(1984) 10 GAU CK 0002

Gauhati High Court

Case No: Civil Revision No. 181 of 1984

Shri Pradip Kumar Kundu and Others		APPELLANT
	Vs	
Shrimati Binapani Kundu and Others		RESPONDENT

Date of Decision: Oct. 27, 1984

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 151

Citation: (1985) 1 GLR 61

Hon'ble Judges: K. Lahiri, J

Bench: Single Bench

Advocate: D.C. Mahanta, for the Appellant; None, for the Respondent

Judgement

K. Lahiri, J.

By this application u/s 115 of the CPC the Petitioners question the order dated 12.6.1984 passed by Munsiff No. 1 at Dhubri refusing to amalgamate or consolidate Title Suit No. 81 of 1983 aloogwith T.S. No. 284 of 1984 and T.S. No. 82/83. Admittedly, there were three actions between the same parties and all these actions were pending, before the learned Munsiff.

2. The Petitioners are the Plaintiffs in Title Suit No. 284 of 1983 whereas they are Defendants in the other two actions. The suit by the Petitioners is for declaration of their right, title and interest in the suit property, for cancellation of a deed of gift and for permanent injunction etc. Whereas the opposite parties brought the actions against the Petitioners for abetment from "the suit lands". "The suit land" is the subject matter of T.S. No. 284 of 1983 as well. On 11.6.1984 i.e., a day prior to the impugned order, the Petitioners made a similar application for the consolidation of the three actions which was rejected by learned Munsiff. On 12.6.1984 when the Petitioners-Defendants made similar application for consolidation of the causes the

trial court turned down the prayer on two grounds; first, a similar application was rejected on 11.6.84 in Title Suit No. 82 of 1983; secondly, learned Munsiff held that there was no ground for consolidating the actions.

3. Mr. D.C. Mahanta, learned Counsel for the Petitioners submits that the trial Court has failed to exercise its discretionary power u/s 151 of ''the Code''. There is no allegation in the petition about breach or violating any provision of law. Learned Counsel for the Petitioners submits that the trial court had inherent jurisdiction to consolidate actions u/s 151 of ''the Code'' which he has failed to exercise.

4. Under these circumstances I proceed to dispose of the application on the basis that consolidation of cases may be made by the trial court u/s 151 of ''the Code''. It is therefore, seen that the challenge to the impugned order is confined to failure to exercise inherent jurisdiction of the court, which power is nothing but discretionary power.

5. A similar application to consolidate the three actions was rejected on 11.6.84 and the order has not been questioned. It is thus seen that there is a final order refusing to consolidate the actions rendered in a different suit. In the face of the existence of the order it would be too incongruous to make a contradictory order or an order which shall nullify a binding order rendered in the connected actions. Learned Counsel could not furnish any reason as to how this difficulty can be surmounted and a favorable order be rendered in favor of the Petitioners.

6. Be that as it may, the trial court held that there was no ground for consolidating the actions. No ground has been set out in the petition to hold that learned Munsiff failed to exercise his discretionary power. A party is not entitled to obtain an order for consolidating the actions as a matter of right unless strong reasons are set forth. In the instant case when no reason is set forth or spelled out which may be a good ground for consolidating the actions it is well-high impossible to hold that the order is liable to be set aside, acting within the contours of power u/s 115 of '''the code".

7. Inherent power of the Court can be exercised only when the Court considers it necessary to make the order: (1) for the ends of justice, or, (2) to prevent abuse of the process of the Court, Learned Counsel for the Petitioners has completely and totally failed to show that the order was necessary for the ends of justice or to prevent abuse of the process of the Court. As such, when the trial court has exercised its discretionary power and refused to consolidate the actions on furnishing grounds therefore, this Court cannot alter, modify or set aside the said order u/s 115 of "the Code". In absence of any material to show that the order for consolidation was essential or necessary to up-hold the ends of justice or for preventing abuse of the process of the Court the petition must fail. I am, therefore, of the opinion that the petition is liable to be rejected.

8. Indeed, there is no specific provision in "the Code" conferring a right on the party to have his pending actions consolidated. It follows, therefore, that there is no right

conferred on the parties to the actions to get the said relief as a matter of right. It is, however, seen that the provisions contained in Section 151 of ''the Code'' enable the Court to make such an order if considered "necessary for the ends of justice or to prevent abuse of the process of the Court". As such, the Court can undoubtedly consolidate actions in exercise of powers u/s 151 of "the Code", It is for the party applying for consolidation to set out how the relief will up-hold the cause of justice. The power to consolidate actions is not a statutory right as obtainable in England under R.S.C., Order, XLIX Rule 8, There, a statutory provision exists enabling a party to ask for and have the actions consolidated. I feel that a provision of the nature ought to be introduced in our CPC Code. In a line of cases the High Courts of India have persistently or consistently held that in exercise of inherent power u/s 151 of the Code the trial Court may consolidate causes or actions. To cite but a few decisions I would refer Vengu Naidu and Others Vs. The Deputy Collector of Madura Division, ; Narayan Vithal Samant v. Janki Bai (1915) 39 Bom. 604: 30 IC. 560: Kashi Prasad Singh v. Secretary of State, ILR (1902) Cal. 140; Dharam Das v. Dharam Das (1917) 40 IC 182; Kalichand Dutta v. Manadabala Das, (1912) 17 C.W.N. 526.

9. In the instant case the trial Court did not find any reason to consolidate the actions but rendered an order which surely go a long way to uphold the cause of justice. Learned Munsiff rejected the prayer but suo-moto directed that the actions should be posted for hearing on or about the same date. As such, the parties will be benefited by this order. Learned Munsiff directed that the suit should be posted for hearing "close to each other, if possible". It is thus seen that learned Munsiff has suo-moto considered that the suit should be heard simultaneously on or about the same date. I have no manner of doubt that learned Munsiff shall see that the actions are tried on or about the same date. I feel that similar actions should be heard on or about the same date. However, I think that it is wholesome and useful to leave the matter of making an order for consolidation to the discretion of the trial Court to say whether consolidation in a particular case is expedient and proper, or not. Even after the consolidation, the Court has power to severe actions. The prime object of consolidation is to do away waste of time and money and to prevent dispensation of delayed justice. The parties get quick relief and the costs are minimized. If the suits are taken together or simultaneously the witnesses may be examined and cross-examined almost simultaneously and it may be convenient for the Court to conclude trial of the suits early. However, in my opinion, the discretion should be left to the trial Court who is to consider whether consolidation of the suits will uphold the cause of justice and speedy trial.

10. For the reasons alluded, I find no merit in the application. Further, the Petitioners have failed to bring the case within the four corners of Section 115 of ''the Code''.

11. However, learned Munsiff may, if he finds just and expedient post the suits on or about the same date, if he feels that it will uphold the cause of justice. There will be

no order as to costs.