

(1960) 12 GUJ CK 0006

In the Gujarat High Court

Case No : Civil Revision Application No. 1085 of 1960

Bhopo Fakirbhai (minor) and Another

APPELLANT

Vs

Bai Mani and Others

RESPONDENT

Date of Decision : 05-12-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 6, 115 , 151

Citation : AIR 1961 Guj 92 : (1961) 2 GLR 179

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : S.B. Vakil, for A.H. Mehta, for the Appellant; Mukund M. Thakore, B.R. Shah and Parikh, for the Respondent

Final Decision : Allowed

Judgement

Raju, J.—This is a civil revision application by the original defendants Nos. 1 and 2 in Suit No. 90 of 1959 challenging the order of the 5th Joint Civil Judge, Senior Division, ordering that this suit should be consolidated with Suit No. 11 of 1959 notwithstanding their objections and the objections of defendants Nos. 4 to 7 and ordering that the evidence of both the suits be recorded in the former suit. It is contended by the applicants that two of the parties to one of the suits are not parties to the second suit.

2. The learned counsel for the opponents raises a preliminary objection and contends that this application does not lie as it does not fall within the ambit of Section 115 of the Code of Civil Procedure, because no case has been decided by a subordinate Court. He relies on a Full Bench decision of the Allahabad High Court in Gupta and Co. Vs. Kripa Ram Brothers , and contends that although the word "case" does not necessarily mean a suit and may include interlocutory orders, in the instant case no case has been decided by the lower Court. The learned Judges of the Allahabad High Court have observed as under:-

"The word "case" is not an exact equivalent of the word "suit". It is something

wider. At the same time, it does not include every order that is passed by a Court during the trial of a suit or proceeding pending before it. It cannot be a case unless it is a proceeding which can be regarded as something separate and in a sense independent from the suit under hearing, and the termination of that proceeding should be somewhat different from mere-orders passed in the ordinary trial of the suit itself. Where the case is a proceeding which can be considered separate and distinct and is finally disposed of by an order which terminates it, it may well be considered to be a case decided although the suit has not in one sense been completely disposed of. This view has been relied on by the learned counsel for the opponents. The question is whether a proceeding relating to consolidation of suits is an independent proceeding or is part of the proceeding of the two suits consolidated. In my opinion, the application to consolidate the two suits is a separate and independent proceeding. If only one suit is Bled, such an application cannot be given. Such an application has nothing to do with the matters to be decided in either of the suits. It is not of the nature of an interlocutory application in the suit. I, therefore reject the preliminary objection and hold that revision does lie u/s 115, C. P. Code, in respect of the order to consolidate two suits for the purpose of hearing evidence.

3. The learned Judge has ordered the consolidation of the two suits, The consolidation of two suits does not mean that the two suits become one thereafter. It does not mean that the issues framed in both the suits become joint issues in both the suits after consolidation. There will as usual be separate decrees. All these points are considered by the learned advocate for the opponents. He contends, however, that the consolidation means the hearing of the evidence in one of the two suits and treating that evidence as evidence in both the suits. The order to treat the evidence in one suit as the evidence in another suit cannot be passed without file consent of the parties in both the suits. It is not open to the Court to hear witnesses in one suit only and to treat evidence in one suit as evidence in another without the consent of the parties unless the Court has authority to do so under the provisions of the Evidence Act. The learned counsel for the opponents has not pointed out any provisions in the Evidence Act giving the Court such powers to treat the evidence in one suit as evidence in the other suit notwithstanding the issues may be different and notwithstanding that the parties may not be common as in this case. He, however, relies on the case of Kashi Prosad Singh v. Secy. of State for India in Council, ILR Cal 140, which however relates to the consolidation of appeals and deals more or less with the question of Court-fees. In appeal, there is no question of taking evidence. The Calcutta High Court's decision is not a decision on the question of consolidation of suits. Whatever principles may apply to the consolidation of appeals, I am of the opinion that evidence cannot or ought not to be heard in common in suits without the consent of the parties.

4. I therefore allow this revision application with costs on opponent No. 1 only. Both the suits should be heard and decided separately.