

Case called out in the afternoon session.  
Parties and counsels absent.  
Proceed to pass the following:-

**ORDERS ON I.A No.2**

The applicant defendant No.1 has filed present application under Section 10 of CPC seeking an order of stay in the above case pending disposal of the earlier suit filed by the defendant No.1 in O.S. No.26320/2013 on the file of CCH-74 for the reasons assigned in the accompanying affidavit stating that the plaintiff herein is a alienee to the schedule property over which the 1<sup>st</sup> defendant has right, title and interest as per the judgment and decree granted in O.S. No.10755/1995. Further it is arrayed that, the defendant No.2 to 7 in connivance with the plaintiff harassing the 1<sup>st</sup> defendant in one or the other way and illegally dispossessed him though he was a party to the proceedings and decree which was executed in Ex.No.25025/2013 pending before the Hon'ble High Court of Karnataka in RFA No.1703/2016. Further it is averred that, he has already instituted a suit for the same reliefs in O.S. No.26320/2013 wherein the plaintiffs have been impleaded as parties to the suit, as such by virtue of Section 10 of C.P.C. two parallel proceedings have been instituted in respect of the same property and liable to be stayed until proceedings in the said suit is disposed of in accordance with law. On these grounds prayed for allowing the application.

2. It is contended in the objections filed by the plaintiffs that, the application filed by the 1<sup>st</sup> defendant is not maintainable for the reasons that, she has not disclosed the real facts before th court and also filed a suit for bare injunction in O.S. No.26320/2013 pending before CCH-74. On the other hand the present plaintiffs have filed the suit for declaration and permanent injunction, as such the suits are not identical and for different reliefs. The 1<sup>st</sup> defendant has also set up counter claim in the present suit and

plaintiffs have filed the written statement. Further the 1<sup>st</sup> defendant had not arrayed the present plaintiffs as parties to the suit in O.S. No.10755/1995 and obtained ex-parte decree by misleading the court without making defendant No.8 and 9 as parties to the suit. The plaintiffs have challenged the judgment and decree passed in O.S. No.10755/1995 as not binding. Further defendant No.8 has purchased the schedule property from the L.Rs of M. Krishnan i.e. from defendant No.2 to 7 on 17/08/1996 by way of registered sale deed and thereafter defendant No.8 has alienated the same in favour of defendant No.9 by way of notarized Hiba dated 25/03/1999. Further the application filed by the plaintiffs before CCH-74 Mayo Hall to implead them as parties came to be dismissed, accordingly the plaintiffs have filed the present suit. On these grounds prayed for dismissal of the application.

3. Heard and perused the written arguments filed by the counsel for plaintiffs along with material on record. Defendant No.1 did not turn up, accordingly taken as nil with liberty to file written submissions within the stipulated period, but did not file.

4. The point that arises for my consideration is:-

Whether the applicant defendant No.1 shows that the matter in issue is also directly and substantially in issue in O.S. No. 26320/2013 on the file of CCH-74?

5. My answer to the above point is in the negative for the following:-

### **REASONS**

6. It is worth to note that admittedly the plaintiffs have filed the above numbered suit in O.S. No.811/2018 against the defendants for

the relief of declaration and mandatory injunction with the following reliefs:-

*a. Pass judgment and decree declaring that plaintiffs are absolute owners in possession of suit schedule property by virtue of registered sale deed dated 03/03/2014 registered vide document No.SHV-1-03405-2013-14 as per document No.1.*

*b. To grant an order of declaration, declaring that the judgment and decree passed in O.S. No.10755/1995 passed by XXVIII Addl. City Civil & Sessions Judge, Mayo Hall at Bengaluru (CCH-29) dated 17/01/2001 (Ex-parte) is not binding on the plaintiffs as null and void and void abinitio.*

*c. Pass a mandatory injunction not to disturb the physical peaceful possession of the plaintiffs in respect of suit schedule property.*

*d. Further pass such other order/s and relief/s as this Hon'ble Court deems fit under fact and circumstances of the case, in the interest of justice and equity.*

7. The plaintiffs have filed the above numbered suit based on cause of action arose on 17/08/1996, on the date of execution of Hiba dated 25/03/1999, on the date of execution of sale deed by the defendant No.9 in favour of the plaintiffs dated 03/03/2014 and on the date of execution of confirmation deed dated 23/06/2015 and subsequent dates.

8. On the other hand if we go through the true copy of order sheet and pleadings pertains to O.S. No.26320/2013 on the file of CCH-74 the 1<sup>st</sup> defendant has filed the said suit against one Abdul Aleem for the following reliefs:-

*i) not to put up construction on the suit schedule property, except by due process of law by way of permanent injunction.*

*ii) to direct the defendant to restore the suit schedule property to the plaintiff*

*iii) or any other order/s as deems fit by this Hon'ble Court in the interest of justice and equity.*

9. On perusal of the records reveal that there is plethora of litigations since 1995 from the date of suit in O.S. No.10755/1995, O.S. No.6323/1999, O.S. No.3324/2001, O.S. No.26320/2013, Ex.No.25025/2013, RFA No.1703/2016 and present O.S. No.811/2018 before the different courts of law for various reliefs.

10. It is pertinent to note that the object under Section 10 of C.P.C. is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on the issues **which are directly and substantially in issue in a previously instituted suit.** So now it is clear that in order to grant stay of the suit, one of the conditions under Section 10 of C.P.C. is that, issue in both proceedings shall be directly and substantially one and the same.

11. It is also worth to note that in the case on hand though the defendant has filed the present application seeking an order to stay the present suit, but she has also set up counter claim in her written statement and it appears that necessary court fee has also not been paid on the written statement schedule property. This being the fact whether partial stay could be granted under Section 10 of the C.P.C. or not is to be looked in to.

12. Though the provisions of Order VIII Rule 6 C.P.C. provides for counterclaim and set off against the claim which a plaintiff makes in a suit, but the said provisions does not provide for stay of the counterclaim, as such at this stage partial stay pertains to the trial of the suit in question cannot be granted.

13. It is settled that stay can be granted pertains to trial in subsequent suits only. So though institution of subsequent suit is not restricted but the trial proceedings of that suit or plaint is only barred under Section 10 of C.P.C. based on the doctrine of Res Subjudice.

14. Therefore having regard to the facts and circumstances of the case, I am of the opinion that, on careful scrutiny of the pleadings in both the suits we can find that the issue in the present suit is not directly and substantially in issue in the previously instituted suit by the 1<sup>st</sup> defendant. Further the nature of reliefs claimed in both the suits are not identical and based on different causes of action. For these reasons I am of the view that the applicant defendant No.1 has not shown any grounds so as to grant an order for stay of the present suit. In the result I.A. No.2 is liable to be dismissed without cost. Hence, I answer the point raised for consideration is in the negative and proceed to pass the following:-

### **ORDER**

I.A. No.2 filed under Section 10 of CPC by the learned counsel for defendant No.1 is hereby dismissed.

No orders as to cost.

Perused the records. I.A. No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 C.P.C. is still pending from the year 2018 and none of the parties have pressed. Therefore, if I.A. No.1 is ordered to be heard with main suit and case is posted for plaintiff's evidence it can meet the ends of justice.

Hence, I.A. No.1 be heard with main suit. For plaintiff's evidence call on 23/06/2022.

(C.D. Karoshi)  
**V ACC &SJ, Bengaluru.**

