
(1999) 10 AHC CK 0043
In the Allahabad High Court
Case No : Writ Petition No. 1807 of 1999 (M/S)

Krishna Kanhaiya Gupta

APPELLANT

Vs

Civil Judge (S.D.) Gonda and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (1999) 10 AHC CK 0043

Hon'ble Judges : R.D.Shukla, J

Final Decision : Disposed Of

Judgement

R. D. Shukla, J.—The writ petition has been filed for a writ of certiorari to quash the order dated 2nd February, 1999 passed in Regular Suit No. 240 of 1996, rejecting the petitioner's application 48C under Order IVA and Section 151, C.P.C. for consolidation of the suit with Suit No. 253 of 1996.

2. The impugned order contained in Annexure1 was passed on 2nd February, 1999 by the Civil Judge (Senior Division) Gonda, rejecting application 48C for consolidation of Suit No. 253 of 1996 with Regular Suit No. 249 of 1996. Both the suits were pending in the same Court in which parties were same and the subject matter of dispute was also the same. It is also not in dispute that the matter in issue is substantially the same in both the suits. The trial Court, however, rejected the application for consolidation of suit 48C on the ground that in view of the provisions of Section 10 there can be no consolidation of the two suits.

3. Heard parties counsel.

4. The dispute in the two suits relate to the same house claimed by the daughter and the daughterinlaw of one Banwari Lal. The impugned order has not considered this material aspect of the two suits noted above that these relate to the same property and are between the same parties, in which matter in issue was directly and substantially the same. Obviously the consolidation of the two

suits shall avoid multiplicity of the proceedings.

5. Section 10, C.P.C. 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 IVA of the Code of Civil Procedure prescribes that when two or more 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. These two provisions were considered in *Anandan Gupta v. Navin Agarwal and others*, AIR 1984 Alld. 387. It was held that these provisions expressly empowers the trial Court to consolidate the suits if it was expedient in the interest of justice to direct a joint trial. There is no doubt that looking to the facts involved in the two suits before the trial Court, a joint trial would avoid the multiplicity of proceedings and it would be expedient in the interest of justice to have a joint trial of the two suits.

6. In *P.P. Gupta v. East Asiatic Co. Bombay*, AIR 1960 Allahabad 184, it was held that Section 10 does not go to the root of the jurisdiction of the Court trying the second suit, but merely lays down a rule of procedure. The words "no Court shall proceed with the trial of any suit" 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, as is the case of the parties in the writ petition. Section 10, C.P.C. is 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. It appears that the trial Court has not been able to consider this aspects of the matter thoroughly.

7. The impugned order has not considered the provisions of Section 10, C. P. C. and Order IVA of the same Code while deciding the application 48C. The observations made shall provide guide to the trial Court in proceeding further in the matter. It will be appropriate, therefore, for the trial Court to consolidate the two suits noted above and proceed in accordance with law and dispose them of expeditiously through a common judgment. The impugned order is thus quashed accordingly.

8. With these observations, the writ petition is disposed of finally. Send copy of this judgment for compliance to the Court concerned. Ordered accordingly.