

Order below Ex. 12

(Dated 12/12/2013)

1) This is application u/o. IV-A r/w sec. 151 of Code of Civil Procedure for consolidation of this suit with RCS 29/11. It is contested by plaintiff by filing say vide ex.21.

2) Heard respective parties.

3) As per application both this suit and RCS 29/11 are having common party and relief claim as well subject matter is the similar. Before going in to the merit of the application, it is strained to mention that defendant had relied on IV-A along with sec. 151 of Code of Civil Procedure. The copies supplied by defendants clearly shows that it is Act of State of U. P. and not of State of Maharashtra. In view of rules applicable in state of Maharashtra, there is no Order IV-A. Therefore, there can not be an application under Order IV-A of Code of Civil Procedure.

4) There can be application u/sec.151 for consolidation of suit. Applicant placed their reliance of following authorities:

- i) *Sitaram Deorao Pawar vs. Rupabai wd/o Gundulal Khatri & ors. 2006(2) ALL MR 646.*
- ii) *Sheela Sohanlal Ghai & Ors vs. Snehalata Sohanlal Ghai & ors., 1999(1) ALL MR 718 .*
- iii) *M/s P. T. Anklesharai & Co. Vs. Union of India [1974 Mh.L.J. 334.*
- iv) *Zakinaben and ors. vs. Babubhai Alimohmad Kapadia & ors. AIR 1999 GUJARAT 118 .*
- v) *Motilal Chunilal Rathor vs. Pani Bai and ors. AIR 1992 ORISSA 155.*

5) However, it makes very much that suit can be consolidated if parties and property involved are same. On keen perusal of record it show copy of RCS 29/11 on record. Though parties namely Sarita Bhutani and Kishor Dipani are common but remaining parties are not same. Moreover in RCS 29/11 relief of perpetual injunction is claimed against Sarita Bhutani and Amit Bhutani. At this juncture Adv. Shri. Kanoongo argued that the suit of applicant is barred by principal of res-judicata. However, there is no such bar for consolidation of suit. But it can be seen that the relief claimed is regarding lane between the houses of parties. Yet in suit at the hand construction of defendant is claimed is illegal wherein in RCS 29/11 plaintiff i.e. present applicant have claimed there possession over said lane. So relief claimed are different. Therefore, it can not be said that finding of the Court will result in multiplicity of proceeding and will affect the judgment of other suit. Hence following order:

Order

- i) Application is rejected with cost .

Kamptee
Dated: 12/12/2013

(R. U. Shaikh)
Jt. CJJD, Kamptee.