

(2017) 04 AHC CK 0169
ALLAHABAD HIGH COURT
Case No: 2298 of 2017

Sanjay Khanduja

APPELLANT

Vs

Smt. Usha Devi And
Another

RESPONDENT

Date of Decision: April 18, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Section 115 - Revision

Hon'ble Judges: Manoj Misra

Bench: Single Bench

Advocate: Vinay Kumar Mishra, Manoj Kumar Sharma

Judgement

1. Heard counsel for the petitioner; and Sri B.P. Singh, learned Senior Counsel, assisted by Sri Manoj Kumar Sharma for the contesting respondent no. 1.

2. Sri B.P. Singh does not pray for time to file counter affidavit. Therefore, considering the nature of the order that is being passed as also ground on which it is being passed this Court does not find it necessary to issue notice to the second respondent, accordingly, with the consent of the learned counsel for the represented parties, this petition is being disposed of finally.

3. Brief facts giving rise to the present petition are as follows:

4. An Original Suit No.204 of 1990 was instituted by Smt. Usha Devi (Respondent No. 1) against N.B. Montrose (Respondent No. 2) and Sanjay Khandooja (Petitioner) for specific performance of agreement for sale evidenced by agreement dated 28.03.1984 and sale deed dated 17th January, 1985. Another suit no. 212 of 1989 was instituted by Smt Usha Devi against as many as seven defendants including

Sanjay Khandooja (Petitioner). Suit No. 212 of 1989 was for permanent prohibitory injunction in respect of a portion of immovable property which was the subject matter of sale deed dated 17.01.1985. In the pending suit no. 204 of 1990, an application was filed by the plaintiff-respondent for consolidation of suit no. 204 of 1990 and 212 of 1989 on the ground that both the suits were pending in the same court and since in original suit no. 204 of 1990, the subject matter of the agreement was the same as in respect of which injunction was sought in original suit no. 212 of 1989, therefore both the suits be consolidated and O.S. No. 212 of 1989 be made the leading case.

5. The trial court by its order dated 02.04.2013 rejected the consolidation prayer on the ground that the cause of action in both the suits was different; the parties were different; and there was no justification to consolidate the two suits. Against the order dated 02.04.2013, the plaintiff-respondent no. 1 filed a Civil Revision No. 239 of 2013 which came to be allowed by impugned order dated 23.01.2017 thereby setting aside the order dated 02.04.2013 and remanding the matter back to the trial court for taking a fresh decision on the consolidation application filed by the plaintiff-respondent.

6. The revisional court took the view that for applicability of Order IV-A C.P.C. neither commonality of parties nor commonality of cause of action is essential what is of paramount consideration is whether it is expedient in the interest of justice that there be a joint trial. It observed that since O.S No.212 of 1989 related to a portion of property of which sale deed was executed under parent agreement dated 28.03.1984, of which enforcement was sought by O.S. No. 204 of 1990, therefore, the trial court needed to reconsider the consolidation application.

7. Assailing the order dated 23.01.2017, the learned counsel for the petitioner has submitted that Order IV A of the Code of Civil Procedure does not confer any right upon the parties to seek consolidation of two suits but it confers a discretion on the Court to consolidate two or more suits when it is of the opinion that it is expedient in the interest of justice that there be a joint trial. It has been submitted that the court below has considered the facts of the case; the array of the parties; and the difference in cause of action in the two suits, to record its satisfaction that the two suits need not be consolidated and accordingly rejected the application. It has been submitted that once said discretion has been exercised by the trial Court and the application has been rejected, no right of any party stood affected and therefore the Revisional Court committed manifest error by interfering with such an order which was well within the jurisdiction of the trial court. It has also been submitted that the Revisional Court has exceeded its jurisdiction in as much as revision itself was not maintainable in view of the provisions of sub-section (3) of Section 115 C.P.C. as applicable in the State of U.P. vide U.P. Act 14 of 2003, w.e.f. July 1, 2002, according to which, the revisional court would not vary or reverse any order except where,-(1)

the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or proceeding; or (2) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

8. Sri B.P. Singh, who has appeared on behalf of the plaintiff respondent, has submitted that for applicability of Order IV A of the Code of Civil Procedure it need not be that the two suits must have a common cause of action or have common parties. The Court has to draw its satisfaction whether it would be expedient in the interest of justice that there should be a joint trial of the two or more suits. It has been submitted that since Suit No.204 of 1990 was for specific performance of an agreement which covered the subject matter of Suit No. 212 of 1989, there was good reason that the two suits be heard together and one of them be made a leading case because that would save the parties from leading evidence in two separate proceedings when evidence in one proceeding could be read in the other and, therefore, rejection of consolidation application caused great inconvenience and as such revision was maintainable.

9. I have given thoughtful consideration to the submissions of the learned counsel for the parties. The original suit no 204 of 1990 is a suit for specific performance. In a suit for specific performance different consideration weigh for grant of relief to the plaintiff and the necessary parties in a suit for specific performance are those which are privy to the contract. In a suit of injunction, the consideration is different. Here the court is required to see the title and possession of the plaintiff seeking injunction.

10. In Suit No.212 of 1989 injunction has been sought not only against the party which had executed the agreement for sale but against several other defendants who are not privy to the contract of which specific performance has been sought. Injunction was sought on basis of sale deed dated 17.01.1985. Though sale deed dated 17.01.1985 may have been executed pursuant to agreement dated 28.03.1984, but the essential flavour of the two suits was completely different and the nature of evidence to be led in the two suits would have to serve entirely different purpose. Under the circumstances, once the trial court exercised its discretion after recording cogent reasons that it was not a fit case where two suits should be consolidated, there was no jurisdictional error in the order passed by the trial court which should have been interfered with in exercise of power under Section 115 of the Code of Civil Procedure, particularly in view of the mandate contained in sub-section (3) of Section 115 C.P.C., as applicable in the State of U.P. vide U.P. Act No. 14 of 2003, which provides that superior court shall not, under the said Section, vary or reverse any order made except where,-

(i) The order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

11. In the instant case, by setting aside of the order passed by the trial Court neither suit nor proceeding would be disposed of. Further, if the order is allowed to stand there would be no failure of justice because the parties can still lead there respective evidence and prove there respective cases. And there is no question of causing any irreparable loss to any party by not consolidating the suit. Because mere inconvenience to a party would not fall within the ambit of irreparable loss. Hence, the revisional Court over looked the restriction placed upon it by sub-section (3) of Section 115 C.P.C., as applicable in the State of U.P.

12. Accordingly, and in view of the discussion made above, this court is of the view that the Revisional Court has exceeded its jurisdiction by interfering with the order passed by the trial court and therefore the order dated 23.01.2017 deserves to be set aside and is, accordingly, set aside.

13. At this stage, both the learned counsel for the parties prayed that since the two suits had remained pending for over two decades therefore it would be appropriate that this Court may be pleased to direct the court concerned that both the suits be decided expeditiously within a specified period.

14. Considering the facts and circumstances of the case, it is observed that the Court concerned shall ensure that both the aforesaid suits are proceeded expeditiously, on priority basis, without entertaining unnecessary adjournment from either of the parties.

The petition stands allowed to the extend indicated above.