

Special Civil Suit No.1463/2011

CNR No. MHPU02-003993-2011

M/s. Opal Properties Vs.

Mr. Bhagwan Arjundas Kriplani & ors.

Special Civil Suit No. 1605/2014

CNR No. MHPU02-006082-2014

Mr. Pitambar Satramdas Kriplani Vs.

M/s. Opal Properties

Special Civil Suit No.1606/2014

CNR No. MHPU02-006083-2014

Maya Govardhandas Kriplani & ors.Vs.

M/s. Opal Properties

**Common order below Exh.No.147 in Special Civil Suit No.
1463/2011, on Exh. 98 in Special Civil Suit No. 1605/2014 and
on Exh. 65 in Special Civil Suit No.1606/2014
(Passed on 01/03/2023)**

01. The plaintiff in Special Civil Suit No.1463/2011 who is defendant in Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 has filed present applications for direction to record common evidence in respect of Special Civil Suit No.1463/2011, Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014.

02. According to plaintiff, as per the order of the Hon'ble District Court on administration side, Special Civil Suit No.1463/2011 has been transferred to this Court. The Special Civil Suit No.1463/2011 is fixed for filing evidence affidavit of plaintiff whereas, in the companion suits i.e. in Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014, the evidence affidavit of plaintiff therein is already filed. It is contended that as the parties to all these three suits and properties are involved in the three suits are part of Survey No.83/1 and 83/2 which are adjacent to each other. The defendants in their Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 raised the reference of Special Civil

Suit No.1463/2011 and about the contractual obligations agreed by the parties. It is further contended that the Special Civil Suit No.1463/2011 is substantive suit for the relief of specific performance as a owner of these properties being contagious block of lands had agreed to sell their respective properties by Memorandum of Understanding as a part of one concluded transaction and owners being members of the same Kriplani family.

03. Considering the commonality of facts and issues involved in all the three suits, it is necessary to consolidate all the three suits and to lead common evidence of all these three suits in the substantive suit bearing Special Civil Suit No. 1463/2011. It is further contended that the above course of cause will avoid duplication of evidence and improvisation by the parties, if the separate evidence is laid and separate cross examination are taken at the different times. It will also be convenient for the parties to lead common evidence in one suit and based on such common evidence common Judgment can be passed. Lastly, plaintiff in Special Civil Suit No.1463/2011 prayed that application be allowed and direction be issued to lead common evidence in respect of all connected suits in Special Suit No. 1463/2011.

04. The defendants in Special Civil Suit No.1463/2011 who are plaintiffs in Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 have resisted the application by filing their say at Exh. 148, Exh. 101 and Exh.68 in respective suits and contended that both these Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 have no concerned with the Special Civil Suit No.1463/2011. All three suits neither even remotely concerned to each other and the cause of action is completely different. It is contended that the plaintiff has filed application only with intention to delay the matter and lastly, prayed that application be rejected with cost.

05. Heard learned advocate Shri. C.D. Dharne, learned advocate Shri. Tejwani and learned advocate Shri. Survase for respective parties and also considered the written notes of arguments of learned advocate Shri.C.D. Dharne.

06. Perused the record. The Special Civil Suit No.1463/2011 is for specific performance against the defendants in respect of Memorandum of Understanding dtd. 08.12.2009. The defendants appeared and filed their respective written statements and the issues have been come to be framed. Thereafter, the present application has been filed by the plaintiff.

07. Learned advocate Shri. Dharne submits that the defendants particularly defendant nos.6 and 27 of Special Civil Suit No.1463/2011 are also parties to the Special Civil Suit No. 1605/2014 and defendant nos.7 and 28 of Special Civil Suit No.1463/2011 are also parties to the and Special Civil Suit No.1606/2014. The Special Civil Suit No.1463/2011 is for specific performance of Agreement to Sale dtd. 08.12.2009 executed by the branch of Kriplani family. He further submits that the suit properties in Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014 are also suit property in the Special Civil Suit No.1463/2011 which are part and parcel of Survey No.83/1 and 83/2. He further submits that in order to avoid duplication of evidence and improvisation, the evidence particularly in cross examination of parties, all three suits are required to be consolidated and parties are required to lead common evidence. Lastly, he prayed that application be allowed and parties to Special Civil Suit No.1463/2011 and in Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014 be directed to lead evidence in the Special Civil Suit No.1463/2011.

08. In support of his arguments, he relied on the case of **Chitivalasa Jute Mills Vs. Jaypee Rewa Cement reported in 2004 DGLS (SC) 111** wherein, it has been held that *the Code of Civil Procedure does*

not specifically speak of consolidation of suits but the same can be done under the inherent powers of the Court flowing from Section 151 of the C.P.C. It further laid down that consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trial. The evidence having been recorded, common arguments need be addressed followed by one common judgment.

09. On the same point, learned advocate relied on the cases of **Sheela Sohanlal Ghai & ors. Vs. Snehalata Sohanlal Ghai & ors.** reported in 1999(2) Bom.C.R. 282, **Sitaram Deorao Pawar & Anr. Vs. Rupabai Gundulal Khatri & ors.** reported in 2006(2) All M.R. 646, **Sanjeev Indravadan Dani Vs. Rupal Sanjeev Dani** reported in 2010(1) Bom.C.R. 226 and **Tarkude Hotels Pvt. Ltd. Vs. Rupee Co-operative Bank Ltd. & ors.** reported in 2012(1) Bom.C.R. 442.

10. Per contra, learned advocate Shri. Tejawani for defendants submits that the facts of the Special Civil Suit No.1463/2011 and Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 are different. Even, cause of actions are different therefore, common evidence cannot be lead for all there suits. He further submits that only with intention to protract and prolong the matter, the present applications have been filed. He further submits that even issues in all three suits are different therefore, applications be rejected.

11. In support of his arguments, he relied on the case of **Shubhangi Dinesh Babhan Vs. Tanaji Pandurang Patil & ors.** Writ Petition

No. 3959 of 2014 decided on 13.11.2014 wherein, the Hon'ble Bombay High Court in different suits one for partition and another for injunction, held that the trial of first suit is pending since 2003 and in the both suits, no common issues are involved and the order of the rejection of prayer for common evidence and clubbing of suits of the Hon'ble the Principal District Judge has been confirmed and Writ petition has been dismissed.

12. Considering all above aspects, I would like to state here that Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 are also pending on the file of this Court. The Special Civil Suit No.1463/2011 is for specific performance of agreement of which the Survey no.83/1A of village Tathvade is subject matter. I have also gone through the Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014, both the suits are for cancellation of Sale Deeds against plaintiff in Special Civil Suit No.1463/2011 and both the suits are in respect of Land Survey no. 83/1/B and 83/1/C which alleged to be part and parcel of Survey No. 83 as described in Special Civil Suit No.1463/2011.

13. It is to be noted that defendant nos.6 and 27 and defendant nos.7 and 28 who are respective plaintiffs in Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 are parties to the Special Civil Suit No.1463/2011. According to plaintiffs, all the transactions involved in the three suits are one and common and in respect of same suit properties and wherein, entire Kriplani family is involved. It is to be noted that in order to avoid abuse of process of Court and for ends of justice, it is necessary to record the common evidence in respect of in all three suits. Further, the said course would avoid duplication of evidence even, it would prevent any improvisation in the cross examination of the parties. Therefore, I am of opinion that common evidence can be recorded for all three suits in Special Civil Suit No.1463/2011. Further, no loss would cause to either party, if the exercise of recording of common

evidence has been adopted. After all, parties of Special Civil Suit No. 1605/2014 and Special Civil Suit No.1606/2014 have every opportunity to read their evidence in respect of their claim and pleadings of their respective suits. Even, the pleadings of the Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014 are different from the Special Civil Suit No. 1463/2011. I am of opinion that the Special Civil Suit No. 1463/2011 has been filed prior to the filing of rest of the suits. Further, the suit properties and the defendants are also common in Special Civil Suit No. 1463/2011 and rest of two suits. Further, in order to avoid contradictory evidence in the respective suits, I am of opinion that evidence of all three connected suits can be recorded in one suit. Hence, I proceed to pass following order:-

ORDER

1. Applications Exh.No.147 in Special Civil Suit No.1463/2011, Exh.98 in Special Civil Suit No. 1605/2014 and Exh. 65 in Special Civil Suit No.1606/2014 are hereby allowed.
2. There shall be common evidence for Special Civil Suit No.1463/2011, Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014.
3. The parties to above suits are hereby directed that they shall lead common evidence which will be recorded in Special Civil Suit No.1463/2011.
4. Copies of the recorded evidence in Special Civil Suit No.1463/2011 shall be kept in Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014.
5. Copy of this order be also kept on the record of Special Civil Suit No.1605/2014 and Special Civil Suit No.1606/2014.

Pune
Date : 01.03.2023

(A.B.Jadhav)
6th Addl. Small Cause Judge &
Jt.Civil Judge Senior Division, Pune.

I affirm that the contents of this P.D.F. file order is same word for word as per original order.

Name of Steno	: Sou. P. P. Deo (Stenographer Grade-II)
Court Name	: Shri. A.B.Jadhav
	: 6 th Addl. Small Cause Judge & Civil Judge Senior Division, Pune
Date of Order	: 01.03.2023
Signed by P. O.	: 01.03.2023
Uploaded on	: 01.03.2023