

CIVIL REVISION

Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 27.08.2010

C.O. No. 992 of 2008

Chaitali Kabashi

Versus

Sipra Mondal & ors.

Points:

Analogous hearing-Analogous hearing of two appeals filed by two defendants against the one decree whether permissible- Code of Civil Procedure, 1908- O 2R 3

Facts:

Opposite party no.1 filed a suit praying for perpetual injunction restraining the defendant, his men and agents from transferring the suit property in any way, for declaration of the plaintiff's title to the suit property described in the schedule A and for recovery of possession of the property described in schedule B of the plaint and other reliefs against the petitioner, Sipra Mondal, Monoj Santra and Goutam Ram. That suit was decreed on contest and against the said suit two title appeals were filed by the two defendants. The plaintiff of the suit filed an application for analogous hearing of the two appeals. The learned appellate court allowed the application directing that the two appeals shall be heard analogously.

Held:

In schedule B, the plaintiff has described the portion encroached by Chaitali Kabashi and the portion encroached by Goutam Ram separately with specific indication of the extent of encroachment. Under the circumstances,

the learned appellate court directed that the said two appeals shall be heard analogously. This was done for convenience of the parties though the two appellants might have their respective defence relating to the encroachments, as stated above. The plaintiff might have different causes of action against the two defendants/appellants; but the suit is related to the same property as described in the schedule 'A' but different encroachments by the two defendants/appellants as shown in schedule 'B' of the plaint which is the part of the schedule 'A' property. There will not any difficulty in making different findings in respect of different encroachments by the two defendants. There will not be any problem in executing the decree if passed against the different appellants in the same judgment. But the plaintiff/opposite party no.1 is the same. The plaintiff has claimed the ownership of the suit property by purchase. So the question of ownership will be involved in the two appeals. Under the circumstances, if analogous hearing is held, there will not be any inconvenience or prejudice to either of the parties. Under such circumstances, joinder of several causes of action against the defendants/appellants is permissible under Order II Rule 3(1) of the C.P.C. No miscarriage of justice has occasioned in directing the analogous hearing of the two appeals. Para 4

For the Petitioners: Mr. S. P. Mukherjee, Mr. Rabi Sankar Banerjee.

For opposite party No.1: Mr. Ratan Lal Shaw.

Prasenjit Mandal, J. : This application is directed against the order no.63 dated January 24, 2008 passed by the learned Additional District Judge, Fast Track Court No.1 at Sealdah in Title Appeal No.29 of 2005 thereby directing analogous hearing of the two appeals.

2. The short fact is that the opposite party no.1 filed the Title Suit No.155 of 1986 before the learned Civil Judge (Junior Division), Second Court at Sealdah praying for perpetual injunction restraining the defendant, his men and agents from transferring the suit property in any way, for declaration of the plaintiff's title to the suit property described in the schedule A and for recovery of possession of the property described in schedule B of the plaint and other reliefs against the petitioner, Sipra Mondal, Monoj Santra and Goutam Ram. That suit was decreed on contest and against the said suit two title appeals being Title Appeal No.54 of 2002 and the Title Appeal No.74 of 2002 were filed. The judgment and decree were challenged by the two defendants by filing two separate appeals, as stated above, before the appellate court. Smt. Sipra Mondal, plaintiff of the suit, filed an application for analogous hearing of the two appeals. The present petitioner filed objection against such petition and upon hearing both the sides over the application and its objection, the learned appellate court allowed the application directing that the two appeals shall be heard analogously. Being aggrieved by the said order, this application has been filed for setting aside the impugned order.

3. The point that arises for decision is whether the impugned order can be upheld.

4. Upon hearing the learned counsel for the parties and on consideration of the materials on record, I find that the plaintiff/opposite party no.1 filed the title suit against the defendants, just stated above and the suit was decreed on contest. In that suit, the plaintiff described the suit properties in the schedule of the plaint in two categories numbered as schedule A and schedule B. The schedule A is the main property. In schedule B, the plaintiff has described the portion encroached by Chaitali Kabashi and the portion

encroached by Goutam Ram separately with specific indication of the extent of encroachment. Under the circumstances, the learned appellate court directed that the said two appeals shall be heard analogously. This was done for convenience of the parties though the two appellants might have their respective defence relating to the encroachments, as stated above. Mr. Mukherjee submits that the plaintiff joined different causes of action against the defendants in the same suit. If the two appeals are heard together in respect of different causes of action against different defendants/appellants, there will not be any convenience, rather the two appeals would suffer from misjoinder of causes of action and it would hit the provisions of Order II Rule 3 of the C.P.C. So, the two appeals should not be heard together. In this regard, I hold that the plaintiff might have different causes of action against the two defendants/appellants; but the suit is related to the same property as described in the schedule 'A' but different encroachments by the two defendants/appellants as shown in schedule 'B' of the plaint which is the part of the schedule 'A' property. There will not any difficulty in making different findings in respect of different encroachments by the two defendants. There will not be any problem in executing the decree if passed against the different appellants in the same judgment. But the plaintiff/opposite party no.1 is the same. The plaintiff has claimed the ownership of the suit property by purchase. So the question of ownership will be involved in the two appeals. Under the circumstances, if analogous hearing is held, there will not be any inconvenience or prejudice to either of the parties. Under such circumstances, joinder of several causes of action against the defendants/appellants is permissible under Order II Rule 3(1) of the C.P.C. No miscarriage of justice has occasioned in directing the analogous hearing of the two appeals.

5. This being the position, I am of the view that there is nothing to interfere with the order impugned.

6. Accordingly, this application has no substance. It is dismissed.

Considering the circumstances, there will be no order as to costs.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

