

(1996) 06 CAL CK 0048
In the Calcutta High Court
Case No : C.O. No. 41 of 1992

Smt. Kusum Daga

APPELLANT

Vs

Smt. Niva Rani Biswas and Another

RESPONDENT

Date of Decision : 14-06-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115A
Constitution of India, 1950 — Article 227

Citation : (1997) 1 CALLT 105

Hon'ble Judges : Arun Kumar Dutta, J

Bench : Single Bench

Advocate : A.N. Banerjee and Ansu Nath Banerjee, for the Appellant; Pramatha Nath Chatterjee and Lutfar Rahaman Molla, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Dutta, J.—This application under Article 227 of the Constitution of India is directed against the order dated 13th August, 1991 passed by the learned Additional District Judge, 2nd Court, Nadia, in Civil Revision No. 29 of 1990 before him, for the reasons stated and on the grounds made out therein.

2. The facts, as are relevant for the present purpose, may shortly be set out as follows:

The opposite-party No. 1 herein Smt. Niva Rani Biswas (hereinafter referred to as Niva Rani) had filed a suit, being Title Suit No. 51 of 1987, before the 3rd Court of Munsif at Krishnagar against the Opposite Party No. 2 herein Amar Chand Adhikary (hereinafter referred to as Amar Chand) as the principal defendant, wherein the Petitioner Kusum Daga (hereinafter referred to as Kusum) had been impleaded as a proforma defendant, praying for a decree for eviction and mesne profits against the said Amar Chand. It is contended by Niva Rani that she and Kusum are co-owners in respect of R.S. Plot No. 447, under R.S. Khatian No. 225, within mouza-Bagha Doba, measuring 47 decimals of land. Niva Rani has contended in the said suit that she has 9 annas share in the said

plot and the defendant Amar Chand is a rank trespasser in respect of .06 decimals of land therein, the subject matter of the said suit, which was stated to be in her exclusive possession. The said Niva Rani had filed another suit, being Title Suit No. 145 of 1987, before the same very court at Krishna Nagar, impleading both Kusum and Amar Chand as defendants therein in respect of the same very R.S. Plot No. 447 praying for partition, contending, inter-alia, that she has 9 annas share therein and the remaining 7 annas share belongs to Kusum, further contending that she is in exclusive possession of the aforesaid .06 decimals of land from which she had allegedly been dispossessed by the said Amar Chand.

3. Kusum had filed written statements in both the said two suits challenging that Niva Rani has 9 annas share in the disputed plot and that she was in exclusive possession of the aforesaid .06 decimals of land in the disputed plot from which she had allegedly been dispossessed by the said Amar Chand.

4. In view of the averments made by Niva Rani in the plaints in the aforesaid two suits and the pleas taken by the petitioner (Kusum) in her written statements in the two suits, she (petitioner) had filed a petition before the trial court for analogous hearing of both the suits for the reasons stated, therein. The said petition was opposed by Niva Rani by filing a written objection. The learned Munsif, upon hearing the contending parties and perusal of the record, had allowed Kusum's prayer for analogous trial of the said two suits. On revision being preferred there against by Niva Rani, the learned Additional District Judge concerned by his impugned order had set aside the order of the learned Munsif holding that the two suits cannot be tried analogously for the reasons recorded therein.

5. Being aggrieved by the aforesaid impugned order passed by the learned Additional District Judge concerned, the petitioner has filed the instant application under Article 227 of the Constitution of India for the reliefs prayed for, for the reasons stated and on the grounds made out therein.

6. There are a large number of decisions of different High Courts which have well-settled the proposition that a court has inherent power to order consolidation of suits in appropriate cases. It has been held that in deciding whether two 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 suits tried together as analogous cases. Where it appears that there is sufficient unity or similarity in the matters in issue in the two suits to warrant their consolidation, it is a fit case for such consolidation. It has further been held that if in such circumstance the trial court refuses consolidation, then it would be a fit case in which the High Court can interfere in its revisional Jurisdiction. As held by a learned single Judge of the Patna High Court in *Bokaro and Ramgur Ltd. Vs. The State of Bihar and Others*,

"The Court has inherent power to consolidate suits. Suits can be consolidated if it

is expeditious and advantageous to all concerned. Where it appears that there is sufficient unity or similarity in the matter in issue in the suits or that the determination of suits rests mainly on a common question, it is convenient to try them as analogous cases. Further, the question to be considered should also be as to whether or not the non-consolidation of the 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 consideration, viz. whether it will avoid multiplicity of suits and eliminate chances of conflicting decisions on the same point."

7. I fully concur with the view so taken therein for much the same reasons recorded therein by the learned Judge.

8. As already indicated above, the plaintiff Niva Rani in the first suit being Title Suit No. 51 of 1987, has claimed 9 annas share in the disputed plot and has contended that she had been in exclusive possession of the suit property from which she had allegedly been dispossessed by the principal defendant Amar Chand. The plaintiff Niva Rani had presumably impleaded the petitioner Kusum in the said suit, contending that she is a co-owner in respect of the disputed plot to the extent of 7 annas share therein, without claiming any relief against her, in view of the decision of the Supreme Court reported in Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another, wherein it has been held that when one of the co-owners has filed a suit for declaration of his title and eviction of a trespasser without impleading other co-owners, the suit must fall as the suit partakes the nature of a suit for partition; so that the suit filed by her (Niva Rani) does not fall for non-Joinder of the co-owner in respect of the disputed plot. In the second suit, being Title Suit No. 145 of 1987, for partition the petitioner Kusum has been impleaded, who is stated to be Niva Rani's only other co-owner in respect of the disputed plot. Amar Chand has as well been impleaded as a defendant in the said suit.

9. It is contended on behalf of the petitioner Kusum that she has filed written statements in both the aforesaid two suits and it has been contended, Inter-alia, by her therein that the said two suits are not maintainable for non-joinder of necessary parties, namely Badri Narain Rathui, Khitish Chandra Roy, Kuddus and Jahanara, who are all alleged to be co-sharers in respect of the suit plot. The question as to whether the aforesaid four persons are co-sharers in respect of the suit property in the two suits is indeed required to be decided in both the suits. If all the co-sharers in respect of the suit plot have not been impleaded in the first suit, being Title Suit No. 51 of 1987. filed by the plaintiff Niva Rani, the same is likely to fail in view of the aforesaid decision of the Supreme Court reported in Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another, for which the petitioner Kusum, who is alleged to be Niva Rani's only other co-sharer, has been impleaded therein as a proforma defendant. In view of the

aforesaid plea taken by the petitioner Kusum that both the suits are bad for non-joinder of necessary parties, as indicated above, an issue is required to be framed in both the suits as to whether the same are bad for defect of parties in view of the aforesaid plea taken by the petitioner Kusum in her written statements filed therein. If the two suits are heard separately, conflict of judicial decisions at least on the said issue cannot be ruled out for which the two suits, to my judgment, are required to be heard together to avoid probable conflict of Judicial decisions, as also to pre-empt the question of res-judicata if one of the two suits is heard and decided first.

10. In view of the averments made by the plaintiff Niva Rani in the complaints of the two suits and the pleas taken by the petitioner-Kusum in the written statements filed by her therein, the two suits should be heard analogously. The plaintiff Niva Rani or, for the matter of that, Amar Chand are neither likely to suffer any inconvenience or prejudice if the two suits are heard together. Per-contra, there could be little mistaking that in the long run the analogous hearing of the two suits would be expeditious and advantageous to all concerned, which might also result in avoidance of avoidable wastage of court's valuable time, and money and energy for all concerned.

11. True it is, the revisional jurisdiction of the District Court having once been exercised by a party herein, the revisional jurisdiction of this court could not clearly be invoked over again. But the power of superintendence of the High Court under Article 227 of the Constitution is all pervasive. It has been held in Jagdishlal Dhody Vs. State of Madhya Pradesh and Others, that where the cause of Justice is seriously jeopardised the exercise of power under Article 227 may take the shape of constitutional obligation. The power is derived directly from the Constitution which is the fountain source and parent of all laws and statute in the Republic: the power imposed on the High Court are grave and sacred responsibilities for the administration of justice and the court is invested with unlimited and unfathomable reserve of judicial power of supervision under Article 227 of the Constitution of India. To hold that the impugned order of the Additional District Judge concerned cannot be interfered with under Article 227 of the Constitution on the ground that a second revision is being sought for in the guise of exercise of power of superintendence is to conclude that the revisional order of the District Court is not open to scrutiny by the High Court under Article 227 of the Constitution, and the subordinate revisional court is immune from the superintending jurisdiction of the High Court. Such a proposition could hardly be accepted.

12. True it is, the Supreme Court has sounded a note of caution in Umaji's case in tune with similar burning question in some earlier decisions. The Supreme Court has held therein that the High Court will not surety act as a second court of revision while exercising power of superintendence, but it (latter) will interfere in the case of manifestly gross injustice, abuse of the process of all court or similar other extraordinary situation.

13. In the nature of the instant matters and for the reasons indicated above, by passing the impugned order refusing the petitioner Kusum's prayer for analogous hearing of the two suits, the learned Additional District Judge seems to me to have acted illegally and with material irregularity in the exercise of jurisdiction vested in him by law since separate trial of the two suits, apart from causing inconvenience to the parties, is likely to result in conflict of judicial decisions, involving question of res-judicata as well. For the reasons amply indicated above, it seems to me to be a fit case for interference by this court in the exercise of its power of superintendence to prevent injustice and possible miscarriage of Justice which might be occasioned if the aforesaid two suits are tried separately by the trial court, in the facts and circumstances discussed above.

14. In the premises above, the instant application filed by the petitioner under Article 227 of the Constitution of India stands allowed. The impugned order passed by the learned Additional District Judge be hereby set aside. The Court below is directed to try the relevant two suits being Title Suit No. 51 of 1987 and Title Suit No. 45 of 1987, analogously, without being influenced by the observations hereinabove made by me. Since the relevant two suits are pending for long, the learned Munsif shall seek to dispose of the same according to law, as early as possible, preferably within a period of nine months from the date of communication of this order. The order of stay dated 14.1.92 should vacated.

In the nature of the matter, I direct the parties to bear their respective costs of this hearing.