

(1955) 12 PAT CK 0011
In the Patna High Court
Case No : Civil Revision No. 452 of 1954

Harinarain Choudhary and Others

APPELLANT

Vs

Ram Asish Singh and Others

RESPONDENT

Date of Decision : 08-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 16, Order 18 Rule 16(1), 151

Citation : AIR 1957 Patna 124

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : K.B.N. Singh and Janardan Sinha, for the Appellant;

Judgement

Raj Kishore Prasad, J.—Defendants are the petitioners. They have moved this Court in revision against an order, dated the 21st April, 1954 of the Munsif of Barh, rejecting their application for consolidation of Title Suits Nos. 1 to 3 of 19,52, and hearing them together as analogous cases.

2. There was a proceeding u/s 145 of the Code of Criminal Procedure between the petitioners and the opposite party, which was decided on the 22nd January, 1951, against the opposite party. To this proceeding, opposite party Nos. 1, 3 and 5, along with two others, were parties as second party; and the defendants, who are petitioners before this Court, were first party. Section 145 proceeding was in respect of plots Nos. 503, 504, 505, 506, 460 and a portion of 455, After the adverse order in the aforesaid proceeding against them, the opposite party, on the 23rd January, 1952, filed three different suits; opposite party No. 1 filed Title Suit No. 1 of 1952, in respect of plots 505 and 455; opposite party Nos. 2 to 4 filed Title Suit No. 2 of 1952, in respect of plots 506 and 460 and opposite party Nos. 5 and 6 filed Title Suit No. 3 of 1952, in respect of plot No. 503.

The present petitioners are the defendants in all the three suits. These three suits were instituted originally in the Court of the Munsif at Barh, but, later on, they were all transferred to the Court of the Additional Munsif at the same place

on different dates under orders of the District Judge, Patna. But, subsequently, all these three suits were re-transferred to the Court of the Munsif at Barh by the District Judge, Patna. Title Suit No. 1 of 1952 was transferred on the 18th April, 1953, Title Suit No. 2 of 1952 on the 9th December, 1953, and Title Suit No. 3 of 1952 on the 1st April, 1954. All these three suits were, therefore, in the same Court, that is, in the Court below, only on the 1st April, 1954.

3. In Title Suit No. 1 of 1952, the defendants, on the 21st April, 1954 filed a petition for analogous trial, and this petition was rejected on the same date, on the ground that plaintiff No. 1 had already been examined, and it would not be proper and convenient to try the suits analogous. It is against this order that the petitioners have come up in revision.

4. in Title Suit No. 2 of 1952 also on the 14th April, 1954, the defendants-petitioners had made a similar application for analogous trial of the three suits, but it was also rejected on the same day, that is, on the 21st April, 1954. The defendants have not moved against this order, but they have made the plaintiffs of all the three suits parties to the present application.

5. From the order-sheet of Title Suit No. 1 of 1952, it would appear that the defendants made previous attempts also to have the three suits heard together. The first application, in Title Suit No. 1 of 1952, out of which the present application arises, was made on the 19th June, 1953, and the second one was made on the 4th January, 1954; and both these petitions were rejected--the first implicitly, and the second expressly, on the 1st February, 1954. But the Court below had no jurisdiction then to order consolidation of the three suits, because the other two suits were not then pending in its Court. It further appears that the parties, both the plaintiff and the defendants of Title Suit No. 1 of 1952, agreed to the examination of their witnesses according to Order 18, Rule 16 of the Code of Civil Procedure.

6. Accordingly, the plaintiff of Title Suit No. 1 of 1952 examined himself as a special witness, as P. W. 1, on the 1st February, 1954. Order 18, Rule 16 provides for the de bene esse examination of a witness about to leave the jurisdiction of the Court, or for other sufficient cause shown to the satisfaction of the Court. The evidence so taken may then be read at any hearing of the suit under Clause (3) of Rule 16 of 6. 18 of the Code. A perusal of the order-sheet of Title Suit No. 1 of 1952 further reveals that the defendants also, on the 10th December, 1953, examined two witnesses, namely, D. Ws. 1 and 2 : on the 1st February 1954 one witness, namely, D. W. 3; on the 29th April, 1954, two witnesses, namely, D. Ws. 4 and 6; and on the 7th June, 1954, they examined D. Ws. 6 and 7.

The result, therefore, is that in Title Suit No. 1 of 1952 one witness on behalf of the plaintiff, and as many as seven witnesses on behalf of the defendants have already been examined under Order 18, Rule 16(1) of the Code of Civil Procedure. It further appears that some documents have also been exhibited on

the side of both parties. The hearing of Title Suits Nos. 2 and 3 of 1952 has not yet started. The question, therefore, is if, in such circumstances, an analogous trial of the three suits should be ordered, and if this Court should Interfere, in its revisional jurisdiction, with the order of the Court below refusing to consolidate the three suits.

7. Court has inherent power *ex debito* justify to consolidate suits, where it is in the ends, of justice to do so 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 : see *Ramavtar Prasad Verma Vs. Satdeo Lal and Others*, . The inherent power of Court, u/s 151 of the Code of Civil Procedure, to consolidate suits is exercisable even without the consent of the parties. If it were not so, it would not have inherent jurisdiction to consolidate at all, for Consent of parties cannot confer a Jurisdiction that does not exist : see *Mahamad Fazal Vs. Mahkumar Mahton* .

8. Bearing in mind the above principles, I would now consider the facts and circumstances of the present suits to see If. they warrant their consolidation.

9. From the facts stated earlier, it would appear that the defendants are the same in all the three suits, although the plaintiffs are, different and the suit lands are also different. From the plaints of the three suits, it appears that the defendants claimed their title on the basis of certain purchases from one *Walzul Hague*, who was one of the many co-sharer landlords of the *khe-wat* under which all these lands are recorded.

The case of all the three sets of plaintiffs is that it is not correct that the lands originally belonged to *Waizul Haque*, because he was only one of the several landlords of the *khewat* in dispute, and the plaintiffs' ancestors were tenure-holders under the landlords recorded in respect of *khewat* No. 7. There is, therefore, no doubt that only one common question arose for decision in the three suits. The Court below has not at all directed its attention to this aspect of the matter. Only one proceeding u/s 145, Code of Criminal Procedure, was also started against all the plaintiffs and the defendants in respect of all the lands in dispute in the three suits, obviously, because common questions arose for decision between the parties concerned.

The cause of action in all the three suits is also the same, namely, the order passed on the 22nd January, 1951, in the 9, 145 proceeding against the plaintiffs of the different suits. In my opinion, therefore, an analogous trial of the three suits would be most convenient and conducive to the benefit of the plaintiffs of all the three suits. The convenience of the parties in the conduct of litigation is certainly a relevant consideration, and it is, perhaps, no too much to say that it is

the basis of nearly all statutory jurisdiction on the civil side. The plaintiffs of all the three suits, who have been made parties to the present application, have not, in spite of service of notices on them, appeared to contest this application.

The Court below, in rejecting the application of the petitioners for analogous trial, only said that one witness plaintiff No. 1 had already been examined, and, it would not be proper and convenient to try the suits analogous. The learned Munsif, however, has given no reason as to why he considered that it would not be proper and convenient to try the suits together. He has not, as I have stated before, considered the pleadings of the parties, in order to find out if really there was sufficient unity or similarity in the matters in issue in the three suits, or that the determination of the three suits rested mainly on some common question.

On the other hand, as I have stated before, from a casual reading of the plaints of the three suits, it appears that there is sufficient unity or similarity in the matters in issue in the three suits, and there is a common question to be decided. These facts and circumstances, in my opinion, warrant the consolidation of the three suits; and it is a fit case in which this Court should interfere, in its revisional jurisdiction, with the order complained of. I would, therefore, allow the application, and direct that the three suits namely, Title Suits Nos. 1 to 3 of 1952 should be tried together by the Court below.

10. I may, however, mention one circumstance, namely, the examination of one witness on behalf of the plaintiff and seven witnesses on behalf of the defendants in Title Suit No. 1 of 1952, under Order 18, Rule 16 of the Code. The evidence so far recorded and the documents marked as exhibits in Title Suit No. 1 of 1952 will not be binding on the plaintiffs of the other two suits, because they were not parties to this title suit. The oral and documentary evidence so far taken will therefore, have to be scrapped altogether and taken anew in presence of the plaintiffs of the other two suits, unless the plaintiffs of the other two suits agree that the evidence, oral and documentary, so far taken in Title Suit No. 1 of 1952, under Order 18 Rule 16 of the Code should be read at the hearing of the three suits under Clause (3) of Rule 16 of Order 18 of the Code.

If the plaintiffs of the two suits, however, do not agree to this procedure, then the evidence taken so far will have to be taken afresh. In case the suits are decided in favour of the defendants, the cost incurred by the defendants in examining their defence witnesses, namely, D. W's. 1 to 7, will not form the cost of the suits.

11. I find that the suits were Instituted in January, 1952, but yet they have not been brought to a close, even when four years are about to be completed. The Court below will, therefore, expedite the hearing of the three suits, which are ready for hearing, and try to decide them as quickly as possible.

12. With these observations, I would make the rule absolute. There will be no order for costs.