

IN THE COURT OF PRINCIPAL CITY CIVIL AND
SESSIONS JUDGE, AT BANGALORE

Dated this the 21st day of April 2012

PRESENT

Sri.R.B.Budihal, M.Com., LL.B., (Spl.)
Principal City Civil & Sessions Judge,
Bangalore.

Misc.No.780/2011

<u>Petitioners:-</u>	1. Sri.V.B.Bhuvan Yoga Banu @ Banu Prasad, Son of V.Balachandra, Aged about 28 years 2. Sri.V.Balachandra, Son of Late Venkateshappa, Aged about 58 years Both are Residing at No.6, Akshayaspurthi, Vigneshwara Street, Bank Avenue, Babusapalya, Kalyanagar Post, Bangalore-560043. [By Sri.HSRM-Adv.] VS
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<u>Respondents:-</u>	1. Sri.Mylarappa, Son of Late Mallaiah, Aged about 76 years 2. Smt.Munirathnamma, Daughter of Sri.Mylarappa, Wife of B.R.Ajappa, Aged about 40 years 3. Sri.Mallikarjuna, Son of Mylarappa, Aged about 25 years 4. Smt.Nagalakshmi, Daughter of Sri.Ajappa, Aged about 20 years 5. Sri.M.A.Kemparaju, Son of Sri.Ajappa, Aged about 23 years 6. Smt.Laxmamma, Daughter of Mylarappa, Wife of Sri.Konappa, Aged about 47 years 7. Sri.K.Babu, Son of Sri.Konappa, Aged about 23 years, 8. Smt.Chitra, Daughter of. Sri.Konappa, Aged about 20 years
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	9. Sri.Manjunath, Son of Sri.Konappa, Aged about 19 years All are residing at Laggere village, Yeshwanthapur Hobli, Bangalore North Taluk. 10. Sri.N.Srinivasa Son of Sri.P.Nagappa, Aged about 46 years 11. Master.Darshan Son of Sri.N.Srinivasa, Aged about 9 years Since minor represented by his minor guardian and natural guardian Sri.N.Srinivasa. Respondents 10 and 11 are residing at C/o. Muniyappa Building, Andrahalli, Vishwaneedam Post, Bangalore-560058. [R.1 & 9 : By Sri.KVO-Adv; R.10 and 11: Absent]
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O R D E R

This is the petition filed by the petitioners under

Section-24 of Code of Civil Procedure, praying the court to transfer OS No.26404/2008 pending on the file of CCH No.29 and O.S.No.496/2010 pending on the file of CCH No.27 to one court in the interest of justice and equity.

2. Brief facts of the case as averred by the petitioners in the petition are that, after first petitioner purchased the property bearing site No.49, Assignment No.153, Katha No.49, measuring East to West:60 feet and North to South:55 feet, the respondents have filed OS No.26404/2008 for declaration and consequential reliefs and the said suit is pending on the file of CCH No.29. The petitioners also filed OS No.496/2010 for declaration and consequential injunction in respect of the schedule property and the said suit is pending on the file of CCH No.27. Both the suits are for declarative relief in respect of the schedule property. The schedule property is one and the same in both the suits and common question of law and facts involved in both the cases. Parties in both the suits are common and to avoid conflict of proceedings by delivering the

judgment by different courts in respect of the same property, it is just and necessary to transfer one suit to another court. Hence sought to allow the petition.

3. Respondent No.7 filed the objection contending that the petition is not maintainable either in law or on facts and the same is liable to be dismissed. This respondent partly admits the averments in para-3 of the petition, however, he denies that, the respondents in turn executed the GPA in favour of the petitioner No.2 and other averments made therein are substantially denied as false and baseless and the said document is fraudulent document. This respondent has filed the suit OS No.26404/2008 against the petitioner nos.1 and 2, but however this respondent has not made party to the proceedings in the said suit i.e., respondents 10 and 11 and as such parties are different, question of clubbing above cases does not arise at all and petitioner No.1 has filed the suit OS No.496/2010. The petitioner no.2 has not been made a party to the above proceedings and as such the parties are different. Hence sought to reject the petition.

4. Heard counsel for the petitioners and also counsel for the respondents 1 to 9 and Respondents 10 and 11 called out absent.

5. In view of the above, the point that arises for the consideration of this court, is:-

“Whether petitioners have made out a case to allow the petition and to grant relief as prayed for in the petition?”

6. My answer to the above point is in the affirmative for the following:-

REASONS

7. I have perused the petition averments and objection statement filed by the respondent No.7 and I have also perused the copies of the plaint in OS No.26404/2008 and OS No.496/2010.

8. Perusing the copies of the plaint in both the suits, parties in both the suits are substantially one and the same. Perusing the schedule of the property in both the suits, it is one and the same. Therefore, it goes to show that, the suit schedule property involved

in both the suits is one and the same. When that is so, it is necessary that, both the suits have to be tried and disposed off by one court. Otherwise, there may be conflicting decisions passed by two courts in respect of the very same subject matter of the property in both suits, which leads to multiplicity of proceedings and further complications. Even if the petition is allowed, the respondents will not be put into any injury or hardship because they can still submit their say before that another court also. There is no question of clubbing both the suits, but both the suits will have to be tried by the same court. If the petition is not allowed, the petitioners will be put into hardship and injury.

9. Therefore, considering entire materials on record, I am of the opinion that the petitioners have made out a case to allow the petition and to grant relief as prayed for in the petition. Hence, I answered the above point in the affirmative and proceed to pass the following:-

O R D E R

The Petition under consideration is allowed and suit O.S.No.496/2010 pending on the file of CCH No.27 is ordered to be withdrawn and made over to CCH No.29, to try and dispose of the same, along with O.S.No.26404/2008 in accordance with law.

In the circumstances of the case, there is no order as to costs.

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(Dictated to Stenographer, transcribed and computerized by him, corrected and then pronounced by me in the open court on this 21st day of April 2012)

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(R.B.BUDIHAL),
Prl. City Civil & Sessions Judge,
Bangalore

v.