



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE, GOKAK

Present: K.M. SHANKAR, B.A.L., LL.B.,
I Addl. Senior Civil Judge, Gokak

Dated, this the 07th day of October, 2023

O.S.No.290/2012

Plaintiff: Konappa @ Anand S/o. Irappa Ankadavar,

(By Sri.RSK., Advocate)

V/s

Defendants: 1. Irappa S/o. Konappa Ankadavar
and others

(D1 & 11 to 14 By Sri.NSG., Advocate)
(D2 to 5, 2(a) to (e), 3(b) & 6 exparte)
(D15 to 17 By Sri.BKJ., Advocate)
(D18 By Sri.SBM., Advocate)
(D10 By Sri.SCG., Advocate)
(D3(a) & (c), 7 to 9 & 19
by Sri. LMS., Advocate)

I.A. No.52

Applicant : Shankar

V/s

Opponents : Vinayak and another

ORDERS ON IA-52 FILED DATED 26.07.2023 UNDER SECTION 151
OF CPC

The 10th defendant has made the instant application
seeking clubbing of OS.No.314/2022 on the file of this court with

the present suit on the grounds that the present suit is pending before this court between the plaintiff and defendants for the relief of partition of the suit properties along with the suit properties of OS.No.314/2022 on the file of this court. The 7th defendant in the suit is full brother of the 10th defendant of this suit. Plaintiffs 1 and 2 of OS.No.314/2022 are the defendants 8 and 9 in the present suit. Hence, the subsequent suit OS.No.314/2022 between the same parties and in respect of same suit properties is pending and is posted for evidence. The defendants 8 and 9 in the present suit suppressed these material facts with bad intention to mislead the court and have filed false OS.No.314/2022 with ulterior motive to gulp the entire suit properties. The suit properties of the present suit are also suit properties of OS.No.314/2022. The legal rights of the parties are not yet determined i.e., not adjudicated by the court till today.

2. The 10th defendant is running a ready made cloth shop in the trade name M/s. Delhi Best Collections in the suit properties. The present suit is filed by the brother of defendants for the relief of partition in respect of joint family properties including the suit properties of OS.No.314/2022 before this

court. Business condition of the 10th defendant was very good and raised loans from the NKGSB Co-Op Bank, Belagavi Branch for running ready made cloth business in the suit properties and they are mortgaged to the said bank towards security of the loan advanced by the bank to the 10th defendant. He invested money in the said business but unfortunately in 2016 his shop was closed as the Municipal Council, Gokak introduced a master plan for widening of the road and the front portion of the properties was demolished. Thereafter, the 10th defendant restarted the business but due to the viral disease covid-19 once again his business place was closed for another two years. Hence, he sustained a huge loss in his business and has not paid loan installments to the said bank. Hence, it gave notice to him demanding outstanding loan amount of Rs.2,20,00,000/- but he has not paid the dues to the bank, further he has requested the bank to give some time to discharge debts as he had no money at that time. Thereafter, the said bank without waiting issued a final notice Under Section 13(2) of the Securitization and Re-Construction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No.54 of 2002 dated 17.12.2002) as amended by the enforcement of security interest and recover of debts laws amended Act, 2012 (Act 1 of 2013 dated 31.01.2013)

to the 10th defendant. In the said notice bank attached the suit properties and thereafter it gave a notice for auction of the suit properties for recovery of outstanding loan of Rs.2,20,00,000/- and the bank affixed the said public sale notice to the shop suit properties and declared that the said suit properties are attached by the bank, these will be put in auction. Further, the 10th defendant was restricted not to sell or transfer the suit properties to anybody.

3. This being the state of affairs, the defendants 7 to 9 approached the 10th defendant and told that the properties are going to the hands of strangers in case they are sold in auction sale, further joint family business will be affected and he has made arrangements to pay the loan of Rs.2,20,00,000/- to the bank to avoid auction of the suit properties. Accordingly, the defendants 7 to 9 paid the outstanding loan to the bank and stopped auction sale of the suit properties. Further, they told the 10th defendant to repay the same after improvement in the business. He believed the same and promised to repay the said loan after necessary arrangements. The intention of the defendants 7 to 9 of the present suit is not to purchase the properties but to avoid the auction of the suit properties and

protect the joint family properties. After few days the defendants 7 to 9 insisted the 10th defendant to execute some documents towards safety of the loan amount. Thereafter the alleged sale deed of OS.No.314/2022 is not actual sale of the suit properties but it is family arrangement made between the family members and in presence of elders so as to protect the properties and joint family business. Now, the 10th defendant will have to refund the money and get back properties in his name. The deeds executed in respect of the properties in OS.No.314/2022 are only executed for security of loan paid by the defendants 7 to 9 but the 10th defendant is never intends to sell the properties to the defendants 7 to 9.

4. The properties of OS.No.314/2022 are approximately worth of more than Rs.7,00,00,000/- but as the defendants 7 to 9 paid outstanding loan of Rs.2,20,00,000/- to the bank and wanted to misuse the conditions of the 10th defendant, have changed their mind claiming rights over the properties of OS.No.314/2022 though the sale deed is executed only for the security of loan. The defendants 7 to 9 behind the back of the 10th defendant got entered their names to the property records. Now, the 10th defendant came to know about the illegal plan of

them to gulp the entire huge properties only for the Rs.2,20,00,000/- in place of market value of the properties. No ownership and possession is given to the defendants 7 to 9. The 10th defendant is ready and willing to refund the loan amount, which was paid by the defendants 7 to 9, and now the property should be returned to the 10th defendant or plaintiffs and defendants must wait till the final disposal of OS.No.290/2012. The matter in dispute in the present suit is whether the suit properties are self acquired properties or ancestral properties of the plaintiffs and defendants. This matter is yet to be decided. Unless rights are declared by the court the question of execution of sale deed or rectification of deed will not arise for consideration of the court.

5. The court cannot come to conclusion about the above said properties unless the rights of the parties are fully determined. If any order is passed in the present suit it will affect the rights of the parties of OS.No.314/2022. Hence, the 10th defendant prayed to club the OS.No.314/2022 with the present suit and prayed for recording of common evidence so as to enable the court to deliver a common judgment. The properties of OS.No.314/2022 cannot be sold during pendency of

OS.No.290/2012 in view of Section 52 of the Transfer of Property Act. The intention of the law is in pending litigation nothing new should be introduced as it is based on equity and public policy. Pendency in any court or of any proceedings which is not collusive and in which any rights to immovable properties is directly and specifically in question i.e., the doctrine of *lis pendens* the properties cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect right of any other party. If the application is allowed, no loss or hardship would be caused to the plaintiffs or other defendants. If it is not allowed, the 10th defendant will be put to heavy and irrelevant loss.

6. In the objections dated 28.08.2023, the application is resisted by the defendant No.3(a) to (c), 2, 5, 7, 9 and 19 contending that it is groundless and the averments made therein are false. The present suit is for the relief of partition and OS.No.314/2012 is for the relief of mandatory injunction and all the parties to the present suit are not the parties of OS.No.314/2012 and it's subject matter is just to correct the last number of sold property infavour of it's plaintiffs by it's defendant. Thus, subject matter of both the suits are totally

different from each other. The 10th defendant sold three properties under one sale deed, out of which only one property is the subject matter of OS.No.314/2012. The other two properties sold under sale deed infavour of plaintiffs in OS.NO.314/2012 are not the subject matter of the present suit. The present 10th defendant sold the suit property of OS.No.314/2012 by executing a registered agreement of sale with possession and then under a registered sale deed. That by executing the sale deed he received Rs.2,20,00,000/-. Himself has admitted that he executed the sale deed and received the said amount from the plaintiffs of OS.No.314/2022. That, not only the 10th defendant, all his family members have signed the sale deed relating to the suit property of OS.No.314/2022. But, now the 10th defendant is asserting that the deeds are not sale deeds.

7. The 10th defendant has filed the written statement in the present suit and averred that the properties at hands are his self acquired properties. Now, by filing written statement in OS.No.314/2022 he is contending that the nature of the suit properties is yet to be decided. It means the 10th defendant received the benefit from one hand by selling the suit properties

of OS.No.314/2022 infavour of plaintiffs and again contending that another suit is pending. The cunning character of the 10th defendant has to be taken into consideration. Section 52 of the Transfer of Property Act, is applicable to the case at hand. The 10th defendant himself is the executant of the sale deed and now is taking the shelter of the provisions of law. Such conduct is actionable one and is liable to be curtailed by dismissing the application. In view of wrong last number of property in the sale deed the plaintiffs of OS.No.314/2022 are abstained from getting loan from the Nationalized bank and they are purely business people and rate of interest is having a direct bearing relating to their loss and profit. For registration of deed of correction the 10th defendant is demanding more money from the plaintiffs of OS.No.314/2022. Evidence of plaintiffs and three defendants has already been completed in the present case and the PW1 of OS.No.314/2022 was partly cross-examined by the present 10th defendant. Accordingly, it is prayed for dismissal of the application with cost.

8. In the objections dated 16.09.2023, the application is resisted by the defendants 11 to 14 contending that it is groundless and the averments made therein are false. The

plaintiff has filed the false suit against the defendants on false and baseless grounds in active collusion with the 10th defendant in order to harass other defendants. This suit being a partition and evidence of plaintiffs and almost defendants is over. This suit is of the year 2012 and the 10th defendant is claiming to club the suit in 2022. There is a gap of 10 years in between these suits. Now, the present case is at the fag end. At this stage, the 10th defendant filed the false application in order to harass the other defendants in active collusion with plaintiff and defendants 15 to 17. Hence, the application is not maintainable. On looking to the written statement of the 10th defendant it is very contradictory to the contents of affidavit filed by him in support of the application. The nature of the present suit and nature of the OS.No.314/2022 are also different. Accordingly, it is prayed for dismissal of the application with cost.

9. I have heard the arguments of the learned counsel appearing for the parties and perused the material on record.

10. Points that arise for consideration of the court are;

1. Whether the 10th defendant has made out grounds to allow the present application?
2. What Order?

11. Findings of the court on the above points are as under:

Point No.1: in the negative and

Point No.2: as per final order for the following:

R E A S O N S

12. Point No.1: it is well settled that in order to club two suits with each other, cardinal principles that are to be full filled by the person who seeks for clubbing of the suits are that both suits must be pending before the same court, parties and properties of both suits must be one and the same and reliefs sought in both suits must be interlinked with each other and as much as possible order for clubbing of suits must be passed before framing of issues and before commencement of trial in order to enable the court to record common evidence of the parties and render a common judgment in the suits.

13. But, in the case at hand, as rightly contended by the defendant No.3(a) and (c), 7 to 9 and 19, issues have already been framed in both suits and evidence of parties has also been commenced. Moreover, in the present suit, defendants have adduced their evidence and it is about to complete within a short period. Apart from these things, all the parties of this suit are not

the parties of OS.No.314/2022 and all the properties of this suit are not the properties of the said suit. Even, the reliefs sought in both suits are not one and the same. Under these circumstances, the said suit cannot be clubbed with the present suit and accordingly the application is devoid of merits and deserves to be dismissed and the point No.1 is answered in the negative.

14. Point No.2: in view of the findings arrived on the point No.1, I proceed to pass the following:

O R D E R

The IA-52 filed Under Section 151 of CPC, is hereby dismissed.

There shall be no order as to cost.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 07th day of October, 2023)

Sd/-
(K.M.SHANKAR)
I Addl. Senior Civil Judge, Gokak