

A ARVIND KUMAR SHARMA
v.
VINEETA SHARMA & ANR.
(Civil Appeal Nos. 3884-3886 of 2013)

APRIL 15, 2013

B [SURINDER SINGH NIJJAR AND
PINAKI CHANDRA GHOSE, JJ.]

C *Practice and Procedure – Consolidation of proceedings*
D *in two suits – The suits filed by husband before Family Court*
E *– One seeking divorce and other seeking permanent and*
temporary injunction restraining the wife from entering
matrimonial home – In the second suit ex-parte ad interim
injunction granted – Plea of wife to consolidate both the
proceedings, rejected by Family Court – Appeal by wife
praying for consolidation of the two proceedings – High Court
stayed the operation of ex-parte ad interim injunction as well
as hearing of both the suits – Held: High Court committed
mistake in granting a relief which was not even prayed for –
Order of High Court set aside – Both the suits directed to be
consolidated and be tried together.

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
3884-3886 of 2013.

F From the Judgment & Order dated 29.02.2012 in AO No.
61 of 2012, dated 21.06.2012 in CLMA No. 1925 of 2012 in
AO No. 61 of 2012 and dt. 13.07.2012 in CLMA No. 6976 of
2012 in AO No. 61 of 2012 of the High Court of Uttarakhand
at Nainital.

G Dhruv Mehta, Tayenjam Momo Singh for the Appellant.

P.N. Gupta and Bharti Gupta for the Respondents.

The following Order of the Court was delivered

ORDER

A

1. Leave granted.

2. The original prayer made by the respondent No.1 before the Principal Judge, Family Court, Dehradun was that the proceedings in Original Suit No. 74 of 2009 and Original Suit No.263 of 2009 should be consolidated and tried together. This prayer was rejected by the Family Court by its judgment and order dated 27th January, 2012. Consequently, respondent No.1 filed appeal before the High Court. The High Court noticed the fact that the appellant - husband has filed two suits. In one suit, he is seeking divorce from the wife. In the other suit, he is seeking permanent injunction as well as temporary injunction, restraining the wife from entering the matrimonial home of the couple. It is also noticed by the High Court that in the second suit, ex parte ad interim order of injunction had been granted in favour of the husband. The aforesaid suit is still pending. Instead of deciding the issue on merits, the High Court admitted the appeal and stayed the operation of the ex parte ad interim order of injunction as well as hearing of both the suits until the appeal is heard and decided.

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3. In our opinion, the aforesaid order cannot be sustained. The High Court has granted a relief which was not even prayed for by the respondent, who was the appellant before the High Court. At best, the High Court could have directed that both the suits filed by the husband shall be consolidated and tried together.

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4. Mr. Dhruv Mehta, learned Senior Advocate appearing for the appellant, submits that the relations between husband and wife have deteriorated to such an extent that it would not be possible for the appellant to spend any time with the respondent – wife. Therefore, it would not be appropriate to order that wife be permitted entry into the matrimonial home.

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5. We are of the considered opinion that it would not be

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- A appropriate for the High Court or for this Court to make any observations on the merits of the controversy involved between the parties as the same shall have to be decided by the appropriate Court where the proceedings are pending. We, therefore, set aside the order passed by the High Court. We
- B allow the appeal filed by the respondent before the High Court. Both the suits filed by the husband are consolidated and shall be tried together as prayed for by the respondent wife. We also direct the Court which is designated to decide the aforesaid two matters to decide the same as expeditiously as possible.
- C 6. The appeals are disposed of in the above terms. No costs.

K.K.T.

Appeals disposed of.