

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MONDAY ,THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR



PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 2616 OF 2024

Petition under Article 227 of the Constitution of India, against the Order and Decree in I.A.No.1315 of 2022 in O.S. No. 47 of 2016, dated 20th day of June, 2024 on the file of the Court of the XIII Additional District and Sessions, Gajuwaka, Visakhapatnam District.

Between:

Smt Ghousia Sulthana, W/o. Habbib Mohiuddin, D/o. Sri Razana Shariff, Muslim, aged 38 years, R/o. D. No. MIG-49, VUDA Colony, Gitam University (P.O), Visakhapatnam - 530 045.

...Petitioner/Respondent No.3/Defendant No.3

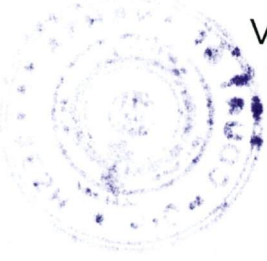
AND

1. Sri P Yuganddhar, S/o. P. Maridayya, Hindu, aged 48 years, R/o. D. No. 9-8-213, Jogavanipalem, Gajuwaka, Visakhapatnam - 26.

...Respondent No.1/Petitioner/Plaintiff

2. Sri Rahamatulla Shariff, S/o. Sri Razana Shariff, Muslim, aged about 50 years, R/o. D.No. MIG-49, VUDA Colony, Gitam University (P.O.), Visakhapatnam - 530 045.

3. Sri GM. Shariff, S/o. Sri Razana Shariff, Muslim, aged about 45 years,
R/o. D.No. MIG-49, VUDA Colony, Gitam University (P.O.),
Visakhapatnam 5.



**...Respondent No.2&3/Respondent
No.1 & 2/Defendant No. 1 & 2**

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in O.S.No. 47 of 2016 on the file of the Court of XIII Additional District & Sessions Judge, Gajuwaka, Visakhapatnam District, pending disposal of the C.R.P. before this Hon'ble Court.

Counsel for the Petitioner : Sri. Saranu Phani Teja

Counsel for the Respondents: -

The Court made the following:

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.2616 of 2024

Between:

Smt. Ghousia Sulthana

..... **PETITIONER**

AND

Sri P. Yugandhar and 2 others

.....**RESPONDENTS**

DATE OF JUDGMENT PRONOUNCED: **11.11.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals ✓ Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? ✓ Yes/No

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****+ CIVIL REVISION PETITION No.2616 of 2024**

% 11.11.2024

Smt. Ghousia Sulthana

....Petitioner

Versus

\$ Sri P. Yugandhar and 2 others

....Respondents

! Counsel for the Petitioner: Sri Saranu Phani Teja

^ Counsel for respondents : ---

< Gist :

> Head Note:

? Cases Referred:

1. 2022 (5) ALT 698
2. (2004) 3 SCC 85
3. 1959 SCC OnLine All 245
4. 1999 SCC OnLine All 1009
5. AIR 1984 All 387

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**CIVIL REVISION PETITION No. 2616 of 2024****JUDGMENT:**

Heard Sri Saranu Phani Teja, learned counsel for the petitioner.

2. The petitioner Smt Ghousia Sulthana is the defendant No.3 in O.S.No.47 of 2016 on the file of the XIII Additional District and Sessions Judge, Gajuwaka, Visakhapatnam District. The said suit was filed by the plaintiff/1st respondent herein namely P. Yungandhar for a decree of specific performance of contract to execute sale deed in terms of the agreement of sale dated 15.04.2010, alleging its execution by the 3rd defendant of the said suit Smt Ghousia Sulthana as also the 1st defendant, namely, Rahamatulla Shariff. The 3rd defendant Smt.Ghousia Sulthana of O.S.No.47 of 2016 had previously filed O.S.No.42 of 2016 against the three defendants, including Sri Rahimtulla Sharif (2nd defendant in her suit) for declaration in her favour that, she was the absolute owner of the suit schedule property, in terms of the alleged registered gift settlement deed 08.08.2008 along with some other prayers.

3. The plaintiff P. Yugandhar in O.S.No.47 of 2016 filed I.A.No.1315 of 2022 to consolidate both the suits i.e., O.S.No.42 of 2016 and O.S.No.47 of 2016, both pending in the same Court for joint trial. The said application has been allowed by order dated 20.06.2024. Challenging the said order, the plaintiff of O.S.No.42 of 2016 (3rd defendant of O.S.No.47 of 2016) Smt Ghousia Sulthana has filed the present revision petition under Article 227 of the Constitution of India.

4. Learned counsel for the petitioner submits that the parties in both the suits are not the same. The plaintiffs of O.S.No.47 of 2016, P. Yungandhar is not party in O.S.No.42 of 2016. He submits that the learned trial Court has wrongly observed that the parties in both the suits are same. Consequently, his submission is that both the suits could not be consolidated for trial. The impugned order therefore cannot be sustained. He placed reliance in the case of ***A. Sri Venkata Suryanarayana Raju v. R. Naga Venkata Vijayalakshmi***¹ to contend that each suit is to be tried separately, is the normal mode provided under the law.

5. I have considered the aforesaid submissions and perused the material on record.

6. On specific query, learned counsel for the petitioner submits that the suit property in both the suits is the same. So, it is not in dispute that the property in both the suits is the same.

7. The contention that requires consideration is if the parties of both the suit are same or not.

8. So far as the said contention with respect to the parties not being the same is concerned, the suit O.S.No.47 of 2016 has been filed by the plaintiff, namely, P. Yugandhar, based on the alleged agreement to sell said to have been executed by Smt Ghousia Sulthana the plaintiff of O.S.No.42 of 2016 (and 3rd defendant in O.S.No.47 of 2016) as also the 2nd defendant of O.S.No.47 of

¹ 2022 (5) ALT 698

2016, who is also the 2nd defendant in O.S.No.42 of 2016. Consequently, it cannot be said that the parties in both the suits are not the same.

9. There is another aspect, the plaintiff of O.S.No.47 of 2016 is in fact claiming for a specific performance of contract, including, against the plaintiff of O.S.No.42 of 2016, based on agreement of sale. The property of both the suits is the same. In O.S.No.47 the plaintiff thereof is seeking specific performance of contract with respect to that property and inter alia against the plaintiff of O.S.No.42 of 2016. Whereas the plaintiff of O.S.No.42 of 2016 who is the one of the defendants as defendant No.3 in O.S.No.47 of 2016, in her suit is seeking a declaration that she is the exclusive owner of the suit property. Any declaration in O.S.No.42 of 2016 in which the plaintiff of O.S.No.47 of 2016 has not been impleaded, may also possibly adversely affect his rights to get a specific performance in his O.S.No.47 of 2016 with respect to the same property against the defendants, other than the defendant No.3 of O.S.No.47 of 2016. Consequently the consolidation of both the suits, as has been directed by the learned trial Court, cannot be faulted.

10. In ***Chittivalasa Jute Mills vs. Jaypee Rewa Cement***², the Hon'ble Apex Court observed that 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

² (2004) 3 SCC 85

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. It was also observed that 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.

11. Para No.12 of ***Chittivalasa Jute Mills*** (supra) reads 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.

12. In ***Chittivalasa Jute Mills*** (supra), the Hon'ble Apex Court thus held that substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision.

13. In ***P.P. Gupta vs. East Asiatic Co, Bombay***³, the Allahabad High Court considered the expression "shall not proceed in any suit" in Section 10 C.P.C. and held that these words were intended to bar the 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 did not apply to the simultaneous hearing of a later and an earlier suit, after consolidation of the two. 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 ***P.P.Gupta*** (supra), the Allahabad High Court thus held that the power of consolidation of suits is inherent and Section 10 does not take away that power.

14. In ***K.K. Gupta vs. Civil Judge (Sr. Division), Gonda and others***⁴, the Allahabad High Court, Lucknow Bench, held that Section 10, CPC deals with the stay of suits on the ground that no court shall proceed with the trial of any suit in which matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties and at the same time Order IV-A of the Code of Civil Procedure (as applicable in State of U.P, which was added vide U.P.Act 57 of 1976) prescribes that when two or more

³ 1959 SCC OnLine All 245

⁴ 1999 SCC OnLine All 1009

suits or proceedings are pending in the same court, and the court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, whereupon all such suits and proceedings may be decided upon the evidence in all or any such suits or proceedings. In **K.K. Gupta** (supra), the previous judgment, in the case of **Anandan Gupta v. Navin Agarwal⁵** was also considered in which it was held that those provisions expressly empower the trial court to consolidate the suit if it was expedient in the interest of justice to direct a joint trial. A joint trial would avoid multiplicity of proceedings.

15. In **A. Sri Venkata Suryanarayana Raju** (supra), upon which, learned counsel for the petitioner placed reliance, the facts were that the defendant in the three suits, filed by the plaintiff for recovery of money based on three different promissory notes, pending before the same court, filed interlocutory application under Section 151 CPC for clubbing the suits and to hold a joint trial recording common evidence. The request of consolidation was declined by the trial Court on the premise that the plaintiff in each of those suits was different from one another and the consideration that passed under each of three promissory notes was different. The validity of such an order of rejection was under challenge in civil revision petition before this Court. The civil revision petitions were dismissed.

16. In **A. Sri Venkata Suryanarayana Raju** (supra) in paragraphs-13 and 14, this Court observed and held as under:

⁵ AIR 1984 All 387

“13. Point:

On every cause of action, the plaintiff could seek a relief as against the defendant. The procedure to try a civil suit is provided by the Code of Civil Procedure, 1908. On certain occasions, situations may develop where a suit instead of being considered alone would need be considered along with another suit. For instance, where subject matter of dispute is a residential premises or an agricultural land and that is in the occupation of a tenant or a lessee and in the event of a dispute between the landlord and tenant, the tenant finding an aggressive landlord may seek to protect his possession and seek a perpetual injunction against the landlord to prevent his unlawful interference. At about some time, the landlord having found a recalcitrant tenant not vacating the premises despite expiry of period of lease may sue his tenant seeking his ejection and recovery of possession. Thus, the dispute may have given rise to two different suits for two different reliefs. It is in such occasion, the trial Court instead of trying both the matters separately may hold a joint trial or consolidate trial which means the evidence could be recorded in one of the comprehensive suits and that evidence would cover the disputes raised in both the suits and finally, a common judgment disposing of both the suits could be made. The reason for such consolidation is normally understood as one to avoid conflicting decisions. To have consistency of opinion on same facts leading to uniform decisions is one of the primary objectives that is to be achieved by any Court of law.

14. In what other matters consolidation of trials need to take place cannot be stated extensively. Code of Civil Procedure, 1908 has not made a particular provision prescribing the parameters for consolidation of suits. Therefore, as and when parties to the litigation and the Court trying them find it necessary to have a consolidated trial, the powers under Section 151 C.P.C., which speak about the powers that are inherent with every Court, are utilized. Broadly stated, this is how consolidation of suits takes place. In the context of above undisputed situation, now the case at hand has to be seen. The three separate suits filed by three different plaintiffs are to be tried separately in the normal course. It may be noted that all the pronotes had allegedly come into

existence on the same day and though all the plaintiffs are related to one another so also the defendant in the suit is related to them, those factors by themselves do not make it a case of same transaction or series of transaction concerning each of the plaintiffs. To put it in other words, these three plaintiffs cannot join together and file one single suit as against the defendant. When that being the case, the inclination of the trial Court to have the suits tried separately cannot be found fault with. Trying each suit separately is the normal mode that is provided for under the law. Consolidation is an exception. Be it noted that each Court has wide discretionary power to control the conduct of proceedings before it (vide *Prem Lala Nahata Vs. Chandi Prasad Sikaria* (2007) 2 SCC 551 at 562). Therefore, the order of the trial Court in not consolidating the three suits does not by itself cannot be termed as violation of any particular law especially that of any statute.”

17. There is no dispute on the proposition of law as in the aforesaid case of **A. Sri Venkata Suryanarayana Raju**. The normal mode as provided for under the law is trying an each suit separately. But, when the court trying the suits find it necessary to consolidate trial, there is inherent power under Section 151 CPC to consolidate the suits for trial. In the said case, the order of the trial Court declining to consolidate was affirmed, as there were different transactions, different promissory notes under which different considerations passed to different plaintiffs of those suits, though the defendant was common.

18. I do not find force in the submission of the learned counsel for the petitioner that the parties in both the suits are not the same.

19. It is well settled in law that in the exercise of the jurisdiction under Article 227 of the Constitution of India, this court will not interfere in a routine way and such interference may be only in rare cases, when it is called for to

keep the subordinate Courts/Tribunals within the bounds of their jurisdiction/authority. The impugned order is not of such a nature. The impugned order in fact would avoid multiplicity of the legal proceedings and would also afford an opportunity of hearing to the plaintiff of O.S.No.47 of 2016 in O.S.No.42 of 2016 which is with respect to the same property for which there is an agreement of sale in favour of the plaintiff of O.S.No.47 of 2006. The power to consolidate two suits lies with the domain and discretion of the learned trial court if it find it necessary to have a consolidated trial under Section 151 CPC. In this case, such discretion has been exercised reasonably and judiciously.

20. Thus considered. I do not find any illegality in the order impugned.

21. The Civil Revision Petition is dismissed at the admission stage. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

//TRUE COPY//

SD/- K J RAJA BABU
ASSISTANT REGISTRAR


SECTION OFFICER

**One fair copy to the Honourable Sri Justice RAVI NATH TILHARI
(for His Lordships' kind perusal)**

To,

1. The XIII Additional District and Sessions, Gajuwaka, Visakhapatnam District.
2. One CC to Sri. Saranu Phani Teja Advocate [OPUC]
3. Nine (09) L.R copies
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi
5. The Secretary, Andhra Pradesh High Court Advocates Association Library, High Court Buildings at Amaravathi'
6. **Two CD Copies**

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HIGH COURT

DATED: 11/11/2024

ORDER

CRP.No.2616 of 2024



**DISMISSING THE C.R.P. AT THE STAGE
OF ADMISSION WITHOUT COSTS**