

Chandra Bhan Vs. Ramanlal

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Court : Rajasthan

Decided On : Dec-17-1976

Reported in : 1976WLN(UC)542

Judge : A.P. Sen, J.

Appeal No. : S.B. Civil Revision Petition No. 214 of 1975

Appellant : Chandra Bhan

Respondent : Ramanlal

Judgement :

A.P. Sen, J.

1. This is a defendant's revision directed against an order of the District Judge, Bharatpur, dated 14th January, 1975, allowing the plaintiff's implication under Section 151 of the Code of Civil Procedure, for consolidation of the proceedings in Civil Suit No. 11 of the 1972 and Civil Suit No. 6 of 1963 while disallowing his application under Section 10 of the Code for staying the proceedings in Civil Suit No. 6 of 1973.

2. The material facts are these. The earlier suit i.e. Civil Suit No. 11 of 1972 was filed on 18-9-1972, by the defendant Chandrabhan who was a tenant of a house item Smt. Ramdei seeking the relief of declaration that the acceptance of the bid of

Rs. 10,250/- in favour of the plaintiff Ramanlal was null and void and that he being the tenant of the suit house from Smt. Ramdei was entitled to remain in its possession and for a perpetual injunction against the defendant in that suit including the plaintiff Ramanlal. The present suit, that is, Civil Suit No. 6 of 1973 was brought by plaintiff Raman Lal on 19-2-1973. It was a suit for possession based on title and mesne profits. He alleged that he had acquired an indefeasible title to the suit house by virtue of the auction sale and its confirmation in his favour. It appears that the defendant Chandrabhan had also offered a bid of Rs. 10,221/- but his bid being lower, the sale was knocked down in favour of the plaintiff Ramanlal who offered a higher bid of Re. 10,250/-. The defendant Chandra Bhan being in possession of the suit house forestalled the plaintiff by filing Civil Suit No. 6 of 1973.

3. The short question that arises for consideration in the revision is whether the learned District Judge was right in consolidating the two suits, or he should have stayed the proceedings in Civil Suit No. 6 of 1973. The contention is that the requirements of Section 10 of the Code having been satisfied the learned District Judge had no jurisdiction but to stay the proceedings in Civil Suit No. 6 of 1973. There can be no doubt that the requirements of Section 10 of the Code are substantially met in the instant case, but the question still remains whether, in the facts and circumstances of the case, it can be said that the learned District judge was not right in making the direction that he did.

4. In support of the revision, learned Counsel for the petitioner has advanced a two-fold contention, namely, (i) the learned District Judge has failed to exercise his jurisdiction vested in him by law in not disposing of the application filed by the defendant Chandrabhan under Section 10 for staying of the proceedings in Civil Suit No. 6 of 1973, and (ii) the requirements of Section 10 of the Code being fulfilled, the learned District Judge had no other option but to stay the proceedings in that suit. I am afraid, the contentions cannot be accepted. The learned District Judge has dealt with both the application and in his well considered order he observes that justice of the case demands that the proceedings in the two suits should be consolidated rather than that of Civil Suit No. 6 of 1973 be stayed. He has expressly stated so in para 4 of the order observing 'I feel that the

consolidation will serve the interests of justice better than the stay of either under Section 10 of the Code of Civil Procedure.

5. In making a direction for consolidation, the learned District Judge observes:

In both suits which are cross cases of each other the court will have to arrive at a finding whether Ramdai was a licensee upto her life time or she was a mortgagee with possession and could let out the property on rent and if so whether the defendant was a tenant of Ramdai or whether he is a trespasser the another point of contest between the parties is also common and it to the auction of the suit house to the plaintiff in preference to the defendant. the plaintiff claims that the sale has become absolute in his favour and so the defendant should be evicted from the suit premises; whereas the defendant claims that the sale is invalid under rules and so it should be cancelled and he be declared to be its tenant and should of be evicted from the premiers. I, therefore, feel that most of the evidence that will be led in both the cases will be of same or similar character and evidence on behalf of one party in one case will be a rebuttal of the other party in other case.

No exception can be taken to this line of reasoning. the mistake, however, lay in consolidating the two suits the direction should have been for their trial together.

6. The contention that the learned District Judge could not have consolidated the two suits is perhaps not without substance. The proper order, in my view, was to make a direction that both the suits should be tried together In *Manobar Lal Coopra v. Raj Bahadur Rao Raja Seth Hiralal* : AIR 1962 SC527 , their Lordships in some what similar circumstances make the direction stating:

The suit at Indore which had been instituted later, could be stayed in view of Section 10 of the Code. The provisions of that section are clear, definite and mandatory. A Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit. In certain specified circumstances When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under Section 151 is not justified.

In view of the provisions of this section, it was open to the respondent to apply for the transfer of the suit at Asansol to the Indore Court and. if the suit had been transferred to the Indore Court, the two suits could have been tried together.

In that view, their Lordships set aside a temporary injunction passed by the Additional District Judge, Indore by taking recourse to Section 151, and made a direction that the two suits, namely, one at Indore and the other at Asansol should be transferred to the same court and tried together.

7. The result, therefore, is that the revision succeeds and is partly allowed. The order passed by the District Judge for consolidation of Civil Suit No. 11 of 1972 and Civil Suit No. 6 of 1973 is modified with the direction that the two suits be tried together. The issue regarding Section 10 is struck out as being redundant. The records of the two suits be returned to the District Judge, Bharatpur, forthwith and he shall try to dispose of them as expeditiously as possible.

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