

MHSN150011552020



(Mahesh Anandrao Kadam-1
V/s.
Pandurang Hari Dhende-Other)

ORDER BELOW EXHIBIT 90 IN
SPECIAL CIVIL SUIT No.14/2020
{*OLD SPECIAL CIVIL SUIT No.318/2011*}

1. Perused application and say of defendants. Heard both side at length.
2. Vide present application plaintiffs seeking framing of consolidated issues in consequence to the order *Exhibit 40* for clubbing of the suits i.e. present suit and Special Civil Suit No.19/2020 (for the purpose of recording evidence only) dated 27/11/2015. Defendants conceded to pass an appropriate order.
3. When this case was fixed for hearing and after completing the cross-examination of plaintiff below *Exhibit 71*, when this *Court* inquired with plaintiffs and defendants, as to whether issues were consolidated for the purpose of recording common evidence ?, plaintiffs filed present application as the issues were not found consolidated.
4. In this case the issues have been framed on 17/07/2014. Whereas, in the other suit bearing Special Civil Suit No.19/2020 issues were framed in the year 2013. As such, it can be seen that,

while framing the issues, both the cases were decided to be heard and tried separately. The issues were framed by different *Judges*. Later on plaintiffs got clubbed both these suits as per the order of the *Hon'ble District Court, Sangli* vide Section 24 of *Code of Civil Procedure* in Civil M.A. No.252/2014.

5. A perusal of order *Exhibit 40* it can be seen that, learned predecessor directed common recording of evidence for both suits, in the present suit only. It means the order is not of consolidation of suits, but only for recording the common evidence.

6. Despite said order, it can be further seen that, evidence in both suits have been recorded separately. Plaintiffs have examined *Rahul Krushnat Kadam (Exhibit 71)* as per his affidavit dated 26/07/2019. Various documents are marked exhibited in his evidence. Whereas in the other suit bearing Special Civil Suit No.19/2020 the evidence of *Vidya Pandurang Dhende* i.e. plaintiff No.1/2 have been recorded vide her affidavit *Exhibit 36* dated 08/12/2017.

7. As such, the record shows that, despite the order in the present suit below *Exhibit 40* same has not been followed and the evidence is not recorded in common.

8. In order to consolidate the suits, the order of consolidation had to be passed before framing of issues and consolidated issues have to framed accordingly in one suit. As such, both suits are to be heard and disposed by common judgment.

But, in this case proper order of consolidation was not passed, nor the suits consolidated by framing the consolidated issues, nor the evidence recorded despite order *Exhibit 40*.

9. The issue regarding appropriate methodology to be followed in such cases was considered at length by the Hon'ble Apex Court in *M/s. Chitivalaso Jute Mills V/s. Jaypee Rewa Cement Air 2004 SC 1687*, wherein it has been ordained that, where necessary in the interest of justice, in order to prevent abuse of the process of the Court, such suits should be consolidated for the purpose of trial and decision. The Court may frame consolidated issues. Complete or even substantial and sufficient similarity of the issues for decision in two suits will be sufficient to consolidate the suit. The parties are relieved on the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded common, arguments need to be addressed followed by one common judgment. However, as the suits are two, the Court may based, on the common judgment, draw two different decree or one common decree to be placed on the record of the two suits.

10. In view of the above guidelines, the order of consolidation was not passed. The order below *Exhibit 40* is just merely an order of common recording of evidence, which seen not followed later on and the evidence has been recorded separately in both suits. In such circumstances, when already the issues were framed separately in both suits, the evidence have to be recorded accordingly and it was seen followed. As such, the order below

Exhibit 40 seen not given effect by the learned predecessor, therefore, at this stage when already the matter have been proceeded consolidating issues is not justified, nor proper. It would only further delay the hearing, which were already separately taken place in both suits. Thus, the issues cannot be consolidated as sought for. Accordingly, the application have to be rejected. Hence, following order.

ORDER

1. The application is rejected.
2. Costs in cause.

Vita.

(Sudhir N. Shinde)

Date: 17/06/2023.

Jt. Civil Judge Senior Division, Vita.

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : S. P. Pethkar.

Court : Jt. Civil Judge Senior Division,
Vita.

Judgment/Order signed by

the Presiding Officer on : 17/06/2023.

Judgment/Order uploaded on : 19/06/2023.