

KABG040037502017



ORDERS ON I.A.IV

The defendant no.1 has filed I.A. No.IV Under Section 10 of CPC praying to stay the further proceeding of this suit till disposal of RSA No.10100289/21 pending before Hon'ble High Court of Karnataka, Dharwad Bench.

2. In the affidavit, the defendant no.1 stated that the plaintiff filed this suit for possession with respect to suit property against him and another defendant. The plaintiff also filed O.S. No.156/2012 for cancellation of registered sale deed executed by the plaintiff in favour of Manohar Gopal Kulkarni and it was decreed and sale deed was cancelled. The defendant was restrained by way of permanent injunction from interfering with the possession of the plaintiff.

Thereafter, Manohar Gopal Kulkarni has filed R.A. No.203/2017 before the Prl. District Judge, Belagavi and it was allowed and cancellation of sale deed dated 17.02.2007 was dismissed and directed the defendant to pay Rs.5,00,000/- to the plaintiff along with interest @ 10%. Manohar Gopal Kulkarni deposited Rs.12,16,666/- before the Hon'ble Prl. District Judge, Belagavi. The present plaintiff filed RSA before the Hon'ble High Court of Karnataka bearing RSA No.100289/2021 and the Hon'ble High Court stayed the judgment and decree in RA No.203/2017 and directed Manohar not to dispossess the plaintiff from the suit property without following due process of law. In view of the above facts, the plaintiff has not successful in getting sale deed cancelled and still there is a chance for the parties to approach the Hon'ble Supreme Court. The present case is posted for cross-examination of DW.1 and it will take lot of time to cross-examine the DW.1. In view of the order of Hon'ble High Court of Karnataka, conducting of further proceedings in this suit will amount to wastage of time. To avoid multiplicity of proceedings, stopping of further proceedings is necessary. With these contentions, prayed to allow the I.A.

3. The plaintiff's counsel filed objections and specifically denied the contentions made in the affidavit. The plaintiff contended that suit property was leased out to the defendant on 21.01.2005 for monthly

rent of Rs.1500/- for a period of 5 years and the defendant admitted that he has been inducted as a tenant in the suit property and there exists a jural relationship of land lady and tenant. The plaintiff was stum to know the manipulation of document styled as 'Registered sale deed' dated 17.02.2007 by the defendant no.2. Therefore, she filed O.S.No.156/2012 for declaration and cancellation of sale deed. After adjudication, the said suit was decreed and cancelled the registered sale deed. In the process, the Hon'ble Court passed an order of permanent injunction against the defendant no.2 restraining him from disturbing the plaintiff's possession over the suit property. The defendant no.2 preferred an appeal and it was allowed by Prl. Sr. Civil Judge, Belagavi as per the order of Hon'ble Prl. District Court, Belagavi in part. Against the said judgment, the plaintiff preferred RSA No.100289/21 and the Hon'ble High Court of Karnataka stayed the judgment and decree of R.A No.203/2017. In the circumstances, the question of invoking section 10 of CPC does not arise as the same are not applicable to the appeal and suit. In view of the order passed by Hon'ble High Court of Karnataka, the defendant no.1 has no plea before this Court. With these contentions, prays to reject the application.

4. Heard both side counsels.

5. Now, the points that arise for consideration are as under:

Point No.1: Whether the defendant no.1 has made out grounds to stay the further proceedings of this case?

Point No. 2: What Order?

6. Answer to the above points are as under:

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

REASONS

7. **Point No.1:** The plaintiff has filed this suit for recovery of possession from the defendants and also for recovery of rent amount of Rs.57,600/- for the period from 21.10.2014 to 21.10.2017 along with interest. In the plaint, the plaintiff stated that she is the owner of suit property and the defendant no.1 is her tenant since 21.01.2005. The defendant no.2 taking disadvantage of his acquaintance with the plaintiff and her mental condition, got executed registered sale deed 17.02.2007 in his favour. After that, she filed O.S. No.156/2012 for cancellation of said sale deed and it was decreed and the sale deed was cancelled. Against the judgment and decree, the defendant no.2 preferred an appeal before the Hon'ble Prl District Judge, Belagavi and Hon'ble Court set aside the order of trial Court and directed the defendant no.2

to pay Rs. 5,00,000/- to the plaintiff along with 10% interest. Against the said judgment and decree, the plaintiff preferred an appeal before the Hon'ble High Court of Karnataka and it was pending. The Hon'ble High Court in the said appeal stayed the order of Hon'ble District Court passed in RA No.203/2017.

8. This case is filed by the plaintiff for recovery of possession from the defendants with respect to same property. The question of ownership of plaintiff and defendant no.2 is before the Hon'ble High Court of Karnataka. The defendant no.2 took the possession of the suit property from the defendant no.1 as per the compromise decree in O.S. No.576/2007. In the circumstances, till the dispute with respect to ownership of suit property between plaintiff and defendant no.2 is decided by the Hon'ble Court in RSA No.100289/2021, the proceedings of this case has to be stayed for some period in order to avoid conflicting decisions on the same subject matter and between the same parties. Therefore, the defendant no.1 has made out grounds to allow the application. Hence, I answer point no.1 in the ***Affirmative***.

9. **Point No.2:** In view of above discussion and reasons assigned therein, I proceed to pass the following;

ORDER

**IA.No.IV filed by the defendant no.1 Under
Section 10 of CPC is hereby allowed.**

**The proceedings of this case are stayed till
further orders.**

Call on 22.11.2023.

**III Addl. Civil Judge & JMFC.,
Belagavi.**

