

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC.,

HUNAGUND.

Present:-

Sri. Hanamantarao R.Kulkarni,

B.Com., LL.B.,

Senior Civil Judge and JMFC., Hunagund.

O.S.No.228/2023

Dated this the 3rd day of April, 2025.

1. Smt. Mahantamma W/o Sharanabasava Sunakal and others
... **Plaintiffs**

-Versus-

1. Sri. Sangappa S/o Veerabhadrapa Iddalagi and another
... **Defendants**

I.A. No.II

1. Mudappa S/o Veerabhadrapa Iddalagi
... **Applicant/
defendant no.2**

-Versus-

1. Smt. Mahantamma W/o Sharanabasava Sunakal and others
...**Opponents/
plaintiffs**

(By Sri. U.S.S., Advocate for Applicant/Defendant no.2)

(By Smt. S.A.H., Advocate for opponents/plaintiffs)

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ORDER ON I.A. NO.II

1. I.A. No. II is filed by the applicant/defendant no.2 under Sec.10 R/w 151 of C.P.C. for staying the instant suit till the disposal of the O.S.No.177/2021.
2. The learned Counsel for the opponents/plaintiffs has filed her statement of objections to the said application.
3. Heard both Counsel.
4. After perusal of the records of the case, the following points would arise for my consideration:
 - 1) Whether the defendant no.2 is entitled for the relief as sought in the I.A. No.II?
 - 2) To what order?
5. My finding to the above points is as follows:

Point No.1: In the Negative.

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

REASONS

6. **Point No.1:** In the affidavit appended to I.A.No.II it is stated by the defendant no.2 that he is contesting in other suit in O.S.No.177/2021 and in this case and the parties and properties and prayer and nature of the suit are same. Hence,

he has filed this application for staying the above said suit i.e., subsequent suit till the disposal of O.S.No.177/2021.

7. Per contra, in the statement of objections to I.A.II the learned Counsel for the plaintiffs has denied the application averments in material aspects and contended that the application filed by defendant no.2 is not maintainable either under law or on facts and the same is liable to be dismissed. It is further contended that O.S.No.177/2021 has been filed by Amarappa Veerabhadrappe Iddalagi for the relief of partition and separate possession and the present suit is filed for the relief of declaration, partition and separate possession and also for consequential relief of permanent injunction in respect of the land bearing S.No.372/B situated at Nandawadagi village and she has further contended that the plaintiffs' in this suit have challenged the gift deed and the cause of action was different and the parties are different and the subject matter is different and the reliefs are also different and accordingly, among other grounds prays to reject the application.
8. In view of the rival contentions put forth by both the parties, now, let me see as to whether the application filed by the defendant no.2 is deserves to be allowed.

9. **Sec.10 of C.P.C.** reads as under: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.
10. The object of the rule contained in Sec.10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief. The policy of the law is to confine a plaintiff to one litigation, thus obviating the possibility of two contradictory verdicts by one and the same court in respect of the same relief. The section intends to protect a person from multiplicity of proceedings and to avoid a conflict of decisions. It also aims to avert inconvenience to the parties and gives effect to the rule of res judicata. It is pertinent to note that What is to be seen is what reliefs plaintiff seeks and what question or issues are to

be adjudicated in deciding plaintiffs entitlement to claimed relief-Matter should be directly and subsequently in issue in first suit may be directly and substantially in issue in other suit. Directly and substantially in issue means whole of subject matter in both proceedings is identical. The fundamental test for applicability of Sec.10 is whether decision in previous suit operates as res judicata in subsequent suit. In staying a suit the issue of which also directly is in issue in a previous suit between the parties, an application under Sec.10 does not pose an embargo on the Court for examining the merits. For application of Sec.10 two suits between same parties and identity with regard to cause of action, suit property and also relief's sought for in both suits. In order to invoke Sec.10 (I) subject matter of the second suit must be directly and substantially in issue in the earlier suit; (II) prior suit must be pending in same court or in any court in India having jurisdiction to grant relief; and (III) court in which earlier suit is pending is of competent jurisdiction to grant relief in subsequent suit. It is not for a litigant to dictate to the Court as to how the proceedings should be conducted, it is for the Court to decide what will be the best course to be adopted for expeditious disposal of the case. In a given case the stay of

proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties.

11. In the instant suit, the plaintiffs have filed the suit for declaration to declare that the alleged Gift deed dated 30/03/2017 is not binding on the legitimate share of the plaintiffs and the same is null and void in respect of the property bearing S.No.372/B situated at Nandawadagi village. Further, in O.S.No.177/2021 the plaintiff by name Amarappa S/o Veerabhadrappa Iddalagi against the defendants for the relief of partition and separate possession in respect of several properties including the suit property in this case. It is pertinent to note that the subject matter of the second suit i.e., O.S.228/2023 is not directly and substantially in issue in the earlier suit i.e., O.S.No.177/2021. The decision in O.S.No.177/2021 do not operate as res judicata in the subsequent suit i.e., 228/2023. Further, the parties are different in both the suits and nature of the relief sought is also entirely different. All the requisites enumerated under Sec.10 are not fulfilled. Hence the subsequent suit i.e., O.S.228/2023 is not to be stayed. Hence the defendant no.2 is not entitled the relief claimed in the I.A.No.II. Accordingly, I answer this point in the negative.

12. **Point No.2:** In view of my discussion made supra, I proceed to pass the following:

ORDER

I.A.No.II filed by the defendant no.2 under Sec.10 R/W Sec.151 of C.P.C. is hereby rejected.

No order as to costs.

**(Sri. Hanamantarao R.Kulkarni)
Senior Civil Judge and JMFC.,
Hunagund.**