

KABG300004782024



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT; BAILHONGAL.**

Present:

Sri. Ravi Babu Chawan B.A.LL.B (Spl.)
Senior Civil Judge, Bailhongal.

O.S.No.121/2024

Dated this the 3rd of July, 2024.

1) Shri. Mhantayya Guruputrayya Hiremath,
and others

.....Plaintiffs

Vs.

1) Smt. Nimbekka @ Nimbewwa W/o Kumarayya
Virakthamath and others,

.....Defendants

PARTIES TO I.A. No. II

1) Smt. Nimbekka @ Nimbewwa W/o Kumarayya
Virakthamath,
Ag: 72 years, Occ: Household work,
R/o: Belawadi, Tq: Bailhongal,
Dist: Belagavi and others.

.....Applicant/Defendant No.1,

(By Sri. C.S.C. Adv.)

Vs.

1) Shri. Mhantayya Guruputrayya Hiremath,
Age: 59 years, Occ: Agriculture/Lecturer,
R/o: Jalikoppa, Tq: Bailhongal Dist: Belagavi.

2) Smt. Pratiba W/o Gurupuarayya Hiremath,
Age: 34 years, Occ: Household work,
R/o: Gaddikaravinkoppa, Tq: Bailhongal,
Dist: Belagavi.

3) Smt. Archana Viany Chikkamath,
Age: 31 years, Occ: Household work,
R/o: Jalikoppa, Now at: Kadatanhal,
Tq: Kittur, Dist: Belagavi.

4) Shri. Sunil Mahantayya Hiremath,
Age: 28 years, Occ: Agriculture,
R/o: Jalikoppa, Tq: Bailhongal,
Dist: Belagavi.

.....**Opponent/Plaintiffs**

(By Sri. B.M.M., Advocate)

ORDER ON I.A. No. II

This is an application filed by the defendant No.1 under Section 10 of CPC praying to stay the further proceeding of the present suit till the disposal of O.S.No.45/2022 and O.S. No.106/2022 pending on the file of this court.

2. Facts in brief are as follows:

In the affidavit annexed to the IA,-II it is stated that the original suits in O.S. No. 45/2022 and 106/2022 regarding suit properties have been filed and the same are pending under trial. In these above said two suits, the properties are the same and the parties also the same. It is further sated by defendant No.1 that, she has filed Original suit No.45/2022 regarding the same suit properties and there is an order not to sell or transfer the suit properties under order 39 rule 1 and 2 of CPC. The original suit No.45/2022 and O.S. No. 106/2022 have the same cause of action and since the plaintiffs have the same cause of action. There will be no cause of action for the plaintiffs herein. If there is a claim interest in the suit properties of the plaintiffs, they are at liberty to appear in original suits No.45/2022 and 106/2022. Thus the suit of the plaintiffs hit by principle of "sub-judice" as the parties involved in both the suits and matter in issue in both the suits are similar. As such in order to avoid conflict of judgment it is prayed to stay the present suit.

3. The plaintiffs have filed their detailed objection to the IA-II. They have denied the contents of affidavit, annexed to the IA-II. It is stated that in OS No.45/2022 sought declaration and injunction in respect of properties bearing 1) RS. No. 197/1/A

measuring 4 acres 36 guntas, 2) RS No. 197/5 measuring 4 acres, 3) RS No.202 measuring 2 acres 17 guntas, 4) RS. No.198 measuring 1 acres 13 guntas, 5) G.P No.795, 794 and 795, whereas suit of the plaintiffs for partition and separate possession against the defendants in respect of landed properties bearing 1) RS No.210 measuring 1 acre 38 guntas consisting of 34 plots out of 9 plots Nos.21/19, 20, 18, 14, 15, 16 9 10 ,11, 1 13 and 28, 2) RS No.198 measuring 1 acre 13 guntas, 3) RS No.197/5 measuring 4 acres, 4) RS No. 312/3 measuring 7 acres 13 guntas, 5) GP No.249, 6) 249/1, 7) GP No.794A and 8) GP No.793. Thus both case are totally different. They are no identical in nature, not at all between the same parties and litigating to the different title. Hence section 10 of CPC is not at all attracted to the O.S. No45/2-22 and present suit. It is further submitted that the applicant invoke one more suit bearing O.S No. 106/2022 which is filed by present defendant No.2 for partition and separate possession in respect of plot No.210/12 which was already sold away by father of present defendant No.2 and husband of defendant No.1 of the case. But in that O.S No.45/2022 the plaintiff of that case not sought all 9 remaining plots No. 1) GP No. 210/19, 2) GP No.210/20, 3) GP No. 210/18, 4) GP No.

210/14,15,16, 5) GP No.210/9, 6) GP No.210/10, 7) GP 210/1, 8) GP No. 210/13 and 9) GP No.210/28 which are all situated in RS No. 210 of Belawadi village. It is further contended that the plaintiff of OS. No. 106/2022 has not sought entire these plots for partition and moreover these plots are not at all made are taken in the hotch-pot. It is further contended that in O.S. No. 45/2022 and O.S No106/2022 only against one plot out of 10 plots is G.P No.210/12. But this plot is not made as suit properties in the present suit. Moreover wife of present plaintiff No.1 and mother of plaintiff 2 to 4 deceased Suvarna made as party in O.S. No106/2022, but after her death till today the plaintiff of that suit in OS No.106/2022 as well as defendant No.2 of this case not taken steps to bring her LRs. on record. Hence suit against deceased Suvarna dismissed. Therefore the present plaintiffs are not at all parties to O.S No. 106/2022. Hence the application under section 10 of CPC is totally not at all maintainable in this case. Hence prayed for dismissal of the IA-II.

4. The following points would arise for my consideration:

Point No.1) Whether the matter in issue in the present suit is directly and substantially in issue in OS. No.45/2022 and OS No.106/2022?

Point No.2) Whether the present suit is liable to be stayed under section 10 of CPC?

Point No.3) What order?

5. Heard arguments. Both plaintiffs and defendant No.1 have filed memo with list of documents. Perused the same.

6. My finding to the above points are in the negative for the following reasons:

:REASONS :

7. **Point No.1 and 2 :-** Since these points are inter-connected to each other, they are taken up together for discussion.

8. I have photo copies of the plaint, in both suits in OS No.45/2022 and OS No.106/2022 and entire order sheet in O.S No.45/2022 filed before the Senior Civil Judge Court, Bailhongal. Admittedly, the present suit schedule B properties are 1) RS No.210 which consists of 34 plots now remained 9 plots, 2) RS No.198 acre 13 guntas, 3) 197/5 measuring 4 acres and 4) 312/3 7 acres 13 guntas all are situated at Belwadi village and schedule C

properties are 1) GP No249, 2) GP No.249/1 , 3) GP No.794/A and 4) GP No. 793 of Belwadi village. Whereas the suit properties involved OS No. 45/2022 are 1) RS No.197/1/A measuring 4 acre 36 guntas, 2) RS No. 197/5 measuring 4 acres, 3) RS Np.202 measuring 2 acres 17 guntas, 4) RS No.198 measuring 1 acres 13, 5) GP No. 795, 6) GP No.794, 7) GP No.795 all are situated Belwadi village. The suit in OS No.45/2022 is one for declaration and injunction filed by present defendant No.1 in respect of the 1) RS No.197/1/A measuring 4 acre 36 guntas, 2) RS No. 197/5 measuring 4 acres, 3) RS Np.202 measuring 2 acres 17 guntas, 4) RS No.198 measuring 1 acres 13, 5) GP No. 795, 6) GP No.794, 7) GP No.795. The suit property in O.S No.106/2022 is plot No.210/12. Therefore the suit properties are not similar.

9. Admittedly the plaintiff in OS No.45/2022 is defendant No.1 in the present suit. Similarly the plaintiff in OS No.106/2022 is defendant No.2 in the present suit. The present plaintiffs in present suit are not the parties in both the above said suit OS No.45/2022 and 106/2022. Therefore the parties to suit are not litigating under the same title. The present suit is for partition and separate possession; whereas OS No.45/2022 is filed for declaration of

title and consequential relief of permanent injunction. The OS No.106/2022 is one for partition and separate possession and declaration declaring that sale deed dated 03-05-2019 executed respect of property bearing plot No.210/12. Furthermore, the suit property involved in OS No.106/2022 bearing plot No.210/12 is not suit property in present case on hand. As such it goes to show that the mater in issue in the present suit is not directly and substantially in issue in OS No.45/2022 and OS No.106/2022 as property involved in OS No.106/2022 and in present suit on hand are not similar.

10. Moreover in the present suit defendant No.1 has not filed her written statement. The defendant No.2 to 5 appeared before the court through their counsels, but failed file objections to IA-2 as well as their written statement. It appears that the defendant No.1 with an intention to prolong the proceeding have moved this application. There is no bona-fide shown. Accordingly point No.1 and 2 are answered in the negative

11. **Point No.3:-** For the findings given to point No.1 and 2, I pass the following:

ORDER

I.A.No. II filed under Section 10 of CPC by the defendant No.1 is hereby dismissed with cost of Rs.250/-.

(Dictated to the stenographer, transcribed and typed by him, corrected, revised then signed by me and pronounced in the open Court on this the 3rd day of July, 2024)

(Sri. Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.