be determined even in his

absence and therefore he was not necessary party. In E. Ajay Kumar vs. Tulsabai reported at 1973 Mh.L.J. 683, this High Court has taken similar view and in paragraph 9 observed that a stranger to the agreement and hence to the controversy who claims to be entitled to the property as such cannot come before the Court either as necessary or proper party. Nandlal, respondent No. 2 in this matter filed application contending that title of Tulsabai was defective and he had interest in said property. His application was rejected by trial Court and said rejection was maintained in this reported judgment. Shamrao vs. Gurukul Gruhanirman reported at 1995 (1) Mh. L.J. 893, is another judgment of this High Court wherein similar view has been taken in paragraph 6 and support has been taken from E. Ajay Kumar vs. Tulsabai (supra). Applicant

Shamrao contended that there was subsequent agreement in his favour and therefore he was necessary/proper party but his application was rejected by trial Court and said rejection was maintained by this Court. A.I.R. 1981 Delhi 237 between Raj K. Mehera vs. Anjali is another ruling cited by learned counsel for Petitioner which takes the same view and views that if strangers are permitted to be impeded, it would change the nature of suit.

8. Adv. Khapre has relied upon Herberstons Ltd. vs. Kishore Rajaram reported at 2000 (3) Mh. L.J. 550, to state that where party is absolutely necessary such person can be joined against the wish of plaintiff. The intervenors in that matter had filed a Civil suit before Calcutta High Court and their contention was on account of intergroup

rivalry amongst the parties, they would like to have their say in the matter before Bombay High Court also. Their prayer for intervention was rejected holding that they were neither necessary nor proper parties. While so doing, in paragraph 8, the above observations have been made. In Geeta vs. Vijaycharan reported at 2000 (4) Mh. L.J. 556, the dispute was about dealership and licence of kerosene which came to be transferred in the name of applicant after death of her husband. Non-applicant No. 4 was earlier given power of attorney to facilitate said business but it came to be revoked. She also filed a suit for declaration and permanent injunction against him but it was withdrawn. Later on non-applicant No. 4 filed a suit against Indian Oil Corporation authorities only for declaration in respect of dealership and for grant of

mandatory injunction to supply kerosene to him. Applicant was held to be necessary party to this dispute and this High Court set aside the order of trial Court rejecting her application for impleading her as party. In paragraph 31 this Court has held that under Order 22 rule 10 the Court can add a party found to be necessary to effectively and completely adjudicate upon and settle all questions involved in the suit. In 2001 (3) Mh. L.J. 288 between Adam A. Sorathia vs Municipal Corporation of Greater Bombay, issue was about removal of unauthorised construction and it has been held that landlords have directed substantial interest. Perusal of paragraph 17 shows that it was held that landlord would be better person to throw light on the controversy. Learned counsel for respondents has also relied upon

judgment between Gram Panchayat Garhi vs. Dharambir and others reported at A.I.R. 1998 P&H 165, wherein owner of adjoining land was held to be necessary party because of his contention that he was the owner of portion occupied by defendant and had entered into an agreement to sale the same to the defendant though actual sale was not executed. The defendant in his written statement admitted said contention. While holding this, the Hon'ble High Court held that the rule "dominus litus" is not without exception. Khemchand vs. Vishnu, reported at A.I.R. 1983 SC 124 is also cited by him to contend that Order 22 rule 10 recognises the right of transferee to be impeded as party despite section 52 of Transfer of Property Act. Observations in paragraph 6 of this judgment show that Hon'ble Apex Court found that

position of such person is somewhat similar to the position of a heir or legatee of a party who dies during the pendency of a suit or proceeding. It is observed that they can participate in execution proceedings even though their names may not have been shown in the decree, preliminary or final and hence, if they apply to the court to be impeded as parties they cannot be turned out. A.I.R. 2001 SC 2552 (Dhurandhar Prasad vs. Jai Prakash University) has been cited to show that a person who acquires such interest subsequently during pendency of suit may apply for leave to Court under Order 22 rule 10 and the person who ceases to have interest in the property may lose interest in the litigation. Such person may not even effectively defend it.

9. The above case law, therefore, shows that in appropriate cases the Court can add a party against the wishes of plaintiff, if it finds that presence of that party is essential for complete, effective decision of controversy with a view to avoid further litigation between the parties. From the facts of present matter stated above, it is apparent that in view of the nature of controversy and the allegations and counter allegations between parties the order of consolidation is already passed and it has become final. The parties are disputing the role of original owner Rupabai and evidence in this respect as also evidence about the possession of suit property is bound to be common. Property involved and role played by Rupabai, Amrut & Yamunabai is to be scrutinised in all matters. The decree ultimately passed must be capable of being

smoothly executed without any obstruction by the other claimants. Thus object behind addition of parties and consolidation is advanced by the impugned order. Object of consolidation of suits to avoid multiplicity of proceedings and unnecessary delay and protraction of litigation is achieved in this matter. In circumstances, as the suit is not only for specific performance and other allegations made against present petitioners are also required to be answered, I do not find anything wrong in the exercise of discretion by Court below. After examining the facts, Court has found it proper to allow the parties to be added and by this approach of learned trial Court the controversy can be settled finally, more effectively and once for all. I have perused the cases/citations placed on record by both the sides. Normally, in suit for specific

performance strangers are not allowed to be added as parties. However, here the predecessor-in-title of said strangers had already filed suit against petitioners in relation to very same property. Not only this, petitioners are last to file their suits. Dominus litus is not the rule without exception. Hence, in the facts and circumstances of present case I am not inclined to interfere in the matter in exercise of writ jurisdiction.

10. Writ petitions are accordingly dismissed with no order is to costs.

*dragon.